

**EXPLANATORY MEMORANDUM TO**

**THE AUTHORISATION OF FREQUENCY USE FOR THE PROVISION OF MOBILE  
SATELLITE SERVICES (EUROPEAN UNION) (AMENDMENT) REGULATIONS 2013**

**2013 No. 174**

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 These Regulations implement an EU Decision (Decision 2011/667/EU<sup>1</sup>) which makes provision for an EU-wide common enforcement procedure to be followed by all Member State regulators in relation to the “common conditions” which were imposed on the 2 companies selected to provide mobile satellite services (“MSS”) in the EU. These conditions were set out in an earlier Decision when the European Commission set out the criteria on which winning bids to provide MSS across the EU were to be selected.

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

3.1 None

**4. Legislative Context**

4.1 In 2008 a Decision<sup>2</sup> was enacted in the EU which set out the conditions on which the European Commission would decide on and award contracts to provide MSS in the whole EU. This Decision set out the “common conditions”, together with a list of 9 Milestones to be completed and provisions which relate to complementary ground components which are needed in order to boost the signals from the satellites to mobile telephones on the ground.

4.2 In 2009 the European Commission adopted a further Decision<sup>3</sup> which gave the names of the selected operators; Inmarsat Ventures Limited and Solaris Mobile Limited. Member States were required to ensure that those 2 operators were authorised in each Member State to provide these services.

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<sup>1</sup> Decision 2011/667/EU of the Commission on modalities for coordinated application of the rules on enforcement with regard to mobile satellites services (MSS) pursuant to Article 9(3) of Decision No 626/2008/EC of the European Parliament and of the Council OJ No L265, 11.10.2011, p 25.

<sup>2</sup> Decision 626/2008/EC of the European Parliament and of the Council of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services (MSS) OJ L172, 2.7.2008, p15.

<sup>3</sup> Decision 2009/449/EC of the Commission of 13 May 2009 on the selection of operators of pan-European systems providing mobile satellite services (MSS) OJ L149, 12.6.2009, p 65.

4.3 In the UK, we implemented those 2 Decisions by giving Ofcom the powers and a duty to grant those two operators licences to use specified frequencies in order to create a system to deliver MSS. The UK licensing system did not already deal with satellite communications. The Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010 was enacted in March 2010 to provide for the granting of licences by Ofcom, and also to ensure that there was an enforcement regime to deal with breaches of the authorisations.

4.4 The 2011 Commission Decision amends the enforcement regime in the EU, which was previously left to Member State national regulatory authorities (Ofcom in the UK). However, the 2011 Decision imposes an EU dimension; requiring that member states inform the European Commission where breaches of the common conditions are found in their Member State. The Commission will then pass this along to all other Member States. The individual Member States cannot take action against an infringing operator until the Communication Committee has met and discussed the infringements found in the original Member State and any others who have also found infringements in their state.

4.5 The 2010 Regulations did not make provision for such a procedure, and could not easily be made compatible with it, so needed to be amended. A Transposition Note has been produced and is set out at Annex A.

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

5.1 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**

- What is being done and why

7.1 We are amending the regulatory regime for mobile satellite services in order to bring it into line with an EU Decision of 2011. The 2011 Decision set out a harmonised process for enforcing the 2008 EU Decision on mobile satellite services. Under this harmonised process, Member States must be able to “take appropriate and proportionate measures, including financial penalties, aimed at ensuring compliance”. The current UK regulatory regime does not allow Ofcom to impose financial penalties which would be effective in relation to both operators. We need to update the regime to bring it into line with the EU Decision, ensuring that Ofcom was able properly to participate properly in the new process if that became necessary.

## **8. Consultation outcome**

8.1 No consultation is required. We have discussed the SI with Ofcom and we wrote to the two companies in question in April 2012 to let them know that we planned to make these changes.

## **9. Guidance**

9.1 No guidance is required.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is confined to Ofcom. The potential costs of enforcement are estimated to be a maximum of £40,000. There would be a risk of litigation by one or both of the operators but it is difficult to quantify the risk as it would depend on the circumstances.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

Ofcom will be responsible for monitoring use of these powers as and when necessary.

## **13. Contact**

Paul Blaker at the Department for Culture, Media and Sport (Tel: 020 7211 6441 or email [paul.blaker@culture.gsi.gov.uk](mailto:paul.blaker@culture.gsi.gov.uk)) can answer any queries regarding the instrument.

**Commission Decision (2011/667/EU) of 10 October on modalities for coordinated application of the rules on enforcement with regard to mobile satellite services (MSS) pursuant to Article 9(3) of Decision No 626/2008/EC of the European Parliament and the Council (“the 2011 Decision”)**

This Commission Decision supplements earlier decisions taken by the Council and Parliament and the Commission in relation to the provision in the EU of mobile satellite services (MSS). The previous decisions set out the ground rules for a selection at the EU level of operators to provide MSS across Europe. Decision 626/2008/EC was implemented in the UK in The Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010 (S.I. 2010/672) (“the 2010 Regulations”).

Decision 2011/667/EU supplements Decision 626/2008/EC by providing for a coordinated approach to enforcing the “common conditions” which are the conditions on which the 2 operators were granted the right to provide MSS across the EU. The 2011 Decision does not affect any national conditions which might have been imposed, nor does it apply to the information requirements of Decision 626/2008/EC.

Article 9 of Decision 626/2008/EC required member States to ensure that there was in place monitoring of the compliance of the operators with their conditions. In addition, it required that the rules on enforcement included rules on penalties applicable in the event of breaches of the common conditions. Those penalties must be effective, proportionate and dissuasive. The 2010 Regulations set out an enforcement regime based on that contained in the Wireless Telegraphy Act 2006, including an enforcement notice (requiring the companies to comply with the requirements), and a monetary penalty. However, with the publication of the 2011 Decision, the procedures in the 2010 Regulations were seen to be incompatible with the common enforcement procedure set out in the 2011 Decision. Therefore, the 2010 Regulations require amendment and have been amended as set out in this transposition table.

The transposition does not go beyond what is required to implement the 2011 Decision, with one exception, which is the requirement in regulation 5F on Ofcom to ensure that monies received by Ofcom are paid into the Consolidated Fund. This mirrors a provision in section 400 of the Communications Act 2003 which requires Ofcom to pay monetary penalties levied by Ofcom into the relevant Consolidated Fund.

<b><u>Provision of the 2011 Decision</u></b>	<b><u>Requirement in the Decision</u></b>	<b><u>Amendment to the 2010 Regulations</u></b>
Article 1	Sets out the subject matter, objectives and scope of the Decision. It is clear that the Decision only applies to contravention of the common conditions, not to any other matters.	No transposition required

Article 2	Sets out definitions used in the Decision.	Insert definitions of “common conditions” and “the 2011 Commission Decision” into regulation 1(2)
Article 3	Sets out the coordination of enforcement of common conditions	Omit Regulations 6 to 9 (which contained the enforcement mechanism in the 2010 Regulations) and include Regulations 5A to 5E
Article 3.1	Requires an authorising member State to inform the operator and the Commission in the event that there is a contravention of the common conditions in that member State.	Regulation 5A(3) requires OFCOM to notify the European Commission when it notifies a selected applicant of a contravention of one or more of the common conditions.
Article 3.2	Provides for the transmission by the Commission of any notification it receives under paragraph 3.1, the other authorising member States must investigate whether there is a contravention in their territories of the common conditions.	Regulation 5D(1) and (2) requires OFCOM to investigate whether a selected applicant is in breach of his authorisation in the UK in the event we receive a notification of a contravention of the common conditions in another member State. OFCOM must give the operator an opportunity to make representations in relation to those allegations.
Article 3.3	Requires the authorising member State to notify a summary of the findings from the investigation in article 3.2, together with any views submitted by the operators to the Commission within 5 months of transmission of the notification in article 3.1	Regulation 5D(3) requires OFCOM, within 5 months of being notified, to report to the Commission with the conclusions of the investigation and any representations made by the selected applicants.  Regulation 5D(4) requires OFCOM, if they find a contravention in the United Kingdom during the investigation, to notify the selected applicant of the contravention in accordance with the requirements in new regulation 5A. However, regulation 5D(5) states that OFCOM need not also notify the Commission, as this information will be in the report back to the Commission.
Article 3.4	Prohibits member States from adopting final decisions on penalties and the breach until a meeting of the Communications Committee has taken place in accordance with article 3.3	New regulation 5A(5) requires OFCOM to wait until the completion of the process set out in Article 3.2 and 3.3 of the Decision before taking enforcement action.
Article 3.5	Allows authorising member States to	Regulation 5B sets out what penalties

	<p>take appropriate and proportionate measures where there is a breach of the common conditions. These measures can include financial penalties. However, at this stage, it is not permitted for the authorising member State to withdraw or suspend the authorisation.</p>	<p>that OFCOM can impose for contravention of the common conditions. These penalties are an enforcement notice and/or a monetary penalty up to a maximum of £2,000,000.</p>
Article 3.6	<p>Sets out the conditions to be satisfied before a member State can decide to revoke an authorisation.</p>	<p>Regulation 5C requires OFCOM to inform the European Commission if OFCOM intends to revoke an authorisation. In addition, OFCOM may not revoke an authorisation without first going through the procedure in regulations 5A and 5B.</p>
Article 3.7	<p>Requires member States to refrain from withdrawing or suspending an authorisation until the procedure set out in Article 3.6 and 3.7 are completed</p>	<p>Regulation 5C(3) states that OFCOM may not revoke an authorisation until the steps set out in the Decision have been completed.</p>
Article 3.8	<p>Allows member States to adopt decisions to revoke or suspend an authorisation</p>	<p>Regulation 5C(1) allows OFCOM to adopt a decision to revoke an authorisation in the case of serious or repeated breaches of the common conditions.</p>
Article 3.9	<p>Requires that enforcement decisions taken pursuant to Article 3.5 or 3.8 to be communicated to the operator and the European Commission within 1 week of adoption of the relevant decision.</p>	<p>Regulations 5B(2) and 5C(4) require OFCOM to notify the operators and the European Commission within 1 week of the decision to impose such a penalty.</p>