

**EXPLANATORY MEMORANDUM TO**  
**THE WIRELESS TELEGRAPHY ACT 2006 (DIRECTIONS TO OFCOM)**  
**ORDER 2010**

**2010 No. Draft**

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 To direct the Office of Communications (OFCOM) to carry out a package of spectrum management measures that will support the deployment of high speed mobile broadband services. The measures will also enable the UK to meet its obligations to implement Directive 2009/114/EC<sup>1</sup> and Commission Decision 2009/766/EC<sup>2</sup> on the liberalisation of frequencies in the 900MHz and 1800MHz bands to allow them to be used for different mobile telephony technologies.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 There are no matters of special interest to the JCSI.

4. **Legislative Context**

4.1 The instrument is being made under section 5 of the Wireless Telegraphy Act 2006. This is the first time that this power has been used.

4.2 The instrument additionally implements Directive 2009/114/EC and the Commission Decision which extend the technologies that can be used with certain radio spectrum frequencies. The Decision will allow the deployment of improved mobile broadband services across Europe. The direction to OFCOM will require it to take a variety of actions in respect of existing spectrum holdings, competition

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<sup>1</sup> 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 (Text with EEA relevance) OJ L 274, 20.10.2009, p. 25.

<sup>2</sup> Commission Decision 2009/766/EC of 16 October 2009 on the harmonisation of the 900 MHz and 1800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community (notified under document C(2009) 7801) (Text with EEA relevance) OJ L 274, 20.10.2009, p. 32.

and supporting the availability of higher speed mobile broadband services across the UK.

4.3 A Transposition Note has been prepared for this instrument and is attached to this memorandum.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

The Minister for Culture, Communications, and Creative Industries, Ed Vaizey, has made the following statement regarding Human Rights:

In my view the provisions of the Wireless Telegraphy Act 2006 (Direction to OFCOM) Order 2010 are compatible with the Convention rights.

## **7. Policy background**

7.1 In January 2009, the previous Government published its interim Digital Britain report setting out a series of actions designed to ensure the UK maximised the opportunities for all in the digital age. That report identified a complex set of challenges that were hindering the release and use of additional spectrum that could support the deployment of next generation broadband services, and the then Government announced the appointment of an Independent Spectrum Broker to examine whether a solution could be found to overcome the challenges.

7.2 The Independent Spectrum Broker's report was published on 12th May 2009<sup>3</sup> and the Government's response to it was published in the Digital Britain report in June 2009. In that report, the Government indicated that it was minded to accept the proposals set out by the Independent Spectrum Broker, subject to further work to be progressed by the Independent Spectrum Broker.

7.3 This additional work was designed to address a number of issues, the most significant being those around making 900 MHz and 1800 MHz spectrum available for both GSM and UMTS systems to implement Directive 2009/114/EC and the Decision. This phase of work involved extensive engagement with a range of stakeholders. BIS published the Independent Spectrum Broker's final report of September 2009 in its Consultation on a Direction to Ofcom to Implement the Wireless Radio Spectrum Modernisation Programme (referred to in paragraph 7.4).

7.4 In the Digital Britain report, the Government noted that there was an option to direct OFCOM to implement any decision to take forward the proposals.

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<sup>3</sup> Report from the Independent Spectrum Broker : findings and policy proposals

In the light of the Independent Spectrum Broker's final report, the Government decided that the proposals represented a basis for further action and that it would seek to do this through a direction to OFCOM. In doing so, the Government was obliged to consult on the direction it proposed to give to OFCOM. The consultation document was published on the 16th October 2009, with a closing date for responses of 8th January 2010.

## **8. Consultation outcome**

8.1 The consultation document was sent to a range of organisations, including OFCOM, telecommunications companies, representative organisations for businesses and consumers, equipment manufacturers and infrastructure operators. The Department received 35 responses. Although the majority of respondents broadly welcomed the overall objectives of the spectrum modernisation programme, given the complex nature of the issues and the differing positions of many of the interested stakeholders, there was a significant divergence of views around a number of the proposals. A small number of respondents believed that a direction would be inappropriate at this time.

8.2 The consultation document, the Government's response and a summary of the responses are available on the Department's website at [www.bis.gov.uk](http://www.bis.gov.uk).

8.3 Taking the responses into account, the previous Government decided to proceed to direct Ofcom in line with their proposals, with some amendments. A draft S.I. was laid under the affirmative procedure before Parliament in March 2010, but it was not possible to obtain the necessary time in both Houses to debate and vote upon the draft. When the General Election was called, the draft was left before Parliament pending a decision by the new administration on how to proceed.

8.4 The Coalition Government has subsequently considered a number of options in coming to a decision on whether to progress the existing draft, taking into account the responses to the consultation. They have decided that a less interventionist approach would be preferable and so have decided not to implement all the proposals set out in the previous draft direction, but only a selected sub-set of those proposals.

## **9. Guidance**

9.1 The direction sets out actions for OFCOM. It does not require direct action by any other organisation. OFCOM have been consulted on the direction and no further guidance is planned.

## **10. Impact**

10.1 The impact of the instrument on business, charities or voluntary bodies is limited. Only those businesses providing mobile telecommunication networks or

services, or who may wish to do so in the future, are directly impacted by this instrument.

10.2 The impact on the public sector is also limited. A number of departments have an interest in the use of spectrum and have been kept informed of these plans.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 Success will be determined by the release of spectrum into the UK market suitable for the deployment of high speed mobile broadband services and the availability of those services to consumers and business. OFCOM regularly publish reports on the state of the UK communications market and will therefore monitor developments.

## **13. Contact**

Mark Swarbrick at the Department of Business, Innovation and Skills (Tel: 0207 215 2900; [mark.swarbrick@bis.gsi.gov.uk](mailto:mark.swarbrick@bis.gsi.gov.uk)) can answer any queries regarding the instrument.

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

## Transposition Notes

**(i) 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**

**(ii) Commission Decision 2009/766/EC of 16 October 2009 on the harmonisation of the 900MHz and 1800MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community**

The purpose of Directive 2009/114/EC (“the Directive”) is to allow new digital technologies to be deployed in the 900MHz band in coexistence with GSM systems. Therefore, the exclusive reservation of the 900MHz band for GSM systems needs to be removed.

Article 1(1) of the Directive requires Member States to make the 900MHz band available for both GSM and UMTS systems, as well as for other systems capable of providing electronic communications services that can coexist with GSM systems in accordance with technical implementing measures adopted pursuant to Commission Decision 2009/766/EC (“the Decision”).

The Decision requires the implementation of technical measures to allow the coexistence of GSM systems with other terrestrial systems capable of providing electronic communications services in the 900 and 1800 MHz bands.

Article 3 and the Annex to the Decision provide that UMTS systems that comply with 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, are terrestrial systems capable of providing electronic communications services that can coexist with GSM systems in the 900MHz band. Under the Annex, UMTS systems must, in the absence of bilateral or multilateral agreements between neighbouring network operators (that may have less stringent technical parameters if agreed between those operators), be subject to conditions requiring carrier separation of 5 MHz or more between two neighbouring UMTS networks and carrier separation of 2.8 MHz or more between a neighbouring UMTS network and a GSM network.

Article 1(2) of the Directive requires that when making the 900MHz band available for UMTS systems, Member States must examine whether the existing assignment of the 900MHz band is likely to distort competition in the mobile markets concerned and, where justified and proportionate, address distortions.

Article 4 of the Decision requires the 1800MHz band to be designated and made available for GSM systems and for UMTS systems in accordance with the Annex (as above).

The Office of Telecommunications (OFCOM) is responsible for the management of the radio spectrum in the United Kingdom. Their powers and duties for the management of radio spectrum are set out in the Communications Act 2003 and the Wireless Telegraphy Act 2006 (“the Act”). Under section 5 of the Act, the Secretary of State can give general or specific directions to OFCOM about the carrying out by them of their radio spectrum functions. Directions are made by order and no order can be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House. The Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2010 will give directions to OFCOM that will achieve the United Kingdom’s compliance with the Directive and the Decision.

At present, the wireless telegraphy licences granted by OFCOM to use the 900 MHz band and the 1800 MHz band allow for the bands to be used for GSM systems. The directions will require OFCOM to vary the relevant licences to allow for use of those bands for both UMTS and GSM systems and to ensure that network operators comply with the technical parameters in the Decision.

This table has been prepared by the Department for Business, Innovation and Skills.

**DIRECTIVE 2009/114/EC**

<b>Article(s) of the Directive</b>	<b>Detail</b>	<b>Implementation (references are to the provisions of the Order)</b>
1(1)	Requires Member States to make the 900 MHz band available for both GSM and UMTS systems, as well as for other terrestrial systems capable of providing electronic communications services that can coexist with GSM systems in accordance with “the Decision”.	Article 4(b) requires OFCOM to vary licences covering the 900 MHz band to allow use of that band for both GSM and UMTS systems.  On other terrestrial systems that can coexist with GSM systems in accordance with the Decision, see the table for the Decision (below).
1(2)	Requires Member States, when implementing the Directive, to examine whether the existing assignment of the 900 MHz band to the competing mobile operators in their territory is likely to distort competition in the mobile markets concerned and, where justified and proportionate, to address such distortions in accordance with article 14 of Directive 2002/20/EC (“the Authorisation Directive”).	This Order directs OFCOM to take a range of measures aimed at ensuring the release of additional electromagnetic spectrum for use by providers of next generation wireless mobile broadband, the early deployment of next generation wireless mobile broadband and the broad coverage of next generation wireless mobile broadband services.  In authorising current licensees to use the 900 MHz for both GSM and UMTS systems, likely market distortions are addressed in the context of the full range of Directions.
2	Definitions of “GSM system” and “UMTS system”	These definitions are reflected in article 3 (Interpretation)

**DECISION 2009/766/EC**

<b>Article of the Decision</b>	<b>Detail</b>	<b>Implementation (references are to the provisions of the Order)</b>
1	Sets out the aim of the Decision.	No implementation required.
2	Sets out the definitions used in the Decision	These definitions are reflected in article 3 (Interpretation)
3	Provides that the terrestrial systems capable of providing electronic communications services that can coexist with GSM systems in the 900 MHz band within the meaning in article 1(1) of the Directive are those listed in the Annex i.e. UMTS systems complying with 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.	The definition of UMTS systems in article 3 (Interpretation) restricts those systems that the 900 MHz band licences must be varied to accommodate to those in the Annex to the Decision.
3	The systems shall be subject to the conditions and implementation deadlines laid down in the Annex.	Article 4(c) requires OFCOM to impose the necessary technical requirements when it liberalises the 900 MHz and spectrum for both GSM and UMTS systems.

	Under the Annex, UMTS systems must, in the absence of bilateral or multilateral agreements between neighbouring network operators (that may have less stringent technical parameters if agreed between those operators), be subject to conditions requiring carrier separation of 5 MHz or more between two neighbouring UMTS networks and carrier separation of 2.8 MHz or more between a neighbouring UMTS network and a GSM network.	
4	The 1800 MHz band shall be designated and made available for GSM systems and for GSM and UMTS systems.	Article 4(b) requires OFCOM to designate the 900 MHz and 1800 MHz bands for both GSM and UMTS systems.
5	Member States may designate and make available the 900 MHz band and the 1800 MHz band for other terrestrial systems not listed in the Annex where certain conditions are met.	No implementation required.
6	Member States shall keep the use of the 900 MHz band and the 1800 MHz band under review to ensure the efficient use thereof and in particular report to the Commission any need for a revision of the Annex.	No implementation required.