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STATUTORY INSTRUMENTS

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**2018 No. 86**

**The Wireless Telegraphy (Licence Award) Regulations 2018**

**PART 1**

Introductory

**Citation, commencement, and extent**

1.—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) Regulations 2018 and shall come into force on 31st January 2018.

(2) These Regulations shall not extend to the Channel Islands or the Isle of Man.

**Interpretation**

2.—(1) In these Regulations—

- “2.3 GHz additional price” has the meaning given in regulation 76;
- “2.3 GHz assignment stage bid” shall be construed in accordance with regulation 72(1);
- “2.3 GHz assignment stage option” has the meaning given in regulation 72(4);
- “2.3 GHz assignment stage option list” has the meaning given in regulation 72(4);
- “2.3 GHz base price A” has the meaning given in regulation 41(1);
- “2.3 GHz base price B” has the meaning given in regulation 41(3);
- “2.3 GHz bid limit” shall be construed in accordance with regulation 20;
- “2.3 GHz licence” has the meaning given in regulation 91(a);
- “2.3 GHz refusal payment” shall be construed in accordance with regulation 103;
- “2.3 GHz winning option” has the meaning given in regulation 99(1);
- “2.3 GHz withdrawn lot licence” has the meaning given in regulation 91(b);
- “3.4 GHz additional price” has the meaning given in regulation 84;
- “3.4 GHz assignment stage bid” shall be construed in accordance with regulation 77(1);
- “3.4 GHz assignment stage option” has the meaning given in regulation 77(4);
- “3.4 GHz assignment stage option list” has the meaning given in regulation 77(4);
- “3.4 GHz base price A” has the meaning given in regulation 41(2);
- “3.4 GHz base price B” has the meaning given in regulation 41(4);
- “3.4 GHz licence” has the meaning given in regulation 91(c);
- “3.4 GHz minimum requirement” means the number of 3.4 GHz lots selected by a bidder (if any) as its minimum requirement in the application submitted by that bidder to OFCOM in accordance with regulation 4(3)(a)(i);
- “3.4 GHz refusal payment” shall be construed in accordance with regulation 103;

- “3.4 GHz winning option” has the meaning given in regulation 100(2);
- “3.4 GHz withdrawn lot licence” has the meaning given in regulation 91(d);
- “additional 3.4 GHz lot” shall be construed in accordance with regulation 78(2)(a);
- “additional deposit” has the meaning given in regulation 17(1);
- “additional price” means the 2.3 GHz additional price or the 3.4 GHz additional price;
- “applicant” means a body corporate making an application for a licence;
- “applicant group” means in relation to an applicant—
- (a) that applicant;
  - (b) each associate of that applicant; and
  - (c) each person in respect of whom the applicant has delivered to OFCOM a completed document in the form set out in Schedule 3;
- “assignment stage” has the meaning given in regulation 22;
- “assignment stage bid” means a 2.3 GHz assignment stage bid or a 3.4 GHz assignment stage bid;
- “assignment stage form” shall be construed in accordance with regulation 71;
- “assignment stage option” means a 2.3 GHz assignment stage option or a 3.4 GHz assignment stage option;
- “assignment stage round” shall be construed in accordance with regulation 68;
- “associate” means, in relation to an applicant or bidder, a person who has a material interest in that applicant or bidder;
- “authorised person” means a person specified by an applicant in its application as authorised to bind that applicant for all purposes relating to the award process;
- “bidder” means an applicant which has qualified to bid in the award process and which has not withdrawn from the award process on or before the last day for withdrawal;
- “bidder group” shall be construed in accordance with regulation 9;
- “bidder ranking list” has the meaning given in regulation 34(2);
- “category one bidders” has the meaning given in regulation 34(1)(a);
- “category two bidders” has the meaning given in regulation 34(1)(b);
- “category three bidder” has the meaning given in regulation 34(1)(c);
- “confidential information” means, in relation to any applicant or bidder, any information which is not in the public domain and which, if it were made public or disclosed to another applicant (or potential applicant) or bidder or a member of their respective applicant or bidder group, would be likely to affect decisions that such other applicant (or potential applicant) or bidder may make in relation to the award process;
- “current round” means, except in regulations 49 to 52 where the meaning in regulation 49 applies, the principal stage round that has begun but has not yet ended;
- “deadline”, in relation to any requirement imposed on any person by or under these Regulations, means (as the case may require)—
- (a) the time;
  - (b) the date; or
  - (c) the date, and the time on that date;
- by which that requirement must be fulfilled by that person;

“electronic auction system” means the system established by OFCOM for bidders to participate in the award process;

“eligibility event” shall be construed in accordance with regulation 52;

“eligibility limit” means, in relation to a bidder, a number of eligibility points which limits the bids that may be made by the bidder in a principal stage round;

“eligibility points used” shall be construed in accordance with regulation 51;

“excess demand” shall be construed in accordance with regulation 55(2);

“existing spectrum holdings” has the meaning given in regulation 5(1);

“existing immediately useable spectrum holdings” has the meaning given in regulation 5(2);

“existing overall spectrum holdings” has the meaning given in regulation 5(3);

“financial exposure” shall be construed in accordance with regulation 63;

“GHz” means gigahertz;

“grant stage” has the meaning given in regulation 22;

“initial deposit” shall be construed in accordance with regulation 4;

“last day for withdrawal” has the meaning given in regulation 15(1);

“leftover 3.4 GHz lots” has the meaning given in regulation 78(2)(b)(ii);

“licence” means a wireless telegraphy licence to be granted pursuant to these Regulations to establish or use a wireless telegraphy station or install or use wireless telegraphy apparatus in the United Kingdom at frequencies comprised in one or more of the 2.3 GHz lots or 3.4 GHz lots to be determined in accordance with the procedure set out in these Regulations;

“material interest” means, whether held directly or indirectly—

(a) any interest (construed in accordance with sections 820 to 825 of the Companies Act 2006 <sup>M1</sup>) in—

(i) any share which carries, or any shares which together carry, more than twenty-five per cent of the votes entitled to be cast at a general meeting of the applicant or bidder; or

(ii) any share or shares in the case where the consent of the holder of that share or those shares is required for the conduct of any business of the applicant or bidder; or

(b) the right to appoint or remove a majority of the applicant's or bidder's board of directors;

“MHz” means megahertz;

“most recent round” means the principal stage round that has most recently ended;

“OFCOM” means the Office of Communications;

“OFCOM's bank account” means the bank account nominated by OFCOM for the purposes of the award process, details of which are published on their website;

“overall bid list” has the meaning given in regulation 35(3);

“overall bid constraint” shall be construed in accordance with regulation 21;

“pounds” means pounds sterling;

“pre-existing licence” means the licence with number 1111442 which authorises the establishment, installation and use of wireless telegraphy stations and wireless telegraphy apparatus in the frequency ranges 3480-3500 MHz and 3580-3600 MHz <sup>M2</sup> held by UK Broadband Limited;

“pre-existing licence holder” means UK Broadband Limited (a company with company registration number 04713634);

“previous round” means the principal stage round that immediately preceded the most recent round;

“principal stage” has the meaning given in regulation 22;

“principal stage bid” shall be construed in accordance with regulation 27;

“principal stage form” shall be construed in accordance with regulation 26;

“principal stage round” shall be construed in accordance with regulation 25;

“recorded spectrum holdings” means recorded immediately useable spectrum holdings and recorded overall spectrum holdings;

“recorded immediately useable spectrum holdings” shall be construed in accordance with regulation 19(2);

“recorded overall spectrum holdings” shall be construed in accordance with regulation 19(3);

“refusal payment” shall be construed in accordance with regulation 103;

“replacement licence” is a licence applied for under this award process which authorises the use of frequencies comprised in a block of eight 3.4 GHz lots on substantially the same terms, conditions and limitations which apply to the pre-existing licence;

“required assignment stage deposit” shall be construed in accordance with regulation 89;

“required final principal stage deposit” shall be construed in accordance with regulation 64;

“round” means a period of time specified by OFCOM during which bidders may make bids in accordance with the procedure set out in these Regulations;

“round event” shall be construed in accordance with regulation 28;

“round price” shall be construed in accordance with regulations 29 and 30;

“standing high bid status” shall be construed in accordance with regulations 33 to 36;

“third party” has the meaning given in regulation 4(3)(a)(iii)(ee);

“third party parent” has the meaning given in regulation 4(3)(a)(iii)(ff);

“total 2.3 GHz base price A” has the meaning given in regulation 42(1);

“total 2.3 GHz base price B” has the meaning given in regulation 42(3);

“total 3.4 GHz base price A” has the meaning given in regulation 42(2);

“total 3.4 GHz base price B” has the meaning given in regulation 42(4);

“total auction sum” shall be construed in accordance with regulation 104;

“total base price” means, in respect of a bidder, the sum of that bidder's total 2.3 GHz base price A (if any), total 2.3 GHz base price B (if any), total 3.4 GHz base price A (if any) and total 3.4 GHz base price B (if any);

“total frequencies associated with a principal stage form” has the meaning given in regulation 44(2);

“valid 2.3 GHz assignment stage bid” shall be construed in accordance with regulation 74;

“valid 3.4 GHz assignment stage bid” shall be construed in accordance with regulation 80;

“valid assignment stage bid” means a valid 2.3 GHz assignment stage bid or a valid 3.4 GHz assignment stage bid;

“valid assignment stage form” shall be construed in accordance with regulation 71;

“valid combination of 2.3 GHz assignment stage bids” shall be construed in accordance with regulation 75;

“valid combination of 3.4 GHz assignment stage bids” shall be construed in accordance with regulation 82 or 83 as the context requires;

“valid request to carry forward its eligibility limit” shall be construed in accordance with regulation 26;

“valid withdrawal of standing high bid status” shall be construed in accordance with regulation 26;

“valid principal stage bid” shall be construed in accordance with regulation 26;

“valid principal stage form” shall be construed in accordance with regulation 26;

“winning 2.3 GHz assignment stage bid” shall be construed in accordance with regulation 75;

“winning 3.4 GHz assignment stage bid” shall be construed in accordance with regulation 81;

“winning assignment stage bid” means a winning 2.3 GHz assignment stage bid or a winning 3.4 GHz assignment stage bid;

“winning bidder” means a winning bidder for 2.3 GHz lots or a winning bidder for 3.4 GHz lots;

“winning bidder for 2.3 GHz lots” means a bidder who made bids for 2.3 GHz lots which became winning principal stage bids in accordance with regulations 38 or 39;

“winning bidder for 3.4 GHz lots” means a bidder (including the pre-existing licence holder if it is a bidder) who made bids for 3.4 GHz lots which became winning principal stage bids in accordance with regulations 38 or 40 and also the pre-existing licence holder in respect of eight 3.4 GHz lots if it is deemed to be a winning bidder under regulation 23;

“winning combination of valid 2.3 GHz assignment stage bids” shall be construed in accordance with regulation 75;

“winning combination of valid 3.4 GHz assignment stage bids” shall be construed in accordance with regulation 81;

“winning principal stage bid” shall be construed in accordance with regulations 37 to 40;

“withdrawal of standing high bid status” shall be construed in accordance with regulation 47; and

“withdrawn lot licence” means a 2.3 GHz withdrawn lot licence or a 3.4 GHz withdrawn lot licence.

(2) A reference in these Regulations to a “2.3 GHz lot” or a “3.4 GHz lot” shall be construed in accordance with Schedule 1.

(3) A reference in these Regulations to a “lot type” or “lot” shall be construed in accordance with Schedule 1.

(4) A reference in these Regulations to a numbered 2.3 GHz lot, a numbered 3.4 GHz lot or a “block” of such lots shall be construed in accordance with Schedule 1.

(5) A reference in these Regulations to the “lower 3.4 GHz frequency range” or the “upper 3.4 GHz frequency range” shall be construed in accordance with Schedule 1.

**Marginal Citations**

**M1** 2006 c.46.

**M2** These frequencies correspond to the 3.4 GHz lots numbered 15 to 18 and 35 to 38 in these Regulations.

## PART 2

### Application stage

#### Applications for the grant of a licence

3. Applications for the grant of a licence shall only be made in accordance with the procedure set out in these Regulations.

#### Application

- 4.—(1) Only a body corporate may apply to OFCOM for a licence.
- (2) A body corporate may only make one application.
- (3) To apply for a licence, a body corporate must—
- (a) on the day or days specified by OFCOM for receipt of applications, deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA within the times on that day or those days specified by OFCOM a sealed envelope containing—
- (i) a document containing the application information required by, and the warranty set out in, Schedule 2, completed in respect of the applicant and signed on its behalf by two authorised persons;
- (ii) for each person, not being an associate of the applicant, which the applicant wishes to join its applicant group, a document in the form set out in Schedule 3 which has been—
- (aa) completed by the applicant and signed on its behalf by two authorised persons; and
- (bb) completed by and signed by or on behalf of the person in respect of whom that document is completed; and
- (iii) a document setting out the details of the existing spectrum holdings of—
- (aa) the applicant;
- (bb) each other member of its applicant group;
- (cc) each person in whom the applicant has a material interest;
- (dd) each person in whom any other member of its applicant group has a material interest;
- (ee) any person (“third party”) who has entered into a contract or arrangement with the applicant (or with any other member of its applicant group or any person in whom the applicant or any other member of its applicant group has a material interest) to acquire rights under a licence granted pursuant to the award process;
- (ff) any person who has a material interest in a third party (“third party parent”);
- (gg) any person in whom a third party has a material interest;
- (hh) any person in whom a third party parent has a material interest; and
- (b) subject to regulation 7(4), by a deadline specified by OFCOM, pay into OFCOM's bank account, with accompanying information which identifies the applicant, an initial deposit of one hundred thousand pounds.
- (4) OFCOM shall publish the day or days, times and deadline on their website.
- (5) The details of existing spectrum holdings that are required are—

- (a) the wireless telegraphy licence number; and
- (b) the frequencies.

### **Meaning of existing spectrum holdings**

- 5.—(1) In these Regulations “existing spectrum holdings” means—
- (a) existing immediately useable spectrum holdings; and
  - (b) existing overall spectrum holdings.
- (2) “Existing immediately useable spectrum holdings” means—
- (a) any authorisation to establish or use a wireless telegraphy station, or to install or use wireless telegraphy apparatus, under a wireless telegraphy licence which relates to any of the frequencies in the frequency bands listed in Schedule 7; and
  - (b) any contract or arrangement under which such an authorisation is to be acquired.
- (3) “Existing overall spectrum holdings” means—
- (a) any authorisation to establish or use a wireless telegraphy station, or to install or use wireless telegraphy apparatus, under a wireless telegraphy licence which relates to any of the frequencies in the frequency bands listed in Schedule 8; and
  - (b) any contract or arrangement under which such an authorisation is to be acquired.

### **3.4 GHz minimum requirement rule**

6. The 3.4 GHz minimum requirement which must be specified by the applicant in the document referred to in regulation 4(3)(a)(i) shall not be greater than four.

### **Application for a replacement licence**

7.—(1) The pre-existing licence holder may apply to OFCOM for a replacement licence under this award process.

(2) No other person may apply to OFCOM for a replacement licence.

(3) To apply for a replacement licence, the pre-existing licence holder, in addition to meeting the requirements of regulation 4(3), must by the same deadline also deliver to OFCOM in the same sealed envelope—

- (a) a declaration, in the form set out in Schedule 4, signed by two persons on behalf of the pre-existing licence holder, consenting to the revocation of the pre-existing licence; and
- (b) a document indicating whether it will participate in the principal stage and the assignment stage, or only in the assignment stage.

(4) If the pre-existing licence holder indicates that it will participate only in the assignment stage (so that it is a winning bidder only in respect of eight 3.4 GHz lots in accordance with regulation 23) the requirement to pay an initial deposit of one hundred thousand pounds under regulation 4(3)(b) does not apply to the pre-existing licence holder.

## **PART 3**

### Qualification stage

#### CHAPTER 1

#### Qualification

##### **Notification of names of applicants and associates**

**8.—**(1) OFCOM shall give notice to each applicant of—

- (a) the name of each other applicant and the names of their associates; and
- (b) the deadline by which each applicant must notify OFCOM under paragraph (3).

(2) On receipt of that notice, each applicant must examine the names of the other applicants and their associates and determine whether any member of its applicant group is also an associate of another applicant or is also an applicant.

(3) Where an applicant determines that a member of its applicant group is also an associate of another applicant or is also an applicant, it must notify the other applicant and OFCOM of that fact by the deadline specified by OFCOM.

(4) If it appears to OFCOM from any application or notice under regulation 4(3) that a member of one applicant group is also a member of another applicant group, OFCOM shall give notice to each of the applicants concerned of that fact and specify a deadline by when each applicant concerned must notify OFCOM of any change in circumstances the effect of which is that no member of its applicant group is also a member of another applicant group.

##### **Recording of applicant group members**

**9.—**(1) Where there has been a change in the composition of an applicant's applicant group since the date of the application, that applicant must deliver to OFCOM revised versions of the documents provided under regulations 4(3)(a)(i) to 4(3)(a)(iii) which comply with those provisions following that change.

(2) OFCOM shall record the members of each applicant group, taking account of any changes notified under paragraph (1).

(3) Each applicant group so recorded shall constitute a bidder group.

##### **Subsequent changes to bidder groups**

**10.—**(1) An applicant or bidder may change its bidder group but, in relation to the award process, the applicant or bidder shall be subject to regulations 13(2), 112 and 115 if they apply to any such change.

(2) If a change involves the addition or departure of an associate, the applicant or bidder must notify OFCOM of the change and deliver to OFCOM a revised version of the documents provided under regulations 4(3)(a)(i) and 4(3)(a)(iii) which comply with those provisions following the change.

(3) If a change involves the addition of a person who is not an associate of the applicant or bidder to its bidder group, the applicant or bidder must deliver to OFCOM—

- (a) a document in the form set out in Schedule 3 completed by the applicant or bidder and signed on its behalf by two authorised persons and completed by and signed by or on behalf of the person in respect of whom that document is completed; and



- (b) a revised version of the document provided under regulation 4(3)(a)(iii) which complies with that provision following the change.

### **Changes to existing spectrum holdings**

**11.** If an applicant or, in relation to an applicant, any person referred to in regulation 4(3)(a)(iii) changes its existing spectrum holdings before existing spectrum holdings are recorded under regulation 19, the applicant must notify OFCOM and deliver to OFCOM a revised version of the document provided under regulation 4(3)(a)(iii) which complies with that provision following the change.

### **Fitness to hold a licence**

**12.—(1)** OFCOM shall, for each applicant which has submitted an application in accordance with regulation 4, determine whether that applicant is fit to hold a licence.

- (2) In making their determination under paragraph (1), OFCOM shall take into account—
  - (a) any direction given by the Secretary of State to OFCOM under section 5 of the Communications Act 2003 <sup>M3</sup>;
  - (b) whether the applicant is a fit and proper person to hold a licence having regard to the probity of—
    - (i) the applicant;
    - (ii) each other member of the applicant's bidder group; and
    - (iii) each director of each member of the applicant's bidder group;
  - (c) whether any of the information submitted to OFCOM by the applicant in connection with the award process is false or misleading;
  - (d) whether any member of the applicant's bidder group has colluded, or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process;
  - (e) whether any member of the applicant's bidder group has acted or is acting in a way which is likely to distort the outcome of the award process;
  - (f) whether any member of the applicant's bidder group, or any person to whom confidential information has been disclosed, has disclosed, or is disclosing or attempting to disclose or has incited or is inciting another person to disclose, any confidential information, whether directly or indirectly, to any person, except where the disclosure is—
    - (i) to OFCOM;
    - (ii) to a member of the applicant's bidder group;
    - (iii) to a provider of finance for the purpose of raising finance for the applicant's application; or
    - (iv) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's bidder group;
  - (g) whether any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;
  - (h) whether any member of the applicant's bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process; and

- (i) whether any person who is a member or a director or an employee of a member of the applicant's bidder group and is also a director or an employee of a member of another bidder group is—
  - (i) taking part in the preparation of both bidder groups for participation in the award process; or
  - (ii) receiving confidential information relating to both bidder groups.
- (3) Applicants must, if requested to do so by OFCOM, provide by a deadline specified by OFCOM any information or documentation which OFCOM require to make their determination.
- (4) If an applicant does not provide such information or documentation by the deadline specified by OFCOM, OFCOM shall also take that fact into account in making their determination.
- (5) Where OFCOM determine that an applicant is not fit to hold a licence the applicant shall be disqualified from the award process.
- (6) OFCOM shall inform an applicant which is disqualified of their decision and the reasons for it but that applicant's initial deposit shall not be forfeited because of that decision.

**Marginal Citations**

M3 2003 c.21.

**Qualification to participate in the award process**

- 13.**—(1) Each applicant—
- (a) which was not disqualified under regulation 12, and
  - (b) which has no member of its bidder group which is also a member of the bidder group of another applicant (which was not disqualified under regulation 12),
- shall be qualified to participate in the award process.
- (2) An applicant which has a member of its bidder group which is also a member of the bidder group of another applicant shall not be qualified to participate in the award process.
- (3) Where an applicant is not qualified to participate in the award process, OFCOM shall inform that applicant of that fact but that applicant's initial deposit shall not be forfeited for that reason.

**Publication of names of qualified applicants**

- 14.**—(1) OFCOM shall notify each applicant qualified to participate of—
- (a) the name of each other applicant who is so qualified;
  - (b) the names of their associates; and
  - (c) if the pre-existing licence holder applied and qualified to participate—
    - (i) whether it applied for a replacement licence; and
    - (ii) whether it will participate in the principal stage and the assignment stage, or only in the assignment stage.
- (2) OFCOM shall publish the names of all applicants who are so qualified on OFCOM's website.

**Withdrawal of an application**

- 15.**—(1) OFCOM shall notify each applicant qualified to participate of the last day for withdrawal from the award process (“last day for withdrawal”) and shall publish the last day for withdrawal on OFCOM's website.

(2) If, on or before the last day for withdrawal, OFCOM receives notice from an applicant that it wishes to withdraw its application, signed by two authorised persons, the application shall be withdrawn and the applicant shall be excluded from the award process but that applicant's initial deposit shall not be forfeited for that reason.

(3) That applicant shall not be re-admitted to the award process.

(4) OFCOM shall notify all other applicants of the withdrawal.

#### **Determination of number of bidders**

16.—(1) After the last day for withdrawal, OFCOM shall determine the number of bidders.

(2) Where there are no bidders, OFCOM shall complete the award process by refunding to applicants which were not qualified, or withdrew in accordance with regulation 15, their initial deposit (where such deposit has not been forfeited) but not any interest which has accrued on the deposit.

(3) Where there are one or more bidders—

(a) OFCOM shall refund to applicants which were not qualified, or withdrew in accordance with regulation 15, their initial deposit (where such deposit has not been forfeited) but not any interest which has accrued on the deposit; and

(b) OFCOM shall grant licences in accordance with the procedure set out in these Regulations.

(4) OFCOM shall publish the names of the bidders on OFCOM's website.

### **CHAPTER 2**

#### **Additional deposit and eligibility limit for the first principal stage round**

##### **Additional deposit before the first principal stage round**

17.—(1) A bidder which wishes to participate in the principal stage must pay, in addition to the initial deposit, a deposit of at least nine hundred thousand pounds (the “additional deposit”) which shall be taken into account by OFCOM in accordance with regulation 18 for the purpose of calculating the bidder's eligibility limit for the first principal stage round.

(2) To pay the additional deposit, a bidder must, by a deadline specified by OFCOM, pay the additional deposit into OFCOM's bank account with accompanying information which identifies the bidder.

(3) Where a bidder does not pay the additional deposit by the deadline, that bidder shall be excluded from the award process and shall not receive a refund of any sums which the bidder has paid as a deposit under these Regulations, which shall (where not already forfeited) be forfeited together with any interest which has accrued on the deposit.

(4) After the deadline specified under paragraph (2), OFCOM shall determine each bidder's eligibility limit for the first principal stage round in accordance with regulation 18 and shall record each bidder's existing spectrum holdings in accordance with regulation 19.

##### **Determination of a bidder's eligibility limit for the first principal stage round**

18.—(1) A bidder's eligibility limit shall be—

(a) where the amount which the bidder has on deposit (including the initial deposit and the additional deposit) is thirty million pounds or less, the number which is the amount of such deposit in pounds divided by one million;

(b) where the amount which the bidder has on deposit (including the initial deposit and the additional deposit) is more than thirty million pounds but less than seventy million pounds,

the number ( $E$ ) which is calculated in accordance with the formula set out in paragraph (2); and

- (c) where the amount which the bidder has on deposit (including the initial deposit and the additional deposit) is seventy million pounds or more, forty-six.

(2) The formula is  $E = 30 + [(D - 30,000,000) / 2,500,000]$ , where “ $D$ ” is the amount of the deposit in pounds.

(3) Where the number which results from the calculation in paragraphs (1)(a) or 1(b) is not a whole number, the bidder's eligibility limit shall be that number rounded down to the nearest whole number.

- (4) That number shall be expressed as a number of points.

### CHAPTER 3

#### Recording of existing spectrum holdings, determination of the 2.3 GHz bid limit and overall bid constraints

##### **Recording of existing spectrum holdings**

**19.**—(1) After the deadline specified in regulation 17(2), OFCOM shall, for each bidder, record—

- (a) the bidder's existing immediately useable spectrum holdings; and  
(b) the bidder's existing overall spectrum holdings.

(2) A bidder's existing immediately useable spectrum holdings to be recorded are those which have been notified by that bidder under regulation 4(3)(a)(iii), as amended to take account of any notifications of subsequent changes to those spectrum holdings which may have been made under regulations 9(1), 10(2), 10(3) or 11.

(3) A bidder's existing overall spectrum holdings to be recorded are those which have been notified by that bidder under regulation 4(3)(a)(iii), as amended to take account of any notifications of subsequent changes to those spectrum holdings which may have been made under regulations 9(1), 10(2), 10(3) or 11.

(4) After the recording of spectrum holdings, the bidder and, in relation to the bidder, any person referred to in regulation 4(3)(a)(iii) may change its spectrum holdings but in relation to the award process—

- (a) the bidder shall be subject to regulations 112 and 115 if they apply to that change; and  
(b) the bidder's recorded spectrum holdings shall not be amended.

(5) If there is such a change, the bidder concerned must notify OFCOM of the change and deliver to OFCOM a revised version of the document provided under regulation 4(3)(a)(iii) which complies with that provision following the change.

##### **Determination of the 2.3 GHz bid limits**

**20.** –

(1) Before the first principal stage round, OFCOM shall—

- (a) determine the maximum number of principal stage bids for 2.3 GHz lots, if any, each bidder may make in any round (the “2.3 GHz bid limit”) in accordance with paragraph (2); and  
(b) notify each bidder of its 2.3 GHz bid limit.

(2) The 2.3 GHz bid limit for a bidder shall be—

- (a) zero bids for 2.3 GHz lots, where the total in MHz of that bidder's recorded immediately useable spectrum holdings is greater than 245 MHz;

- (b) one bid for a 2.3 GHz lot, where the total in MHz of that bidder's recorded immediately useable spectrum holdings is greater than 235 MHz but less than or equal to 245 MHz;
  - (c) two bids for 2.3 GHz lots, where the total in MHz of that bidder's recorded immediately useable spectrum holdings is greater than 225 MHz but less than or equal to 235 MHz;
  - (d) three bids for 2.3 GHz lots, where the total in MHz of that bidder's recorded immediately useable spectrum holdings is greater than 215 MHz but less than or equal to 225 MHz; or
  - (e) four bids for 2.3 GHz lots, where the total in MHz of that bidder's recorded immediately useable spectrum holdings is equal to or less than 215 MHz.
- (3) A bidder's 2.3 GHz bid limit shall not change during the principal stage.
- (4) The 2.3 GHz bid limit may be different for each bidder.

#### **Determination of overall bid constraints**

- 21.**—(1) Before the first principal stage round OFCOM shall—
- (a) determine for each bidder; and
  - (b) notify to each bidder an overall bid constraint.
- (2) The overall bid constraint may be different for each bidder.
- (3) The overall bid constraint shall be expressed as a number of frequencies in MHz and shall be calculated in accordance with paragraphs (4) and (5).
- (4) The number referred to in paragraph (3) shall be calculated in accordance with the formula  $340 \text{ MHz} - z$  rounded down to the nearest multiple of 5 MHz, where  $z$  is the total in MHz of the bidder's recorded overall spectrum holdings.
- (5) Where the number of MHz resulting from the calculation referred to in paragraph (4) is higher than 190 MHz, the number shall be 190 MHz and not that higher number.
- (6) A bidder's overall bid constraint shall not change during the principal stage.

## **PART 4**

### **Award process**

#### **Principal stage, assignment stage and grant stage**

- 22.**—(1) The process for the award of licences shall consist of the procedure set out in Part 6 (“principal stage”), the procedure set out in Part 7 (“assignment stage”) and the procedure set out in Part 8 (“grant stage”).
- (2) During the principal stage, OFCOM shall determine the total number of 2.3 GHz lots and the total number of 3.4 GHz lots which each bidder wins, but not the particular numbered 2.3 GHz lots and particular numbered 3.4 GHz lots.
- (3) Following completion of the principal stage, OFCOM shall determine the particular numbered 2.3 GHz lots and particular numbered 3.4 GHz lots that are to be assigned to the winning bidders in accordance with the procedure set out in the assignment stage.
- (4) Following completion of the assignment stage, OFCOM shall grant licences authorising the use of the frequencies determined in accordance with the grant stage.

## PART 5

### Participation by the pre-existing licence holder

#### **Participation by the pre-existing licence holder where it is a bidder and has applied for a replacement licence**

23. Where the pre-existing licence holder is a bidder and has applied for a replacement licence—
- (a) it may not participate in the principal stage unless it has indicated that it will do so on the document that it submitted in accordance with regulation 7(3)(b); and
  - (b) it will be deemed to be a winning bidder in respect of eight 3.4 GHz lots with an associated base price of zero pounds, without having made principal stage bids, in addition to any 3.4 GHz lots that it may have won as a result of making principal stage bids.

#### **3.4 GHz lots available in the award process**

24. The 3.4 GHz lots which are available in the award process shall be—
- (a) the 3.4 GHz lots numbered 1 to 14 and 19 to 34, if—
    - (i) the pre-existing licence holder is a bidder but did not apply for a replacement licence; or
    - (ii) the pre-existing licence holder is not a bidder; or
  - (b) the 3.4 GHz lots numbered 1 to 38, if the pre-existing licence holder is a bidder and did apply for a replacement licence.

## PART 6

### The principal stage

#### CHAPTER 1

Principal stage rounds, principal stage forms, principal stage bids and round prices

#### **Principal stage rounds**

- 25.—(1) During the principal stage, there shall be one or more principal stage rounds.
- (2) A principal stage round shall begin and end at the times notified by OFCOM under regulation 54.
- (3) The number of principal stage rounds shall be determined by OFCOM in accordance with regulation 28.

#### **Principal stage form**

- 26.—(1) OFCOM shall provide each bidder in the principal stage with a principal stage form.
- (2) Subject to paragraph (8), a bidder is not required to submit a principal stage form in respect of each principal stage round.
- (3) Where a bidder chooses to complete a principal stage form in respect of a principal stage round, that bidder must, on the principal stage form—
- (a) specify the number of principal stage bids for 2.3 GHz lots it wishes to make in that round;
  - (b) specify the number of principal stage bids for 3.4 GHz lots it wishes to make in that round;

- (c) indicate whether it wishes to withdraw the standing high bid status of its bids for 2.3 GHz lots from consideration by OFCOM for the assignment of standing high bid status after the end of that round;
  - (d) indicate whether it wishes to withdraw the standing high bid status of its bids for 3.4 GHz lots from consideration by OFCOM for the assignment of standing high bid status after the end of that round; and
  - (e) indicate whether it wishes to carry forward its eligibility limit (as determined for that round) to the next round.
- (4) A principal stage form submitted by a bidder in a round is a valid principal stage form if—
- (a) the bidder has completed the form in accordance with paragraph (3);
  - (b) the bidder has submitted the form in accordance with regulation 59 or 60;
  - (c) the bidder has complied with regulations 43, 45, 46 and 49 in respect of any principal stage bids specified on the form;
  - (d) the bidder has complied with regulation 47 in respect of any withdrawal of standing high bid status indicated on the form;
  - (e) the bidder has complied with regulation 44 in respect of the total frequencies associated with the form; and
  - (f) the bidder has complied with regulation 48 in respect of any request to carry forward its eligibility limit indicated on the form.
- (5) A principal stage bid is a valid principal stage bid if it is specified on a valid principal stage form.
- (6) A withdrawal of standing high bid status is a valid withdrawal of standing high bid status if it is indicated on a valid principal stage form.
- (7) Any request by a bidder to carry forward its eligibility limit is a valid request to carry forward its eligibility limit if it is indicated on a valid principal stage form.
- (8) Any bidder in the principal stage which, in the first principal stage round, does not specify at least one valid principal stage bid shall be excluded from the award process and shall not receive a refund of any sums which the bidder has paid as a deposit under these Regulations, which shall (where not already forfeited) be forfeited together with any interest which has accrued on the deposit.

### **Principal stage bids**

**27.**—(1) Each principal stage bid is a bid for the inclusion in a licence of one lot of a particular type at the round price for a lot of that type or, in the circumstances described in paragraph (2), at twice the round price for a lot of that type.

(2) The circumstances are where the principal stage bid becomes a winning principal stage bid after withdrawal of that bid's standing high bid status in accordance with regulation 39 or 40.

### **Number of principal stage rounds**

**28.**—(1) After the end of each principal stage round, OFCOM shall determine whether there was a round event in that round in accordance with paragraph (4).

(2) Where OFCOM determine that there was no round event in that principal stage round there shall be no further principal stage rounds, and OFCOM shall determine the winning principal stage bids in accordance with regulation 37.

(3) Where OFCOM determine that there was a round event in that principal stage round, there shall be another principal stage round.

- (4) There was a round event in a principal stage round where—
  - (a) a bidder specified a valid principal stage bid in that round;
  - (b) a bidder indicated a valid withdrawal of standing high bid status in that round; or
  - (c) an eligibility event occurred in that round.

#### **Round prices for the first principal stage round**

- 29.** For the first principal stage round—
- (a) the round price for each 2.3 GHz lot shall be ten million pounds; and
  - (b) the round price for each 3.4 GHz lot shall be one million pounds.

#### **Determination of round prices for subsequent principal stage rounds**

- 30.**—(1) For each subsequent principal stage round—
- (a) the round price for each 2.3 GHz lot shall be determined by OFCOM in accordance with regulation 31; and
  - (b) the round price for each 3.4 GHz lot shall be determined by OFCOM in accordance with regulation 32.
- (2) The round price shall be the same for each lot of the same type.

#### **Round price for 2.3 GHz lots**

- 31.**—(1) The round price for each 2.3 GHz lot shall be the same as it was for the most recent round, except where paragraph (3) applies.
- (2) Where paragraph (3) applies, the round price for each 2.3 GHz lot shall be higher than it was for the most recent round.
- (3) This paragraph applies where, after the end of the most recent round, OFCOM assigned standing high bid status to four valid principal stage bids for 2.3 GHz lots at the round price of the most recent round.

#### **Round price for 3.4 GHz lots**

- 32.**—(1) The round price for each 3.4 GHz lot shall be the same as it was for the most recent round, except where paragraph (3) applies.
- (2) Where paragraph (3) applies, the round price for each 3.4 GHz lot shall be higher than it was for the most recent round.
- (3) This paragraph applies where, after the end of the most recent round, OFCOM assigned standing high bid status to thirty valid principal stage bids for 3.4 GHz lots at the round price of the most recent round.

## CHAPTER 2

### Assignment of standing high bid status

#### **Assignment of standing high bid status by OFCOM after the end of each principal stage round**

- 33.**—(1) After the end of each principal stage round, OFCOM shall assign standing high bid status to valid principal stage bids for 2.3 GHz lots and valid principal stage bids for 3.4 GHz lots in accordance with paragraphs (2) and (3).



- (2) OFCOM shall assign standing high bid status for each lot type separately.
- (3) OFCOM shall assign standing high bid status by—
  - (a) first, identifying and ranking the bidders in accordance with regulation 34;
  - (b) second, identifying and ranking the bids made by those bidders in accordance with regulation 35; and
  - (c) third, assigning standing high bid status to those bids in accordance with regulation 36.

**Process for assigning standing high bid status: ranking the bidders**

**34.**—(1) For each lot type separately, OFCOM shall identify the bidders that fall into one of the following three categories such that—

- (a) the first category contains the bidders (if any) (“category one bidders”) which made valid principal stage bids for a lot of that type at the round price of the most recent round (whether made in the most recent round or in an earlier round);
- (b) the second category contains the bidders (if any) (“category two bidders”) which made valid principal stage bids for lots of that type in the latest round in which the bidder submitted bids for lots of that type satisfying the following conditions—
  - (i) the bids were made at a round price which was lower than the round price of the most recent round; and
  - (ii) all of the bids were assigned standing high bid status by OFCOM after the end of the previous round;
- (c) the third category contains the only bidder (if any) (“category three bidder”) which made valid principal stage bids for lots of that type in the latest round in which the bidder submitted bids for lots of that type satisfying the following conditions—
  - (i) the bids were made at a round price which was lower than the round price of the most recent round;
  - (ii) some but not all of the bids were assigned standing high bid status by OFCOM after the end of the previous round; and
  - (iii) the standing high bid status of the bids was not withdrawn by the bidder in the most recent round in accordance with regulation 47.

(2) For each lot type separately, OFCOM shall rank the bidders on a list (“bidder ranking list”) so that—

- (a) category one bidders appear above category two bidders and above any category three bidder;
- (b) category two bidders appear above any category three bidder; and
- (c) within each category, bidders are ranked in a random order.

**Process for assigning standing high bid status: ranking the bids**

**35.**—(1) For each lot type separately, OFCOM shall identify the relevant valid principal stage bids for each bidder included in the bidder ranking list.

- (2) The relevant valid principal stage bids are—
  - (a) for category one bidders, all the valid principal stage bids for lots of that type made by the bidder in the latest round in which it submitted bids;
  - (b) for category two and category three bidders, all the valid principal stage bids for lots of that type made by the bidder which were assigned standing high bid status after the end of the previous round.

(3) For each lot type separately, OFCOM shall rank those bids on a list (“overall bid list”) so that all the relevant valid principal stage bids made by a bidder which is ranked higher on the bidder ranking list appear above the relevant valid principal stage bids made by a bidder which is ranked lower on the bidder ranking list.

**Process for assigning standing high bid status: assigning standing high bid status to the bids**

**36.**—(1) For each lot type separately, OFCOM shall assign standing high bid status to bids in the overall bid list by giving such status to bids in the order in which they appear in the list, starting from the top of the list.

(2) For each lot type separately, OFCOM shall assign standing high bid status to bids until each bid in the overall bid list has been assigned standing high bid status or until the number of bids to which OFCOM has assigned standing high bid status is equal to the number of lots of that type which are available in the award process (whichever happens first).

CHAPTER 3

Winning principal stage bids and determination of base price

**Determination of the winning principal stage bids**

**37.**—(1) Where OFCOM have determined in accordance with regulation 28 that there shall be no further principal stage rounds—

- (a) principal stage bids with standing high bid status shall become winning principal stage bids in accordance with regulation 38; and
- (b) principal stage bids in respect of which standing high bid status was withdrawn shall also become winning principal stage bids in accordance with regulations 39 or 40.

**Bids with standing high bid status becoming winning principal stage bids**

**38.**—(1) Principal stage bids with standing high bid status shall become winning principal stage bids if they are bids to which paragraph (2) applies.

(2) The bids to which this paragraph applies are—

- (a) the principal stage bids for 2.3 GHz lots to which OFCOM assigned standing high bid status after the end of the final principal stage round; and
- (b) subject to paragraph (3), the principal stage bids for 3.4 GHz lots to which OFCOM assigned standing high bid status after the end of the final principal stage round.

(3) Where a bidder has specified a 3.4 GHz minimum requirement and OFCOM has assigned standing high bid status to fewer principal stage bids for 3.4 GHz lots made by the bidder than its 3.4 GHz minimum requirement—

- (a) those bids for 3.4 GHz lots with standing high bid status will not become winning principal stage bids; and
- (b) there will be no winning bidder for the 3.4 GHz lots for which those bids were made.

**2.3 GHz bids in respect of which standing high bid status was withdrawn becoming winning principal stage bids**

**39.**—(1) Subject to paragraph (3), principal stage bids for 2.3 GHz lots in respect of which standing high bid status was withdrawn shall become winning principal stage bids for those lots in the circumstances described in paragraph (2).

(2) The circumstances are where—

- (a) following the principal stage round in which the standing high bid status of those bids was withdrawn, no bidder withdrew standing high bid status from bids for any 2.3 GHz lots; and
  - (b) after the end of the final principal stage round, OFCOM does not assign standing high bid status to four principal stage bids for 2.3 GHz lots.
- (3) The number of principal stage bids for 2.3 GHz lots which shall become winning principal stage bids under this regulation shall be the number calculated in accordance with paragraph (4).
- (4) The number referred to in paragraph (3) shall be calculated in accordance with the formula (4-x), where x is the number of 2.3 GHz lots to which OFCOM assigned standing high bid status after the end of the final principal stage round.

### **3.4 GHz bids in respect of which standing high bid status was withdrawn becoming winning principal stage bids**

**40.**—(1) Subject to paragraph (3), principal stage bids for 3.4 GHz lots in respect of which standing high bid status was withdrawn shall become winning principal stage bids for those lots in the circumstances described in paragraph (2).

- (2) The circumstances are where—
  - (a) following the principal stage round in which the standing high bid status of those bids was withdrawn, no bidder withdrew standing high bid status from bids for any 3.4 GHz lots; and
  - (b) after the end of the final principal stage round, OFCOM does not assign standing high bid status to thirty principal stage bids for 3.4 GHz lots.
- (3) The number of principal stage bids for 3.4 GHz lots which shall become winning principal stage bids under this regulation shall be the number calculated in accordance with paragraph (4).
- (4) The number referred to in paragraph (3) shall be calculated in accordance with the formula (30-y), where y is the number of 3.4 GHz lots to which OFCOM assigned standing high bid status after the end of the final principal stage round.
- (5) Principal stage bids for 3.4 GHz lots in respect of which standing high bid status was withdrawn, and which were made in the circumstances described in paragraph (2), shall become winning principal stage bids even if the number of 3.4 GHz lots associated with those winning principal stage bids is less than that bidder's 3.4 GHz minimum requirement.

### **Determination of base price**

- 41.**—(1) The base price for a 2.3 GHz lot for which a bidder made a bid that became a winning principal stage bid in accordance with regulation 38 (“2.3 GHz base price A”) will be a sum equal to the round price at which the winning bidder made that winning principal stage bid.
- (2) The base price for a 3.4 GHz lot for which a bidder made a bid that became a winning principal stage bid in accordance with regulation 38 (“3.4 GHz base price A”) will be a sum equal to the round price at which the winning bidder made that winning principal stage bid.
  - (3) The base price for a 2.3 GHz lot for which a bidder made a bid that became a winning principal stage bid in accordance with regulation 39 (“2.3 GHz base price B”) will be a sum equal to twice the round price at which the winning bidder made that winning principal stage bid.
  - (4) The base price for a 3.4 GHz lot for which a bidder made a bid that became a winning principal stage bid in accordance with regulation 40 (“3.4 GHz base price B”) will be a sum equal to twice the round price at which the winning bidder made that winning principal stage bid.

### **Determination of total base price**

42.—(1) A reference to a winning bidder's “total 2.3 GHz base price A” is a reference to that winning bidder's 2.3 GHz base price A multiplied by the number of 2.3 GHz lots won by that bidder in accordance with regulation 38.

(2) A reference to a winning bidder's “total 3.4 GHz base price A” is a reference to that winning bidder's 3.4 GHz base price A multiplied by the number of 3.4 GHz lots won by that bidder in accordance with regulation 38.

(3) A reference to a winning bidder's “total 2.3 GHz base price B” is a reference to that winning bidder's 2.3 GHz base price B multiplied by the number of 2.3 GHz lots won by that bidder in accordance with regulation 39.

(4) A reference to a winning bidder's “total 3.4 GHz base price B” is a reference to that winning bidder's 3.4 GHz base price B multiplied by the number of 3.4 GHz lots won by that bidder in accordance with regulation 40.

## **CHAPTER 4**

Constraints for principal stage bids, withdrawals of standing high bid status and carrying forward an eligibility limit

### *SECTION 1*

*Constraints for principal stage bids*

### **Maximum number of principal stage bids for 2.3 GHz lots and 3.4 GHz lots**

43. In any principal stage round—

- (a) the number of principal stage bids for 2.3 GHz lots that a bidder may make shall not exceed that bidder's 2.3 GHz bid limit; and
- (b) the number of principal stage bids for 3.4 GHz lots that a bidder may make shall not exceed thirty.

### **Overall bid constraint rule**

44.—(1) In addition to the limitations on bidding in regulation 43, in any principal stage round, the total frequencies associated with a bidder's principal stage form must not exceed the number of MHz for that bidder which is that bidder's overall bid constraint.

(2) The “total frequencies associated with a principal stage form” means, in relation to a bidder in a principal stage round, the total number of MHz which is the sum of A plus B where—

- (a) “A” is—
  - (i) where that bidder has specified on its principal stage form in that principal stage round that it wishes to make one or more principal stage bids for 2.3 GHz lots, the number of such bids multiplied by 10 MHz; or
  - (ii) where that bidder makes no new bids on its principal stage form in that principal stage round for 2.3 GHz lots—
    - (aa) the number of principal stage bids for 2.3 GHz lots made by that bidder which were assigned standing high bid status after the end of the most recent round, multiplied by 10 MHz; and
    - (bb) if no such principal stage bids for 2.3 GHz lots made by that bidder were assigned standing high bid status after the end of the most recent round, zero; and

- (b) “B” is—
- (i) where that bidder has specified on its principal stage form in that principal stage round that it wishes to make one or more principal stage bids for 3.4 GHz lots, the number of such bids multiplied by 5 MHz; or
  - (ii) where that bidder makes no new bids on its principal stage form in that principal stage round for 3.4 GHz lots—
    - (aa) the number of principal stage bids for 3.4 GHz lots made by that bidder which were assigned standing high bid status after the end of the most recent round, if any, multiplied by 5 MHz; and
    - (bb) if no such principal stage bids for 3.4 GHz lots made by that bidder were assigned standing high bid status after the end of the most recent round, zero.

### **Number of principal stage bids following assignment of standing high bid status**

**45.** A bidder which made principal stage bids to which OFCOM assigned standing high bid status after the end of the most recent round must (if making bids for lots of the same type in the next round) specify, on its principal stage form, a number of bids for lots (of that type) which—

- (a) is the same as or higher than the number of bids made by that bidder to which OFCOM assigned standing high bid status after the end of the most recent round, if the round price for lots of that type has increased from the most recent round; or
- (b) is higher than the number of bids made by that bidder to which OFCOM assigned standing high bid status after the end of the most recent round, if the round price for lots of that type has not increased from the most recent round.

### **3.4 GHz minimum requirement**

**46.** Where a bidder has specified a 3.4 GHz minimum requirement, the number of principal stage bids for 3.4 GHz lots that bidder specifies on a principal stage form (if any) must be at least its 3.4 GHz minimum requirement.

## *SECTION 2*

### *Withdrawal of Standing High Bid Status*

#### **Withdrawal of standing high bid status**

**47.—**(1) In any principal stage round except the first one, a bidder may indicate on its principal stage form that it wishes to withdraw the standing high bid status of the bids which OFCOM assigned standing high bid status following the most recent round in accordance with this regulation.

(2) Where a bidder withdraws the standing high bid status of bids in a round, the bids which had such standing high bid status will not be considered by OFCOM for the assignment of standing high bid status after that round.

(3) A bidder may withdraw the standing high bid status of bids for one or both types of lot.

(4) Where a bidder withdraws the standing high bid status of bids for a type of lot, it shall withdraw the standing high bid status of all of its bids for that type of lot.

(5) A bidder may only withdraw the standing high bid status of bids for a type of lot in a principal stage round if each of the following applies—

- (a) following the end of the most recent round, OFCOM assigned standing high bid status to some but not all of the bidder's principal stage bids for lots of that type made in the latest round in which the bidder made bids for lots of that type;

- (b) the bidder makes no valid principal stage bids for lots of that type in the current round;
- (c) the bidder has not withdrawn the standing high bid status of bids for lots of either type on five previous occasions.

### SECTION 3

#### *Request by a bidder to carry forward its eligibility limit*

#### **Request by a bidder to carry forward its eligibility limit**

**48.**—(1) In any principal stage round except the first one, a bidder may indicate on its principal stage form that it wishes to carry forward its eligibility limit (as determined for that round in accordance with regulation 50) to the next round if the conditions set out in paragraphs (2) to (4) are met.

- (2) The first condition is that the bidder does not, in the current round, do any of the following—
- (a) specify a valid principal stage bid for 2.3 GHz lots on its principal stage form;
  - (b) specify a valid principal stage bid for 3.4 GHz lots on its principal stage form; or
  - (c) indicate a valid withdrawal of standing high bid status of any of its principal stage bids.

(3) The second condition is that the number of eligibility points used by the bidder in relation to the bidder's principal stage bids to which OFCOM assigned standing high bid status after the end of the most recent round is lower than the bidder's eligibility limit for the current round.

(4) The third condition is that carrying forward the eligibility limit would comply with the limit on the number of eligibility events set out in regulation 52(3).

## CHAPTER 5

### Eligibility

#### **Eligibility rule**

**49.**—(1) The number of eligibility points used by a bidder in a principal stage round, calculated in accordance with regulation 51, may not exceed that bidder's eligibility limit for that round, calculated in accordance with regulation 50.

(2) In this Chapter, a round in relation to which the number of eligibility points used is calculated is referred to as the “current round”.

#### **Determination of a bidder's eligibility limit**

**50.**—(1) A bidder's eligibility limit shall be the number determined by OFCOM—

- (a) for the first principal stage round, in accordance with regulation 18; and
- (b) for the second and each subsequent principal stage round, in accordance with paragraphs (2) and (3).

(2) In relation to the second and each subsequent principal stage round, the bidder's eligibility limit shall be equal to the number of eligibility points used by the bidder in the most recent round, except where an eligibility event occurred in the most recent round.

(3) In relation to each principal stage round where an eligibility event occurred in the most recent round, the bidder's eligibility limit shall be the same as its eligibility limit for the most recent round.

### **Eligibility points used by a bidder**

**51.**—(1) The number of eligibility points used by a bidder in the current round shall be the number equal to the sum of the 2.3 GHz number calculated in accordance with paragraph (2) and the 3.4 GHz number calculated in accordance with paragraph (3).

- (2) The 2.3 GHz number referred to in paragraph (1) is—
- (a) where the bidder has specified a number of principal stage bids for 2.3 GHz lots in the current round, the number of bids for 2.3 GHz lots in that round specified on that bidder's principal stage form, multiplied by four;
  - (b) where the bidder has not specified any principal stage bids for 2.3 GHz lots in the current round, the number of bids for 2.3 GHz lots made by that bidder to which OFCOM assigned standing high bid status after the end of the most recent round and in respect of which the standing high bid status is not withdrawn by the bidder in the current round, multiplied by four; and
  - (c) where the bidder has not specified any principal stage bids for 2.3 GHz lots in the current round and OFCOM did not assign standing high bid status after the end of the most recent round to any bids for 2.3 GHz lots made by that bidder, zero.
- (3) The 3.4 GHz number referred to in paragraph (1) is—
- (a) where the bidder has specified a number of principal stage bids for 3.4 GHz lots in the current round, the number of bids for 3.4 GHz lots in that round specified on that bidder's principal stage form;
  - (b) where the bidder has not specified any principal stage bids for 3.4 GHz lots in the current round, the number of principal stage bids for 3.4 GHz lots made by that bidder to which OFCOM assigned standing high bid status after the end of the most recent round and in respect of which the standing high bid status is not withdrawn by the bidder in the current round; and
  - (c) where the bidder has not specified any principal stage bids for 3.4 GHz lots in the current round and OFCOM did not assign standing high bid status after the end of the most recent round to any bids for 3.4 GHz lots made by that bidder, zero.

### **Eligibility event**

- 52.**—(1) An eligibility event has occurred in a round where—
- (a) a bidder indicated a valid request to carry forward its eligibility limit in the most recent round on its principal stage form; or
  - (b) the conditions set out in paragraph (2) apply.
- (2) The conditions are that—
- (a) the bidder did not, in the most recent round, submit a valid principal stage form;
  - (b) the number of eligibility points used by the bidder in relation to the bidder's principal stage bids to which OFCOM assigned standing high bid status after the end of the previous round is lower than the bidder's eligibility limit for the most recent round; and
  - (c) the limit on the number of eligibility events set out in paragraph (3) is not met.
- (3) For each bidder, an eligibility event may not occur on more than three occasions.
- (4) After the end of each principal stage round, except after the end of the final principal stage round, OFCOM will notify each bidder of the remaining number of occasions on which an eligibility event may occur in respect of that bidder.

## CHAPTER 6

### Deposit constraint

#### **Deposit constraint on bidding**

**53.**—(1) Where, after the end of a principal stage round, OFCOM has notified a bidder under regulation 63(5) that it has not complied with the requirement to pay a further sum as a deposit, that bidder—

- (a) may not submit a principal stage form in the next principal stage round nor in any subsequent principal stage rounds; and
- (b) may not submit an assignment stage form in the assignment stage round and shall be deemed to have made a valid assignment stage bid with a value of zero pounds for each of its assignment stage options.

(2) Such a bidder is not excluded from the award process for that reason.

(3) Any principal stage bids made by that bidder to which OFCOM has assigned standing high bid status after the end of the final principal stage round will become winning principal stage bids in accordance with regulation 38.

(4) Any principal stage bids made by that bidder in respect of which standing high bid status was withdrawn will become winning principal stage bids in accordance with regulation 39 or 40 if, after the end of the final principal stage round, the circumstances described in regulation 39(2) or 40(2) apply.

## CHAPTER 7

### Information released during and following the principal stage

#### **Notice to be given to bidders before each principal stage round**

**54.** Before the start of each principal stage round, OFCOM shall notify each bidder of—

- (a) the date on which, and the times on that date within which, the principal stage round will take place;
- (b) the round price for—
  - (i) a 2.3 GHz lot; and
  - (ii) a 3.4 GHz lot;
- (c) the remaining number of principal stage rounds in which the bidder may withdraw the standing high bid status of bids;
- (d) the remaining number of occasions on which an eligibility event may occur in respect of that bidder; and
- (e) the bidder's eligibility limit for that principal stage round.

#### **Notification of information to bidders after the end of each principal stage round**

**55.**—(1) After the end of each principal stage round, except the final principal stage round, and before the start of the next principal stage round, OFCOM shall notify each bidder of—

- (a) for each lot type, the number of valid principal stage bids made by the bidder in the most recent round;
- (b) for each lot type, the number of valid principal stage bids made by the bidder to which OFCOM has assigned standing high bid status after the end of the most recent round;



- (c) for each lot type for which the bidder made valid principal stage bids to which OFCOM assigned standing high bid status, the round price of the round when those principal stage bids were made;
  - (d) for each lot type, whether the bidder indicated a valid withdrawal of standing high bid status in the most recent round;
  - (e) the remaining number of rounds in which the bidder may withdraw the standing high bid status of bids;
  - (f) the remaining number of occasions on which an eligibility event may occur in respect of that bidder;
  - (g) the bidder's eligibility limit for the next principal stage round;
  - (h) the bidder's financial exposure after the end of the most recent round;
  - (i) for 2.3 GHz lots, the amount in MHz which is the smallest strictly positive whole multiple of twenty which is greater than the excess demand as determined in accordance with paragraph (2); and
  - (j) for 3.4 GHz lots, the amount in MHz which is the smallest strictly positive whole multiple of twenty which is greater than the excess demand as determined in accordance with paragraph (4).
- (2) The excess demand for 2.3 GHz lots ( $ed_{2.3GHz}$ ) is the amount in MHz which is calculated in accordance with the formula set out in paragraph (3).
- (3) The formula is  $ed_{2.3GHz} = (e + f - 4) \times 10$ , where—
- (a) “e” is the total number of valid principal stage bids for 2.3 GHz lots made by all bidders in the most recent round; and
  - (b) “f” is the total number of bids for 2.3 GHz lots with standing high bid status immediately prior to the most recent round made by all bidders who have not made bids for 2.3 GHz lots in the most recent round, and who did not withdraw the standing high bid status of bids for 2.3 GHz lots in the most recent round.
- (4) The excess demand for 3.4 GHz lots ( $ed_{3.4GHz}$ ) is the amount in MHz which is calculated in accordance with the formula set out in paragraph (5).
- (5) The formula is  $ed_{3.4GHz} = (g + h - 30) \times 5$  where—
- (a) “g” is the total number of valid principal stage bids for 3.4 GHz lots made by all bidders in the most recent round; and
  - (b) “h” is the total number of valid bids for 3.4 GHz lots with standing high bid status immediately prior to the most recent round made by all bidders who have not made bids for 3.4 GHz lots in the most recent round, and who did not withdraw the standing high bid status of bids for 3.4 GHz lots in the most recent round.

### **Publication of information at the end of each day during the principal stage**

**56.** After the end of the latest principal stage round to take place on any given day, OFCOM shall publish on their website, in relation to that latest principal stage round—

- (a) the round price for—
  - (i) each 2.3 GHz lot; and
  - (ii) each 3.4 GHz lot;
- (b) for each lot type separately, the amount in MHz which is the smallest strictly positive whole multiple of twenty which is greater than the excess demand.

### **Notification of results of the principal stage to bidders**

**57.** After the end of the final principal stage round, and after the determination of the winning principal stage bids and the determination of the base price for each winning principal stage bid, OFCOM shall notify each bidder of—

- (a) the end of the principal stage; and
- (b) the names of the winning bidders, and in respect of each of them—
  - (i) the number of 2.3 GHz lots won, the 2.3 GHz base price A and the 2.3 GHz base price B; and
  - (ii) the number of 3.4 GHz lots won, the 3.4 GHz base price A and the 3.4 GHz base price B.

### **Publication of results of the principal stage**

**58.** After the notification given in accordance with regulation 57, OFCOM shall publish on their website—

- (a) the names of the winning bidders, and in respect of each of them—
  - (i) the number of 2.3 GHz lots won, the 2.3 GHz base price A and the 2.3 GHz base price B; and
  - (ii) the number of 3.4 GHz lots won, the 3.4 GHz base price A and the 3.4 GHz base price B; and
- (b) the number of 2.3 GHz lots and the number of 3.4 GHz lots not won by any bidder.

## **CHAPTER 8**

### **Procedure for principal stage**

#### **Submission of principal stage form to OFCOM**

**59.**—(1) A bidder must submit the completed principal stage form to OFCOM by using the electronic auction system, except as provided for in regulation 60.

(2) The completed principal stage form must be received by OFCOM by the time notified by OFCOM under regulation 54(a) as the end of the principal stage round.

#### **Alternative method for submission of principal stage form**

**60.**—(1) Where OFCOM are satisfied that a bidder is unable to submit a principal stage form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder's ability to use the electronic auction system), OFCOM shall notify the bidder of an alternative method of submitting the principal stage form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the principal stage form by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (1) relating to the authentication of communications.

#### **Incomplete or defective principal stage form**

**61.**—(1) Where, due to the manner of completion, a principal stage form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the matters set out in regulation 26(3), OFCOM shall ask the bidder to confirm in a notice to OFCOM by a deadline specified by OFCOM that OFCOM have correctly ascertained the bidder's intention in relation to its decisions on the principal stage form.

(2) Where the bidder confirms in a notice given to OFCOM by the deadline which is signed by two authorised persons that OFCOM have correctly ascertained the bidder's intention, the principal stage form in its entirety shall be valid and be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation, the principal stage form in its entirety shall be invalid and rejected by OFCOM.

### **Notification that principal stage form is not valid**

**62.** Where a bidder submits a principal stage form that is not a valid principal stage form during a principal stage round, OFCOM shall, after the end of that principal stage round, notify the bidder of that fact and shall give the reasons why the principal stage form is not a valid principal stage form.

## **CHAPTER 9**

### **Deposits during and following the principal stage**

#### **Deposits during the principal stage**

**63.**—(1) Where, after the end of any principal stage round, the amount a bidder has on deposit with OFCOM for the purposes of the award process is less than the bidder's financial exposure, OFCOM may, having regard to the desirability of securing an efficient outcome to the principal stage, notify the bidder that it is required to pay a further sum in pounds as a deposit.

(2) A bidder's financial exposure after the end of a principal stage round shall be the amount in pounds which is equal to the sum of—

- (a) the number of that bidder's principal stage bids for 2.3 GHz lots to which OFCOM assigned standing high bid status after the end of that principal stage round, multiplied by the round price at which those bids were made;
- (b) the number of that bidder's principal stage bids for 3.4 GHz lots to which OFCOM assigned standing high bid status after the end of that principal stage round, multiplied by the round price at which those bids were made;
- (c) the number of that bidder's principal stage bids for 2.3 GHz lots which would become winning principal stage bids in accordance with regulation 39 (following the withdrawal of standing high bid status) if that principal stage round was the final principal stage round, multiplied by the round price at which those bids were made; and
- (d) the number of that bidder's principal stage bids for 3.4 GHz lots which would become winning principal stage bids in accordance with regulation 40 (following the withdrawal of standing high bid status) if that principal stage round was the final principal stage round, multiplied by the round price at which those bids were made.

(3) The further sum shall be an amount determined by OFCOM such that the total amount that the bidder is required to have on deposit is at most the amount of the bidder's highest financial exposure after the end of any of the previous principal stage rounds before OFCOM gave notice to the bidder under paragraph (1).

(4) Any such sum must be paid into OFCOM's bank account with accompanying information which identifies the bidder, by a deadline specified by OFCOM.

(5) Where a bidder does not satisfy the requirements set out in paragraph (4), OFCOM shall notify the bidder of that fact.

### **Required final principal stage deposit**

**64.**—(1) After the final principal stage round, a further sum in pounds must be paid into OFCOM's bank account with accompanying information which identifies the bidder, by a deadline specified by OFCOM (“required final principal stage deposit”).

(2) In respect of any bidder, the required final principal stage deposit shall be an amount such that the total amount that the bidder has on deposit is not less than the amount which is the sum of—

- (a) that bidder's total 2.3 GHz base price A;
- (b) that bidder's total 3.4 GHz base price A;
- (c) one half of that bidder's total 2.3 GHz base price B; and
- (d) one half of that bidder's total 3.4 GHz base price B.

(3) Where a bidder does not satisfy the requirements set out in paragraph (1)—

- (a) OFCOM shall notify the bidder; and
- (b) the bidder shall not be excluded from the award process, but may not make assignment stage bids and will be deemed to have made valid assignment stage bids with a value of zero pounds for its assignment stage options.

## **PART 7**

### **Assignment stage**

#### **CHAPTER 1**

##### **Assignment stage: Preliminary**

### **Assignment stage**

**65.**—(1) Where there are no winning bidders following completion of the principal stage and either—

- (a) the pre-existing licence holder is not a bidder; or
- (b) the pre-existing licence holder is a bidder but did not apply for a replacement licence,

there shall be no assignment stage and no licences shall be granted.

(2) Where—

- (a) there are winning bidders following completion of the principal stage; or
- (b) the pre-existing licence holder is a bidder and did apply for a replacement licence,

OFCOM shall assign lots in a single assignment stage round in accordance with the procedure set out in chapters 2 to 6.

#### **CHAPTER 2**

##### **Assignment without bidding**

### **Assignment of numbered 2.3 GHz lots without bidding**

**66.** Where there is only one winning bidder for all of the 2.3 GHz lots, OFCOM shall assign all of the 2.3 GHz lots to that winning bidder.

### **Assignment of numbered 3.4 GHz lots without bidding**

67.—(1) Where the pre-existing licence holder is a bidder and—

- (a) did apply for a replacement licence, and
- (b) is the winning bidder for all of the 3.4 GHz lots,

OFCOM shall assign all of the 3.4 GHz lots to the pre-existing licence holder.

(2) Where—

- (a) the pre-existing licence holder—
  - (i) is not a bidder; or
  - (ii) is a bidder but did not apply for a replacement licence; and
- (b) there is only one winning bidder for 3.4 GHz lots; and
- (c) that winning bidder won thirty 3.4 GHz lots,

OFCOM shall assign the lower 3.4 GHz frequency range and the upper 3.4 GHz frequency range to that winning bidder.

(3) Where—

- (a) the pre-existing licence holder—
  - (i) is not a bidder; or
  - (ii) is a bidder but did not apply for a replacement licence; and
- (b) there are two winning bidders for 3.4 GHz lots; and
- (c) one winning bidder won fourteen 3.4 GHz lots and the other winning bidder won sixteen 3.4 GHz lots,

OFCOM shall assign the lower 3.4 GHz frequency range to the bidder who won fourteen 3.4 GHz lots, and the upper 3.4 GHz frequency range to the bidder who won sixteen 3.4 GHz lots.

## **CHAPTER 3**

### **Assignment by bidding**

#### **Assignment of numbered 2.3 GHz lots by bidding**

68. Except where regulation 66 applies, the particular numbered 2.3 GHz lots that are to be assigned to the winning bidder or bidders for the 2.3 GHz lots shall be determined by bidding in one further round of bidding (the “assignment stage round”) in accordance with the procedure set out in regulations 70 to 76.

#### **Assignment of numbered 3.4 GHz lots by bidding**

69. Except where regulation 67 applies, the particular numbered 3.4 GHz lots that are to be assigned to the winning bidder or bidders for the 3.4 GHz lots shall be determined by bidding in the assignment stage round in accordance with the procedure set out in regulations 70, 71 and 77 to 84.

#### **Assignment stage round**

70.—(1) Only the following bidders may bid in the assignment stage round—

- (a) winning bidders for 2.3 GHz lots; and
- (b) winning bidders for 3.4 GHz lots.

(2) The assignment stage round shall begin and end at the times notified by OFCOM under regulation 85.

### **Assignment stage form**

- 71.**—(1) OFCOM shall provide each winning bidder with an assignment stage form.
- (2) To bid in the assignment stage round, a bidder must specify on the assignment stage form—
- (a) the bidder's 2.3 GHz assignment stage bids, if any, in accordance with regulation 74; and
  - (b) the bidder's 3.4 GHz assignment stage bids, if any, in accordance with regulation 80.
- (3) An assignment stage form is a valid assignment stage form if—
- (a) the bidder has complied with regulations 74(1) and 74(2) or regulations 80(1) and 80(2) in respect of all assignment stage bids specified on the form; and
  - (b) the bidder has submitted the form in accordance with regulation 86 or 87.
- (4) Where a bidder submits an assignment stage form which is not a valid assignment stage form, OFCOM shall, after the end of the assignment stage round, notify the bidder of that fact and shall give the reasons why the assignment stage form is not a valid assignment stage form.

## **CHAPTER 4**

### **2.3 GHz frequency assignments determined by bidding**

#### **Bidding for numbered 2.3 GHz lots in the assignment stage**

- 72.**—(1) A 2.3 GHz assignment stage bid shall be a bid for one or more licences that authorise the use of frequencies corresponding to the particular numbered 2.3 GHz lots comprised in a block of numbered 2.3 GHz lots.
- (2) OFCOM shall determine which blocks of numbered 2.3 GHz lots a bidder may bid for, and notify that bidder of its determination.
- (3) The list of possible blocks of numbered 2.3 GHz lots provided to each bidder may be different for each bidder.
- (4) The list shall be known as the “2.3 GHz assignment stage option list” and each block of 2.3 GHz lots in that list shall be known as a “2.3 GHz assignment stage option”.

#### **Preparing a 2.3 GHz assignment stage option list for each bidder**

- 73.**—(1) OFCOM shall determine which 2.3 GHz assignment stage options shall be included in the 2.3 GHz assignment stage option list for each bidder which is eligible to bid in accordance with regulation 70.
- (2) A bidder's 2.3 GHz assignment stage options shall be each of those blocks of numbered 2.3 GHz lots which satisfy the following conditions—
- (a) the number of 2.3 GHz lots contained in the block is equal to the number of that bidder's winning principal stage bids for 2.3 GHz lots; and
  - (b) if that bidder were assigned the 2.3 GHz lots contained in the block the following conditions would be satisfied—
    - (i) each other bidder could be assigned 2.3 GHz lots contained in a block that, in respect of that other bidder's winning principal stage bids for 2.3 GHz lots, satisfies the condition in sub-paragraph (a); and
    - (ii) the 2.3 GHz lots not assigned to that bidder or any other bidder would form a single block of numbered 2.3 GHz lots.

### **2.3 GHz assignment stage bids**

74.—(1) In order to bid for a 2.3 GHz assignment stage option, a bidder must, on the assignment stage form, specify an amount in whole thousands of pounds that it is willing to pay, in addition to the total 2.3 GHz base price A and the total 2.3 GHz base price B for that bidder's winning principal stage bids for 2.3 GHz lots, for one or more licences that authorise the use of the frequencies corresponding to the block of numbered 2.3 GHz lots that is the 2.3 GHz assignment stage option.

(2) A bidder may make no more than one 2.3 GHz assignment stage bid for each 2.3 GHz assignment stage option.

(3) A bidder is not required to make a 2.3 GHz assignment stage bid.

(4) A 2.3 GHz assignment stage bid is a valid 2.3 GHz assignment stage bid if—

(a) the bid is specified on a valid assignment stage form; and

(b) the bidder has paid the full sum of the required assignment stage deposit by the deadline specified by OFCOM.

(5) Where a bidder does not make a valid 2.3 GHz assignment stage bid for a 2.3 GHz assignment stage option that bidder will be deemed to have made a valid 2.3 GHz assignment stage bid with a value of zero pounds for that 2.3 GHz assignment stage option.

### **Determination of the winning 2.3 GHz assignment stage bids**

75.—(1) OFCOM shall determine the winning 2.3 GHz assignment stage bids in accordance with this regulation after the deadline for paying the required assignment stage deposit under regulation 89.

(2) The winning 2.3 GHz assignment stage bids shall be those valid 2.3 GHz assignment stage bids that comprise the winning combination of valid 2.3 GHz assignment stage bids.

(3) The winning combination of valid 2.3 GHz assignment stage bids shall be the valid combination of 2.3 GHz assignment stage bids having the highest total value of amounts bid.

(4) A combination of valid 2.3 GHz assignment stage bids is a valid combination of 2.3 GHz assignment stage bids if—

(a) within that combination there is one valid 2.3 GHz assignment stage bid from each winning bidder for 2.3 GHz lots;

(b) each of those valid 2.3 GHz assignment stage bids is for a 2.3 GHz assignment stage option as determined by OFCOM for the bidder;

(c) no numbered 2.3 GHz lot is included in more than one of the 2.3 GHz assignment stage bids included in the combination of valid 2.3 GHz assignment stage bids; and

(d) the numbered 2.3 GHz lots not included in that combination of valid 2.3 GHz assignment stage bids, taken together, form a single block of numbered 2.3 GHz lots.

(5) Where there is more than one valid combination of 2.3 GHz assignment stage bids for which the total value is equal highest, OFCOM shall employ a method of random selection from amongst those valid combinations of 2.3 GHz assignment stage bids for which the value is equal highest to determine the winning combination of valid 2.3 GHz assignment stage bids.

### **Determination of 2.3 GHz additional prices**

76. In respect of each winning 2.3 GHz assignment stage bid, OFCOM shall determine an amount in whole pounds (“2.3 GHz additional price”) which shall be payable by the relevant winning bidder in accordance with Schedule 5.

## CHAPTER 5

### 3.4 GHz frequency assignments determined by bidding

#### **Bidding for numbered 3.4 GHz lots in the assignment stage**

77.—(1) A 3.4 GHz assignment stage bid shall be a bid for one or more licences that authorise the use of the frequencies corresponding to the particular numbered 3.4 GHz lots comprised in a block or pair of blocks of numbered 3.4 GHz lots.

(2) OFCOM shall determine the blocks and pairs of blocks of numbered 3.4 GHz lots a bidder may bid for, and notify that bidder of its determination.

(3) The list of possible blocks and pairs of blocks of numbered 3.4 GHz lots provided to each bidder may be different for each bidder.

(4) The list shall be known as the “3.4 GHz assignment stage option list” and each block or pair of blocks of numbered 3.4 GHz lots in that list shall be known as a “3.4 GHz assignment stage option”.

#### **Preparing a 3.4 GHz assignment stage option list for each bidder if the pre-existing licence holder is a bidder and did apply for a replacement licence**

78.—(1) This regulation applies where the pre-existing licence holder is a bidder and did apply for a replacement licence.

(2) The 3.4 GHz assignment stage options for the pre-existing licence holder which applied for a replacement licence shall be each of those blocks of numbered 3.4 GHz lots which satisfy the following conditions—

- (a) the number of 3.4 GHz lots contained in the block is equal to the sum of the number of 3.4 GHz lots won by the pre-existing licence holder as a consequence of bidding in the principal stage (the “additional 3.4 GHz lots”), if any, and the number eight; and
- (b) if the pre-existing licence holder were assigned the 3.4 GHz lots contained in the block the following conditions would be satisfied—
  - (i) each other bidder could be assigned the number of 3.4 GHz lots, contained in a block, that is equal to the number of that other bidder's winning principal stage bids for 3.4 GHz lots; and
  - (ii) the 3.4 GHz lots not assigned to the pre-existing licence holder or any other bidder (the “leftover 3.4 GHz lots”) would form a single block of numbered 3.4 GHz lots.

(3) The 3.4 GHz assignment stage options for a bidder which is not the pre-existing licence holder shall be each of those blocks of numbered 3.4 GHz lots which satisfy the following conditions—

- (a) the number of 3.4 GHz lots contained in the block is equal to the number of that bidder's winning principal stage bids for 3.4 GHz lots; and
- (b) if that bidder were assigned the 3.4 GHz lots contained in the block the following conditions would be satisfied—
  - (i) subject to sub-paragraph (ii), each other bidder could be assigned the number of 3.4 GHz lots, contained in a block, that is equal to the number of that other bidder's winning principal stage bids for 3.4 GHz lots;
  - (ii) the pre-existing licence holder could be assigned the number of 3.4 GHz lots, contained in a block, that is equal to the sum of the number of additional 3.4 GHz lots, if any, and the number eight; and
  - (iii) the leftover 3.4 GHz lots would form a single block of numbered 3.4 GHz lots.



**Preparing a 3.4 GHz assignment stage option list for each bidder if the pre-existing licence holder is not a bidder or is a bidder but did not apply for a replacement licence**

- 79.—(1) This regulation applies where the pre-existing licence holder—
- (a) is not a bidder; or
  - (b) is a bidder but did not apply for a replacement licence.
- (2) A bidder's 3.4 GHz assignment stage options shall be each of those blocks of numbered 3.4 GHz lots which satisfy the following conditions—
- (a) the number of 3.4 GHz lots contained in the block is equal to the number of that bidder's winning principal stage bids for 3.4 GHz lots;
  - (b) the block does not contain the 3.4 GHz lots numbered 15 to 18 and 35 to 38; and
  - (c) if that bidder were assigned the 3.4 GHz lots contained in the block the following conditions would be satisfied—
    - (i) each other bidder could be assigned 3.4 GHz lots contained in a block that, in respect of that other bidder's winning principal stage bids for 3.4 GHz lots, satisfies the conditions in sub-paragraphs (a) and (b); and
    - (ii) the leftover 3.4 GHz lots are contained in at most two blocks of numbered 3.4 GHz lots, where one of those blocks is located in the lower 3.4 GHz frequency range and the other block is located in the upper 3.4 GHz frequency range.
- (3) If there are no 3.4 GHz assignment stage options which satisfy the conditions set out in paragraph (2), then the bidder's 3.4 GHz assignment stage options shall be each of those blocks or pairs of blocks of numbered 3.4 GHz lots which satisfy the following conditions—
- (a) the number of 3.4 GHz lots contained in the block or pair of blocks is equal to the number of that bidder's winning principal stage bids for 3.4 GHz lots;
  - (b) the block or pair of blocks does not contain the 3.4 GHz lots numbered 15 to 18 and 35 to 38;
  - (c) where the number of the bidder's winning principal stage bids for 3.4 GHz lots is less than eight, the numbered 3.4 GHz lots contained in the option together form a single block of numbered 3.4 GHz lots;
  - (d) where the number of the bidder's winning principal stage bids for 3.4 GHz lots is eight or more, the numbered 3.4 GHz lots contained in the option are included in at most two blocks of numbered 3.4 GHz lots, where—
    - (i) one of those blocks is located in the lower 3.4 GHz frequency range and the other block is located in the upper 3.4 GHz frequency range; and
    - (ii) the number of 3.4 GHz lots contained in each of the two separate blocks of numbered 3.4 GHz lots is at least four; and
  - (e) if that bidder were assigned the 3.4 GHz lots contained in the block or pair of blocks, the following conditions would be satisfied—
    - (i) each other bidder could be assigned 3.4 GHz lots contained in a block or pair of blocks that, in respect of that other bidder's winning principal stage bids for 3.4 GHz lots, satisfies the conditions in sub-paragraphs (a) to (d);
    - (ii) the number of separate blocks of numbered 3.4 GHz lots assigned to all bidders considered together is no more than necessary to meet the conditions set out in sub-paragraphs (a) to (e)(i); and
    - (iii) the leftover 3.4 GHz lots are contained in at most two blocks of numbered 3.4 GHz lots, where one of those blocks is located in the lower 3.4 GHz frequency range and the other block is located in the upper 3.4 GHz frequency range.

(4) If there are no 3.4 GHz assignment stage options which satisfy the conditions set out in paragraph (2) or (3) above, then the bidder's 3.4 GHz assignment stage options shall be each of those blocks or pairs of blocks of numbered 3.4 GHz lots which satisfy the following conditions—

- (a) the number of 3.4 GHz lots contained in the block or pair of blocks is equal to the number of that bidder's winning principal stage bids for 3.4 GHz lots;
- (b) the block or pair of blocks does not contain the 3.4 GHz lots numbered 15 to 18 and 35 to 38;
- (c) the numbered 3.4 GHz lots are included in at most two separate blocks of numbered 3.4 GHz lots, where one of those blocks is located in the lower 3.4 GHz frequency range and the other block is located in the upper 3.4 GHz frequency range; and
- (d) if that bidder were assigned the 3.4 GHz lots contained in the block or pair of blocks, the following conditions would be satisfied—
  - (i) each other bidder could be assigned 3.4 GHz lots contained in a block or pair of blocks that, in respect of that other bidder's winning principal stage bids for 3.4 GHz lots, satisfies the conditions in sub-paragraphs (a) to (c);
  - (ii) the number of separate blocks of numbered 3.4 GHz lots assigned to all bidders considered together is no more than necessary to meet the conditions set out in sub-paragraphs (a) to (d)(i); and
  - (iii) the leftover 3.4 GHz lots are contained in at most two blocks of numbered 3.4 GHz lots, where one of those blocks is located in the lower 3.4 GHz frequency range and the other block is located in the upper 3.4 GHz frequency range.

### **3.4 GHz assignment stage bids**

**80.**—(1) In order to bid for a 3.4 GHz assignment stage option, a bidder must, on the assignment stage form, specify an amount in whole thousands of pounds that it is willing to pay, in addition to the total 3.4 GHz base price A and the total 3.4 GHz base price B for that bidder's winning principal stage bids for 3.4 GHz lots, for one or more licences that authorise the use of the frequencies corresponding to the block or pair of blocks of numbered 3.4 GHz lots that is the 3.4 GHz assignment stage option.

(2) A bidder may make no more than one 3.4 GHz assignment stage bid for each 3.4 GHz assignment stage option.

(3) A bidder is not required to make a 3.4 GHz assignment stage bid.

(4) A 3.4 GHz assignment stage bid is a valid 3.4 GHz assignment stage bid if—

- (a) the bid is specified on a valid assignment stage form; and
- (b) the bidder has paid the full sum of the required assignment stage deposit by the deadline specified by OFCOM.

(5) Where a bidder does not make a valid 3.4 GHz assignment stage bid for a 3.4 GHz assignment stage option that bidder will be deemed to have made a valid 3.4 GHz assignment stage bid with a value of zero pounds for that 3.4 GHz assignment stage option.

### **Determination of the winning 3.4 GHz assignment stage bids**

**81.**—(1) OFCOM shall determine the winning 3.4 GHz assignment stage bids in accordance with this regulation, regulation 82 and regulation 83 after the deadline for paying the required assignment stage deposit.

(2) The winning 3.4 GHz assignment stage bids shall be those valid 3.4 GHz assignment stage bids that comprise the winning combination of valid 3.4 GHz assignment stage bids.

(3) The winning combination of valid 3.4 GHz assignment stage bids shall be the valid combination of 3.4 GHz assignment stage bids, determined in accordance with regulation 82 or regulation 83, having the highest total value of amounts bid.

(4) Where there is more than one valid combination of 3.4 GHz assignment stage bids for which the total value is equal highest, OFCOM shall employ a method of random selection from amongst those valid combinations of 3.4 GHz assignment stage bids for which the value is equal highest to determine the winning combination of valid 3.4 GHz assignment stage bids.

**Valid combinations of 3.4 GHz assignment stage bids where the pre-existing licence holder is a bidder and did apply for a replacement licence**

**82.**—(1) This regulation applies where the pre-existing licence holder is a bidder and did apply for a replacement licence.

(2) A combination of valid 3.4 GHz assignment stage bids is a valid combination of 3.4 GHz assignment stage bids if—

- (a) within that combination there is one valid 3.4 GHz assignment stage bid from each winning bidder for 3.4 GHz lots;
- (b) each of those valid 3.4 GHz assignment stage bids is for a 3.4 GHz assignment stage option as determined by OFCOM for the bidder under regulation 78;
- (c) no numbered 3.4 GHz lot is included in more than one of the 3.4 GHz assignment stage bids included in the combination of valid 3.4 GHz assignment stage bids; and
- (d) the numbered 3.4 GHz lots not included in that combination of valid 3.4 GHz assignment stage bids together form a single block of numbered 3.4 GHz lots.

**Valid combinations of 3.4 GHz assignment stage bids where the pre-existing licence holder is not a bidder or is a bidder but did not apply for a replacement licence**

**83.**—(1) This regulation applies where the pre-existing licence holder—

- (a) is not a bidder; or
- (b) is a bidder but did not apply for a replacement licence.

(2) A combination of valid 3.4 GHz assignment stage bids is a valid combination of 3.4 GHz assignment stage bids if—

- (a) within that combination there is one valid 3.4 GHz assignment stage bid from each winning bidder for 3.4 GHz lots;
- (b) each of those valid 3.4 GHz assignment stage bids is for a 3.4 GHz assignment stage option as determined by OFCOM for the bidder under regulation 79;
- (c) no numbered 3.4 GHz lot is included in more than one of the 3.4 GHz assignment stage options included in the combination of valid 3.4 GHz assignment stage bids; and
- (d) the numbered 3.4 GHz lots not included in that combination of valid assignment stage bids together form at most one single block of numbered 3.4 GHz lots in the lower 3.4 GHz frequency range and at most one single block of numbered 3.4 GHz lots in the upper 3.4 GHz frequency range.

**Determination of 3.4 GHz additional prices**

**84.** In respect of each winning 3.4 GHz assignment stage bid, OFCOM shall determine an amount in whole pounds (“3.4 GHz additional price”) which shall be payable by the relevant winning bidder in accordance with Schedule 6.

## CHAPTER 6

### Procedure and further deposit for assignment stage

#### **Notice to bidders before the assignment stage round**

**85.** Before the start of the assignment stage round, OFCOM shall notify each bidder that may make an assignment stage bid in the assignment stage round of—

- (a) the 2.3 GHz and 3.4 GHz assignment stage options that are available to that bidder in the assignment stage round; and
- (b) the date on which, and the times on that date within which, the assignment stage round will take place.

#### **Submission of assignment stage form to OFCOM**

**86.**—(1) A bidder must submit the completed assignment stage form to OFCOM by using the electronic auction system, except as provided for in regulation 87.

(2) The completed assignment stage form must be received by OFCOM by the time notified to bidders under regulation 85(b) as the end of the assignment stage round.

#### **Alternative method for submission of assignment stage form**

**87.**—(1) Where OFCOM are satisfied that a bidder is unable to submit an assignment stage form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder's ability to use the electronic auction system), OFCOM shall notify the bidder of an alternative method of submitting the assignment stage form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the assignment stage form by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (1) relating to the authentication of communications.

#### **Incomplete or defective assignment stage form**

**88.**—(1) Where, due to the manner of completion, an assignment stage form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of assignment stage bids, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a deadline specified by OFCOM that OFCOM have correctly ascertained the bidder's intention in relation to the making of assignment stage bids.

(2) Where the bidder confirms in a notice given to OFCOM by the deadline which is signed by two authorised persons that OFCOM have correctly ascertained the bidder's intention, the assignment stage form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation, the assignment stage form in its entirety shall be rejected by OFCOM and none of the assignment stage bids made on that assignment stage form shall be valid, and regulation 74(5) or regulation 80(5) shall apply.

#### **Required assignment stage deposit**

**89.**—(1) A further sum in pounds must be paid into OFCOM's bank account, with accompanying information which identifies the bidder, by a deadline specified by OFCOM (the "required assignment stage deposit").

(2) The required assignment stage deposit shall be an amount such that the total amount that the bidder has on deposit is not less than the amount which is the sum of—

- (a) the bidder's total 2.3 GHz base price A;
- (b) the bidder's total 3.4 GHz base price A;
- (c) one half of the bidder's total 2.3 GHz base price B;
- (d) one half of the bidder's total 3.4 GHz base price B;
- (e) the amount which is the bidder's highest 2.3 GHz assignment stage bid for a 2.3 GHz assignment stage option; and
- (f) the amount which is the bidder's highest 3.4 GHz assignment stage bid for a 3.4 GHz assignment stage option.

#### **Notification of results of the assignment stage**

**90.** After the determination of the winning assignment stage bids, and the determination of the additional price for each winning assignment stage bid, OFCOM shall notify each winning bidder of—

- (a) the 2.3 GHz and 3.4 GHz assignment stage options for which the bidder made winning assignment stage bids; and
- (b) the additional price determined for each winning assignment stage bid made by the bidder.

## **PART 8**

### **Grant Stage**

#### **CHAPTER 1**

Licences available, the determination of licence fees  
and the precise frequencies for particular licences

#### **Interpretation**

**91.** In these Regulations—

- (a) a “2.3 GHz licence” is a licence that authorises the use of particular frequencies corresponding to a block of such number of 2.3 GHz lots as that bidder won in accordance with regulation 38;
- (b) a “2.3 GHz withdrawn lot licence” is a licence that authorises the use of particular frequencies corresponding to a block of such number of 2.3 GHz lots as that bidder won in accordance with regulation 39 (following the withdrawal of standing high bid status);
- (c) a “3.4 GHz licence” is a licence that authorises the use of particular frequencies corresponding to a block or pair of blocks (as the case may be) of such number of 3.4 GHz lots as that bidder won in accordance with regulation 38;
- (d) a “3.4 GHz withdrawn lot licence” is a licence that authorises the use of particular frequencies corresponding to a block or pair of blocks (as the case may be) of such number of 3.4 GHz lots as that bidder won in accordance with regulation 40 (following the withdrawal of standing high bid status).

#### **Determination of licences, licence fees and frequencies associated with particular licences**

**92.** After notification of the results of the assignment stage under regulation 90, OFCOM shall determine—

- (a) the licences which may be granted; and

- (b) for each licence—
  - (i) the licence fee payable to OFCOM, in accordance with regulations 94 to 98; and
  - (ii) the particular frequencies, in accordance with regulations 99 to 101.

#### **Licences which may be granted under this award process**

- 93.** The licences which may be granted to a bidder under this award process are—
- (a) for a bidder which won 2.3 GHz lots in accordance with regulation 38, a 2.3 GHz licence;
  - (b) for a bidder which won 2.3 GHz lots in accordance with regulation 39, a 2.3 GHz withdrawn lot licence;
  - (c) for a bidder which won 3.4 GHz lots in accordance with regulation 38, a 3.4 GHz licence;
  - (d) for a bidder which won 3.4 GHz lots in accordance with regulation 40, a 3.4 GHz withdrawn lot licence; and
  - (e) where the pre-existing licence holder is a bidder and did apply for a replacement licence, a replacement licence.

#### **Licence fee payable by a winning bidder for a 2.3 GHz licence**

- 94.** The licence fee payable by a winning bidder for a 2.3 GHz licence shall be an amount equal to the sum of—
- (a) that bidder's total 2.3 GHz base price A; and
  - (b) that bidder's 2.3 GHz additional price.

#### **Licence fee payable by a winning bidder for a 2.3 GHz withdrawn lot licence**

- 95.** The licence fee payable by a winning bidder for a 2.3 GHz withdrawn lot licence shall be an amount equal to the sum of—
- (a) that bidder's total 2.3 GHz base price B; and
  - (b) except where that bidder also won 2.3 GHz lots in accordance with regulation 38, that bidder's 2.3 GHz additional price.

#### **Licence fee payable by a winning bidder for a 3.4 GHz licence**

- 96.** The licence fee payable by a winning bidder for a 3.4 GHz licence shall be an amount equal to the sum of—
- (a) that bidder's total 3.4 GHz base price A; and
  - (b) that bidder's 3.4 GHz additional price.

#### **Licence fee payable by a winning bidder for a 3.4 GHz withdrawn lot licence**

- 97.** The licence fee payable by a winning bidder for a 3.4 GHz withdrawn lot licence shall be an amount equal to the sum of—
- (a) that bidder's total 3.4 GHz base price B; and
  - (b) except where that bidder also won 3.4 GHz lots in accordance with regulation 38, that bidder's 3.4 GHz additional price.

#### **Licence fee payable by the pre-existing licence holder for a replacement licence**

- 98.** The licence fee payable by the pre-existing licence holder for a replacement licence shall be—

- (a) where the pre-existing licence holder does not win any additional 3.4 GHz lots in the principal stage, the amount which is the pre-existing licence holder's 3.4 GHz additional price; or
- (b) where the pre-existing licence holder won additional 3.4 GHz lots in the principal stage, zero pounds.

**Particular frequencies to be included in 2.3 GHz licences and 2.3 GHz withdrawn lot licences**

**99.**—(1) Where a winning bidder won 2.3 GHz lots in accordance with either regulation 38 or 39 (but not both), any 2.3 GHz licence or 2.3 GHz withdrawn lot licence granted to that bidder shall authorise the use of the frequencies corresponding to the 2.3 GHz assignment stage option for which the bidder made the winning 2.3 GHz assignment stage bid (“2.3 GHz winning option”).

(2) Where a winning bidder won 2.3 GHz lots in accordance with both regulations 38 and 39—

- (a) the 2.3 GHz licence granted to that bidder shall authorise the use of the frequencies corresponding to the block which—
  - (i) includes such number of lots as won in accordance with regulation 38; and
  - (ii) comprises the higher frequencies included in that bidder's 2.3 GHz winning option; and
- (b) the 2.3 GHz withdrawn lot licence granted to that bidder shall authorise the use of the frequencies corresponding to the block which—
  - (i) includes such number of lots as won in accordance with regulation 39; and
  - (ii) comprises the lower frequencies included in that bidder's 2.3 GHz winning option.

**Particular frequencies to be included in 3.4 GHz licences and 3.4 GHz withdrawn lot licences granted to a winning bidder where the pre-existing licence holder is not a bidder or where the pre-existing licence holder is a bidder but did not apply for a replacement licence**

**100.**—(1) This regulation applies in respect of the grant of a 3.4 GHz licence or a 3.4 GHz withdrawn lot licence to—

- (a) each winning bidder for 3.4 GHz lots other than the pre-existing licence holder; and
- (b) where it is a bidder and did not apply for a replacement licence but makes one or more winning principal stage bids for 3.4 GHz lots, the pre-existing licence holder.

(2) Where a winning bidder to which this regulation applies won 3.4 GHz lots in accordance with either regulation 38 or 40 (but not both), any 3.4 GHz licence or 3.4 GHz withdrawn lot licence granted to that bidder shall authorise the use of the frequencies corresponding to the 3.4 GHz assignment stage option for which the bidder made the winning 3.4 GHz assignment stage bid (“3.4 GHz winning option”).

(3) Where a winning bidder to which this regulation applies won 3.4 GHz lots in accordance with both regulations 38 and 40—

- (a) the 3.4 GHz licence granted to that bidder shall authorise the use of the frequencies corresponding to the block or pair of blocks which—
  - (i) includes such number of lots as won in accordance with regulation 38; and
  - (ii) comprises the higher frequencies included in that bidder's 3.4 GHz winning option; and
- (b) the 3.4 GHz withdrawn lot licence granted to that bidder shall authorise the use of the frequencies corresponding to the block or pair of blocks which—
  - (i) includes such number of lots as won in accordance with regulation 40; and

(ii) comprises the lower frequencies included in that bidder's 3.4 GHz winning option.

**Particular frequencies to be included in any 3.4 GHz licence, 3.4 GHz withdrawn lot licence and replacement licence granted to the pre-existing licence holder where it is a bidder and did apply for a replacement licence**

**101.**—(1) This regulation applies in respect of the grant to the pre-existing licence holder of a 3.4 GHz licence, a 3.4 GHz withdrawn lot licence and a replacement licence under this award process where that pre-existing licence holder is a bidder and did apply for a replacement licence.

(2) Where the pre-existing licence holder to which this regulation applies did not win any additional 3.4 GHz lots in the principal stage, any replacement licence granted to that pre-existing licence holder shall authorise the use of 40 MHz corresponding to its 3.4 GHz winning option.

(3) Where the pre-existing licence holder to which this regulation applies won 3.4 GHz lots in accordance with either regulation 38 or 40 (but not both)—

- (a) the replacement licence granted to that pre-existing licence holder shall authorise the use of 40 MHz corresponding to the block which comprises the higher frequencies included in that pre-existing licence holder's 3.4 GHz winning option; and
- (b) the 3.4 GHz licence or 3.4 GHz withdrawn lot licence granted to that pre-existing licence holder shall authorise the use of the frequencies corresponding to the block of additional 3.4 GHz lots which comprises the lower frequencies included in the pre-existing licence holder's 3.4 GHz winning option.

(4) Where the pre-existing licence holder to which this regulation applies won 3.4 GHz lots in accordance with both regulations 38 and 40—

- (a) the replacement licence granted to that pre-existing licence holder shall authorise the use of 40 MHz corresponding to the block which comprises the higher frequencies included in that pre-existing licence holder's 3.4 GHz winning option;
- (b) the 3.4 GHz licence granted to that pre-existing licence holder shall authorise the use of the frequencies corresponding to the block which—
  - (i) includes such number of lots as won in accordance with regulation 38; and
  - (ii) comprises the frequencies immediately below the block included in the replacement licence referred to in sub-paragraph (a); and
- (c) the 3.4 GHz withdrawn lot licence granted to that pre-existing licence holder shall authorise the use of the frequencies corresponding to the block which—
  - (i) includes such number of lots as won in accordance with regulation 40; and
  - (ii) comprises the lower frequencies included in that pre-existing licence holder's 3.4 GHz winning option.

## CHAPTER 2

### Withdrawn lot licences

**Acceptance or refusal of the withdrawn lot licence**

**102.**—(1) Following the determination by OFCOM of the licences which may be granted to each winning bidder, each winning bidder's licence fees and particular frequencies, OFCOM shall notify each bidder that won 2.3 GHz lots or 3.4 GHz lots in accordance with regulations 39 or 40 (following the withdrawal of standing high bid status) of—

- (a) the licence fee payable by that bidder to OFCOM in respect of its withdrawn lot licences, as determined in accordance with regulations 95 and 97; and



- (b) the particular frequencies the use of which would be authorised by those withdrawn lot licences, as determined in accordance with regulations 99 to 101.
- (2) Each winning bidder so notified by OFCOM must, by a deadline specified by OFCOM, indicate whether or not it wishes to accept the withdrawn lot licences.
- (3) Where a winning bidder has won both 2.3 GHz lots and 3.4 GHz lots in accordance with regulations 39 and 40, that bidder must indicate either—
  - (a) that it wishes to accept withdrawn lot licences for both lot types; or
  - (b) that it does not wish to accept withdrawn lot licences for both lot types.
- (4) Where a winning bidder does not notify OFCOM in accordance with paragraphs (2) and (3), that bidder shall be deemed to have indicated that it does not wish to accept any withdrawn lot licences.

### **Refusal payment for withdrawn lot licences**

- 103.**—(1) Where a winning bidder has indicated that it does not wish to accept any withdrawn lot licences in accordance with regulation 102, OFCOM shall determine the amount payable by that bidder in respect of the withdrawn lot licences that it has refused (“refusal payment”) in accordance with paragraph (2).
- (2) The refusal payment shall be an amount equal to the sum of—
    - (a) the 2.3 GHz refusal payment, which is the amount payable by a winning bidder in respect of any 2.3 GHz withdrawn lot licence that it does not wish to accept, determined in accordance with paragraph (3); and
    - (b) the 3.4 GHz refusal payment, which is the amount payable by a winning bidder in respect of any 3.4 GHz withdrawn lot licence that it does not wish to accept, determined in accordance with paragraph (4).
  - (3) The amount referred to in paragraph (2)(a) shall be an amount equal to the sum of—
    - (a) one half of that bidder's total 2.3 GHz base price B; and
    - (b) except where that bidder also wins 2.3 GHz lots in accordance with regulation 38, that bidder's 2.3 GHz additional price.
  - (4) The amount referred to in paragraph (2)(b) shall be an amount equal to the sum of—
    - (a) one half of that bidder's total 3.4 GHz base price B; and
    - (b) except where that bidder also wins 3.4 GHz lots in accordance with regulation 38, that bidder's 3.4 GHz additional price.

## **CHAPTER 3**

### **Total auction sum**

### **Determination of the total auction sum payable by winning bidders to OFCOM**

- 104.**—(1) Following the determination of the refusal payment (if any), OFCOM shall determine the total auction sum payable by each winning bidder in accordance with paragraph (2).
- (2) The total auction sum payable by a winning bidder shall be the sum of—
    - (a) for that winning bidder's 2.3 GHz licence (if any), the licence fee determined in accordance with regulation 94;
    - (b) in respect of that winning bidder's 2.3 GHz withdrawn lot licence (if any) —
      - (i) the licence fee determined in accordance with regulation 95; or

- (ii) where that bidder has indicated that it does not wish to accept any withdrawn lot licences in accordance with regulation 102, the 2.3 GHz refusal payment determined in accordance with regulation 103(3);
- (c) for that winning bidder's 3.4 GHz licence (including for a 3.4 GHz licence for additional 3.4 GHz lots (if any)), the licence fee determined in accordance with regulation 96; and
- (d) in respect of that winning bidder's 3.4 GHz withdrawn lot licence (including for a 3.4 GHz withdrawn lot licence for additional 3.4 GHz lots (if any)) —
  - (i) the licence fee determined in accordance with regulation 97; or
  - (ii) where that bidder has indicated that it does not wish to accept any withdrawn lot licences in accordance with regulation 102, the 3.4 GHz refusal payment determined in accordance with regulation 103(4); and
- (e) for that winning bidder's replacement licence (if any), the licence fee determined in accordance with regulation 98.

#### **Notification of the total auction sum payable by winning bidders to OFCOM**

**105.** Following the determination of the total auction sum payable by each winning bidder to OFCOM, OFCOM shall notify each winning bidder of the total auction sum payable by that winning bidder to OFCOM.

#### **Further payment where the amount of a winning bidder's deposit is less than its total auction sum**

**106.** Where, after the notification given in accordance with regulation 105, the total amount that a winning bidder has on deposit is an amount that is less than the total auction sum payable by that bidder to OFCOM, the bidder must, by a deadline specified by OFCOM, pay into OFCOM's bank account, with accompanying information which identifies the bidder, the sum in pounds which is the difference between such amount and the amount the bidder has on deposit.

### CHAPTER 4

#### Grant of licences

#### **Entitlement to the grant of licences**

**107.—**(1) Where, following the passing of the deadline under regulation 106, the total amount that a winning bidder has on deposit is an amount that is equal to or more than the total auction sum payable by that bidder to OFCOM, OFCOM shall grant to that bidder the relevant licences referred to in regulation 108.

(2) Subject to paragraph (3), where, following the passing of the deadline under regulation 106, the amount of the deposit of a winning bidder remains less than the total auction sum payable by that bidder to OFCOM, that bidder—

- (a) shall not be entitled to the grant of any licences under these Regulations and shall not receive a refund of any sum which the bidder has paid as a deposit under these Regulations which shall (where not already forfeited) be forfeited, together with any interest which has accrued on that deposit; and
- (b) shall remain liable to pay the amount which is the difference (if any) between—
  - (i) the amount which is the total auction sum payable by that bidder to OFCOM; and
  - (ii) the amount the bidder has on deposit.

(3) Where—

- (a) the pre-existing licence holder applies for a replacement licence; and
- (b) following the passing of the deadline under regulation 106, the amount of the deposit of the pre-existing licence holder remains less than the total auction sum payable by the pre-existing licence holder to OFCOM,

the pre-existing licence holder will remain entitled to the grant of a replacement licence (but no other licence) under these Regulations.

### **Grant of licences**

**108.** The licences referred to in regulation 107(1) are—

- (a) where the winning bidder won 2.3 GHz lots in accordance with regulation 38, a 2.3 GHz licence which authorises the use of the frequencies determined in accordance with regulation 99;
- (b) where the winning bidder won 2.3 GHz lots in accordance with regulation 39 (following the withdrawal of standing high bid status) and has indicated that it wishes to accept a 2.3 GHz withdrawn lot licence, a 2.3 GHz withdrawn lot licence which authorises the use of the frequencies determined in accordance with regulation 99;
- (c) where the winning bidder won 3.4 GHz lots in accordance with regulation 38, a 3.4 GHz licence which authorises the use of the frequencies determined in accordance with regulation 100 or 101;
- (d) where the winning bidder won 3.4 GHz lots in accordance with regulation 40 (following the withdrawal of standing high bid status) and has indicated that it wishes to accept a 3.4 GHz withdrawn lot licence, a 3.4 GHz withdrawn lot licence which authorises the use of the frequencies determined in accordance with regulation 100 or 101; and
- (e) where the winning bidder concerned is the pre-existing licence holder, and the pre-existing licence holder did apply for a replacement licence, a replacement licence which authorises the use of the frequencies determined in accordance with regulation 101.

## **CHAPTER 5**

### **Completion of the award process**

#### **Refunds**

**109.** Where, following the grant of licences, the total amount a bidder has on deposit at that time is an amount that is greater than the total auction sum payable by that bidder to OFCOM, OFCOM shall refund to that bidder a sum in pounds which is the difference between—

- (a) the amount which is the total auction sum payable by that bidder to OFCOM (if any); and
- (b) the amount the bidder has on deposit.

#### **Notification to bidders following the grant of licences**

**110.** Following the grant of licences and the refund (if any) of deposits, OFCOM shall notify each winning bidder of the names of all of the persons to whom licences were granted, and, in relation to each of them—

- (a) the frequencies in respect of which the licences were granted; and
- (b) the licence fees paid, indicating the total base prices and the additional prices.

#### **Completion of the award process**

**111.** OFCOM shall complete the award process by publishing on OFCOM's website—

- (a) the names of the winning bidders to whom licences were granted, and, in relation to each of them—
  - (i) the frequencies in respect of which the licences were granted; and
  - (ii) the licence fees paid;
- (b) the names of the winning bidders that did not wish to accept withdrawn lot licences and, in relation to each of them—
  - (i) the frequencies in respect of which, if the withdrawn lot licences had been accepted, those withdrawn lot licences would have been granted; and
  - (ii) the refusal payment paid.
- (c) the names of any winning bidders who, following the passing of the deadline under regulation 106, had an amount on deposit which is less than the total auction sum payable by them to OFCOM, and, in relation to each of them—
  - (i) the frequencies in respect of which, if they held on deposit an amount equal to the total auction sum, licences would have been granted; and
  - (ii) the total auction sum payable to OFCOM; and
- (d) details of all valid principal stage bids, valid withdrawals of standing high bid status, valid assignment stage bids made by each bidder, and occurrences of an eligibility event in respect of each bidder.

## PART 9

### Activity rules

#### **Forfeit of deposit and exclusion from award process**

**112.** If, in relation to an applicant which is qualified to bid or a bidder, OFCOM are satisfied that any of the events set out in regulation 115 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process or would affect that bidder's 2.3 GHz bid limit or overall bid constraint—

- (a) any sum paid as a deposit under these Regulations shall be forfeited (together with any interest which has accrued on the deposit) by, and not refunded to, the applicant or bidder concerned; and
- (b) that applicant or bidder may also be excluded from the award process by OFCOM giving that applicant or bidder notice in writing.

#### **Bids made by an excluded bidder**

**113.—(1)** Subject to regulation 114, where a bidder is excluded from the award process under regulation 112 during the principal stage, OFCOM shall determine whether it should disregard the bids (and other bidding indications made on its principal stage form) made in any principal stage rounds prior to the exclusion, in order to have a fair and efficient outcome to the award process.

(2) Where OFCOM determine that it is appropriate to disregard the bids (and other bidding indications) made in any principal stage rounds—

- (a) it shall notify bidders of the rounds for which it has determined to disregard the bids (and other bidding indications); and
- (b) resume the award process from the start of the principal stage round after the round for which bids are not disregarded under sub-paragraph (a), or, where all bids are to be

disregarded under that sub-paragraph, to rerun the award process from the start of the first principal stage round.

(3) Subject to regulation 114, where a bidder is excluded from the award process under regulation 112 during the assignment stage—

- (a) OFCOM shall determine whether it should disregard the bids (and other bidding indications) made in any principal stage round prior to the exclusion in accordance with paragraphs (1) and (2); and
- (b) all of the assignment stage bids made by the bidder shall not be taken into consideration for the purposes of determining—
  - (i) the winning assignment stage bids under regulations 75 and 81;
  - (ii) the additional price payable by a winning bidder under regulations 76 and 84.

### **Exclusion of the pre-existing licence holder**

**114.**—(1) Where the pre-existing licence holder applies for a replacement licence and is excluded from the award process under regulation 26(8) or 112 during the principal or assignment stage, OFCOM shall disregard the bids (and other bidding indications made on its principal stage form) made in all principal and assignment stage rounds and rerun the award process from the start of the first principal stage round.

(2) Where OFCOM reruns the award process from the start of the first principal stage round in accordance with paragraph (1) above, the pre-existing licence holder shall not participate in the principal stage or the assignment stage of that award process and shall be deemed to have not applied for a replacement licence in that award process.

(3) Where a pre-existing licence holder has applied for a replacement licence but is excluded from the award process under these Regulations, OFCOM will notify the other bidders of that fact.

### **Events**

**115.**—(1) The events referred to in regulation 112 are the events in paragraph (2) and the events in paragraph (3).

(2) Events in relation to an applicant or bidder are—

- (a) the submission to OFCOM of any information in connection with the award process which is false or misleading;
- (b) any member of that applicant's or bidder's bidder group colluding or attempting to collude with another person to distort the outcome of the award process;
- (c) any member of that applicant's or bidder's bidder group acting in a way which is likely to distort the outcome of the award process;
- (d) any member of that applicant's or bidder's bidder group, or any person to whom confidential information has been disclosed, disclosing, or attempting to disclose, or inciting another person to disclose, any confidential information, whether directly or indirectly, to any person, except where the disclosure is—
  - (i) to OFCOM;
  - (ii) to a member of that applicant's or bidder's bidder group;
  - (iii) to a provider of finance for the purpose of raising finance for a bid; or
  - (iv) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's or bidder's bidder group;

- (e) any member of that applicant's or bidder's bidder group obtaining or attempting to obtain confidential information relating to another applicant or bidder;
  - (f) any member of that applicant's or bidder's bidder group receiving or attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process;
  - (g) any person who is a member or a director or employee of a member of that applicant's or bidder's bidder group and also a director or employee of a member of another bidder group—
    - (i) taking part in the preparation of both bidder groups for participation in the award process; or
    - (ii) receiving confidential information relating to both bidder groups;
  - (h) a member of that applicant's or bidder's bidder group is or becomes a member of another applicant's or bidder's bidder group; and
  - (i) a change occurring in the membership of that applicant's or bidder's bidder group from that notified to OFCOM in its application except as a result of—
    - (i) a person ceasing to be a member of that bidder group;
    - (ii) a person joining that bidder group under the procedure in regulation 10(3); or
    - (iii) a person becoming an associate through merger or acquisition activity provided that such activity is not for a purpose related to the award process.
- (3) Events in relation to a bidder (but not an applicant) are—
- (a) a change, after OFCOM has recorded that bidder's existing spectrum holdings under regulation 19, to the existing spectrum holdings of a bidder or, in relation to the bidder, any person referred to in regulation 4(3)(a)(iii) except insofar as the change is a divestment of a part of or the whole of the existing spectrum holdings; and
  - (b) any person which has existing spectrum holdings which was not at the time OFCOM recorded the bidder's existing spectrum holdings under regulation 19 a person referred to in regulation 4(3)(a)(iii) becoming such a person during the award process.

## PART 10

### MISCELLANEOUS

#### General power of exclusion

**116.** OFCOM may, at any time, notify any applicant or bidder of its exclusion from the award process, if required to do so by any direction given by the Secretary of State to OFCOM under section 5 of the Communications Act 2003 <sup>M4</sup> or if, after OFCOM's determination under regulation 12(1) (and notwithstanding that determination), in their opinion the applicant or bidder is not a fit and proper person to hold a licence.

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#### Marginal Citations

**M4** 2003 c.21.

### **Notification to OFCOM**

**117.** If, in accordance with any provision of these Regulations, an applicant or bidder is required, or wishes, to notify OFCOM of any fact or circumstance, it must do so by notice in writing which is marked for the attention of the OFCOM personnel who are specified by OFCOM for that purpose on OFCOM's website and must deliver that notice to OFCOM—

- (a) by electronic mail to an electronic mail address dedicated to the award process which is published by OFCOM on their website;
- (b) by personal delivery to Riverside House, 2a Southwark Bridge Road, London, SE1 9HA; or
- (c) by fax to a number dedicated to the award process which is published by OFCOM on their website.

### **Changes to timing or location**

**118.**—(1) Subject to regulations 119 and 120, paragraph (2) applies where OFCOM determine that it is impracticable for any reason—

- (a) for any document which is to be delivered to OFCOM under these Regulations to be delivered at the place specified or by the deadline specified under these Regulations; or
- (b) for any action which is required to be undertaken in accordance with these Regulations to be completed by the deadline specified.

(2) Where this paragraph applies, OFCOM shall take reasonable steps to notify applicants or bidders that—

- (a) delivery must be made on a different day or within different times on that day or at a different place; and
- (b) the action must be completed on a different day or by a different deadline.

### **Changes to round times and use of electronic auction system**

**119.**—(1) Where a time for the start of a round has been notified to bidders and OFCOM determine that it is impracticable for any reason to start the round at that time, OFCOM shall take reasonable steps to notify bidders of a revised time for the start of the round.

(2) Where a time for the end of a round has been notified to bidders and OFCOM determine that it is impracticable for any reason for the round to end at that time, OFCOM shall take reasonable steps to notify bidders of a revised time for the end of the round.

(3) Where OFCOM determine that it is impracticable for any reason to use the electronic auction system for any of the purposes specified in Parts 6 and 7 of these Regulations, OFCOM shall take reasonable steps to notify bidders of an alternative method of participating in the award process and any requirements relating to the authentication of communications made by means of the alternative method.

(4) Bidders must use the alternative method of participating in the award process in accordance with a notification under paragraph (3).

### **Rerunning rounds**

**120.**—(1) Paragraph (2) applies where a round is in progress and OFCOM determine that it is not possible to continue the round because of technical failure (or an event or circumstance with similar effect on the continuation of the round).

(2) Where this paragraph applies, OFCOM shall—

- (a) take reasonable steps to notify bidders of its determination under paragraph (1);
  - (b) disregard the bids (and other bidding indications) made in that round; and
  - (c) resume the award process from the end of the most recent round.
- (3) Paragraph (4) applies where OFCOM determine that it is not possible to continue the award process in accordance with the provisions of Parts 6 and 7 of these Regulations because of technical failure (or an event or circumstance with similar effect on the continuation of the award process).
- (4) Where this paragraph applies, OFCOM shall—
- (a) determine the rounds for which bids (and other bidding indications) made in those rounds should be disregarded in order to have a fair and efficient outcome to the award process;
  - (b) take reasonable steps to notify bidders of its determinations under paragraph (3) and sub-paragraph (a); and
  - (c) resume the award process from the end of the latest round for which bids (and other bidding indications) are not disregarded under sub-paragraph (a), or, where all bids (and other bidding indications) are to be disregarded under that sub-paragraph, to rerun the award process from the start of the first principal stage round.

#### **Refunds**

**121.** OFCOM may, in such cases as they think fit, refund, in whole or in part, sums which have been paid to them in accordance with any provision of these Regulations.

#### **Deposits**

**122.** In determining under these Regulations the amount that an applicant or bidder has on deposit OFCOM shall disregard any sum forfeited under these Regulations and any interest which may have accrued on any deposit.

For and by authority of the Office of  
Communications

*Philip Marnick*  
Group Director, Spectrum Group



**Changes to legislation:**

There are currently no known outstanding effects for the The Wireless Telegraphy (Licence Award) Regulations 2018.