Draft Order laid before Parliament under section 6(4) of the Wireless Telegraphy Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. 0000

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2010

Made - - - - ***

Coming into force in accordance with article 1(1)

The Secretary of State, in exercise of the powers conferred by section 5 of the Wireless Telegraphy Act 2006(**1**), makes the following Order.

In accordance with section 6(2) of that Act, the Secretary of State has consulted OFCOM and such other persons as the Secretary of State thinks fit.

In accordance with section 6(4) of that Act, a draft of this Order was laid before Parliament and approved by resolution of each House of Parliament.

PART 1

Citation, commencement and extent

1. This Order may be cited as the Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2010 and shall come into force 10 days after the day on which it is made.

Purpose of Directions

2. These Directions are given for the purposes of: ensuring the release of additional electromagnetic spectrum for use by providers of next generation wireless mobile broadband, allowing early deployment and maximising the coverage of those services; creating greater investment certainty for operators; and implementation of Directive 2009/114/EC(**2**) and the Decision(**3**) on the liberalisation of frequencies in the 900MHz and 1800MHz bands.

(**1**) 2006 c.36.
(**2**) Directive 2009/114/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community OJ L 274, 20.10.2009, p. 25.
(**3**) Commission Decision 2009/766/EC.

Interpretation

3. In this Order—

"the 800MHz band" and other such frequency bands are defined in Schedule 1;

"800MHz licence" means a licence authorising the use of frequencies in the United Kingdom in the 800MHz band to provide cellular mobile electronic communications services and "900MHz licence", "1800MHz licence", "2100MHz licence" and "2600MHz licence" shall be construed accordingly;

"the Act" means the Wireless Telegraphy Act 2006;

"Combined Auction" means the auction of frequencies referred to in article 7;

"completion of the Combined Auction" means the publication by OFCOM on its website at www.ofcom.org.uk of the names of the persons to whom licences have been granted pursuant to the Combined Auction;

"the Decision" means Commission Decision 2009/766/EC on the harmonisation of the 900MHz and 1800MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community;

"electronic communications network" and "electronic communications service" have the meaning given by section 32 of the Communications Act 2003(**4**);

"GSM system" means an electronic communications network that complies with the GSM standards as published by the European Telecommunications Institute ("ETSI"), in particular EN 301 502 and EN 301 511 listed in Schedule 2;

"licence" means a wireless telegraphy licence;

"relevant network provider" means a provider of an electronic communications network that is capable of providing mobile telecommunications services to an area within which at least 70% of the population of the United Kingdom lives and with a 90% probability that users in outdoor locations within that area can receive the service with a sustained downlink speed of not less than 768kbps when a small number of users are simultaneously using that service in the vicinity of the user;

"rural areas" means the least populated areas of the United Kingdom which together contain 20% of the population of the United Kingdom;

"UMTS system" means an electronic communications network that complies with the UMTS standards as published by ETSI, in particular EN 301 908-1, EN 301 908-2, EN 301 908-3 and EN 301 908-11 listed in Schedule 2.

PART 2

Variation of 900MHz, 1800MHz and 2100MHz licences

4.—(1) OFCOM must use its powers under section 10 of and paragraph 6 of Schedule 1 to the Act to vary existing 900MHz, 1800MHz and 2100MHz licences to make provision as set out in this article.

(2) OFCOM must vary each existing 900MHz licence to—

(a) permit the licensee to use the frequencies in the 900MHz band to which the licence relates for both GSM and UMTS systems;

(**4**) 2003 c.21.

(b) require the licensee to provide on request and on a wholesale basis in rural areas to any relevant network provider all the retail data services the licensee offers in rural areas where the licensee uses any system other than a GSM system using frequencies in the 900MHz band to provide those services;

(c) require the licensee to provide at any time during the period in paragraph (d) where the licence covering the use of frequencies between 811 and 821MHz and 852 and 862MHz has not come into force in respect of those frequencies by 31st March 2013, on request and on a wholesale basis to any person with an 800MHz licence all the retail services it offers in any part of the United Kingdom where the licensee uses any system other than a GSM system using frequencies in the 900MHz band to provide those services;

(d) provide that the period during which the services referred to in subparagraph (c) must be provided on request is to be from 31st March 2013 until a date which is two years after the date when all the 800MHz licences that have been granted pursuant to the Combined Auction or any subsequent auction have come into force in respect of the frequencies in the 800MHz band;

(e) make provision as set out in article 17;

(f) require the licensee to comply with the spectrum defragmentation process set out in Schedule 3; and

(g) amend the period of notice for revocation for spectrum management reasons from 1 year to 5 years.

(3) OFCOM must vary each existing 1800MHz licence to—

(a) permit the licensee to use the frequencies in the 1800MHz band to which the licence relates for both GSM and UMTS systems;

(b) require the licensee to comply with the spectrum defragmentation process set out in Schedule 3; and

(c) amend the period of notice for revocation for spectrum management reasons from 1 year to 5 years.

(4) OFCOM shall, subject to the consent of each holder of existing 2100MHz licences to vary those licences to provide all of the following, vary those licences to provide that—

(a) by 30th June 2013 the licensee must provide an electronic communications network that is capable of providing mobile telecommunications services to an area within which at least 90% of the population of the United Kingdom lives and with a 90% probability that users in outdoor locations within that area can receive the service with a sustained downlink speed of not less than 768kbps when a small number of users are simultaneously using that service in the vicinity of the user;

(b) the licensee is required to comply with the spectrum defragmentation process set out in Schedule 3;

(c) the licence shall continue in force unless or until revoked by OFCOM; and

(d) OFCOM may revoke the licence either for spectrum management reasons on not less than 5 years' notice, such notice not to be given before 31st December 2016 or otherwise in accordance with their powers under the Act.

Licence fees for 900MHz and 1800MHz licences

5.—(1) OFCOM must revise the sums prescribed by them by regulations under section 12 of the Act for existing 900MHz and 1800MHz licences after the completion of the Combined Auction so that they reflect the full market value of the frequencies in those bands.

(2) OFCOM must take all relevant factors into account in revising the sums prescribed with particular reference to the sums bid for licences in the Combined Auction.

Spectrum trading

6. OFCOM must use their powers under section 30 of the Act to amend the Wireless Telegraphy (Spectrum Trading) Regulations 2004(**5**) to make provision—

(a) to permit the transfer of rights and obligations arising as a result of 800MHz, 900MHz, 1800MHz, 2100MHz and 2600MHz licences from the licensee to another person;

(b) that OFCOM may, as a result of an assessment of any competition effects of a proposed transfer of rights and obligations arising as a result of any such licence (which may include consideration of whether OFCOM would refuse to consent to such a transfer under sub-paragraph (c) if it were proposed during the period set out in that sub-paragraph), consent to the transfer, consent to the transfer subject to conditions, or refuse to consent to the transfer;

(c) to specify that until 1 year after the completion of the Combined Auction or 1 year after the completion of a subsequent auction which covers the sale of spectrum in the 800MHz band which is unsold in the Combined Auction, OFCOM may refuse to consent to a transfer, or consent to a transfer subject to conditions where the transfer would result in a person holding more than—

(i) a total of 40MHz in the 800MHz and 900MHz bands together; or

(ii) a total of 180MHz in the 800MHz, 900MHz, 1800MHz, 2100MHz or 2600MHz bands together.

Auction regulations

7.—(1) OFCOM must use their powers to make regulations under section 14 of the Act to provide for—

(a) an auction of the frequencies between 2570MHz and 2620MHz as a single lot; and

(b) the Combined Auction;

(c) (where necessary) any subsequent auction in which any frequencies unsold in the Combined Auction are included.

(2) The regulations for the Combined Auction must (among other matters) make provision for—

(a) the lots of spectrum available and the minimum and maximum number of lots for which a person may bid, as set out in article 8;

(b) the limits on the amount of spectrum which may be held if a person applies for a licence set out in article 9;

(c) OFCOM to refuse to accept a bid from a person for a licence including frequencies in the same frequency band in which that person has been required to commit to surrender frequencies in order to comply with the limits set out in article 9.

Lots in the Combined Auction

8.—(1) OFCOM must make provision for the Combined Auction in the regulations referred to in article 7(1) to specify the lots in which frequencies are or may be available, and the minimum and maximum lots which may be bid for in that auction and provide for the following matters.

(2) In relation to frequencies in the 800MHz band—

(**5**) S.I. 2004/3154.

(a) frequencies will be available in lots of 2 x 5MHz; and

(b) any bid for a licence in respect of frequencies in the 800MHz band must be a bid for a licence which includes not fewer than 2 and not more than 4 lots.

(3) In relation to frequencies in the paired 2600MHz band—

(a) frequencies will be available in lots of 2 x 10MHz; and

(b) any bid for a licence in respect of frequencies in the paired 2600MHz band must be a bid for a licence which includes not more than 3 lots.

(4) In relation to frequencies in the 900MHz, 1800MHz and 2100MHz bands—

(a) Frequencies offered will be available in lots of 2 x 5MHz in each band;

(b) subject to the limits set out in article 9(2), there is no limit on the number of lots of these frequencies for which a person may bid in the Combined Auction.

Limits on frequency holdings

9.—(1) OFCOM must make provision in the regulations referred to in article 7(1) for the following.

(2) As a result of the Combined Auction a person may not hold—

(a) a total of more than 40MHz in the 800MHz and 900MHz bands together; or

(b) a total of more than 180MHz in the 800MHz, 900MHz, 1800MHz, 2100MHz, and 2600MHz bands together.

(3) In applying the levels set out in paragraph (2) no account shall be taken of the surrendering of any unpaired frequencies to OFCOM, or any other divestment of frequencies between the date this Order is laid and the Combined Auction, without the agreement of OFCOM.

(4) If during the Combined Auction, a person holds or bids for frequencies which are more than the level set out in—

(a) paragraph (2)(a), then that person must commit to surrender spectrum in the 900MHz band in blocks of 2 x 5MHz to OFCOM in sufficient quantity to bring that person below the level set out in that paragraph if that bid is successful;

(b) paragraph (2)(b), then that person must commit to surrender contiguous paired spectrum in blocks of 2 x 5MHz in the 900MHz or 1800MHz bands or paired frequencies in the 2100MHz band (frequencies from 1920MHz to 1980MHz and 2110MHz to 2170MHz) to bring that person below the level set out in that paragraph if that bid is successful.

Minimum prices in the auction

10.—(1) For the purposes of the Combined Auction, OFCOM must require any winner of a licence covering frequencies set out in this article to pay an amount to OFCOM in respect of those frequencies that is no less than the following minimum prices.

(2) In relation to surrendered frequencies in the 900MHz band, the minimum price per MHz must be 37.5% of the average final price per MHz of frequencies in the 800MHz band.

(3) In relation to surrendered frequencies in the 1800MHz band, the minimum price per MHz must be 37.5% of the average final price per MHz of frequencies in the paired 2600MHz band.

(4) In relation to surrendered frequencies in the 2100MHz band, the minimum price per MHz of spectrum must be 75% of the average final price per MHz of frequencies in the paired 2600MHz band.

(5) In this article "price per MHz" means the amount paid to OFCOM in respect of the frequencies in the 800MHz or paired 2600MHz bands as the case may be.