

*This draft Order supersedes the previous draft Order of the same title which was laid before Parliament on the 23rd March 2010 and published on the 25th March 2010
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*

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.

Citation and commencement

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. The Secretary of State gives these directions 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 implementing 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 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, p25).

(3) Commission Decision 2009/766/EC.

Interpretation

3. In this Order—

“the 800MHz band” and other frequency bands are defined in Schedule 1;

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

“the Auction” means the auction of licences authorising the use of frequencies to be held by OFCOM pursuant to article 9;

“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⁽⁴⁾;

“the Directive” means 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⁽⁵⁾ as amended by Directive [2009/114/EC](#) of the European Parliament and of the Council⁽⁶⁾;

“electronic communications network” and “electronic communications service” have the meaning given by section 32 of the Communications Act 2003⁽⁷⁾;

“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;

“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;

“the WTA” means the Wireless Telegraphy Act 2006.

Variation of 900MHz and 1800MHz licences to allow use for GSM and UMTS systems

4. OFCOM must exercise their powers under—

- (a) section 2 of the WTA to designate the 900MHz and 1800MHz bands for use for both GSM and UMTS systems;
- (b) section 10 of and paragraph 6 of Schedule 1 to the WTA to vary each 900MHz and 1800MHz licence to permit the licensee to use the licensed frequencies for both GSM and UMTS systems;
- (c) Part 2 of the WTA to ensure compliance with the technical parameters in the Annex to the Decision.

Other variations to existing wireless telegraphy licences

5.—(1) OFCOM must exercise their powers under section 10 of and paragraph 6 of Schedule 1 to the WTA to vary 900MHz, 1800MHz and 2100MHz licences to make provision as follows.

(2) OFCOM must vary each 900MHz and 1800MHz licence to extend the period of notice for revocation for spectrum management reasons from 1 year to 5 years.

(4) OJ No L 274, 20.10.2009, p.32.

(5) OJ No L 196, 17.07.1987, p 85.

(6) OJ No L 274, 20.10.2009, p25.

(7) [2003 c.21](#).

(3) OFCOM must, provided the holder of a 2100MHz licence consents, vary the licence to provide for all of the following—

- (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 in a lightly loaded cell;
- (b) the licence shall continue in force unless or until revoked by OFCOM;
- (c) OFCOM may revoke the licence either—
 - (i) for spectrum management reasons on not less than 5 years' notice, such notice not to be given before 31st December 2016, or
 - (ii) in accordance with their powers under the WTA; and
- (d) that the licensee is to pay an annual charge for the licence to be determined by OFCOM in accordance with article 6(3) in respect of periods following 31st December 2021.

Licence fees

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

(2) In revising the sums prescribed OFCOM must have particular regard to the sums bid for licences in the Auction.

(3) OFCOM must prescribe sums by regulations under section 12 of the WTA for 2100MHz licences which are varied under article 5(3) so that they reflect the full market value of the frequencies in that band.

Spectrum trading

7. OFCOM must exercise their powers under section 30 of the WTA to amend the Wireless Telegraphy (Spectrum Trading) Regulations 2004⁽⁸⁾ to make provision to permit the transfer of all or part of the rights and obligations arising as a result of 900MHz, 1800MHz and 2100MHz licences from the licensee to another person.

Competition assessment

8.—(1) As soon as reasonably practicable OFCOM must assess likely future competition in markets for the provision of mobile electronic communications services.

(2) The competition assessment shall be in respect of the future competitiveness of those markets after the conclusion of the Auction, taking into account possible effects of the Auction.

(3) The competition assessment shall include consideration of the potential for new entry into those markets.

(4) In the light of the competition assessment OFCOM must, where they think fit, put in place appropriate and proportionate measures which will promote competition in those markets after the conclusion of the Auction.

(5) The measures to promote competition may include rules governing the Auction.

⁽⁸⁾ S.I. 2004/3154; amended by S.I. 2006/339, 2006/1807, 2007/380, 2008/608, 2008/2105, 2008/3192.

Auction of licences

9.—(1) OFCOM must exercise their power to make regulations under section 14 of the WTA to provide for an auction of licences to take place for use of frequencies in—

- (a) the 800MHz and 2600MHz bands; and
- (b) any other frequency bands as OFCOM thinks fit.

(2) OFCOM must exercise their powers to make such regulations as soon as reasonably practicable after concluding the competition assessment required by article 8.

	<i>Name</i>
	Minister for Culture, Communications and Creative Industries
Date	Department for Business, Innovation and Skills

SCHEDULE 1

Article 3

Table 1

Frequency bands

<i>Description of frequency band</i>	<i>From</i>	<i>To</i>
800MHz band	791MHz	821MHz
	832MHz	862MHz
900MHz band	880MHz	915MHz
	925MHz	960MHz
1800MHz band	1710MHz	1781.7MHz
	1805MHz	1876.7MHz
2100MHz band	1900MHz	1980MHz
	2110MHz	2170MHz
2600MHz band	2500MHz	2690MHz

SCHEDULE 2

Article 3

<i>ETSI Number</i>	<i>Version</i>	<i>Title</i>
EN 301 502	V7.0.1 (2000–08)	Harmonized EN for Global System for Mobile communications (GSM); Base Station and Repeater equipment covering essential requirements under article 3.2 of the R&TTE directive (GSM 13.21 version 7.0.1 Release 1998)
	V8.1.2 (2001–07)	Harmonized EN for Global System for Mobile communications (GSM); Base Station and Repeater equipment covering essential requirements under article 3.2 of the R&TTE directive (GSM 13.21 version 8.1.2 Release 1999)
EN 301 511	V7.0.1 (2000-12)	Global System for Mobile communications (GSM); Harmonized standard for mobile stations in the GSM 900 and DCS 1800 bands covering essential requirements under article 3.2 of the R&TTE

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2010 No. 3024

<i>ETSI Number</i>	<i>Version</i>	<i>Title</i>
		directive (1999/5/EC) (GSM 13.11 version 7.0.1 Release 1998)
	V9.0.2 (2003-03)	Global System for Mobile communications (GSM); Harmonized EN for mobile stations in the GSM 900 and GSM 1800 bands covering essential requirements under article 3.2 of the R&TTE directive (1999/5/EC)
EN 301 908-1	V1.1.1 (2002-01)	Electromagnetic compatibility and Radio spectrum Matters (ERM); Base Stations (BS) and User Equipment (UE) for IMT-2000 Third-Generation cellular networks; Part 1: Harmonized EN for IMT-2000, introduction and common requirements, covering essential requirements of article 3.2 of the R&TTE Directive
	V2.2.1 (2003-10)	Electromagnetic compatibility and Radio spectrum Matters (ERM); Base Stations (BS), Repeaters and User Equipment (UE) for IMT-2000 Third-Generation cellular networks; Part 1: Harmonized EN for IMT-2000, introduction and common requirements, covering essential requirements of article 3.2 of the R&TTE Directive
	V3.2.1 (2007-05)	Electromagnetic compatibility and Radio spectrum Matters (ERM); Base Stations (BS), Repeaters and User Equipment (UE) for IMT-2000 Third-Generation cellular networks; Part 1: Harmonized EN for IMT-2000, introduction and common requirements, covering essential requirements of article 3.2 of the R&TTE Directive
	V4.1.2 (2009-12)	Electromagnetic compatibility and Radio spectrum Matters

<i>ETSI Number</i>	<i>Version</i>	<i>Title</i>
		(ERM); Base Stations (BS), Repeaters and User Equipment (UE) for IMT-2000 Third-Generation cellular networks; Part 1: Harmonized EN for IMT-2000, introduction and common requirements, covering the essential requirements of article 3.2 of the R&TTE Directive
EN 301 908-2	V1.1.1 (2002-01)	Electromagnetic compatibility and Radio spectrum Matters (ERM); Base Stations (BS) and User Equipment (UE) for IMT-2000 Third-Generation cellular networks; Part 2: Harmonized EN for IMT-2000, CDMA Direct Spread (UTRA FDD) (UE) covering essential requirements of article 3.2 of the R&TTE Directive
	V2.2.1 (2003-10)	Electromagnetic compatibility and Radio spectrum Matters (ERM); Base Stations (BS), Repeaters and User Equipment (UE) for IMT-2000 Third-Generation cellular networks; Part 2: Harmonized EN for IMT-2000, CDMA Direct Spread (UTRA FDD) (UE) covering essential requirements of article 3.2 of the R&TTE Directive
	V3.2.1 (2007-05)	Electromagnetic compatibility and Radio spectrum Matters (ERM); Base Stations (BS), Repeaters and User Equipment (UE) for IMT-2000 Third-Generation cellular networks; Part 2: Harmonized EN for IMT-2000, CDMA Direct Spread (UTRA FDD) (UE) covering essential requirements of article 3.2 of the R&TTE Directive
	V4.1.2 (2009-12)	Electromagnetic compatibility and Radio spectrum Matters (ERM); Base Stations (BS), Repeaters and User Equipment (UE) for IMT-2000 Third-

<i>ETSI Number</i>	<i>Version</i>	<i>Title</i>
		Generation cellular networks; Part 2: Harmonized EN for IMT-2000, CDMA Direct Spread (UTRA FDD and E-UTRA FDD)(UE) covering the essential requirements of article 3.2 of the R&TTE Directive
EN 301 908-3	V1.1.1 (2002-01)	Electromagnetic compatibility and Radio spectrum Matters (ERM); Base Stations (BS) and User Equipment (UE) for IMT-2000 Third-Generation cellular networks; Part 3: Harmonized EN for IMT-2000, CDMA Direct Spread (UTRA FDD) (BS) covering essential requirements of article 3.2 of the R&TTE Directive
	V2.2.1 (2003-10)	Electromagnetic compatibility and Radio spectrum Matters (ERM); Base Stations (BS), Repeaters and User Equipment (UE) for IMT-2000 Third-Generation cellular networks; Part 3: Harmonized EN for IMT-2000, CDMA Direct Spread (UTRA FDD) (BS) covering essential requirements of article 3.2 of the R&TTE Directive
	V3.2.1 (2007-05)	Electromagnetic compatibility and Radio spectrum Matters (ERM); Base Stations (BS), Repeaters and User Equipment (UE) for IMT-2000 Third-Generation cellular networks; Part 3: Harmonized EN for IMT-2000, CDMA Direct Spread (UTRA FDD) (BS) covering essential requirements of article 3.2 of the R&TTE Directive
	V4.1.2 (2009-12)	Electromagnetic compatibility and Radio spectrum Matters (ERM); Base Stations (BS), Repeaters and User Equipment (UE) for IMT-2000 Third-Generation cellular networks; Part 3: Harmonized EN for IMT-2000, CDMA Direct

<i>ETSI Number</i>	<i>Version</i>	<i>Title</i>
		Spread (UTRA FDD and E-UTRA FDD) (BS) covering the essential requirements of article 3.2 of the R&TTE Directive
EN 301 908-11	V2.3.1 (2004-10)	Electromagnetic compatibility and Radio spectrum Matters (ERM); Base Stations (BS), Repeaters and User Equipment (UE) for IMT-2000 Third-Generation cellular networks; Part 11: Harmonized EN for IMT-2000, CDMA Direct Spread (UTRA FDD) (Repeaters) covering essential requirements of article 3.2 of the R&TTE Directive
	V3.2.1 (2007-05)	Electromagnetic compatibility and Radio spectrum Matters (ERM); Base Stations (BS), Repeaters and User Equipment (UE) for IMT-2000 Third-Generation cellular networks; Part 11: Harmonized EN for IMT-2000, CDMA Direct Spread (UTRA FDD) (Repeaters) covering essential requirements of article 3.2 of the R&TTE Directive
	V4.1.2 (2009-12)	Electromagnetic compatibility and Radio spectrum Matters (ERM); Base Stations (BS), Repeaters and User Equipment (UE) for IMT-2000 Third-Generation cellular networks; Part 11: Harmonized EN for IMT-2000, CDMA Direct Spread (UTRA FDD and E-UTRA FDD) (Repeaters) covering the essential requirements of article 3.2 of the R&TTE Directive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives a number of directions to the Office of Communications (OFCOM). It directs OFCOM to vary existing wireless telegraphy licences to include provisions regarding the revocation of those licences, the duration of those licences, and coverage of services. In addition it directs OFCOM to amend their spectrum trading regulations to permit the trading of licences. OFCOM is also directed to amend their regulations to provide for amended charges for the grant of a licence, and to make regulations to set the rules for an auction of licences to use frequencies.

This Order implements Directive [2009/114/EC](#) of the European Parliament and of the Council 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, p25) and 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 (OJ L 274, 20.10.2009, p32)

Copies of the ETSI standards listed in Schedule 2 are available from The European Telecommunications Institute website <http://www.etsi.org/WebSite/Standards/Standard.aspx> or from The British Standards Institute (BSI), 389 Chiswick High Road, London, W4 4AL.

A full Impact Assessment and a Transposition Note have been produced. Copies may be obtained from Information Economy, Department for Business, Innovation and Skills, 1 Victoria Street, London, SW1H 0ET.