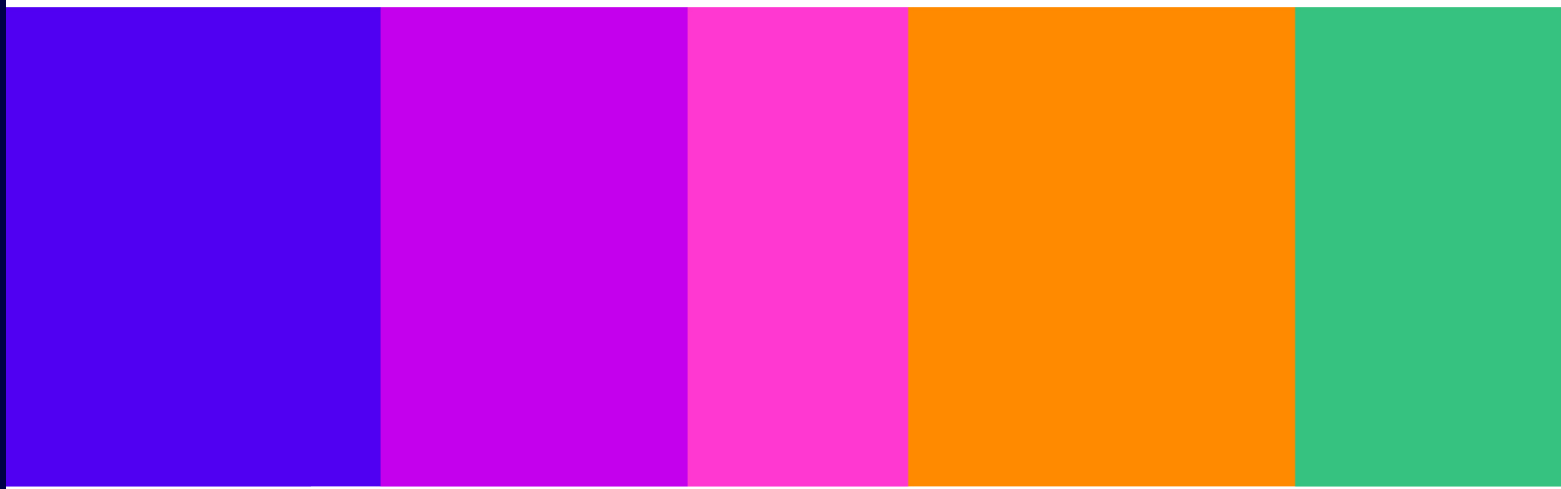


Statement on the final draft Regulations for the mmWave spectrum auction

Notice of Ofcom's final draft of the Wireless Telegraphy (Licence Award) Regulations 2025

Statement

Published: 11 November 2024



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1. Overview

- 1.1 This document considers responses to Ofcom’s earlier notice of intention to make a statutory instrument for the award of licences authorising use of spectrum in “high density areas” in the 25.1-27.5 GHz and the 40.5-43.5 GHz frequency bands (together the “mmWave bands”).

What we have decided – in brief

On 14 May 2024, we published a [notice](#) of, and invited stakeholders’ views on, our proposals to make regulations for the award by auction of licences authorising use of spectrum in the 26 GHz and 40 GHz bands. The regulations were intended to give effect to the policy decisions set out in our auction design decision documents published on 8 November 2023 for the principal stage and 16 April 2024 for the assignment stage.

We have considered the responses to our May 2024 notice, and we have decided to make the regulations in a very similar form to the draft we consulted on, with a number of changes which are explained in this document. This document provides notice of our final draft of the regulations, which, when enacted, will give effect to the decisions set out in our auction design decision documents.

This overview is a high-level summary only. The decisions and reasoning are set out in the full document. In the case of any discrepancies between this document and the regulations, the regulations will prevail.

2. Introduction

- 2.1 Ofcom has a statutory power under sections 14 and 122(7) of the Wireless Telegraphy Act 2006 (the “**WT Act**”) to make regulations to award licences by means of an auction.
- 2.2 On [8 November 2023](#) and [16 April 2024](#), we published documents setting out our decisions for the award of licences authorising use of spectrum in “high density areas” in the 25.1-27.5 GHz band and the 40.5-43.5 GHz band (together the “**mmWave bands**”) by auction.
- 2.3 This document provides further notice to stakeholders of our intention to give effect to such proposals by making The Wireless Telegraphy (Licence Award) Regulations 2025 (the “**Auction Regulations**” or “**Regulations**”). We intend to make Auction Regulations substantially in the form of the final draft set out in the Annex.
- 2.4 For the avoidance of doubt, if there are any discrepancies between this document and the Regulations, the Regulations (once made) will be definitive and will prevail.

Responses to the May 2024 Notice

- 2.5 On 14 May 2024, we published a notice of our proposal to make the Wireless Telegraphy (Licence Award) Regulations 2025 (the “**May 2024 notice**”). The May 2024 notice included a draft statutory instrument and invited comments on this by 8 July 2024.
- 2.6 We received three responses to the May 2024 notice, which are published on our [website](#). We summarise and respond to the comments we received in section 3.

Making and publication of the Regulations for the award

- 2.7 Having considered the responses to the May 2024 notice, we have finalised the Wireless Telegraphy (Licence Award) Regulations 2025 (the “**Auction Regulations**” or “**Regulations**”), and they will be available on www.legislations.gov.uk.
- 2.8 As set out in our [September 2023 Statement](#) (paragraphs 1.4-1.6), we will not start the auction until the CMA has reached a decision on the proposed merger between H3G and Vodafone’s UK businesses. We intend to make the Regulations once we have certainty over the start date of the auction. Once we have made the Regulations, they will be available on www.legislation.gov.uk, which is the only authorised source for published statutory instruments.
- 2.9 We have annexed a final draft of the Regulations to this statement for indicative purposes, in substantially the form which we would intend Ofcom to make and submit for registration and publication.

Document structure

- 2.10 The structure of this document is as follows:
 - a) Section 3 summarises stakeholders’ responses to our May 2024 notice and our subsequent decisions.

- b) Annex 1 is a copy of the final draft of the Regulations in substantially the form which we would intend Ofcom to make and submit for registration and publication.
- c) Annex 2 provides our response to requests for clarifications made by stakeholders.

3. Responses to the May 2024 notice and Ofcom's decisions

Summary

- 3.1 We received three responses to the May 2024 notice, from BT/EE, VMO2 and Vodafone, which are published on [our website](#).
- 3.2 The responses all identified minor drafting and cross-referencing issues, and included requests for confirmation of certain points. We have implemented these where we consider appropriate, and we respond to the requests for confirmation in Annex 2 of this document. In addition, BT/EE and VMO2 provided a number of substantive comments, some of which relate to errors in the draft Regulations, while others relate to concerns they have previously raised about the design of the auction.
- 3.3 We summarise and address these substantive comments below.

Changes to the drafting of the Regulations

- 3.4 As well as making a number of minor changes to the cross referencing and drafting of the Regulations, we have made the following substantive changes (in light of stakeholder comments, and our own further review):
 - a) We have amended the final draft Regulations to make it clear that the awarded licences will authorise spectrum use in 'designated areas' only. The term "designated area" is defined in the Regulations by reference to Ofcom's publication: "*mmWave Spectrum Access Licences: High Density Areas*", and it means the areas of the UK described in that publication as "high density areas".
 - b) We have changed the definition of the 'second period' so that this period starts after 1 January 2029. This is in order to implement our policy intention, which is to allow a 6-month period in which the first and second period licensees of 26 GHz spectrum can both use the relevant spectrum to enable a smooth transition.
 - c) We have added a number of new definitions relating to the assignment stage options and bids, current eligibility capacity, and ranking list which were missing from the draft Regulations.
 - d) We have amended the final draft Regulations 21 and 27 to add reference to the eligibility constraint specified by the eligibility rule.
 - e) We have amended the final draft Regulation 50 to improve the clarity of the drafting on the eligibility rule.
 - f) We have amended the final draft Regulation 55 to clarify that the regulations would give Ofcom power to require a bidder to top up its deposit up to the level of its highest financial exposure in any previous principal stage round.
 - g) We have amended draft Regulation 79(2)(d) to include the case where a 26 GHz lower only winner can be placed, in terms of frequencies, adjacent to another 26 GHz lower only winner which is placed at the very bottom of the lot category. This is now reflected in Regulation 76(2)(d) of the final draft of the Regulations.

- h) We have amended Regulation 84(3)(d) to include the case where a 26 GHz upper only winner can be placed, in terms of frequencies, adjacent to another 26 GHz upper only winner which is placed at the very top of the lot category. This is now reflected in Regulation 81(3)(d) of the final draft of the Regulations.
- i) We have amended Part 7 Chapter 1 of the final draft of the Regulations to include all cases where bidders are assigned frequencies with and without bidding in the assignment stage.
- j) We have amended draft Regulation 123(d) to clarify that we will publish details of all assignment stage bids. This is now reflected in Regulation 120(d) of the final draft of the Regulations.
- k) We have amended draft Regulation 124(2) to clarify that bidders will be allowed to share information without breaching the rules after the notification to all bidders of the results of the third assignment stage round. This is now reflected in Regulation 121(2) of the final draft of the Regulations.
- l) We have made a number of minor drafting changes and improvements, particularly in relation to the assignment stage. These were not intended to change the design of the award, only to improve the clarity of the drafting.

Comments on our auction design

Eligibility points

VMO2's comment

- 3.5 VMO2 reiterated a concern it has previously raised about the potential for bidders to lose eligibility points when switching between the 40 GHz and 26 GHz bands, which would mean that in the next round the bidder would not be able to bid on the same quantity of spectrum.¹ It noted that the eligibility points we have assigned to lots in the auction (1 eligibility point for each 26 GHz lot, and 2 eligibility points for each 40 GHz lot), mean that a bidder who switches from 40 GHz to 26 GHz could lose an eligibility point if their bid to reduce demand in 40 GHz is only partially accepted. To eliminate this risk, VMO2 propose we adjust the eligibility rule (Regulation 53 of the draft Regulations) such that a bidder's next round eligibility is the higher of (i) the eligibility points used in a bidder's submission of a set of bids in the current round; and (ii) the eligibility points associated with the bidder's posted demand at the end of the current round.
- 3.6 VMO2 note that bidders may prefer not to use an all or nothing ("AON") bid to mitigate this concern, given the risk that an AON bid may not be processed when an equivalent simple bid would have been processed in full (due to the way the iterative algorithm works in the bid processing queue).

Ofcom's response

- 3.7 As set out in our [November 2023 Statement](#) (paragraph 5.46), we do not consider that this is a significant concern. We remain of this view, and we do not consider that VMO2's most recent response provides sufficient reason for us to revisit this decision. This is because the concern that VMO2 highlight is unlikely to arise in practice, as it requires bidders to switch from 40 GHz to 26 GHz. We remain of the view that bidders switching their demand from

¹ VMO2 response to the May 2024 Notice, pp. 3-7.

40 GHz to 26 GHz is less likely because bidders are likely to attach more value (relative to the reserve price) to spectrum in the 26 GHz band. Even if this situation does arise, using an AON bid will always mitigate the risk of inadvertently losing eligibility.

- 3.8 We have considered VMO2's concern that an AON bid may not be processed when an equivalent simple bid would have been processed in full. While this can occur, the situation is unlikely to arise because it requires, in a round, low excess demand in multiple lot categories and two bidders wishing to switch their demand in opposite directions. Therefore, bidders can use AON bids with little risk that they will be disadvantaged compared to using simple bids.

Obligation to repeat bids every round if there is no excess demand

VMO2's comment

- 3.9 VMO2 requested we add functionality in the EAS to allow bidders to specify 'proxy bids', i.e. an instruction to the EAS to repeat a prior bid at the clock price in the event that the clock price is unchanged, in order to prevent bidders needing to repeat bids every round where prices do not increase, which it said is tedious and risks user error.

Ofcom's response

- 3.10 We acknowledge bidders may find it tedious to make repetitive bids. However, this is a part of the auction design we have decided to use, and we consider it is important that bidders bid actively in every round. This is so that there is no potential for uncertainty over a bidder's demand in each round, particularly as prices may rise in other lot categories, impacting a bidder's overall financial exposure.

Requests relating to auction practicalities

- 3.11 VMO2 made a number of requests relating to the price increments and auction practicalities (e.g. round timings). We considered these requests when setting out the price increments and round schedules we expect to use, which we have published in the "[Process guidance for potential applicants and bidders in the auction](#)".
- 3.12 VMO2 also made some requests about the functionality of the auction software version we would make available to applicants before the start of the auction. We note that, while we intend for the 'playground' software to have most of the functionality requested by VMO2, the auctioneer and bidders using this software will not be able to: (i) add or remove bidder accounts, (ii) save an auction's 'database', or (iii) enter bids via a file upload².

² VMO2 response to the May 2024 Notice, p. 11.

A1. Final draft of the Wireless Telegraphy (Licence Award) Regulations 2025

[\[Available to download as a separate document here\]](#)

A2. Responses to request for clarifications

A2.1 In table A1 below, we summarise and answer the requests for clarifications made by stakeholders in response to our May 2024 Notice.

Table A1. Requests for clarifications.

Stakeholder	Request for clarification	Ofcom's response
VMO2	<i>"The consultation document clarifies that the application form and each associate form must be signed by two authorised persons. Please confirm that each document may be signed by any two of the three-to-five authorised persons that a bidder must identify under Schedule 2 (2)."</i> ³	Confirmed.
VMO2	<i>"This paragraph should refer to the prices set out 3.37(a) and (b), not 3.38 (a) and (b). It should refer to Regulation 20, not 21. Please confirm the identified errors."</i> ⁴	Confirmed.
VMO2	<i>"There appears to be a typo. The phrase 'up to and including' should presumably replace 'up to an including'. Please confirm the identified typo".</i> ⁵	Confirmed.
VMO2	<i>"[...] Our understanding of the regulations is that, for each type of lots where the bidder fails to bid, the auction system will submit a maintain bid for zero lots at the clock price, if the bidder's prior posted demand was for zero lots, or otherwise a decrease bid for zero lots at the opening price, if the bidder's prior posted demand was one or more lots. A consequence of this rule is that the bidder could still have retained demand for a non-zero number of lots in the relevant category if there is no excess demand above the opening bid price. Please confirm our interpretation."</i> ⁶	Confirmed.

³ VMO2 response to the May 2024 Notice, p. 13. The request for clarification refers to the May 2024 Notice, paragraphs 3.14(a) and (b).

⁴ VMO2 response to the May 2024 Notice, p. 13. The request for clarification refers to the May 2024 Notice, paragraph 3.40.

⁵ VMO2 response to the May 2024 Notice, p. 13. The request for clarification refers to the May 2024 Notice, paragraph 3.43.

⁶ VMO2 response to the May 2024 Notice, p. 13. The request for clarification refers to the May 2024 Notice, paragraph 3.44.

Stakeholder	Request for clarification	Ofcom's response
VMO2	<i>"This paragraph says that bidders 'are constrained' by the sums on deposit but should more properly read 'may be constrained'. Our understanding is that this constraint only applies if there is a deposit call and bidders fail to top up their deposit by the relevant deadline. Absent a deposit call, bidders still eligible to submit new bids are not constrained by the level of their deposit. Please confirm our interpretation."</i> ⁷	Confirmed.
VMO2	<i>"This paragraph purports to provide a full description of the process for determining each bidder's posted demand but fails to deliver this because it does not discuss maintain bids. This appears only to be an issue with the consultation document, as the process is described fully in Regulation 32. Please confirm our interpretation."</i> ⁸	Confirmed.
VMO2	<i>"This sub-clause says that 'Ofcom calculates the price point (regulations 33 and 34) for all sets of bids to increase demand and all sets of bids to decrease demand.' We note that Regulation 33 addresses decreases in demand and Regulation 34 addresses increases in demand, the opposite way round to what is stated in the consultation document."</i> ⁹	We confirm that it should have been written as: 'Ofcom calculates the price point (regulations 33 and 34) for all sets of bids to decrease demand and all sets of bids to increase demand.'
VMO2	<i>"This paragraph describes the determination of excess demand. This refers only to Regulation 49, but the actual calculation of excess demand is in Regulation 40, not 49. Please confirm our interpretation."</i> ¹⁰	It should have been written: 'Ofcom will also determine the excess demand for each lot type after the end of bid processing '. In this way, the reference to Regulation 49 is correct.
VMO2	<i>"This paragraph, which refers to Regulation 50, reads "In the any round of the principal stage ...". Please confirm that the first "the" can be deleted for purposes of understanding this paragraph."</i> ¹¹	Confirmed.

⁷ VMO2 response to the May 2024 Notice, p. 13. The request for clarification refers to the May 2024 Notice, paragraph 3.46.

⁸ VMO2 response to the May 2024 Notice, p. 13. The request for clarification refers to the May 2024 Notice, paragraph 3.55.

⁹ VMO2 response to the May 2024 Notice, p. 14. The request for clarification refers to the May 2024 Notice, paragraph 3.55(b).

¹⁰ VMO2 response to the May 2024 Notice, p. 14. The request for clarification refers to the May 2024 Notice, paragraph 3.58.

¹¹ VMO2 response to the May 2024 Notice, p. 14. The request for clarification refers to the May 2024 Notice, paragraph 3.58.

Stakeholder	Request for clarification	Ofcom's response
VMO2	<i>"[...] This paragraph should more properly have been drafted in the same way as the end of para 3.72: 'the bidder will be deemed to have made a valid assignment stage bid of zero pounds for all assignment stage options.' Please confirm our interpretation."</i> ¹²	Confirmed.
VMO2	<i>"We support the rule change set out here and in Regulation 124(2) that will relax the prohibition regarding exchange of confidential information as soon as bidders have received notification of all the assignment stage results. We would appreciate guidance on what action, if any, winning bidders might take to ensure compliance. For example, would it be helpful if a bidder was to notify Ofcom that it intends to contact another winning bidder once the results have been provided to bidders in accordance with Regulation 124?"</i> ¹³	We cannot predetermine whether actions a bidder takes would be compliant with the Regulations, or with competition law, in advance. However, we note that any information exchanged between bidders after the assignment stage results have been released will not affect the submission of principal or assignment stage bids, and is therefore unlikely to distort the outcome of the award process.
VMO2	<i>"This annex, which concerns the 40 GHz assignment round, says that Ofcom will run 'i) A single assignment stage round for 40 GHz (40.5-43.3 GHz)'. Please confirm that you mean 40.5-43.5 GHz."</i> ¹⁴	Confirmed.

¹² VMO2 response to the May 2024 Notice, p. 14. The request for clarification refers to the May 2024 Notice, paragraph 3.72.

¹³ VMO2 response to the May 2024 Notice, p. 14. The request for clarification refers to the May 2024 Notice, paragraph 3.95.

¹⁴ VMO2 response to the May 2024 Notice, p. 14. The request for clarification refers to the May 2024 Notice, paragraph A7.7.

Stakeholder	Request for clarification	Ofcom's response
VMO2	<p><i>"Our interpretation of Regulation 35(2) is that the process of random selection, when required to determine the order of bids with the same price point within the processing queue, happens only once in each round. This has the implication that the established queue order is respected throughout the bid processing, regardless of how many times that the queue is reiterated from the beginning. It is also our understanding that a new queue order is generated after each round, such that the outcome of random tie breaks is not preserved across rounds, even if some bids are the same. Please confirm our interpretation."</i>¹⁵</p>	Confirmed.
VMO2	<p><i>"These regulations fail to make clear that a block of spectrum within a lot type allocated to a bidder must contain contiguous frequency lots. In contrast, the regulations do clarify that any spectrum lots that are unallocated will be assigned to a contiguous frequency block. However, we recognise that Schedule 1 states that a block assigned to a bidder consists of contiguous lots. Please confirm that the Regulations as drafted guarantee contiguity, based on the interrelationship between these specific regulations and Schedule 1, or otherwise update the Regulations."</i>¹⁶</p>	Confirmed.
VMO2	<p><i>"We question whether it is necessary to include the final part of Regulation 91 (1) starting "in addition to— ... (a) .. and (b) ...". It is clear from other regulations that a winning bid in the third assignment round may result in a unique additional fee. As drafted here, the regulation could be misinterpreted as implying the bidder must incorporate the assignment prices it has already paid into its bid amounts. Please consider amending the Regulation."</i>¹⁷</p>	We confirm that a winning bid in the third assignment round may result in a unique additional fee. In Regulation 91(1), we specify all assignment prices for completeness.

¹⁵ VMO2 response to the May 2024 Notice, p. 15. The request for clarification refers to the May 2024 Notice, regulation 35(2).

¹⁶ VMO2 response to the May 2024 Notice, p. 15. The request for clarification refers to the May 2024 Notice, regulations 74, 79 and 84.

¹⁷ VMO2 response to the May 2024 Notice, p. 16. The request for clarification refers to the May 2024 Notice, regulation 91(1).

Stakeholder	Request for clarification	Ofcom's response
VMO2	<i>"This Regulation implies that if Ofcom decides to discard bids because a bidder is excluded, the auction must be rewound to the end of the round prior to the one in which bids were made that are being excluded. Please confirm if this interpretation is correct and that Ofcom is not giving itself any discretion to rewind the auction to some intermediate point."</i> ¹⁸	Ofcom will determine which bids to discard to have a fair and efficient process. Ofcom would then rewind the auction to ensure that there are no bids that should be discarded.
VMO2	<i>"This Regulation precludes an applicant from receiving or attempting to receive services from a party that has provided related services to Ofcom. Please can Ofcom confirm that (a) this clause only applies from the date of submission of applications, and is not retrospective; and that Ofcom will provide a list of all parties that have provided services to Ofcom prior to the Application date, so that bidders are not at risk of inadvertently violating this Regulation?"</i> ¹⁹	We confirm part (a) (we have also addressed it in the regulations). On part (b), Ofcom will not provide a list of parties that have provided services to Ofcom prior to the application date.
Vodafone	<i>"We query whether each "person" would relate to a named individual advisor, or whether it would be sufficient to provide information at the level of company name."</i> ²⁰	Each "person" would relate to a named individual.

¹⁸ VMO2 response to the May 2024 Notice, p. 16. The request for clarification refers to the May 2024 Notice, regulation 125(2).

¹⁹ VMO2 response to the May 2024 Notice, p. 16. The request for clarification refers to the May 2024 Notice, regulation 126(f).

²⁰ Vodafone response to the May 2024 Notice, p. 2. The request for clarification refers to the May 2024 Notice, regulation 4(a)(ii).

Stakeholder	Request for clarification	Ofcom's response
Vodafone	<p><i>"The terminology on "sets of bids" in 27-30 does not appear to reflect the wording of Ofcom's decisions about bid semantics as described in November 2023 [...]. Annex 6 of the statement also referred to single bids, not sets of bids. We question whether the change of language was intentional, and the logic behind this change."²¹</i></p>	<p>In annex 6 of the November 2023 Statement and Consultation, we specified that the procedures set out were for illustrative purposes only and "the terms used in this annex for illustrative purposes may not reflect those in the Auction Regulations".²²</p> <p>In the Regulations, the terminology "sets of bids" is adopted to identify the fact that each single bid may represent multiple requests for a number of lots at a price.²³</p> <p>In annex 6 of the May 2024 Notice, we republished the illustrative auction procedures and included annotations where key terms differed from those used in the draft regulations.</p>
Vodafone	<p><i>"In Regulation 29(2), we believe that the 'price' nominated here has no impact on the semantics of the bid given 29(1)(b) and really only affects the order of processing of the increase bid. This is at best counter-intuitive."</i></p>	<p>We confirm that, when placing a bid to increase demand, the nominated price will only be used for the purpose of bid ranking during bid processing and has no impact on the meaning of the bid.</p>
Vodafone	<p><i>"It is unclear whether, when remaking the list under Regulation 37, the random ordering of bids with the same price point under Regulation 35 is reapplied."²⁴</i></p>	<p>Confirmed that it is reapplied.</p>

²¹ Vodafone response to the May 2024 Notice, p. 3. The request for clarification refers to the May 2024 Notice, regulations 27 – 30.

²² Ofcom, [November 2023 Statement and Consultation](#), paragraphs A6.2 – A6.3.

²³ See, for an example, Ofcom, [November 2023 Statement and Consultation](#), paragraphs A6.38, A6. 42, A6.46, and A6.50.

²⁴ Vodafone response to the May 2024 Notice, p. 3. The request for clarification refers to the May 2024 Notice, regulations 35 - 37.