
STATUTORY INSTRUMENTS

2013 No. 174

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

Amendment of the 2010 Regulations

5. After regulation 5 insert—

“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 takento 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) 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) 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.”