

EXPLANATORY MEMORANDUM TO
THE 3400 – 3800 MHz FREQUENCY BAND (MANAGEMENT)
REGULATIONS 2008

2008 No. 2794

1. This explanatory memorandum has been prepared by the Department for Business Enterprise & Regulatory Reform and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

These Regulations implement in the UK the requirements of Commission Decision 2008/41/EC of 21st May 2008 on the harmonisation of the 3400-3800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community (“the Commission Decision”).

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

None

4. **Legislative Context**

4.1 The Commission Decision came into force on 21 May 2008.

4.2 The Commission Decision aims at harmonising, without prejudice to the protection and continued operation of other existing use in this band, the conditions for the availability and efficient use of the 3400-3800 MHz band for terrestrial systems capable of providing electronic communications services.

4.3 Article 2(1) of the Commission Decision requires Member States, no later than six months after its entry into force, to designate and make available on a non-exclusive basis, the 3400 – 3600 MHz band for terrestrial electronic communications networks, in compliance with the parameters set out in the Annex to the Commission Decision.

4.4 In addition, Article 2(2) of the Commission Decision requires Member States, by 1 January 2012, to designate and subsequently make available, on a non-exclusive basis, the 3600-3800 MHz band for terrestrial electronic communications networks in compliance with the parameters set out in the Annex to the Commission Decision.

4.5 The national regulatory authority with responsibility for the management of the radio spectrum in the UK is the Office of Communications established by the Office of Telecommunications Act 2002 (OFCOM).

- 4.6 The Wireless Telegraphy Act 2006 (“the 2006 Act”) provides OFCOM with the necessary powers to give effect to the requirements of the Commission Decision in the UK through e.g. licensing (or grants of recognised spectrum access) and designation of the band/s in the ‘UK Plan for Frequency Authorisation’ specified in section 2 of the 2006 Act. It is proposed, therefore, that these Regulations place OFCOM under a legal duty to exercise the powers under the 2006 Act in a way that fulfil the obligations of the UK under the Commission Decision.
- 4.7 The relevant obligations under the Commission Decision to which OFCOM must give effect are specified in regulation 3(2) of the Regulations.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The European Commission issued a Decision designed to harmonise the conditions for the use of the 3400-3800 Mhz band. Member States are obliged to implement the Commission Decision, as far as the 3400-3600 Mhz band is concerned, no later than 6 months after the entry into force of the Decision, and as far as the 3600-3800 Mhz band is concerned, by 1 January 2012.
- 7.2 As explained above, the national regulatory authority with responsibility for the management of the radio spectrum in the UK is OFCOM, which is not directly bound by the obligations in the Decision. So as to ensure the proper transposition of the Decision in the UK, the government needs expressly provide for Ofcom to be placed under a duty to exercise their existing powers under the 2006 Act to give effect to the requirements of the Decision.
- 7.3 Government considered whether it was possible to rely on Ofcom implementing the Decision using their existing legislative powers under the 2006 Act (e.g. by way of auction under section 14 of the 2006 Act or by licence exemption regulations under section 8 of the 2006 Act), but concluded that in the present case, those powers were insufficient to give full effect to the requirements of the Decision.
- 7.4 Accordingly, Government concluded that, whilst Ofcom could rely on their existing powers under the 2006 Act to regulate the use of this band in accordance with the provisions of the Decision, that alone

would not be sufficient for the purposes of achieving full and transparent implementation in the UK of that Decision insofar as OFCOM is not directly bound by its provisions. The Government therefore considered it necessary to impose, by way of regulations, a duty on OFCOM to carry out their functions so as to give effect to the requirements in the Decision.

8. Consultation outcome

No formal consultation was carried out as the government is obliged to implement such EU decisions. Additionally it is assessed that there is no additional cost or burden to businesses, citizens or consumers. This regulation is merely aimed at ensuring that the UK transparently meets its EU obligations – the frequency band covered by the Decision is currently regulated by Ofcom and will continue to be subject the same regime (albeit new harmonised conditions will apply to new licenses of this band) after implementation. Thus, it does not affect the regime currently in place.

9. Guidance

Guidance has not been issued because the obligations under the Regulations are placed upon OFCOM alone.

10. Impact

10.1 The impact of these Regulations on business, charities or voluntary bodies is negligible as the Regulations do not affect the regime currently in place.

10.2 The impact on the public sector is negligible for the same reasons.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

10.1 The legislation does not affect small business as it merely requires Ofcom to make available under harmonised conditions the radio spectrum from 3400-3800 Mhz for users.

12. Monitoring & review

12.1 A review of the Regulations effects will be conducted 12 months after implementation and regulations amended in necessary.

13. Contact

James Youngs at the Department of Business, Enterprise and Regulatory Reform Tel: 020 7215 2808 or email: james.youngs@berr.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: BERR	Title: Impact Assessment of The 3400–3800 MHz Frequency Band (Management) Regulations 2008	
Stage:	Version: 1.0	Date: 1 October 2008
Related Publications:		

Available to view or download at:

<http://www.berr.gov.uk>

Contact for enquiries: James Youngs

Telephone: 020 7215 2808

What is the problem under consideration? Why is government intervention necessary?

Government needs to implement the European Radio Spectrum Committee's decision of 21st May 2008 on the harmonisation of the 3400-3800MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community.

What are the policy objectives and the intended effects?

Government is obliged to implement this decision and needs to require Ofcom to deal with the licensing.

What policy options have been considered? Please justify any preferred option.

Options include either doing nothing, assuming that Ofcom's existing licensing powers are sufficient to give effect to the decision or extending Ofcom's powers by introducing new regulations that require them to licence in this band.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

12 months after coming into force

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Stephen Carter

..... Date: 27th
October 2008

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off	Yr	
	£ 0		
	Average Annual Cost (excluding one-off)		
	£ 0		Total Cost (PV) £ 0
<p>Other key non-monetised costs by 'main affected groups'</p> <p>No additional costs as frequencies subject to same Ofcom licensing regime as before</p>			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yr	
	£ 0		
	Average Annual Benefit		
	£ 0		Total Benefit (PV) £ 0
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>Harmonisation across Europe may make these frequencies more attractive to service providers who may offer new services benefitting citizens/consumers but difficult to monetise such benefits. The service providers themselves may also benefit but again difficult to monetise to what extent.</p>			

Key Assumptions/Sensitivities/Risks

Price Base	Time Period	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK wide
On what date will the policy be implemented?	21 st November
Which organisation(s) will enforce the policy?	Ofcom
What is the total annual cost of enforcement for these	£
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No

Annual cost (£-£) per organisation (excluding one-off)	Micro 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)			(Increase -	
Increase	£ 0	Decreas	£ 0	Net £ 0

Key:

Annual costs and benefits: Constant Prices

Evidence Base (for summary)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

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Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annexes

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The 3400–3800 MHz Frequency Band (Management) Regulations 2008

Transposition Notes

Commission Decision 2008/41/EC of 21st May 2008 on the harmonisation of the 3400-3800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community (“the Decision”).

The Decision aims at harmonising, without prejudice to the protection and continued operation of other existing use in this band, the conditions for the availability and efficient use of the 3400 -3800 MHz for terrestrial systems capable of providing electronic communications services in two separate stages:

- a) By 21st November 2008, Member States are required to designate and make available on a non-exclusive basis, the 3400–3600 MHz band for terrestrial electronic communications networks, in compliance with the parameters set out in the Annex to the Decision.
- b) By 1st January 2012, Member States are required to designate and subsequently make available, on a non-exclusive basis, the 3600-3800 MHz band for terrestrial electronic communications networks in compliance with the parameters set out in the Annex to the Decision.

The Office of Telecommunications (OFCOM) is responsible for the management of the radio spectrum in the UK. Under the Wireless Telegraphy Act 2006, OFCOM has the necessary powers to give effect to the requirements of the Decision. Therefore, the Regulations implement the Decision by imposing a duty on OFCOM to exercise their functions under the Wireless Telegraphy Act 2006 so as to give effect to the obligations of the United Kingdom under the Decision.

This table has been prepared by the Department of Business Enterprise and Regulatory Reform.

1.	Sets out the subject matter and scope of the Decision	No implementation required.
2(1)	Sets out a requirement to designate and make available the 3400 – 3600 MHz band by 21 st November 2008	Regulations 3(1) and (2) (a) place a duty on OFCOM to designate and make available the 3400 – 3600 MHz band by 21 November 2008.
2(2)	Sets out a requirement to designate and subsequently make available the 3600 – 3800 MHz band by 1 January 2012	Regulations 3(1) and (2) (b) place a duty on OFCOM to designate and subsequently make available the 3600–3800 MHz band by 1 January 2012.
2(3)	Sets out a requirement for Member States to ensure that the networks referred to in articles 2(1) and (2) give appropriate protection to systems in adjacent bands	Regulations 3(1) and (2) (c) place a duty on OFCOM to ensure that the networks referred to in articles 2(1) and (2) give appropriate protection to systems in adjacent bands.
2(4)	Permits Member States not to implement the obligations in	No implementation required.

	the Decision in areas where coordination with third countries requires a deviation from the parameters specified in the Decision.	
3	Provides Member States with further guidance on the meaning of “terrestrial communications network”.	No implementation required.
4	Requires Member States to keep the use of the 3400 -3800 band under scrutiny and report findings to the Commission to allow regular review of the Decision	No implementation required.
5	Provides that the Decision is addressed to Member States	No implementation required.