

**2013 No. 174**

**ELECTRONIC COMMUNICATIONS**

**The Authorisation of Frequency Use for the Provision of Mobile  
Satellite Services (European Union)(Amendment) Regulations  
2013**

<i>Made</i> - - - -	<i>23rd January 2013</i>
<i>Laid before Parliament</i>	<i>31st January 2013</i>
<i>Coming into force</i> - -	<i>22nd February 2013</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State has been designated for the purpose of section 2(2) of that Act in relation to electronic communications(b).

**Citation and commencement**

1. These Regulations may be cited as The Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union)(Amendment) Regulations 2013 and come into force on 22nd February 2013.

**Amendment of the 2010 Regulations**

2. The Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010(c) are amended as set out below.

3. In regulation 1(2) after the definition of “an authorisation” insert—

““the common conditions” mean the common conditions to which the rights of the selected applicants are subject in accordance with Article 7(2) of the EU Decision;

“the 2011 Commission Decision” means Decision 2011/667/EU of the Commission 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 of the Council(d)”

4. In regulation 4(1) omit “specified in Article 7(2) of the EU Decision”.

5. After regulation 5 insert—

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(a) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(b) S.I. 2001/3495 to which there are amendments not relevant to these regulations.

(c) S.I. 2010/672.

(d) OJ No L 265, 11.10.2011, p 25.

### **“Enforcement of the common conditions: notification**

**5A.**—(1) OFCOM shall ensure that contraventions of the common conditions are dealt with in accordance with these Regulations.

(2) If OFCOM determine that there are reasonable grounds for believing that a selected applicant is in contravention of the common conditions, they may notify that selected applicant.

(3) At the same time as notifying the selected applicant under paragraph (2), OFCOM shall notify the European Commission.

(4) The notification given by OFCOM under paragraph (2) shall—

- (a) specify the contravention found by OFCOM;
- (b) give the selected applicant the opportunity to make representations about the notified contravention; and
- (c) set out a time limit for making the representations referred to in paragraph (b).

(5) OFCOM shall not take further enforcement action until after the completion of the procedure set out in Article 3(2) and (3) of the 2011 Commission Decision.

### **Enforcement of the common conditions: penalties**

**5B.**—(1) Following the completion of the procedure set out in Article 3(2) and (3) of the 2011 Commission Decision, OFCOM may impose a penalty specified in this regulation on the selected applicant if—

- (a) OFCOM has notified the selected applicant of a contravention under regulation 5A; and
- (b) OFCOM determines that one or more of the common conditions has been contravened.

(2) OFCOM shall, within 1 week of adopting a decision to impose a penalty under this regulation—

- (a) notify the selected applicant;
- (b) give reasons for their decision; and
- (c) send a copy of that notification and the reasons for the decision to the European Commission.

(3) OFCOM may issue a notice to the selected applicant setting out —

- (a) steps which the selected applicant must take; and
- (b) a time within which those steps must be taken

to bring the selected applicant into compliance with the common conditions.

(4) OFCOM may impose a financial penalty on the selected applicant if—

- (a) that selected applicant is in contravention of any of the common conditions; or
- (b) that selected applicant has failed to comply with a requirement in a notice given under paragraph (3).

(5) If OFCOM imposes a financial penalty on the selected applicant under paragraph (4)(a) they must fix a reasonable period within which the penalty is to be paid.

(6) If OFCOM imposes a financial penalty on the selected applicant under paragraph (4)(b) they must, in addition to the requirements in paragraph (3)(a) and (b), fix a reasonable period within which the penalty is to be paid.

(7) A penalty under this regulation—

- (a) must be paid to OFCOM; and
- (b) if not paid within the period fixed by them is to be recoverable by them accordingly.

(8) The amount of penalty imposed under this regulation shall be an amount not exceeding £2,000,000 as OFCOM determine to be —

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

(9) When determining the amount of penalty to be imposed, OFCOM must have regard to—

- (a) representations made by the selected applicant; or
- (b) any steps taken by the selected applicant to comply with a notification under paragraph (3).

#### **Enforcement of the common conditions: revocation of authorisation**

**5C.**—(1) Subject to paragraphs (2) and (3) OFCOM may revoke an authorisation where they find a serious or repeated contravention of the common conditions.

(2) Where OFCOM propose to revoke an authorisation they must—

- (a) inform the European Commission of their intention to revoke an authorisation; and
- (b) provide a summary to the European Commission of any measures taken by the selected applicant in response to a notification under regulation 5B(3).

(3) OFCOM shall not take a decision to revoke an authorisation until after the completion of the procedure set out in Article 3(6) and (7) of the 2011 Commission Decision.

(4) OFCOM shall within 1 week of adopting the decision to revoke the authorisation—

- (a) notify the selected applicant;
- (b) specify the reasons for their decision to revoke the authorisation; and
- (c) send a copy of the notification and reasons to the European Commission.

#### **Enforcement of the common conditions: notification by another member State**

**5D.**—(1) Where OFCOM receive a notification from the European Commission that another member State has found that one or more of the common conditions are being contravened by a selected applicant, OFCOM shall investigate whether there is a contravention of the common conditions in the United Kingdom.

(2) In carrying out the investigation pursuant to paragraph (1) OFCOM shall give the selected applicant an opportunity to make representations in relation to the alleged contravention of the common conditions in the United Kingdom.

(3) OFCOM shall within 5 months of receipt of the notification issued by the European Commission report to the European Commission a summary of—

- (a) OFCOM's conclusions from the investigation undertaken pursuant to paragraph (1); and
- (b) any representations made by the selected applicant under paragraph (2).

(4) Where OFCOM, following the investigation in paragraph (1), determines that there are reasonable grounds for believing that the selected applicant is in contravention of the common conditions in the United Kingdom, OFCOM shall notify that selected applicant in accordance with the provisions of regulation 5A.

(5) Where OFCOM notifies the selected applicant of a contravention in accordance with paragraph (4), OFCOM need not notify the European Commission in accordance with regulation 5A(3).

### **Enforcement of other conditions**

**5E.**—(1) Where OFCOM determine that there are reasonable grounds for believing that a selected applicant is contravening or has contravened a requirement under regulation 5(3) they may give a selected applicant a notification under this regulation.

(2) A notification under this regulation must specify—

- (a) the information which must be provided;
- (b) a period during which the selected applicant may make representations; and
- (c) any penalty which OFCOM is minded to impose in accordance with paragraph (4).

(3) The notification may specify a time by which the information required by OFCOM under regulation 5(3) must be provided.

(4) The amount of a penalty under this regulation is to be such amount not exceeding £2,000,000 as OFCOM determine to be both—

- (a) appropriate, and
- (b) proportionate to the contravention in respect of which it is imposed.

### **Destination of penalties**

**5F.** Where OFCOM receives an amount in respect of a financial penalty under these Regulations, OFCOM shall pay that amount into the Consolidated Fund.”

- 6. Omit regulations 6, 7, 8 and 9.
- 7. In regulation 10(1) for “9” substitute “5E”.
- 8. After regulation 13 insert—

### **“Review of the Regulations**

**14.**—(1) The Secretary of State must from time to time—

- (a) carry out a review of regulations 5A to 5F,
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the 2011 Commission Decision is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the enforcement system established by those regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and if so the extent to which they could be achieved with a system which imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning on the day on which regulations 5A to 5F come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”

23rd January 2013

*Ed Vaizey*  
Parliamentary Under Secretary of State  
Department for Culture, Media and Sport

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement in the UK Commission Decision 2011/667/EU of 10<sup>th</sup> October 2011 on modalities for coordinated application of the rules on enforcement with regard to mobile satellite services (MSS) pursuant to Article 9(3) of Decision 626/2008/EC of the European Parliament and of the Council (OJ L265/25, 11.10.11) (“the Decision”). The Decision sets out a common enforcement regime for the “common conditions” across the EU.

These Regulations amend The Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010 (“the 2010 Regulations”), which provided an enforcement regime at that time. That regime has now been superseded by the Decision.

Regulation 5 inserts new provisions (regulations 5A to 5F) into the 2010 Regulations.

Regulations 5A to 5E set out a new enforcement procedure for the enforcement of the common conditions, which requires that the European Commission be notified if there are contraventions of the common conditions in the UK. The Decision requires that there be consultations at the EU level before any enforcement action is taken in a member State.

Regulations 5B and 5C set out what penalties OFCOM may impose on the two selected operators in the event that they are found in contravention of the common conditions.

Regulation 5D sets out obligations on OFCOM in the event that OFCOM are notified of a breach being found in another Member State.

Regulation 5E sets out an enforcement regime to replace the prior regime in relation to the contravention of the information provision requirements in the Regulations.

Regulation 5F requires OFCOM to pay any monetary penalty levied by them into the Consolidated Fund.

Regulation 6 provides for the omission of regulations 6 to 9 of the 2010 Regulations, which contained the previous enforcement regime.

Regulation 7 makes a consequential amendment to regulation 10(1) of the 2010 Regulations.

Regulation 8 inserts a review clause into the 2010 Regulations. That review clause requires the Secretary of State to review the operation and effect of the amendments to the 2010 Regulations as regards the enforcement provisions and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the enforcement provisions in regulations 5A to 5F should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke those regulations or to amend them.

A transposition note and full impact assessment of the effect that this instrument will have on the costs of business is available from the Department for Culture, Media and Sport, 2-4 Cockspur Street, London, SW1Y 5DH and is published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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STATUTORY INSTRUMENTS

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