

De Minimus Assessment: Self-Certification Template



Department for
Digital, Culture
Media & Sport

Title of regulatory proposal	Statutory Instrument: Radio Spectrum (EU Exit) Regulations 2018
Stage	Final
Lead Department/Agency	DCMS
Expected date of implementation	29/03/19
Origin	Domestic
Date	12/11/18
Lead Departmental Contact	Clare Symonds (clare.symonds@culture.gov.uk)
Departmental Triage Assessment	Equivalent Annual Cost to Business (EANDCB: 2016 prices) = £19,273.2

Call in criteria checklist

Significant distributional impacts (e.g. significant transfers between different businesses or sectors)	No
Disproportionate burdens on small businesses	No
Significant gross effects despite small net impacts	No
Significant wider social, environmental, financial, or economic impacts	No
Significant, novel, or contentious elements	No

BRU (CAT) signoff: *Amy Coleman* Date: 13/11/2018

Chief Economist signoff: *[Paul Crawford]* Date: 16/11/2018

SUMMARY

Rationale for government intervention

Ahead of the UK's exit from the European Union, 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 harmonisation of radio spectrum.

The amendments proposed within this SI will ensure that, if the UK leaves the EU without a deal, the risk of ambiguity or defective spectrum management after EU exit is minimised.

Policy options

In order to provide continuity in the statutory framework, the EU Withdrawal Act 2018 makes existing, implemented EU Decisions part of retained domestic law. This SI removes ambiguity regarding the status of some specific historic EU decisions and removes obligations for Ofcom to report to the EU Commission. While the broad policy settings were established in the Withdrawal Act, the specific technical policy approaches taken in the drafting of this SI are set out below:

EU Decisions

Within the proposed SI, a total of at least 50 existing EU Decisions were considered. These decisions place restrictions on the use of individual frequency bands for specific purposes and the obligation to report to the European Commission on matters relating to those specific restrictions.

Option 1 - Retain - 'Do nothing' option - retain the relevant EU Decisions as preserved EU law.

Option 2 - Revoke [agreed option] - revoke all relevant EU Decisions.

Frequency Band Management (FBM) Statutory Instruments

A number of UK SIs relating to the management of specific frequency bands implementing EU Decisions which we recommend should be revoked. As such, amendments to these SIs must be considered to ensure that the UK statute book is functional post-exit.

Option 1 - Retain - 'Do nothing' option - retain all existing FBM SIs and make no changes

Option 2 - Revoke - revoke all affected SIs

Option 3 - Amend [agreed option] - amend in order to make regulations functional and remove ambiguity in the context of EU Exit.

Statutory instrument 2010/672: The Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010

These Regulations implement in the UK 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).

Option 1 - Retain - 'Do nothing' option - retain SI as it currently stands without making any changes

Option 2 - Revoke - revoke entire SI.

Option 3 - Amend [agreed option] - make amendments to SI to keep information sharing channels available where needed, while removing the legal necessity for Ofcom to adhere to EU information-sharing requirements.

Statutory instrument 2010/3024: The Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2010

One of the purposes of SI 2010/3024 is to implement Directive 2009/114/EC and Commission Decision 2009/766 on the frequency bands to be reserved for the coordinated introduction of public pan-European electronic communications services in the Community.

Option 1 - Retain - 'Do nothing' option - retain SI as it currently stands without making any changes

Option 2 - Revoke - revoke entire SI

Option 3 - Amend [agreed option] - remove references to EU Decisions which will no longer be relevant post-exit.

Summary of business impact

The proposed changes are routine and aim to retain the status quo. Alterations relate to drafting and addressing redundant statutory wording rather than making policy changes and will, therefore, not result in significant costs to business

The only direct impact cost of this SI is a familiarisation cost of £19,273.20 (more below). In addition, there may be some indirect impacts in the future, which are discussed throughout the assessment in relation to each policy area affected.

DETAIL & SUPPORTING EVIDENCE

Rationale for government intervention

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. These amendments will ensure that the UK statute book on spectrum management continues to function in the same manner as before exit in a 'no deal' scenario, removing any confusion or defective spectrum management after EU exit.

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 Mason¹ estimated that spectrum contributed £52 billion to the economy in 2011.

As such, it is important that the radio spectrum management regulations remain operable post-exit. Amendments to regulation include removing redundant EU laws, which are incorporated under the 2018 Act, and removing or fixing references to EU legislation and to EU bodies and obligations, as required.

The objective of these amendments is to retain the status quo, avoiding policy changes and unintended consequences. This will be beneficial from a trade perspective to ensure that equipment imported to and exported from the UK will remain functional across EU and UK spectrum bands.

Furthermore, this is a policy area where continued alignment with the EU is beneficial to UK consumers and businesses due to the increased scale of European market and the geographical proximity of neighbouring countries which impacts upon spectrum harmonisation.

¹<https://www.gov.uk/government/publications/impact-of-radio-spectrum-on-theuk-economy-and-factors-influencing-future-spectrum-demand>

Contents

The Radio Spectrum (EU Exit) Regulations 2018 deal with four categories of legislation which require different policy and legal approaches:

- EU Decisions;
- Frequency Band Management Regulations; and
- Two separate statutory instruments:
 - The Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010
 - The Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2010.

Each of these has been assessed separately within the analysis below.

The assessment closes with a section on familiarisation costs. These costs relate to the SI as a whole.

EU Decisions

Background

This SI revokes a number of EU Decisions, which, as a result of the 2018 Act, would otherwise form part of retained EU law. They deal with spectrum harmonisation across Member States. These decisions had already been implemented in domestic legislation. As these have already been implemented, and the only provisions not needing to be implemented generally relate to requirements on Member States to report to the European Commission, the decisions are not needed as part of UK law.

Policy options:

Option 1 - Retain (do nothing): This would preserve the EU Decisions as retained EU law. It is likely that the UK will wish to remain harmonised with the EU post-exit, so retaining these Decisions is not likely to cause a significant issue in the management of radio spectrum allocation. By doing nothing, requirements to report to the European Commission would still apply which would not be acceptable in a 'no deal' exit scenario.

Option 2 [agreed option] - Revoke: While harmonisation with the EU is beneficial to the UK, the UK will likely no longer be a member state participant in EU spectrum management bodies post-exit in a 'no deal' scenario. As such, obligations to adhere to Commission control will be unacceptable and would add unnecessary delay and restrictions in our own radio spectrum management. Relevant obligations have already been implemented in domestic legislation. By revoking the rest, we aim to retain the status quo with regard to domestic radio spectrum management while providing Government with the flexibility to make decisions on the use of radio spectrum bands, should the UK's policy thinking diverge from that of the EU in the future. Although revocation would mean that the decisions themselves would cease to be part of UK law, some references in UK implementing regulation to technical standards in decisions will remain because it is difficult to import those requirements into domestic legislation. Where this happens, the technical standards will be those in force on exit day.

Assessment of business impact

The majority of the EU Decisions affected by this SI have already been implemented in UK law through various pieces of domestic legislation. Others simply remove obligations placed

upon the UK regulator by the European Commission to, for example, report to the Commission at regular intervals.

Risks and assumptions

Risks:

- In the case of a deal with the EU, this analysis will not be valid.

Assumptions:

- We have assumed that the key stakeholders for this SI will be Ofcom and the major Mobile Network Operators (MNOs).

Call-in check list explanations

Distributional Impacts

The proposed amendments strive to retain consistency with the existing regulatory regime and, as such, there should be no distributional impact upon any stakeholders.

Conclusion: There are not significant distributional impacts

Small and Micro Business Assessment (SaMBA)

Amendments will not impact small and micro businesses.

Conclusion: There are not disproportionate effects on small businesses

Gross Effects

Conclusion: There are not significant gross effects

Wider Impacts

Conclusion: There are not significant wider effects

Significant, Novel, or Contentious

This is a non-contentious policy area, and our aim is to retain the status quo.

Conclusion: There are not significant wider effects

Long-term impact

It is in the interest of the UK to maintain harmonisation with EU radio spectrum principles in a 'no-deal' scenario. However, looking at long-term implications, revoking spectrum-related EU Decisions will mean that the UK will have the freedom to use spectrum bands for purposes other than those stipulated in EU legislation in the future, should our policy stance diverge from that of the EU.

Frequency Band Management (FBM) Statutory Instruments

Background

The Frequency Band Management SIs consist of four existing UK SIs which deal with different radio spectrum frequency bands. Band management is currently based on EU Decisions which dictate how Member States should designate certain bands of spectrum for specific uses. Radio spectrum crosses national borders and, as such, it is in the interest of the UK to maintain harmonisation with the EU, even in the event of a 'no deal' scenario. Not maintaining harmonisation would result in a much greater likelihood of interference between different wireless devices. However, it will not be appropriate for the UK to be constrained by the EU post-exit.

Policy options:

Option 1 - Retain - This is the 'do nothing' option. This would ensure consistency with the existing EU regulatory regime and ensure that the UK maintains harmonisation with its geographical neighbours. However, there are requirements in respect of duties to the EU Commission which are not relevant in the event of a 'no deal' exit. SIs must be therefore be amended to reflect this.

Option 2 - Amend [agreed option]: These SIs need to be amended to reflect the fact that the UK will no longer be part of the European Union so EU obligations no longer apply. Despite this, domestic policy remains the same, hence changes are minimal. They ensure that the UK's spectrum management principles remain aligned with those of the EU whilst maintaining appropriate constraints over Ofcom's powers to designate certain spectrum bands to specific uses. This also allows the Government and regulator to change our frequency band management regulations at a later date, should domestic policy thinking diverge from that of the EU.

Option 3 - Revoke: As the UK will no longer be a Member State of the European Union, we may wish to revoke the relevant frequency band management SIs. This will mean that the UK's independent regulator, Ofcom, no longer has to comply with EU specifications and would have more flexibility in the designation of spectrum in certain bands for specific uses. However, this would be a change in policy and would therefore go further than the powers of the EU Withdrawal Act 2018.

Assessment of business impact

Our aim is to retain consistency with the existing regulatory regime. Maintaining harmonisation with the EU is in the interest of the UK so that our existing telecommunications equipment remains functional in the UK and in Europe. As no policy changes are being made, retaining the status quo should result in little to no business impact.

Risks and assumptions

Risks:

- In the case of a deal with the EU, this analysis will not be valid.

Assumptions:

- We have assumed that the key stakeholders for this SI will be Ofcom and the major MNOs.

Call-in check list explanations

Distributional Impacts

The proposed amendments intend to retain consistency with the existing regulatory regime and, as such, there should be no distributional impact upon any stakeholders.

Conclusion: There are not significant distributional impacts

Small and Micro Business Assessment (SaMBA)

Amendments will not impact small and micro businesses.

Conclusion: There are not disproportionate effects on small businesses

Gross Effects

Conclusion: There are not significant gross effects

Wider Impacts

Conclusion: There are not significant wider effects

Significant, Novel, or Contentious

This is a non-contentious policy area, and our aim is to retain the status quo.

*Conclusion: There are **not** significant wider effects*

Long-term impacts

By inserting a reference to the relevant EU legislation into domestic legislation, we are ensuring that Ofcom is, until the UK government decides otherwise, still bound by the same radio spectrum band management principles as Member States. However, as this obligation will now exist solely in domestic law, this means that we retain the ability to amend frequency band management regulations in the future should our policy thinking diverge from that of the EU.

Statutory Instrument 2010/672: The Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010

Background:

The nature of these regulations as stemming from an EU decision means that there are various obligations placed upon the UK's independent regulator, Ofcom, to adhere to EU processes, report to the European Commission and gain consent from the Commission prior to taking action. The European Commission will no longer have any standing in the UK post-exit, so an obligation to adhere to Commission regulation will be redundant and would create unnecessary delays for the UK in our own radio spectrum management.

Option 1 - Retain - This is the 'do nothing' option. As this is domestic legislation, this SI will still stand post-exit regardless of whether or not it is amended unless it is revoked. However, there are requirements within this SI in respect of duties to the EU Commission which are not relevant in the event of a 'no deal' exit. SIs must therefore be amended to reflect this.

Option 2 - Revoke - The purpose of the EU Withdrawal Act is to correct deficiencies resulting from EU exit, and revoking this SI totally is not within the power of the 2018 Act, because, other than the duties noted above, it is not deficient.

Option 3 - Amend [agreed option] - While obligations to adhere to EU regulation are not desirable, the nature of radio spectrum management means that harmonisation with geographical neighbours is highly beneficial. As such, maintaining information-sharing channels with the European Commission would be useful. Amendments are proposed to SI 2010/672 which aim to keep information-sharing channels open - in order to retain the status quo, by expressly allowing Ofcom the discretion to make relevant notifications to the Commission.

Assessment of business impact

Our aim is to retain consistency with the existing regulatory regime. Maintaining harmonisation with the EU is in the interest of the UK so that our existing telecommunications equipment remains functional in the UK and in Europe. As no policy changes are being made, retaining the status quo should result in little to no business impact.

Risks and assumptions

Risks:

- In the case of a deal with the EU, this analysis will not be valid.

Assumptions:

- We have assumed that the key stakeholders for this SI will be Ofcom and the major MNOs.

Call-in check list explanations

Distributional Impacts

The proposed amendments strive to retain consistency with the existing regulatory regime and, as such, there should be no distributional impact upon any stakeholders.

Conclusion: There are not significant distributional impacts

Small and Micro Business Assessment (SaMBA)

Amendments will not impact small and micro businesses.

Conclusion: There are not disproportionate effects on small businesses

Gross Effects

Conclusion: There are not significant gross effects

Wider Impacts

Conclusion: There are not significant wider effects

Significant, Novel, or Contentious

This is a non-contentious policy area, and our aim is to retain the status quo.

*Conclusion: There are **not** significant wider effects*

Long-term impacts

By revoking the underlying EU Decision and amending domestic legislation, we gain the freedom to make future changes to domestic policy without having to comply with EU legislation. This means that, should the UK government's policy views on the provision of mobile satellite services change in the future, we will have the power to amend regulation over Ofcom.

Statutory instrument 2010/3024: The Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2010

Background

Made under section 5 of the Wireless Telegraphy Act 2006, this SI gives a number of directions to Ofcom, including:

- to vary existing wireless telegraphy licenses to include provisions regarding the revocation and duration of licences and coverage of services;
- to amend their spectrum trading regulations to permit the trading of licences;
- to amend their regulations to provide for amended charges for the grant of a licence; and
- to make regulations to set the rules for an auction of licences to use frequencies.

Option 1 - Retain - This is the 'do nothing' option. As this is domestic legislation, this SI will still stand post-exit regardless of whether or not it is amended unless it is revoked. This would ensure consistency with the existing EU regulatory regime. However, there are requirements in respect of duties to the EU Commission which are not desirable or which are no longer acceptable in the event of a 'no deal' exit. SIs must therefore be amended to reflect this.

Option 2 - Revoke - The purpose of the EU Withdrawal Act is to correct deficiencies resulting from EU exit, and therefore revoking this SI is not under the power under the 2018 Act to do this because, other than the references to EU legislation and EU bodies, the Order is not deficient..

Option 3 - Amend [agreed option] - Our recommended approach is to amend the existing domestic legislation by removing current references to EU Decisions and EU bodies. This will ensure that we retain the status quo by keeping the UK statute book functional post-exit in a 'no deal' scenario. None of these amendments grant Ofcom additional powers.

Assessment of business impact

Our aim is to retain consistency with the existing regulatory regime. Maintaining harmonisation with the EU is in the interest of the UK so that our existing telecommunications equipment remains functional in the UK and in Europe. As no policy changes are being made, retaining the status quo should result in little to no business impact.

Risks and assumptions

Risks:

- In the case of a deal with the EU, this analysis will not be valid.

Assumptions:

- We have assumed that the key stakeholders for this SI will be Ofcom and the major MNOs.

Call-in check list explanations

Distributional Impacts

The proposed amendments strive to retain consistency with the existing regulatory regime and, as such, there should be no distributional impact upon any stakeholders.

Conclusion: There are not significant distributional impacts

Small and Micro Business Assessment (SaMBA)

Amendments will not impact small and micro businesses.

Conclusion: There are not disproportionate effects on small businesses

Gross Effects

Conclusion: There are not significant gross effects

Wider Impacts

Conclusion: There are not significant wider effects

Significant, Novel, or Contentious

This is a non-contentious policy area, and our aim is to retain the status quo.

*Conclusion: There are **not** significant wider effects*

Long-term Impacts

As this legislation will now be entirely domestic - not reliant upon underlying EU regulations - the UK Government will have the freedom to change Ofcom's powers as they see fit in the future.

Familiarisation costs and overall business impacts

The EANDCB reflects the combined costs of the preferred options for all elements of the SI. The only direct impact cost of this SI is a familiarisation cost of £19,273.2 (more below). Each telecoms business operating in the UK would need to familiarise themselves with the SI. For this reason, an employee in each telecoms business operating in the UK will need to spend one hour in order to read this SI. We have calculated the familiarisation cost by multiplying £21.90, the average hourly pay for a telecoms professional², by 8,450, the number of telecoms businesses operating in the UK³ and 1 (as one hour will be required to the SI). This cost has subsequently been translated to 2016 prices by using the BIT Impact Assessment Calculator. We expect this a high estimation, only a small subset of telecoms companies are involved in the active purchase and/or management of spectrum, and will therefore have a direct interest in this SI. The amendments made by this SI will not cause any significant impact to business. This is because the amendments are largely technical in nature, with the purpose of maintaining the status quo and removing the objective of Member State harmonisation from the UK regulatory framework; there should therefore be no practical effects.

² ONS (2017), ASHE survey. This is for the latest available year, which is 2015, however we expect the current average hourly pay to be aligned. Available online at:
<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/adhocs/006608annualsurveyofhoursandearningsashepublicandprivatesectorsplitby1to4digitsocode>

³ ONS (2017), UK business: activity, size and location. Available online at:
<https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/datasets/ukbusinessactivitysizeandlocation>