

EXPLANATORY MEMORANDUM TO
THE RADIO SPECTRUM (EU EXIT) REGULATIONS 2018
2018 No. 1385

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 Ahead of the UK's exit from the European Union, the UK Government is seeking to use powers under Section 8 of the European Union (Withdrawal) Act 2018 to correct deficiencies in existing UK and EU legislation resulting from EU Exit and to retain the status quo in respect of the management of radio spectrum.
- 2.2 The amendments proposed within this instrument will ensure that, if the UK leaves the EU without a deal, the UK statute book continues to function, ensuring that there is no confusion or defective management related to radio spectrum after EU exit.
- 2.3 The instrument amends the following legislation:
- Frequency Band Management Regulations
 - The 2010-2025 MHz Frequency Band (Management) Regulations 2016 (S.I 2016/886)
 - The 1452-1492 MHz and 3400-3800 MHz Frequency Band (Management) Regulations 2016 (S.I 2016/485)
 - The 823-832 MHz and 1785-1805 MHz Frequency Bands (Management) Regulations 2016 (S.I. 2016/1658)
 - The 5875-5905 MHz Frequency Band (Management) Regulations 2009 (S.I. 2009/11)
 - The Wireless Telegraphy Act 2006 (Directions to Ofcom) Order 2010 (S.I. 2010/3024)
 - The Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010 (S.I. 2010/672)
- 2.4 It also revokes a number of Decisions of the European Parliament and of the Council (Commission Decisions and Commission Implementing Decisions) relating to radio spectrum. These should no longer form part of UK law if the UK exits the EU without a deal.

Explanations

What did any relevant EU law do before exit day?

- 2.5 This SI deals with EU decisions (decisions of the European Parliament and the Council, Commission decisions and implementing decisions) which, as a result of the 2018 Act, would form part of retained EU law if not revoked. Currently, these

decisions dictate the uses for various spectrum frequency bands for specific purposes. For example, Commission Decision 2008/671 regulates harmonised use of radio spectrum in the 5875-5905 MHz frequency band for safety-related applications of Intelligent Transport Systems.

Why is it being changed?

- 2.6 The EU decisions dealt with in this instrument have already been implemented within domestic legislation. In addition to the obligations on Member States which had to be implemented, there are obligations which generally relate to requirements on Member States to report to the European Commission. These obligations would be irrelevant for the UK should we leave the EU without a deal. As such, the relevant EU legislation is being revoked through this instrument in order to remove ambiguity post-exit.

What will it now do?

- 2.7 The overarching aim of the amendments made within this SI is to maintain consistency with the existing regulatory regime. These EU decisions are being revoked in order to avoid confusion, rather than to effect policy changes. In some cases, the technical aspects of these decisions should still apply in domestic legislation in order to maintain harmonisation with the UK's geographical neighbours. In these cases, a reference to the relevant EU decisions has been preserved, although the decisions themselves will not be retained as part of UK law. Any such reference refers to the technical standards of these decisions as they stand on exit day.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This SI was laid for sifting under the European Union (Withdrawal) Act 2018 on 26th November 2018. The sifting committee reached the decision on 11th December 2018 that this SI should proceed under the negative resolution procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to the negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.
- 3.3 The Department has reached this view because this is a non-controversial policy area where amendments aim to maintain the status quo.

4. Extent and Territorial Application.

- 4.1 The territorial extent of this instrument is all of the United Kingdom.
- 4.2 The territorial application of this instrument is all of the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The EU Withdrawal Act 2018 retains existing EU Decisions, Commission Decisions and Commission Implementing Decisions as part of UK domestic law. Those decisions will be redundant in UK law as they have been implemented by domestic legislation which will remain in force, and so this instrument will revoke them. This instrument will also amend some domestic implementing legislation to remove references to EU bodies and decisions, and convert obligations for Ofcom to report to the EU Commission into discretionary powers.

7. Policy background

What is being done and why?

- 7.1 Government is seeking to use powers under section 8 of the European Union (Withdrawal) Act 2018 to correct deficiencies in existing UK legislation resulting from EU exit. The amendments made by this instrument aim to ensure that, if the UK leaves the EU without a deal, UK law as regards radio spectrum continues to function in the same manner as before exit, removing any confusion or defective spectrum management regulation after EU exit.
- 7.2 Radio spectrum is a critical national asset and the Government wants to maximise the economic and social value for the UK from its use. Spectrum underpins our daily lives, allowing us to use our mobile phones and watch TV, as well as enabling diverse industries to do business – from microphones in our theatres to the space sector. In a report published in November 2012, Analysys Mason estimated that spectrum contributed £52 billion to the economy in 2011.
- 7.3 As such, it is important that radio spectrum management regulations remain operable post-exit. Amendments to regulation include removing redundant EU laws which are incorporated under the 2018 Act. Additionally, we are removing or fixing references to EU bodies and obligations within domestic legislation as required.
- 7.4 For example, in the Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010 (S.I. 2010/672) there are obligations on Ofcom to provide the European Commission with information upon request. This instrument replaces these various obligations with discretionary powers, in order to reflect our ambition to keep information sharing channels open whilst removing the legal necessity for Ofcom to notify the Commission of various events.
- 7.5 The objective of these amendments, and the revocation of EU decisions, is to retain the status quo, avoiding policy changes and unintended consequences. The UK Government's aim is, at this juncture, to maintain consistency with the current regulatory regime.
- 7.6 This is a policy area where continued alignment with the EU is beneficial to UK consumers and businesses alike. This is due to the increased scale of the European market and the geographical proximity of neighbouring countries where spectrum harmonisation is beneficial.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate

effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are currently no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 Extensive engagement has taken place with Ofcom, as the key stakeholder in radio spectrum management. Their views have been taken into consideration throughout the development of this instrument.

11. Guidance

11.1 No guidance is to be issued in relation to this instrument.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no significant impact on business.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The legislation does not introduce new requirements on small businesses. Instead, it corrects deficiencies arising from the UK's withdrawal from the EU in legislation which applies to them. No disproportionate impact on small business is therefore expected.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Melissa Giordano at the Department for Digital, Culture, Media and Sport (telephone: 0207 2116000 or email: melissa.giordano@culture.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Melissa Giordano, Deputy Director for Mobile Infrastructure and Spectrum, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Digital and the Creative Industries at the Department for Digital, Media, Culture and Sport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement

1.1 The Minister for Digital and the Creative Industries, Margot James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Radio Spectrum (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

1.2 This is the case because changes made within this instrument are non-controversial and aim to maintain consistency with the existing regulatory regime rather than affecting policy changes.

2. Appropriateness statement

2.1 The Minister for Digital and the Creative Industries, Margot James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Radio Spectrum (EU Exit) Regulations 2018 does no more than is appropriate”.

2.2 This is the case because the instrument corrects legislative deficiencies arising from EU exit. It removes or amends references to obligations related to membership of the EU and ensure that the radio spectrum regulatory regime will remain consistent post-exit if the UK leaves the EU without a deal.

3. Good reasons

3.1 The Minister for Digital and the Creative Industries, Margot James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

3.2 These are that the instrument addresses irrelevance of EU law in the operation of radio spectrum management post-exit if the UK leaves the EU without a deal, and addresses other deficiencies arising from domestic law as a result of EU exit. The policy reasons for these changes are set out in section 7 of this explanatory memorandum.

4. Equalities

4.1 The Minister for Digital and the Creative Industries, Margot James, made the following statement:

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

4.2 The Minister for Digital and the Creative Industries, Margot James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Margot James, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.