

**2010 No. 672**

**ELECTRONIC COMMUNICATIONS**

**The Authorisation of Frequency Use for the Provision of Mobile  
Satellite Services (European Union) Regulations 2010**

<i>Made</i>	- - - -	<i>8th March 2010</i>
<i>Laid before Parliament</i>		<i>10th March 2010</i>
<i>Coming into force</i>	- -	<i>31st March 2010</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 purposes of section 2(2) of the European Communities Act 1972 in relation to electronic communications(b).

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as The Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010 and shall come into force on 31st March 2010.

(2) In these Regulations—

“an authorisation” means an authorisation granted under regulation 3, subject to the conditions contained in regulation 4;

“the Commission Decision” means Decision 2009/449/EC of the Commission on the selection of operators of pan-European systems providing mobile satellite services (MSS)(c);

“electronic communications network” and “associated facilities” have the meaning given by section 32 of the Communications Act 2003(d);

“the EU Decision” means Decision 626/2008/EC of the European Parliament and of the Council on the selection and authorisation of systems providing mobile satellite services (MSS)(e);

“mobile satellite services” means radio communication services provided by an electronic communications network and associated facilities capable of providing radio communication services between a mobile earth station in the United Kingdom and one or more space stations, or between mobile earth stations in the United Kingdom by means of one or more space stations;

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(a) 1972 c.68.

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

(c) OJ No L 149, 12.6.2009, p 65.

(d) 2003 c.21.

(e) OJ No L 172, 2.7.2008, p 15.

“OFCOM” means the Office of Communications as established by the Office of Communications Act 2002(a);

“the selected applicants” means Inmarsat Ventures Limited(b) and Solaris Mobile Limited(c) which are identified as the eligible applicants under Article 2 of the Commission Decision;

“the Tribunal” means the Competition Appeal Tribunal; and

“Tribunal rules” means rules made under section 15 of the Enterprise Act 2002(d).

### **Authorisation of frequency use for the provision of mobile satellite services**

2.—(1) A person commits an offence if that person uses the frequency bands 1980 to 2010MHz and 2170 to 2200MHz or any part of those bands for the provision of mobile satellite services except under and in accordance with an authorisation granted under these Regulations by OFCOM.

(2) A person who commits an offence under this regulation is liable—

- (a) on conviction on indictment, to an unlimited fine; or
- (b) on summary conviction, to a fine of not more than level 5 on the standard scale (if not calculated on a daily basis) or a fine of not more than £100 a day.

### **Granting of authorisations to the selected applicants**

3.—(1) OFCOM shall grant an authorisation under these Regulations to each of the selected applicants for use in the United Kingdom of the frequencies specified for that selected applicant in Article 3 of the Commission Decision subject to the conditions set out in these Regulations.

(2) For the purposes of paragraph (1), the frequencies specified in Article 3 of the Commission Decision are the following—

- (a) Inmarsat Ventures Limited: from 1980 to 1995MHz for earth to space communications and from 2170 to 2185MHz for space to earth communications; and
- (b) Solaris Mobile Limited: from 1995 to 2010MHz for earth to space communications and from 2185 to 2200MHz for space to earth communications.

### **Conditions of an authorisation**

4.—(1) OFCOM shall ensure that the authorisations are subject to the common conditions specified in Article 7(2) of the EU Decision, namely—

- (a) the selected applicants shall use the frequencies which those applicants are authorised to use pursuant to regulation 3(1) for the provision of mobile satellite services;
- (b) each selected applicant shall meet milestones 6 to 9 set out in the Annex to the EU Decision by 14th May 2011;
- (c) each selected applicant shall honour all commitments given by that applicant in its application or during the comparative selection procedure referred to in Articles 4 and 6 of the EU Decision respectively;
- (d) each selected applicant shall provide OFCOM with an annual report detailing the status of development of their proposed mobile satellite system.

(2) An authorisation shall be granted for eighteen years with effect from 14th May 2009.

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(a) 2002 c.11.

(b) A company incorporated in England and Wales with number 03674573.

(c) A company incorporated in the Republic of Ireland with number 426976.

(d) 2002 c.40.

(3) An authorisation may include objectively justified, non-discriminatory, proportionate and transparent conditions or obligations to ensure communications between emergency services and authorities during major disasters.

(4) An authorisation shall not be transferable.

(5) OFCOM shall not charge the selected applicants for the granting of an authorisation.

### **Monitoring, reporting and information requirements**

**5.**—(1) OFCOM shall monitor compliance by the selected applicants of the conditions of their authorisations.

(2) Where—

(a) there has been a contravention by either of the selected applicants of one or more of the conditions specified in their authorisation; or

(b) where OFCOM have taken action under these Regulations against either of the selected applicants in respect of such a contravention,

OFCOM shall provide the European Commission with information about the contravention or action within 12 months of such contravention or action.

(3) OFCOM may require the selected applicants to provide them with all such information as OFCOM consider necessary for the purpose of carrying out their functions under these Regulations, including the verification of compliance by the selected applicants with the conditions of their authorisations.

(4) A selected applicant required to provide information under paragraph (3) must provide it in such a manner and within such reasonable period as may be specified by OFCOM.

### **Notification of contravention of conditions of authorisations**

**6.**—(1) Where OFCOM determine that there are reasonable grounds for believing that a selected applicant is contravening or has contravened—

(a) a condition of its authorisation; or

(b) a requirement under regulation 5(3) or (4),

they may give that selected applicant a notification under this regulation.

(2) A notification under this regulation is one which—

(a) sets out the determination made by OFCOM;

(b) specifies the condition of the authorisation or the requirement under regulation 5(3) or (4) and the contravention in respect of which that determination has been made; and

(c) specifies the period during which the selected applicant notified has an opportunity of doing the things specified in paragraph (4).

(3) A notification under this regulation—

(a) may be given in respect of more than one contravention; and

(b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(4) Those things are—

(a) making representations about the matters notified;

(b) complying with the notified conditions of the authorisation or the requirements under regulation 5(3) or (4) of which the selected applicant remains in contravention; and

(c) remedying the consequences of the notified contraventions.

(5) Subject to paragraphs (5), (6) and (7), the period for doing those things must be the period of one month beginning with the day after the day on which the notification was given.

(6) OFCOM may, if they think fit, allow a longer period for doing those things either—

- (a) by specifying a longer period in the notification; or
  - (b) by subsequently, on one or more occasions, extending the specified period.
- (7) The selected applicant notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the selected applicant notified.
- (8) The selected applicant notified shall also have a shorter period if—
- (a) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention or that the case is urgent;
  - (b) they have determined that, in those circumstances, a shorter period would be appropriate; and
  - (c) the shorter period has been specified in the notification.
- (9) For the purposes of paragraph (7)(a) a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if—
- (a) a previous notification under this regulation has been given in respect of the same contravention or in respect of another contravention of the same condition of the authorisation or the same requirement under regulation 5(3) or (4); and
  - (b) the subsequent notification is given no more than 12 months after the date when the previous notification was given.
- (10) For the purposes of paragraph (7)(a) a case is an urgent case if the contravention has resulted in, or creates an immediate risk of—
- (a) a serious threat to the safety of the public, to public health or to national security; or
  - (b) serious economic or operational problems for persons (other than the selected applicant in contravention) who—
    - (i) use wireless telegraphy stations or wireless telegraphy apparatus; or
    - (ii) are communications providers or make associated facilities available.
- (11) References to remedying a contravention include references to—
- (a) doing anything the failure to do which, or the failure to do which within a particular period or before a particular time, constituted the whole of or a part of the contravention;
  - (b) paying an amount to a person by way of compensation for loss or damage suffered by that person in consequence of the contravention;
  - (c) paying an amount to a person by way of compensation in respect of annoyance, inconvenience or anxiety to which that person has been put in consequence of the contravention;
  - (d) otherwise acting in a manner that constitutes an acknowledgement that the notified contravention did occur.
- (12) In paragraph (9) the expressions—
- “wireless telegraphy station” and “wireless telegraphy apparatus” have the meanings given by section 117 of the Wireless Telegraphy Act 2006<sup>(a)</sup>; and
- “communications provider” has the same meaning as in section 405 of the Communications Act 2003<sup>(b)</sup>.

### **Penalties for contravention**

- 7.—(1) This regulation applies where—
- (a) a selected applicant (the “notified person”) has been given a notification under regulation 6;

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(a) 2006 c.36.  
 (b) 2003 c.21.

- (b) OFCOM have allowed the notified person the opportunity to make representations about the matters notified; and
  - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may impose a penalty on the notified person if they are satisfied—
- (a) that the notified person has, in one or more of the respects notified, been in contravention of a condition of an authorisation or a requirement under regulation 5(3) or (4) specified in the notification under regulation 6; and
  - (b) that the notified person has not, during the period allowed under that regulation, taken such steps as OFCOM consider appropriate—
    - (i) for complying with that condition or requirement; and
    - (ii) for remedying the consequences of the notified contravention of that condition or requirement.
- (3) Where a notification under regulation 6 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.
- (5) Where OFCOM decide to impose a penalty on a notified person under this regulation, they shall—
- (a) notify that person of their decision and of their reasons for that decision; and
  - (b) in that notification, fix a reasonable period as the period within which the penalty is to be paid.
- (6) 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.

#### **Amount of penalty under regulation 7**

**8.—**(1) The amount of a penalty imposed under regulation 7 shall be an amount not exceeding ten percent of the turnover of the notified person’s relevant business for the relevant period, as OFCOM determine to be—

- (a) appropriate; and
  - (b) proportionate to the contravention in respect of which it is imposed.
- (2) In making that determination OFCOM must have regard to—
- (a) any representations made to them by the notified person;
  - (b) any steps taken by the notified person towards complying with the condition or requirement contravention of which has been notified to him under regulation 6; and
  - (c) any steps taken to by the notified person for remedying the consequences of that contravention.
- (3) For the purposes of this regulation the turnover of the notified person’s relevant business for the relevant period shall be calculated in accordance with regulation 9.
- (4) In this regulation and regulation 9—
- “notified person” has the same meaning as in regulation 7;
  - “relevant business” means so much of any business carried on by the notified person as consists in the provision of mobile satellite services;
  - “relevant period” means—
    - (a) except in a case falling within subparagraphs (b) or (c), the period of one year ending with the 31st March next before the time when notification of the contravention was given under regulation 6;

- (b) in the case of a notified person who at that time has been carrying on that business for a period of less than a year, the period, ending with that time, during which the notified person has been carrying it on; and
- (c) in the case of a notified person who at that time has ceased to carry on that business, the period of one year ending with the time when the notified person ceased to carry it on.

#### **Calculation of turnover of notified person's relevant business**

9.—(1) The turnover of a notified person shall be calculated in conformity with accounting practices and principles which are generally accepted in the United Kingdom.

(2) The turnover of a notified person shall be limited to the amounts derived by that person from the relevant business after deduction of sales rebates, value added tax and other taxes directly related to turnover.

(3) When a notified person's relevant business consists of two or more undertakings that each prepare accounts then the turnover shall be calculated by adding together the turnover of each, save that no account shall be taken of any turnover resulting from the supply of goods or the provision of services between them.

(4) Any aid (within the meaning of Article 107 of the Treaty on the Functioning of the European Union) granted by a public body to a notified person which relates to one of that person's ordinary activities shall be included in the calculation of turnover if the notified person is the recipient of the aid and if the aid is directly linked to the carrying out by that person of the relevant business.

#### **Appeals against decisions by OFCOM**

10.—(1) A selected applicant affected by a decision by OFCOM under regulations 3 to 9 may appeal against it to the Tribunal.

(2) The means of making an appeal is by sending the Tribunal a notice of appeal in accordance with Tribunal rules.

(3) The notice of appeal must be sent within the period specified in those rules.

(4) The notice of appeal must set out—

- (a) the provision under which the decision appealed against was taken; and
- (b) the grounds of appeal.

(5) The grounds of appeal must be set out in sufficient detail to indicate—

- (a) to what extent (if any) the appellant contends that the decision appealed against was based on an error of fact or was wrong in law or both; and
- (b) to what extent (if any) the appellant is appealing against the exercise of a discretion by OFCOM.

(6) In this regulation references to a decision include—

- (a) references to a decision that is given effect to by the exercise or performance of a power or duty conferred or imposed by these Regulations; but
- (b) references to a failure to make a decision, and to a failure to exercise a power or to perform a duty, but only where the failure constitutes a failure to comply with any form of request to make the decision, exercise the power or perform the duty;

and references in the following regulations to a decision appealed against are to be construed accordingly.

(7) For the purposes of this regulation and regulations 11 and 12 a decision to which effect is given by the exercise or performance of a power or duty conferred or imposed by these Regulations, shall be treated, except where provision is made for the making of that decision at a different time, as made at the time when the power is exercised or the duty performed.

## **Decisions of the Tribunal**

11.—(1) The Tribunal shall dispose of an appeal under regulation 10 in accordance with this regulation.

(2) The Tribunal shall decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal.

(3) The Tribunal's decision must include a decision as to what (if any) is the appropriate action for OFCOM to take in relation to the subject matter of the decision under appeal.

(4) The Tribunal shall then remit the decision under appeal to OFCOM with such directions (if any) as the Tribunal considers appropriate for giving effect to its decision.

(5) The Tribunal must not direct OFCOM to take any action which OFCOM would not otherwise have power to take in relation to the decision under appeal.

(6) It shall be the duty of OFCOM to comply with every direction given under paragraph (4).

(7) In any document recording the decision of the Tribunal under this regulation, the Tribunal shall have regard to the need for excluding, so far as practicable, commercial information the disclosure of which would or might, in its opinion, significantly harm the legitimate business interests of any person to whom it relates.

## **Appeals from the Tribunal**

12.—(1) A party to the appeal may appeal a decision of the Tribunal made under regulation 11. An appeal under this regulation—

(a) lies to the Court of Appeal or to the Court of Session; and

(b) must relate only to a point of law arising from the decision of the Tribunal.

(2) An appeal under this regulation requires the permission of the Tribunal or of the court to which it is to be made.

(3) In this regulation references to a decision of the Tribunal include references to a direction given by it under regulation 11(4).

## **Complementary ground components**

13.—(1) OFCOM shall carry out their functions under the Wireless Telegraphy Act 2006(a) so as to give effect to the obligations of the United Kingdom under the EU Decision and the Commission Decision in so far as those obligations have not been given effect by these Regulations.

(2) OFCOM shall in particular pursuant to their powers under that Act grant a selected applicant, if requested, the authorisation necessary for the provision of complementary ground components of systems providing mobile satellite services subject to the common conditions specified in Article 8(3) of the EU Decision.

(3) In this regulation “complementary ground components” means ground-based stations used at fixed locations in order to improve the availability of mobile satellite services in geographical area covered by those services.

8th March 2010

*Stephen Timms*  
Minister for Digital Britain  
Department for Business Innovation and Skills

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(a) 2006 c.36.

## EXPLANATORY NOTE

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

These Regulations implement in the United Kingdom the European Parliament and Council Decision 626/2008/EC of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services (the EU Decision) and the Commission Decision 2009/449/EC of 13 May 2009 on the selection of operators of pan-European systems providing mobile satellite services (the Commission Decision).

Regulation 2 creates a new criminal offence of use of frequency bands 1980 to 2010MHz and 2170 to 2200MHz for the provision of mobile satellite services except under and in accordance with an authorisation granted by OFCOM.

Regulation 3 places an obligation on OFCOM to grant an authorisation to each of the selected applicants, as defined in regulation 1 subject to the conditions set out in regulation 4.

Regulation 5 requires OFCOM to monitor compliance by the selected applicants of the conditions of their authorisations. OFCOM must also report to the Commission any contravention by either of the selected applicants of any such condition or any enforcement action taken by OFCOM against either of the selected applications. Regulation 5(3) confers a power on OFCOM to require the selected applicants to provide information necessary for OFCOM to carry out their functions under these Regulations.

Regulation 6 provides for a notification procedure where OFCOM determine that there has been a contravention by a selected applicant of a condition of its authorisation or a requirement under regulation 5(3) or (4).

Regulation 7 gives OFCOM the power to impose a penalty on a selected applicant who has received a notification under regulation 6 where OFCOM are satisfied that that person has failed to comply with its authorisation or the requirement under regulation 5(3) or (4) and has failed to remedy any consequences of the notified contravention.

Regulation 8 provides for the amount of penalty which may be imposed by OFCOM under regulation 7, and that penalty may not exceed 10% of the turnover of the notified person's "relevant business" for the "relevant period", as defined in regulation 8.

Regulation 9 specifies how the turnover of the "relevant business" is to be calculated for the purposes of regulation 8.

Regulations 10 to 12 provide that a person affected by a decision of OFCOM under these Regulations, other than decisions taken by OFCOM under regulation 13, may appeal that decision to the Competition Appeal Tribunal. Decisions of the Competition Appeal Tribunal may be appealed on a point of law to the Court of Appeal or the Court of Session in Scotland.

Regulation 13 requires 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 EU Decision and the Commission Decision insofar as the implementation of such obligations is not covered by these Regulations.

A full Regulatory Impact Assessment and Transposition Note have been produced. Copies may be obtained from Tracey Halsey, Business Relations Directorate (BR2), Department for Business, Innovation and Skills, 1 Victoria Street, London, SW1H 0ET.

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