EXPLANATORY MEMORANDUM TO

THE AUTHORISATION OF FREQUENCY USE FOR THE PROVISION OF MOBILE SATELLITE SERVICES (EUROPEAN UNION) REGULATIONS 2010

2010 No. 672

1. This explanatory memorandum has been prepared by the Department for Business, Innovation & Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

These Regulations implement the requirements of Decision 626/2008/EC of the European Parliament and the Council of 30 June 2008 ("the EU Decision"), on the authorisation of selected applicants to use radio spectrum within the 2GHz band for the operation of mobile satellite services in the European Union. The Regulations also implement the requirements of Decision 2009/449/EC of the Commission of 13 May 2009 ("the Commission Decision), which confirms the two selected applicants of mobile satellite services.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 In regulation 3(2) we have copied out the allocation of spectrum which were granted to the 2 selected applicants. Although it appears that these overlap, each company is required to ensure that there is a reasonable gap of spectrum between the frequencies that they use so as to avoid interference. Those frequencies which appear to be shared (1995MHz and 2185MHz), will be kept clear of communications.

3.2 The EU Decision requires that the authorisations shall be granted for a period of 18 years from the date the Commission Decision came into force, namely 14th May 2009 when the Commission Decision was formally notified to the UK Government.

4. Legislative Context

4.1 The purpose of Decision 626/2008/EC is to facilitate the development of a competitive internal market for mobile satellite services (MSS) across the Community and to ensure gradual coverage in all Member States.

4.2 Article 7 of the EU Decision requires that Member States authorise the selected applicants, in accordance with the time frame and the service area to which the selected applicants have committed themselves, so that they have the right to use the specific radio frequencies identified in Decision 2007/98/EC and the right to operate MSS.

4.3 Article 8 of the EU Decision requires that Member States grant to selected applicants the authorisations necessary for the provision of complementary ground components (CGCs) of MSS on their territories. CGCs are ground-based stations used at fixed locations, in order to improve the availability of MSS in geographical areas within the footprint of the system's satellite(s). CGC is not a compulsory element of MSS, and it is a commercial decision by the selected applicants as to whether they wish to use CGC as part of their provision of MSS.

4.4 Article 9 of the EU Decision requires Member States to ensure monitoring of compliance with the conditions set out in article 7, and take appropriate measures to address non-compliance.

4.5 In order to fulfil the UK's obligations under Articles 7 and 9 of the EU Decision, these Regulations create a stand-alone authorisation scheme to authorise the use of the specified frequencies for the provision of mobile satellite services. The authorisations will be granted by the UK national spectrum regulatory authority, the Office of Communications (OFCOM). The Regulations also oblige Ofcom to monitor and enforce the selected applicants' use of the specified frequencies and their compliance with the conditions of their authorisation.

4.6 In respect of Article 8, the Regulations oblige Ofcom to exercise their powers under the Wireless Telegraphy Act 2006, in order to licence the use of CGCs by the MSS operators.

4.7 The Regulations ensure that any enforcement action taken by Ofcom is proportionate, effective and dissuasive. Ofcom will monitor the MSS operators' compliance with the conditions of their authorisations, and can impose penalties to address non-compliance. The selected applicants have the right to appeal against decisions taken by Ofcom to the Competition Appeal Tribunal and can also appeal against Tribunal decisions to the Court of Appeal or to the Court of Session.

4.8 The Regulations make it a criminal offence to use the specified frequencies in the Regulations for the provision of mobile satellite services, without an authorisation granted under the Regulations by Ofcom. This is parallel to the system established by the Wireless Telegraphy Act 2006.

4.9 The purpose of Decision 200 9/449/EC (the "Commission Decision") is to specify the two MSS operators selected under the procedures detailed in Decision 626/2008/EC, Inmarsat Ventures Ltd and Solaris Mobile Ltd. The Regulations specify that only these two operators can use frequency bands 1980 to 2010 MHz for earth to space communications, and band 2170 to 2200 MHz for space to earth communications, to provide MSS.

4.10 It should be noted that in September 2008, ICO Services Limited brought an action to the Court of First Instance ("CFI") of the European Communities seeking annulment of the EU Decision. More recently TerreStar Europe Limited and ICO Services Ltd have separately brought actions to the CFI, seeking the annulment of the Commission Decision. On 10 July 2009, the President of the CFI stated that he had decided not to grant interim measures to Terrestar but to hear the case under an expedited procedure. However, until such time as the Court has heard the case and, if appropriate, annulled the Decision, the UK remains under an obligation to implement the decision.

4.11 A Transposition Note has been prepared for this instrument and is attached to this memorandum at Annex 1.

4.12 BIS (formerly the Department of Trade and Industry (DTI) and the Department for Business, Enterprise and Regulatory Reform (BERR)) has previously submitted Explanatory Memoranda on the Decisions.

4.13 BERR submitted an explanatory memorandum (12413/07 COM(2007)480) on 8 October 2007 relating to a "Proposal for a Decision of the European Parliament and of the Council on the selection and authorisation of systems providing mobile satellite services (MSS)". The Commons European Scrutiny Committee considered it politically important and cleared it (Report 26, Session 07/08). The Lords Select Committee on the EU cleared it (Progress of Scrutiny 30/10/2007, Session 06/07).

4.14 DTI submitted an explanatory memorandum (9052/07+Addendum 1-3) on 10 May 2007 relating to a "Communication from the Commission to the Council and European Parliament -European Space Policy" and accompanying Commission Staff Working Documents – "Preliminary elements and Impact Assessment". The Commons European Scrutiny Committee considered it politically important and cleared it (Report 22, Item 28598, Session 06-07). The Lords Select Committee on the EU cleared it (Progress of Scrutiny, 27 July 2008, Report 12, Session 06-07).

4.15 DTI also submitted an explanatory memorandum (9758/05 + Addendum 1) on 20 June 2005 relating to a "Communication from the Commission to the Council, European Parliament, the European Economic & Social Committee - a European Information Society for Growth & Employment (i2010) and Commission Staff Working Paper" The Commons European Scrutiny Committee considered it politically important and for debate (Report 2, Item 26616, Session 05-06). The debate took place on 8 November 2005 in European Standing Committee 'C'. The Lords Select Committee on the EU lifted scrutiny by letter to the Minister dated 15 November 2005 (Progress of Scrutiny, 21 November 2005, Session 05/06).

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The EU Decision is designed to facilitate the development of a competitive internal market for MSS across the European Union. MSS has the potential to provide a wide range of pan-European services, such as telecommunications and broadcasting services and high speed internet access.

7.2 MSS can reach geographic areas not covered by other electronic communications services, in particular rural areas. Therefore, MSS could play an important role in bridging the digital divide by improving the accessibility, speed, and quality of electronic communication services in these areas. MSS could make a substantial contribution to achieving European Union objectives, such as expansion of geographical coverage of broadband in line with the i2010 initiative. The provision of MSS could also contribute to the ambitions relating to the communications infrastructure set out by the UK Government in the Digital Britain White Paper.

7.3 The EU Decision is designed to harmonise the selection criteria for MSS operators and prevent Member States from choosing their own operators, so that the selection process results in availability of MSS across the whole of the European Union. By May 2011, the two selected MSS operators must provide services that cover a service area of at least 60 % of the aggregate land area of the Member States, from the time the provision of MSS commences. By May 2016, MSS shall be available in all Member States and to at least 50 % of the population and over at least 60 % of the aggregate land area of each Member State. Network investment and deployment costs are high for MSS, and the associated high technological and financial risks require an economy of scale for these systems in the form of pan-European geographic coverage, so that they remain economically viable.

7.4 The EU Decision requires that Member States authorise the selected applicants to use the specified frequencies, and carry out monitoring and enforcement action to ensure compliance with the authorisation conditions. Ofcom is responsible for the management of the radio spectrum in the UK, and usually exercises its powers to manage spectrum under the Wireless Telegraphy Act 2006 (WTA) and Communications Act 2003 (CA03). However, under the WTA, Ofcom does not have the necessary powers to authorise the use of frequencies

for the provision of MSS and take monitoring and enforcement action, as the WTA and CA03 only covers the regulation of terrestrial stations and apparatus within the territorial boundaries of the UK. The WTA and CA03 do not extend to the authorisation of use of frequencies to communicate with satellites, and Ofcom usually relies on the ITU Radio Regulations to authorise and regulate satellites' use of spectrum. The ITU Regulations cannot be used to implement these Decisions, as they do not extend to the selection or authorisation of applicants. Therefore, government considers it necessary to create these Regulations, to enable Ofcom to carry out its functions and give effect to the requirements in both Decisions.

8. Consultation outcome

No formal consultation was carried out by BIS on the MSS Decisions, as the Government is obliged to implement such EU Decisions, and the satellite authorisation scheme is free of charge to MSS operators. Ofcom carried out two public consultations on the voluntary authorisation of 2 GHz CGC operating as part of a Mobile Satellite Service and issued statements on 3 November 2008 and 17 July 2009. These statements indicate the type of authorisation that will be granted to the selected 2 GHz MSS operators if they choose to request authorisation of CGC, the technical conditions of the authorisation and the level of fees to be applied.

9. Guidance

Guidance has not been issued because the obligations under the Regulations are placed upon Ofcom alone.

10. Impact

10.1 The impact of these Regulations on business, charities or voluntary bodies is negligible, as the authorisation scheme for the satellite component of MSS is free of charge to MSS operators.

10.2 The impact on the public sector would be one-off set up costs to Ofcom of the new satellite authorisation regime of up to £10,000. There will be a cost of £5,000 a year to Ofcom for routine monitoring costs of the MSS operator's performance. If enforcement action was required against a MSS operator, there would be costs to Ofcom of at least £40,000, which could rise substantially if prosecution action was needed.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

The legislation does not impact on small business, as it affects two large companies, Inmarsat Ventures Ltd and Solaris Mobile Ltd.

12. Monitoring & review

12.1 Ofcom will monitor compliance by selected applicants of the conditions of their MSS authorisations, and will provide the Commission with information on the results of the monitoring on an annual basis, but only where there has been a breach by any of the selected applicants of any of the conditions of their authorisation, or where OFCOM has taken enforcement action against any of the selected applicants.

12.2 A review of the MSS regulations will take place in 2013, after the MSS systems become operational.

13. Contact

Tracy Halsey at the Department for Business, Innovation and Skills (Tel: 020 7215 6451 or email: Tracy.Halsey@bis.gsi.gov.uk) can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Department of Business, Innovation	Title: Impact Assessment of The Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010	
Stage: Implementation	**Version:** 1.1	**Date: 22 January 2010**

Related Publications: Ofcom statement on the licensing of 2 GHz MSS Complementary Ground Components (CGC) - http://www.Ofcom.org.uk/consult/condocs/cgcs2/statement/2ghzstatement.pdf
Authorisation of terrestrial mobile networks complementary to 2 GHz mobile satellite systems - A statement and second consultation http://www.Ofcom.org.uk/consult/condocs/cgcs2/
Ofcom consultation on the Authorisation of terrestrial mobile networks complementary to 2 GHz mobile satellite systems - http://www.Ofcom.org.uk/consult/condocs/cgcs/cgcs.pdf

Available to view or download at: http://www.bis.gov.uk

Contact for enquiries: Tracy Halsey **Telephone:** 020 7215 6451

What is the problem under consideration? Why is government intervention necessary?

The current regulatory framework for spectrum used by satellite may be hampering the creation of a better functioning internal market for electronic communication services provided by satellite and the greater geographical coverage that such services can provide across the EU. This may serve to reduce the economic benefits which could be generated (e.g. increased economic efficiencies associated with the exploitation of greater economies of scale arising from the harmonisation of spectrum management across the EU, increased investment, innovation and geographical coverage of mobile satellite services as well as stronger competition and greater consumer choice.) As a result, the EC and EU have passed a number of Decisions which aim to bring about a more effective and coherent use of radio spectrum used by satellite in the 2GHz band and thereby a better functioning internal market for electronic communications services. These Decisions, which Member States including the UK are required to implement, include:

- Decision 626/2008/EC on the selection and authorisation of systems providing mobile satellite services (MSS)
- Decision 2009/449/EC on the selection of operators of pan-European systems providing mobile satellite services (MSS)

What are the policy objectives and the intended effects?

Under European law, Government is obliged to implement the Decisions. The proposal is to do so, predominantly, by:

- providing Ofcom with powers and requiring it to use these powers to authorise the selected applicants to use the specified frequencies in the 2GHz band for the provision of MSS; and
- requiring Ofcom to use its existing powers under the Wireless Telegraphy Act 2006 and the Communications Act 2003 to authorise Complementary Ground Components (CGC) and terminals in order to give effect to the Decisions.

The Decisions select two MSS operators, who have made commitments to provide a range of services across the European Union to the benefit of European consumers and citizens that were unlikely to have been provided commercially without the regulatory certainty that these Decisions provided.

What policy options have been considered? Please justify any preferred option.

The option of "do nothing" would not comply with the UK's obligation under European law, since Ofcom does not currently have powers to authorise the use of the specified frequencies for the provision of MSS and would therefore be unable to impose the conditions on the MSS operators as required by the Decisions.

The preferred option is to introduce legislation, so that the UK can give effect to the Decisions, and allow and require Ofcom to authorise the use of the specified frequencies for the provision of MSS, and CGCs. As this has been agreed at EU level, this is the option that is being taken forward.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Three to four years after the legislation comes into effect. An evaluation of the MSS Regulations will take place in 2013

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

Stephen Timms ..... Date: 8th March 2010

Summary: Analysis & Evidence

Policy Option:	Description:

COSTS

ANNUAL COSTS	
One-off	**Yr**
£ 10,000	1
Average Annual Cost (excluding one-off)	
£ 5,000	10

Description and scale of **key monetised costs** by 'main affected groups' There would be one off set up costs to Ofcom of the new MSS frequency authorisation regime of up to £10,000. There will be a cost of £5,000 a year to Ofcom for routine monitoring and enforcement costs of the MSS operator's compliance with conditions associated with the selection process.

Total Cost (PV) **£ 53,000**

Other **key non-monetised costs** by 'main affected groups'
The frequency authorisation will be provided free of charge to selected MSS operators. For a voluntary CGC authorisation, existing Ofcom licensing regime would include fees for the use of a CGC. The fee charged by Ofcom for CGC licensing, and on which it consulted, would be £554,000 per 2x1 MHz. If enforcement action was required against a MSS operator, there would be costs to Ofcom of at least £40,000, which could rise substantially if prosecution action was needed.

BENEFITS

ANNUAL BENEFITS	
One-off	**Yr**
£ Unquantifiable	
Average Annual Benefit (excluding one-off)	
£ Unquantifiable	

Description and scale of **key monetised benefits** by 'main affected groups'

The types of benefits associated with these proposals are extremely difficult to measure and have not been quantified in this impact assessment.

Total Benefit (PV) **£ Unquantifiable**

Other **key non-monetised benefits** by 'main affected groups' Benefits arising from the more effective and coherent use of the 2 GHz radio spectrum for satellites and better functioning internal market for electronic communication services including mobile phone services (e.g. increased economic efficiencies, increased investment and innovation in mobile services, greater competition and consumer choice). These economic benefits have the potential to be significant.

Key Assumptions/Sensitivities/Risks The potential economic benefits to UK citizens and consumers could be reduced if the MSS operators are unable to meet their obligations under the EU Decision and selection and authorisation process. If MSS operators choose to take out a CGC licence the potential benefits may be increased.

Price Base Year 2010	Time Period Years 10	**Net Benefit Range** (NPV) **£ Unquantifiable**	**NET BENEFIT** (NPV Best estimate) **£ Unquantifiable**

What is the geographic coverage of the policy/option?	UK-wide
On what date will the policy be implemented?	31 March 2010
Which organisation(s) will enforce the policy?	Ofcom
What is the total annual cost of enforcement for these	£5,300

Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU			No	
What is the value of the proposed offsetting measure per			£ 0	
What is the value of changes in greenhouse gas			£ 0	
Will the proposal have a significant impact on competition?			Yes	
Annual cost (£-£) per organisation (excluding one-off)	Micro Unquantifiable	Small Unquantifiable	Medium Unquantifiable	Large Unquantifiable
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase -

Increase of	£ Unquantifiable	Decrease of	£ 0	**Net Impact**	**£** Unquantifiable

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Introduction

In December 2004, the Council concluded that effective and coherent use of radio spectrum is essential for the development of electronic communications services and contributes to stimulating growth, competitiveness and employment. Access to spectrum must be eased to improve efficiency and promote innovation as well as greater flexibility for users and more choice for consumers.

The introduction of new systems providing mobile satellite services (MSS) will contribute to the development of the internal market and enhance competition by increasing the availability of pan-European services, as well as encouraging efficient investment. MSS constitute an innovative alternative platform for various types of pan-European telecommunications and broadcasting services, Internet access and mobile multimedia services. MSS could, in particular, improve coverage of rural areas in the EU, thus bridging the digital divide in terms of geography, strengthening cultural diversity and media pluralism and simultaneously contributing to the competitiveness of European information and communication technology industries. MSS could also make a substantial contribution to achieving European Union objectives, such as expansion of geographical coverage of broadband in line with the i2010 initiative.

The provision of MSS could also contribute to the ambitions relating to the communications infrastructure set out by the UK Government in the Digital Britain White Paper. In particular, MSS could address deficiencies in coverage in rural areas in the UK, which may have the potential to deliver significant benefits to consumers and businesses as well as the wider economy and society.

In Europe, harmonisation efforts regarding the provision of MSS have resulted in the adoption of three Decisions by the European Commission and the European Parliament and Council. These Decisions refer specifically to the operation of MSS and CGC in the frequency bands 1980 – 2010 MHz and 2170 – 2200 MHz (the 2 GHz spectrum). The first Decision in 2007 was Commission Decision (by the Radio Spectrum Committee) RSC)) 2007/98/EC (First Commission Decision), that harmonised use of radio spectrum in the 2 GHz spectrum for the implementation of systems providing MSS, and includes harmonisation provisions for the 2 GHz spectrum for terrestrial mobile networks known as Complementary Ground Components (CGC).

Technical studies, prior to these Decisions, concluded that sharing between terrestrial mobile services and MSS is only possible when both are under the control of the same frequency management system. Some MSS operators indicated a wish to deploy such terrestrial networks, utilising the same frequency bands as assigned to the MSS system. A CGC system will likely resemble a 2 GHz terrestrial mobile system utilising a number of base stations to provide connectivity within major urban areas as well as areas with lower population density. A CGC system is not a

compulsory element of MSS, and it is a commercial decision by the selected applicants as to whether they wish to use CGC as part of their provision of MSS.

The First Commission Decision was followed by Decision 626/2008/EC (the EU Decision), an EU Decision adopted jointly by the European Parliament and the Council on the selection and authorisation of systems providing MSS that set out details of an EC administered selection and authorisation process. The EU Decision was designed to harmonise the selection criteria for MSS operators in the EU. Network investment and deployment costs are high for MSS, and the associated high technological and financial risks require economies of scale for these systems in the form of pan-European geographic coverage, so that they remain economically viable. An EU harmonised selection process therefore provided the regulatory certainty that the MSS operators required to invest in such systems.

Commission Decision 2009/449/EC (the Commission Decision), was published in the Official Journal on 12 June 2009. In conjunction with the EU Decision, the Commission Decision requires that Member States grant the selected MSS operators – Inmarsat Ventures Ltd and Solaris Mobile Ltd – an authorisation to provide MSS for Member States' territory, with the terms and conditions of such authorisations to be determined by national and community law, in particular the EU Decision. By 12 May 2011, the two selected MSS operators must provide services that cover a service area of at least 60% of the aggregate land area of the Member States, from the time the provision of MSS commences. By May 2016, MSS shall be available in all Member States and to at least 50% of the population and over at least 60% of the aggregate land area of each Member State.

Under the EU Decision, there are a number of "common conditions", detailed separately for the satellite component and CGC, that Member States are required to include in the relevant authorisation for the selected applicants. The Regulations, in the UK, that implement the Decisions will require that Ofcom monitors and enforces these conditions. The monitoring and enforcement regime will also ensure efficient use of the spectrum, as the selected applicants are obliged to roll out the use of the spectrum for MSS by 12 May 2011. In addition, whilst the EU Decision requires that Member States make available the spectrum for use by the satellite component, the CGC is a voluntary element to the MSS and must be authorised but only on request by the selected MSS operators.

It should be noted that in September 2008, ICO Services Limited brought an action to the Court of First Instance ("CFI") of the European Communities seeking annulment of the EU Decision. More recently TerreStar Europe Limited and ICO Services Ltd have separately brought actions to the CFI, seeking the annulment of the EC Selection Decision. On 10 July 2009, the President of the CFI stated that he had decided not to grant interim measures to Terrestar but to hear the case under an expedited procedure. However, until such time as the Court has heard the case and, if appropriate, annulled the Decision, the UK remains under an obligation to implement the Decision.

Rationale for Government Intervention

The current regulatory framework for spectrum used by satellites may be preventing progress towards the creation of a better functioning internal market for electronic communication services including mobile phone services and limiting geographical coverage of these services across the EU. This may serve to reduce the maximum economic benefits that could be achieved to UK citizens and consumers as well as

operators of mobile satellite services. Potential economic benefits foregone could include:

- Increased economic efficiencies associated with the exploitation of greater economies of scale arising from the further harmonisation of spectrum management across the EU

- Increased investment and innovation in mobile services, including multimedia and phone services

- Improved quality and geographical coverage of mobile services, particularly in more rural and less developed regions of the UK

- Increased competition and consumer choice in terms of the range of new innovative mobile services available.

Implementing the Decisions in the UK should aim to bring about a more effective and coherent use of radio spectrum and accordingly greater and swifter progress towards the creation of a well functioning internal market for electronic communication services including mobile phone services in the EU.

Proposal

This Impact Assessment relates to the proposal to make new Regulations in order to comply with the EU and EC Decisions. The Regulations will apply to all of the United Kingdom. The Regulations will:

- make the use of the 2GHz spectrum an offence for the provision of mobile satellite services, except under and in accordance with an authorisation granted under the Regulations by Ofcom;
- provide Ofcom with the power to grant an authorisation for the use of this spectrum in the UK;
- require Ofcom to exercise these powers to authorise the satellite communication component in accordance with the EC and EU Decisions;
- require Ofcom to monitor the compliance of the selected MSS operators against the common conditions required by the EU Decision and also provide them with powers to enforce these conditions; and
- require Ofcom when granting an authorisation for the CGC (upon request) to exercise their existing powers under the Wireless Telegraphy Act 2006 and Communications Act 2003 in accordance with the EU Decision.

In general the above, in particular the monitoring and enforcement requirement (assuming compliance by the operators), is expected to generate minimal additional work for Ofcom. However in the event of a breach of the common conditions it is expected that any enforcement is likely to require a harmonised European approach and would therefore require additional effort and travel and subsistence costs, as indicated in the cost benefit analysis.

Unauthorised use of the 2 GHz frequencies

Under the MSS Regulations, the use of the frequencies for the provision of MSS is an offence, except under a MSS authorisation granted under the MSS Regulations by Ofcom. A person who uses the 2GHz MSS frequencies unlawfully is liable on

conviction on indictment to an unlimited fine, and on summary conviction to a maximum fine of £5000.

Actions/penalties against operators who breach the conditions of an MSS authorisation

If Ofcom determines that there are reasonable grounds for believing that a selected applicant is contravening, or has contravened a condition under its MSS authorisation they may give the selected applicant a notification. The notification specifies the period during which the selected applicant has an opportunity to either; make representations about the matters notified, comply with the notified conditions of the mobile satellite system authorisation or the requirements, or remedy the consequences of the notified contraventions. Ofcom usually gives one month for the selected applicant to respond to the notification, although this period can be shorter if agreed between Ofcom and the selected applicant. The only time a shorter period may be specified without agreement is if the contravention: is a repeated contravention; or that the case is urgent ie a serious threat to the safety of the public, to public health or to national security; or would cause serious economic or operational problems for persons other than the selected applicant.

Ofcom may impose a financial penalty on the notified person if Ofcom is satisfied that the notified person has been in breach of a condition of their MSS authorisation and that they have not, during the period allowed, taken such steps as Ofcom considers appropriate for complying with that condition or provision; and for remedying the consequences of the notified contravention of condition or requirement. A penalty under this regulation must be paid to Ofcom and if not paid within the period fixed by them, is to be recoverable by them accordingly. The amount of a penalty imposed is an amount not exceeding ten percent of the turnover of the notified person's relevant business for the relevant period. The turnover of a notified person shall be calculated in conformity with accounting practices and principles which are generally accepted in the UK.

The notified person has the right to appeal against decisions by Ofcom to the Competition Appeal Tribunal, and can also appeal against Tribunal decisions at the Court of Appeal or to the Court of Session.

The citizen and/or consumer interest

As a Member State, the UK is bound by the terms of the Decisions. However in addition:

- the measures proposed will bring the 2 GHz band into operation and permit the provision of a range of additional services; and
- the measures proposed will make it more likely that these services are introduced as a result of the monitoring and enforcement requirements of the EU Decision.

Options considered

The options open to BIS in relation to the implementation of the Decision are as follows:

Option 1: Do nothing – i.e. not implement the Decisions

Option 2: Implement the Decisions (preferred option)

Option 1: Do nothing

If the UK were to do nothing – i.e. not implement the Decisions – then it would be in breach of the requirements of the Decisions. As a result, it could be open to infraction proceedings initiated by the European Commission and would run the risk of being fined.

Even if the UK did not implement the EC and EU Decisions, consumers and citizens would still gain over time from the development of new services provided over MSS and CGC systems, as a result of the harmonised selection process. This is because Ofcom already has powers to authorise the CGC under the Wireless Telegraphy Act whilst the use of the specified frequencies for the provision of MSS requires no specific authorisation to provide services to the UK. The authorisation provided under the MSS Regulations being required primarily to attach the common conditions of the EU Decision to the MSS operators.

Benefits that consumers and citizens would gain without these Regulations would include:

a) greater likelihood that the services that the MSS operators committed to provide would be made available to UK citizens and consumers;

b) increased capacity, as previously unused spectrum will be utilised for providing services to UK citizens and consumers;

c) greater diversity and choice of MSS broadcasting and data services to UK citizens and consumers; and

d) potential improved coverage of MSS broadcasting and data services in more rural and less developed areas of the UK as well in building coverage in more urban parts of the country

However, it is likely that the total potential economic benefits generated under this option will be lower than the level achievable if the UK implemented the Decisions and would be delivered later.

Consumers and citizens would gain some benefit from the development of new services provided over the MSS and CGC systems, as it is possible that some operators would have entered this market without the Decisions being in place. However, consumers and citizens will benefit further when the Decisions are implemented, as the Regulations give MSS operators certainty of unhindered access to the spectrum for the future, and the confidence to invest in their systems and roll out of services to UK consumers.

Option 2: Implement the EU's Decision (Preferred Option)

Under this option, the UK would implement the EU's Decision. As this has been agreed at EU level, this is the option that is being taken forward.

The most efficient route in the light of mandatory compliance is to make Regulations that enact the Decisions as closely as possible.

As set out earlier the authorisation of the MSS operator will put the 2 GHz spectrum into use and permit the introduction of a range of new services, potentially competing in the wider terrestrial mobile services market.

Under this option, the UK Government would:

a) provide Ofcom with the necessary powers it needs to authorise the use of the specified frequencies for the provision of MSS and impose the conditions required by the EU Decision;
b) require Ofcom to use these powers in accordance with the Decisions; and
c) require Ofcom to exercise their existing powers under the WT Act to authorise the CGC base stations and satellite and CGC handsets, incorporating the conditions required by the EU Decision.

Full compliance with European Community law would bring the 2GHz band into operation and authorise the selected operators to provide satellite and CGC services in the UK. This is expected to deliver the benefits outlined under the "Do Nothing" option above, however they are expected to be of a larger scale and be delivered earlier under full compliance.

These benefits are expected to be greater if MSS operators also take up and use CGC.

According to the 2006 report by Europe Economics, the *Economic impact of the use of radio spectrum in the UK*[1], business activity that is largely dependent on the radio spectrum contributed £37bn, or 3%, to the UK's GDP in 2005/6. This means that users who are largely dependent on spectrum accounted for nearly one pound in every thirty generated by the UK economy. The report also indicated an estimated economic benefit arising from the use of the radio spectrum of £42 billion in 2005/6, based on calculations of consumer and producer surplus. This compares with an estimated benefit of £28 billion in 2002 (result expressed in 2006 prices).

The costs of the preferred option are:

a) minimal costs to Ofcom with regard to the licensing of CGC, as this will be treated as 'business as usual';
b) one-off set-up costs of the new MSS frequency authorisation regime to Ofcom of up to £10,000. Thereafter, the authorisation of the frequency element will be treated as 'business as usual';
c) Routine monitoring costs of the MSS operators' performance to Ofcom of approximately £5,000 pa; and
d) Should enforcement action be required against an MSS operator, there would be costs to Ofcom of at least £40,000, which could rise substantially should prosecution action need to be taken by Ofcom and the Commission.

A CGC licence is a voluntary cost, as it is a commercial decision for the MSS operators as to whether they require CGC as part of their MSS system. Should the MSS operators require a CGC licence, Ofcom will charge a fee at £554,000 per 2 x 1 MHz level, the fee ultimately being passed to HM Treasury. The fee has been calculated on the basis of Administered Incentive Pricing (AIP) policy, and the impact

1 http://www.Ofcom.org.uk/research/radiocomms/reports/economic_spectrum_use/economic_impact.pdf

of the CGC fee level is directly related to the amount of spectrum that the MSS operator requests. Since the fee constitutes a transfer from the MSS operator to Government and is voluntary, this cost is not included in the cost-benefit analysis at the start of this IA. An assessment of CGC fees was undertaken in the CGC authorisation.[2]

There may be benefits to the citizen and consumer should the MSS operators decide to use CGC as part of their system, as the amount and diversity of services will increase owing to the extra capacity of CGC but only in so far as demand exists for such services.

It should also be noted that the licence fee for CGC would be charged for MSS operators who requested a CGC licence, even if the Decisions were not implemented. As a terrestrial mobile network, CGC requires a WT Act Licence, for which WT Act fees are charged by Ofcom. Ofcom's pricing policy would require the same fee to be charged regardless of whether the use of the frequencies for the provision of MSS was explicitly authorised under the Regulations.

Monitoring, evaluation and enforcement

The EU Decision states that the selected operators are to be responsible for compliance with any conditions attached to their authorisations. Member States are to ensure that rules on enforcement, including rules on penalties applicable in the event of breaches of the common conditions in the EU Decision are in accordance with Community law, and that penalties are therefore effective, proportionate and dissuasive. Member States are to ensure monitoring of compliance with the common conditions and take appropriate measures to address non-compliance. Member States shall also inform the Commission of the results of such monitoring on an annual basis, in the event that any common conditions have not been complied with and in the event that any enforcement measures have been taken.

Ofcom will monitor compliance by selected applicants of the conditions of their MSS authorisations, and will provide the Commission with information on the results of the monitoring of the common conditions on an annual basis, but only where there has been a breach by any of the selected applicants of any of the conditions, or where Ofcom has taken enforcement action against any of the selected applicants. Ofcom can require any selected applicant to provide them with all such information as they consider necessary for the purpose of carrying out their functions for monitoring purposes.

Ofcom will carry out these regulatory activities in accordance with the Hampton principles: in a way that is transparent (within the bounds of commercial confidentiality), accountable, proportionate, consistent and targeted only at cases in which action is needed.

An evaluation of the MSS Regulations will take place in 2013, after the MSS systems are required to become operational. The Department for Business, Innovation and Skills will carry out the evaluation.

Ofcom will monitor compliance by selected applicants of the conditions of their MSS frequency authorisations. Ofcom would incur a one-off cost to set-up the new authorisation regime, expected to be in the region of up to £10,000. If enforcement

[2] http://www.ofcom.org.uk/consult/condocs/cgcs2/statement/2ghzstatement.pdf

action was required against a MSS operator, there would be costs to Ofcom of at least £40,000, which could rise substantially if prosecution action was needed.

Administrative burdens

There may be some administrative costs to the 2 operators, if they are required to provide information to enable Ofcom to monitor compliance. These costs have not been quantified in this Impact Assessment.

Specific Impact Tests

Competition Assessment

MSS and CGC operators are likely to offer a range of services that might include mobile phone, multimedia, data or broadcasting services. The impacts of the two MSS operators offering mobile phone services are given below as an example of the potential competition effects.

The mobile telephony sector is competitive at both the wholesale and retail level. In this sector there are five national mobile access networks. Strong competition exists between the various Mobile Network Operators (MNOs).

Within this sector there is relatively high competition at the retail level. It is expected that these proposals would have a pro-competitive effect by allowing an increase in the number of services in the retail market. The introduction of new mobile phone services offered by Mobile Satellite Services would give consumers more choice and therefore all firms would have to offer more competitive services to attract consumers.

It is possible that the pro-competitive effect may be dampened because the services offered by mobile satellite services may not offer a good substitute to the services already available in the market. It is likely that the new services offered would be more expensive than those that already exist, and may offer a lower quality service, largely because of the issue of latency, which could potentially be greater with MSS than the services it will be competing against. In some areas, such as rural areas, which currently receive limited services, the services offered by mobile satellite services may be a better substitute, and therefore increase competition to a greater degree, than in areas that currently receive numerous, high quality services.

Mobile multimedia, data and broadcasting services markets are relatively new and demand for these services is therefore uncertain. However, it is not unreasonable to suggest that the introduction of new applications and innovative services such as these offered via MSS and CGC networks may result in further enhanced competition for new and emerging services.

Small Firms

After initial screening as to the potential impact of these regulations on small firms, it has been decided that there will not be a major impact upon this group. The proposals affect two large companies, Inmarsat Ventures Ltd and Solaris Mobile Ltd.

Legal Aid

After initial screening it has been decided that these proposals are unlikely to have a major impact on the workload of the courts or legal aid costs.

Race Equality / Disability Equality / Gender Equality

After initial screening as to the potential impact of this regulation on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both.

Human Rights

After initial screening it has been decided that these proposals are unlikely to have a major impact on human rights.

Rural Proofing

One of the objectives of the EU Decision was that the provision of MSS could have a positive impact on the availability of electronic communications services to rural areas, as MSS provided over satellite can generally reach geographic areas not well covered by other electronic communications services. If MSS coverage incorporates significant proportions of the rural areas of UK, then UK consumers and citizens should be able to access information much more easily and quickly than before. This will be a particular benefit for citizens and consumers who have not been previously able to experience mobile services. It may also improve the availability of entertainment services such as mobile TV, including movies, and through MSS, consumers in rural areas could have a similar range of services as consumers in more urban areas.

The coverage and range of services provided by MSS will be driven by the location of the MSS satellite on the orbital arc and the size and power of the antennae installed on the MSS satellite, as well as whether CGC will be used to enhance services.

As CGC will require additional investment to that required for the mandatory MSS satellite and this investment will likely be similar to that required by existing terrestrial mobile networks, it is unlikely that CGC will be deployed beyond the current deployment of mobile networks. This is because as the population density falls, the cost of rolling-out terrestrial networks per potential subscriber rises and thus revenues would be expected to fall and therefore reduce the return on investment in some rural areas.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

The 2 GHZ Frequency Band (Authorisation of Systems Providing Mobile Satellite Services) (European Union) Regulations 2010

Transposition Notes

European Parliament and Council Decision 626/2008/EC of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services and Commission Decision 2009/449/EC of 13 May 2009 on the selection of operators of pan-European systems providing mobile satellite services
The purpose of the European Parliament and Council Decision 626/2008/EC (the EU Decision) is to facilitate the development of a competitive internal market for mobile satellite services (MSS) across the Community and to ensure gradual coverage in all Member States. It creates a Community procedure for the common selection of operators that use the 2GHz frequency band, as well as laying down provisions for the coordinated authorisation by Member States of the selected operators to use the assigned radio spectrum within this band for the operation of mobile satellite systems. Commission Decision 2009/449/EC (the Commission Decision) (i) identifies Inmarsat Ventures Limited and Solaris Mobile Limited as the "selected applicants", as a result of the first selection phase of the comparative selection procedure provided in Title II of the EU Decision, (ii) provides the reasons on which the decision is based; and (iii) specifies the frequencies which each selected applicant is to be authorised to use in each Member State. Under Article 7 of the EU Decision, Member States are required to ensure that the selected applicants have the right to use the specific radio frequency identified in the Commission Decision and the right to operate a mobile satellite system (as defined in Article 2(2)(a) of the EU Decision), subject to the common conditions specified in paragraph 2 of that Article. Under Article 8 of the EU Decision, Member States are required to ensure that their competent authorities grant to the selected applicants the authorisations necessary for the provision of complementary ground components (as defined in Article 2(2)(b) of the EU Decision) of mobile satellite systems on their territories. Article 3 of the Commission Decision specifies the frequencies which each of the selected applicants, Inmarsat Ventures Limited and Solaris Mobile Limited shall be authorised to use in each Member State. The Office of Telecommunications (OFCOM) is responsible for the management of the radio spectrum in the UK. Their powers and duties for the management of radio spectrum are set out in the Communications Act 2003 and the Wireless Telegraphy Act 2006. At present, no licensing system exists in the UK in relation to the use of the frequency bands specified in the EU Decision to transmit from the UK to a space station or from a space station to the UK. Accordingly, so as to give effect to the requirements in Article 7 of the EU Decision in respect of the selected applicants identified in the Commission Decision, the creation of a UK wide authorisation regime, managed by OFCOM, for the use of these frequencies (to transmit from the UK to a space station or from a space station to the UK) is necessary. Accordingly, so as to give effect to the requirements in Article 7 of the EU Decision, the Regulations create a new authorisation regime for that purpose. A person commits an offence if he uses the frequencies

set out in the Regulations for the purposes of providing mobile satellite services without an authorisation under the Regulations from OFCOM. OFCOM must grant authorisations to the two selected applicants (as specified in the Commission Decision) subject to the conditions specified in that Article and the Annex to the EU Decision.

However, OFCOM already has the necessary powers to give effect to the requirements of Article 8 of the EU Decision, in relation to authorisation of the complementary ground components of mobile satellite system. Therefore, the Regulations implement the requirement of this Article of the EU Decision by imposing a duty on 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.

This table has been prepared by the Department for Business, Innovation and Skills.

EUROPEAN PARLIAMENT AND COUNCIL DECISION 626/2008/EC

1.	Sets out the objective and scope	No implementation required.
2(2)(a) and (b)	Sets outs definitions of "mobile satellite systems" and "complementary ground components"	Regulation 1(2) reproduces the definitions with certain modifications so as to make them consistent with domestic law.
3 to 6	These articles set out a Community-wide comparative selection procedure for the selection of operators of mobile satellite systems.	No implementation required. The resolution of such selection procedure resulted in the Commission Decision, which identified Inmarsat Ventures Limited and Solaris Mobile Limited as the "selected applicants".
7(1) and (2)	Sets out requirements on Member States to ensure that the selected applicants have the right to use the specific radio frequency identified in the Commission Decision and the right to operate a mobile satellite system (as defined in Article 2(2)(a) of the EU Decision), subject to the common conditions specified in paragraph 2 (a) to (e)	Regulation 2 makes it an offence to use the frequencies set out in regulation 3 for the provision of mobile satellite services except under or in accordance with an authorisation granted under regulation 3. Regulation 3 places an obligation on OFCOM to grant authorisations to the two selected applicants specified in the Commission Decision for the use of the frequencies set out for each of them in Article 3 of the Commission Decision. Regulation 4 sets out the conditions under which the authorisations to the selected applicants shall be granted, which reproduce the conditions set out in paragraphs 2(a) to (e) of Article 7 of the EU Decision.
7(3)	Allows Member States to grant authorisations for the use of the frequencies specified in Article 1(1)	No implementation is required, because there is no remaining service area in the UK in respect of which additional rights of use could be granted.

	of the EU Decision, to the extent that they remain outside the service area to which the selected applicants have committed themselves.	
7(4)	Allows Member States to impose objectively justified non-discriminatory, proportionate and transparent obligations to ensure communications between emergency services and authorities during major disasters.	Regulation 4(3) implements this provision.
8	Requires Member States to ensure that their competent authorities grant to the selected applicants, the authorisations necessary for the provision of complementary ground components (as defined in Article 2(2) (b) of the EU Decision) of mobile satellite systems on their territories.	Regulation 13 places a duty on 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 insofar as they have not been given effect by the Regulations. This includes the requirements of article 8, since OFCOM already have sufficient powers under the Wireless Telegraphy Act to give effect to these requirements.
9 (1)	Confirms that selected operators shall comply with any conditions attached to their authorisations and pay any fees specified by Member States.	No implementation required. Regulation 4(5) provides that the authorisation to be granted to the selected applicants under the Regulations shall be free of charge.
9(2) First indent	Requires Member States to ensure that rules of enforcement, include ng rules on penalties for breaches of the common conditions specified in the authorisations shall be effective, proportionate and dissuasive and in accordance with Community law, in particular Article 10 of Directive 2002/20/EC	Regulations 6, 7, 8, 9 and 10 sets out the enforcement provisions in respect of contraventions of conditions of authorisations granted by OFCOM pursuant to regulation 3 of the Regulations. Regulation 6 provides for a notification procedure, regulation 7 gives OFCOM a power to impose a penalty to a selected applicant who is in contravention of his authorisation, regulation 8 specifies the amount of penalty which may be imposed by OFCOM, regulation 9 sets out the mechanism for the calculation of the turnover of the selected applicant's relevant business for the purposes of calculation of the penalties, and regulations 10 to 12 set out the appeal mechanisms against decisions by OFCOM under regulations 3 to 12.

9(2) Second indent	Requires Member States to set up mechanism to monitor compliance with the common conditions, and to provide reports to the Commission on the results of such monitoring.	Regulation 5 gives effect to this requirement by imposing on OFCOM certain monitoring, reporting and information requirements.

COMISSION DECISION 2009/449/EC

1.	Specifies the applicants which have been declared non-eligible under the comparative selection procedure for the selection of operators of mobile satellite systems under Title II of the EU Decision.	No implementation required.
2.	Confirms that Inmarsat Ventures Limited and Solaris Mobile Limited have been declared eligible applicants under the comparative selection procedure for the selection of operators of mobile satellite systems under Title II of the EU Decision.	Regulation 1 defines “selected applicants” and regulation 3 identifies the two selected companies and refers to the relevant article of the Commission Decision
3.	This article specifies the frequencies which each selected applicant is to be authorised to use, in each Member State.	Regulation 3(2) gives effect to this provision by specifying the frequencies which each selected applicant will be authorised to use to transmit to and from the UK to and from a space station.