



Notice of proposals to make The Wireless Telegraphy (Control of Interference from Apparatus) Regulations 2015

Consultation

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Closing Date for Responses: 16 February 2015

About this document

This document sets out Ofcom's consultation on draft regulations for new wireless telegraphy legislation, intended to keep pace with technological advances to control interference.

Electrical and electronic apparatus are capable of emitting electromagnetic energy. In most cases, this is minimal and has no noticeable negative effects. However, in some cases the level of energy emitted from apparatus can cause interference to wireless communications.

Ofcom has powers to take enforcement action in instances where some types of electrical or electronic apparatus causes undue interference to wireless communications.

The proposed regulations are intended to be more resilient to technical developments.

The deadline for responses to this consultation is 16 February 2015.

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Section 1

Executive summary

- 1.1 This document consults on draft regulations to make the Wireless Telegraphy (Control of Interference from Apparatus) Regulations 2015 (the “Proposed Regulations”).
- 1.2 The Proposed Regulations will regulate the intensity of the electromagnetic energy at which electrical and electronic apparatus operates such that it does not cause undue interference to wireless telegraphy apparatus.
- 1.3 In summary, apparatus in use must operate in such a way that the maximum intensity of electromagnetic energy generated from that apparatus does not cause undue interference with wireless telegraphy apparatus.
- 1.4 In accordance with the requirements of section 122(4) and (5) of the Wireless Telegraphy Act 2006 (the “Act”), this document gives notice of our intention to make the Proposed Regulations. Comments on the Proposed Regulations are invited by 5pm on Monday 16 February 2015. Subject to consideration of responses, and to acceptance by the European Commission and other Member States of the Proposed Regulations¹, we intend to bring the new regulations into force within May 2015.
- 1.5 An impact assessment for the Proposed Regulations is available at Annex 5 to this document. The Proposed Regulations are included in this document at Annex 6. Further copies may be obtained from www.ofcom.org.uk or from Ofcom at Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

¹Notified in accordance with Directive 98/34 of the European Parliament and of the Council laying down a procedure for the provision of information in the file of technical standards and regulations (OJ No L204 21.7.1998, p.37) as amended by Directive 98/48/EC (OJ No L217 5.8.1998, p.18) (the “Technical Standards Directive”).

Section 2

Notice

Introduction

- 2.1 The Proposed Regulations would be made under section 54(1) of the Act. Section 54 allows Ofcom to make regulations prescribing the requirements to be complied with in respect of apparatus specified in the regulations, if the apparatus is to be used. The operation of the enforcement provisions under section 55 of the Act are dependent on secondary legislation made under section 54.
- 2.2 Before making any regulations we are required by section 122(4) of the Act to give notice of our proposal to do so. We must give that notice to those we think representative of the persons likely to be affected by the implementation of the proposal, and publish notice of our proposal in the way we think appropriate for bringing it to the attention of those persons who we think are likely to be affected by it. We have to consider any representations that are made to us about our proposal.
- 2.3 Under section 122(5), the notice must state that Ofcom propose to make the regulations in question, set out their general effect, specify an address from which a copy of the proposed regulations or order may be obtained, and specify a time before which any representations with respect to the proposal must be made to Ofcom. That time must be at least one month beginning with the day after that on which the notice is given or published.
- 2.4 This document gives notice of our proposal to make the Proposed Regulations. It is given to those we think representative of the persons likely to be affected by the Proposed Regulations, and published on Ofcom's website. Those who wish to do so have until 5pm on Monday 16 February 2015 to make representations on our proposal. This document sets out the general effect of the Proposed Regulations in particular in section 3. A copy of the Proposed Regulations is in Annex 6 of this document, and further copies may be obtained from www.ofcom.org.uk or from Ofcom at Riverside House, 2a Southwark Bridge Road, London SE1 9HA.
- 2.5 This consultation is about whether the Proposed Regulations correctly give effect to the policy proposals referred to in this document and to the other intentions set out in this document. We seek responses to this consultation in that respect.

Document structure

- 2.6 The document is structured as follows:
 - Section 3 sets out the general effects of the Proposed Regulations;
 - Annex 1 sets out the consultation question;
 - Annexes 2 to 4 provide information on our approach to consultation;
 - Annex 5 sets out an impact assessment of the options considered; and
 - Annex 6 has a copy of the Proposed Regulations.

Next steps

- 2.7 Following the publication of this consultation document, Ofcom invites feedback on whether the Proposed Regulations correctly give effect to the policy proposals and other intentions set out in this document. The deadline to submit responses to us is 5pm on Monday 16 February 2015. We expect to release a statement on this consultation by March 2015, having taken into account the stakeholder responses to our proposals and, subject to those responses, to bring into force the regulations within May 2015.

Section 3

Background

The Proposed Regulations

- 3.1 We propose to make regulations under section 54(1) of the Act prescribing a requirement which is imposed on the *use* of apparatus *after* it has already been placed on the market² or put into service³ and has reached the end-user. The Proposed Regulations are intended to address situations outside Directive 2004/108/EC (OJ No L390, 31.12.2004, p.27) (the “EMC Directive”) and Directive 1995/5/EC (the “RTTE Directive”) as illustrated below. This is explained in more detail in the following paragraphs.

Before		After
EMC and RTTE Directives (and implementing regimes)	Apparatus is placed on market and/or put into service and has reached the end-user	The Wireless Telegraphy (Control of Interference from Apparatus) Regulations 2015

- 3.2 The Proposed Regulations set out a requirement at Regulation 5 that applies to apparatus. That requirement relates to the intensity of the electromagnetic energy at which apparatus operates, for the purpose of ensuring that apparatus does not cause undue interference with wireless telegraphy. Where the use of apparatus does not meet that requirement Ofcom may serve on the person in possession of the apparatus a notice prohibiting its use, breach of which would be a criminal offence.
- 3.3 The definition of “apparatus” specifies a number of characteristics, all of which have to be satisfied for a device to constitute “apparatus”.⁴ It must:
- 3.3.1 Be a finished appliance or combination of appliances;
 - 3.3.2 Be liable to generate electromagnetic disturbance or to be affected by such disturbance; and
 - 3.3.3 Generate or be designed to generate, or is liable to generate fortuitously, electromagnetic energy at frequencies not exceeding 3,000 gigahertz.⁵

² “A product is placed on the market when it is made available for the first time on the Union market.” The “Blue Guide” on the Implementation of EU product rules 2014, p17.

³ “Putting into service takes place at the moment of first use within the [European] Union by the end user.” The “Blue Guide” on the Implementation of EU product rules, 2014, p.19.

⁴ Ofcom does not consider it necessary for the Proposed Regulations to apply to fixed installations.

Under the EMC Regulations, for as long as a fixed installation is in operation, the “responsible person” (defined in regulation 3 of the EMC Regulations) is under an obligation to demonstrate its compliance with the essential requirements (see Regulation 36 of the EMC Regulations) by having available appropriate documentation. The regulations in relation to apparatus are different, however as the end user of apparatus does not owe a similar obligation under the EMC Regulations to demonstrate compliance.

- 3.4 The general effect of the Proposed Regulations is described in more detail below. A draft of the Proposed Regulations is included in Annex 6 of this document.

Electromagnetic compatibility (EMC)

- 3.5 Electrical and electronic apparatus produces electromagnetic energy and can influence other apparatus, such as wireless telegraphy apparatus. The purpose of electromagnetic compatibility is to keep this side effect under reasonable control.
- 3.6 Electromagnetic compatibility is the engineering process which limits the natural electromagnetic fields produced by electrical equipment and enhancing immunity ensuring interoperability of equipment.
- 3.7 There are legal requirements about acceptable levels of electromagnetic disturbance.

The EMC legal requirements

Under European Union law

- 3.8 E.U. law, by way of the EMC Directive (which is harmonised legislation) aims to regulate the compatibility of apparatus regarding EMC. The EMC Directive sets requirements for apparatus which apply when it is placed on the market (or put into service) and to any subsequent making available until it reaches the end-user. These requirements effectively limit the electromagnetic emissions of apparatus in order to ensure that, when used as intended, such apparatus does not disturb radio and telecommunication as well as other apparatus. Once the apparatus has reached the end-user, it is no longer considered new apparatus and this harmonised legislation no longer applies⁶.
- 3.9 Used apparatus, which are on the E.U. market, are subject to free movement according to the principles laid down by Articles 34 and 36 of the Treaty rules on free movement of goods.

Under U.K. law

- 3.10 *Before* electrical and electronic apparatus can be placed on the market or put into service in the United Kingdom, it is required to comply with the Electromagnetic Compatibility Regulations 2006 (S.I. 2006 No. 3418) (the “EMC Regulations”) which implemented the EMC Directive.
- 3.11 The EMC Regulations aim to ensure that the electromagnetic disturbance generated by electronic apparatus does not exceed a level above which other apparatus (including radio and telecommunications apparatus) cannot operate as intended (and that the apparatus itself has an adequate level of immunity to electromagnetic disturbance).
- 3.12 The EMC Regulations set out a number of requirements (the “essential requirements”) with which apparatus must conform before it can be placed on the market or put into service in the U.K.

⁵ Section 54(5) of the Act provides apparatus which may be specified in regulations made under section 54(1) of the Act is “apparatus which generates, or is designed to generate, or is liable to generate fortuitously, electromagnetic energy at frequencies not exceeding 3,000 gigahertz.”

⁶ However this is without prejudice to the level of safety or other public interest protection that a product must offer in relation to the applicable EU harmonisation legislation at the time it was placed on the market. See the “Blue Guide” on the Implementation of EU product rules, 2014, p.19

- 3.13 The essential requirements define the results to be attained, but do not specify the detailed technical requirements. The appropriate technical solutions to meet the requirements are not imposed as long as the apparatus complies with the essential requirements. This mechanism of defining results to be attained, serves to facilitate technological progress as it allows scope for change, for example through updates in product design.
- 3.14 The essential requirements include that apparatus must:
- meet electromagnetic compatibility requirements, e.g. that it does not generate electromagnetic disturbances above the level which stops radio, telecommunications or other equipment operating as intended; and
 - that the apparatus itself has an adequate level of immunity to electromagnetic disturbance.
- 3.15 The Radio Equipment and Telecommunications Terminal Equipment Regulations 2000, S.I. 2000 No. 730, as amended, which implemented the Directive 1995/5/EC (the “RTTE Directive”), requires that equipment must meet the protection requirements of the EMC regulations including the essential requirements.
- 3.16 In short therefore, the above regime provides a set of rules across the European Union to ensure the levels of electromagnetic disturbance are regulated in relation to apparatus placed on the market or put into service and to any subsequent making available until the apparatus reaches the end-user. These rules are designed to secure the free movement of safe and compliant apparatus.
- 3.17 The intensity of the electromagnetic energy required under the Proposed Regulations is consistent with the maximum intensity of electromagnetic energy which was permissible at the time when the apparatus was made available on the market (or put into service). Therefore, the permissible maximum intensity under the Proposed Regulations do not go beyond the permissible intensity that would have been required under the Directives (and related implementing regimes) at the time the apparatus was put into service or made available on the market.
- 3.18 While the Proposed Regulations would apply to apparatus which prior to being placed on the market or being put into service, was covered by the EMC Directive or the RTTE Directive (and the implementing regimes), *at the point in time when the Proposed Regulations impact*, that apparatus would no longer be covered by these harmonised Directives. This is because the apparatus has already been placed on the market and/or put into service and reached the end-user.
- 3.19 The Proposed Regulations deal with situations outside the area covered by the EMC and RTTE Directives. This is because they will cover circumstances where electromagnetic disturbance is caused by apparatus which occurs after it has been made available and is in use by the end-user.

The Act

- 3.20 The Act regulates wireless telegraphy in the UK. Wireless telegraphy is defined in section 116 of the Act. It is the emitting or receiving, over paths that are not provided by any material substance constructed or arranged for the purpose (e.g. not via wires), of electromagnetic energy of a frequency not exceeding 3,000 gigahertz and which is used, for example, to convey messages, sound or visual images or for controlling machinery or determining the location of objects.

- 3.21 For example police, security and ambulance radios, and broadcast television are wireless telegraphy apparatus.
- 3.22 The Act gives Ofcom a number of functions relating to the management of the electromagnetic spectrum and in relation to wireless telegraphy and wireless telegraphy apparatus. Part 3 of the Act contains provisions relating to the regulation of apparatus for the purpose of ensuring that it does not cause undue interference to wireless telegraphy.
- 3.23 Wireless telegraphy is considered to be interfered with if the purpose of the telegraphy is prejudiced. By virtue of section 115(3) – (5) of the Act, interference is regarded as “undue interference” where it creates dangers, or risks of danger, in relation to the functioning of a wireless telegraphy service or it degrades, obstructs or repeatedly interrupts anything broadcast or transmitted by licensed wireless telegraphy.
- 3.24 Under section 54 of the Act, Ofcom may make regulations prescribing the requirements with which apparatus must comply, if the apparatus is to be used. Under section 55, where apparatus does not comply with any such requirements and one of the following conditions are met, Ofcom may serve an enforcement notice prohibiting its use. These conditions are:
- Condition 1- that the use of the apparatus is likely to cause undue interference with wireless telegraphy used: for the purposes of a safety of life service; or for the purpose on which the safety of a person, or of a ship, aircraft or vehicle, may depend⁷.
- Condition 2 - that the use of the apparatus is likely to cause undue interference with wireless telegraphy other than wireless telegraphy falling into (i) above; and the use has caused, or is causing interference; and Ofcom considers that all reasonable steps have been taken to minimise interference with the wireless telegraphy which is being interfered with.⁸
- 3.25 Failure to comply with a notice under section 55 is a criminal offence under section 58. It is a more serious offence if it involves or consists in a contravention of a notice in relation to apparatus the use of which is likely to cause undue interference with wireless telegraphy used for the purpose of a safety of life service or for a purpose on which the safety of a person, or of a ship, aircraft or vehicle, may depend. In other words, if condition 1 above is met, the offence is more serious.⁹
- 3.26 Provision is made for an appeal against a notice under section 55¹⁰. Where such an appeal is pending, proceedings are to be stayed until the appeal is finally determined and the proceedings are to be discharged if the notice is set aside as a result of the appeal.

General effect of the Proposed Regulations

- 3.27 The general effect of the Proposed Regulations is to impose a requirement in respect of the use of apparatus. Where the use of apparatus does not comply with that

⁷ Section 55(2) of the Act. Although it is not defined by the Act, wireless telegraphy used for safety purposes includes wireless telegraphy apparatus used for the purposes of mitigating, managing, averting and/or resolving danger to physical safety and well-being, security, life and/or property.

⁸ Section 55(3) of the Act.

⁹ Section 58(2)(a) and section 58(6) of the Act.

¹⁰ Section 192 of the Communications Act 2003.

requirement Ofcom may, if certain conditions relating to undue interference are met, take enforcement action against the person in possession of the apparatus, including prosecution for a criminal offence. The Proposed Regulations therefore provide part of the means by which apparatus is regulated and by which Ofcom may take action in respect of undue interference.

3.28 In particular:

- (Proposed) Regulation 5 provides that, apparatus must when in use operate in such a way that the maximum intensity of electromagnetic energy generated does not cause undue interference to wireless telegraphy.
- Where, in Ofcom's opinion, apparatus does not comply with the requirement in Proposed Regulation 5 Ofcom would, if certain conditions are met, be able to serve on the person in possession of the apparatus a notice under section 55 of the Act. We may do so where we think the apparatus has caused, is causing or is likely to cause undue interference to wireless telegraphy including wireless telegraphy used for the purposes of a safety of life service, or for a purpose on which the safety of a person, or of a ship, aircraft or vehicle may depend. The notice may prohibit the use of the apparatus. Failure to comply with a notice is a criminal offence under section 58 of the Act.
- The imposition of the requirement by the Proposed Regulations and its breach are pre-conditions of such enforcement action. The effect of the Proposed Regulations would, therefore, be to enable Ofcom to take specific action that we otherwise could not.

The Proposed Regulations will apply in the United Kingdom and will not extend to the Channel Islands or the Isle of Man.¹¹

¹¹ Section 54 of the Act is extended, with modifications, to the Channel Islands and the Isle of Man. See further, in relation to the extension of section 54 of the Act, with modifications, to Jersey: the Wireless Telegraphy (Jersey) Order 2006, SI 2006/3324; to Guernsey: the Wireless Telegraphy (Guernsey) Order 2006, SI 2006/3325; to the Isle of Man: the Wireless Telegraphy (Isle of Man) Order 2007, SI 2007/278.

4 Section 4

Policy objectives and how the Proposed Regulations achieve them

Policy objectives

- 4.1 The policy objective of the Proposed Regulations is to regulate the electromagnetic energy emitted by apparatus, to ensure that it does not affect the correct function of communication networks, by causing undue interference to it. Communications networks form an important part of the UK's national infrastructure, both directly and as an input to other services including safety and security services, utilities and industry (e.g. banking). Communications networks are a key aspect on which these services depend for their organisation and operation and therefore it is important to protect their correct function from undue interference.
- 4.2 The policy objective is to be achieved by regulating the intensity of the electromagnetic energy at which electrical and electronic apparatus operates, which has already been made available (after it has been placed on the market and/or put into service), whilst not infringing on the underlying free movement and electromagnetic compatibility objectives of the EMC Directive¹².
- 4.3 The Proposed Regulations should assist in reducing the risk of interference to wireless telegraphy (e.g. radio communications), as Ofcom will be able to take prompt enforcement action to require the cessation of relevant interference, enabling communications to be restored to an interference-free state and therefore to fulfil their purpose.

Problems under consideration and why intervention is necessary

- 4.4 In summary, and in addition to over-riding general reason described in the preceding paragraphs of this section, the reasons new secondary legislation is necessary are:
- 4.4.1 certain apparatus placed on the market and/or put into service (and has reached the end-user) may have been improperly installed, assembled or maintained or cease to function correctly or be used as other than intended,¹³ causing excessive levels of electromagnetic disturbance. This may cause undue interference to wireless telegraphy, such that it cannot function properly, and which disturbance and interference is not regulated under the EMC (or other) legislation described elsewhere in this document;
 - 4.4.2 dealing with any such interference under the enforcement provisions in section 55 of the Act is dependent on the existence of secondary legislation made under section 54; and

¹² We consider that the provisions of the Proposed Regulations fall entirely outside the EMC and RTTE Directives and implementing regimes and that they do not infringe on the total harmonisation approach of these directives.

¹³ As intended at the time it was first made available.

- 4.4.3 existing secondary legislation made under section 54¹⁴ has failed to keep pace with technological developments¹⁵.
- 4.5 As to the first reason, circumstances where apparatus is on the market and/or in service and is causing electromagnetic disturbance and interference to wireless telegraphy when used by the end-user, such that it cannot function as intended, are not currently subject to undue interference regulation (unless the apparatus falls within the narrow range existing statutory instruments made under section 54 of the Act, as explained further below).
- 4.6 Rather, apparatus in the United Kingdom is required to comply with the EMC Regulations which, as described above, set out a number of requirements, including the “essential requirements”, with which apparatus must conform before it can be placed on the market and/or put into service in the United Kingdom. The EMC Regulations concern a particular point in time: when the apparatus is first made available (placed on the market and/or put into service). They do not address circumstances where electromagnetic disturbance and interference is caused to wireless telegraphy apparatus by apparatus already in use by the end-user.
- 4.7 Apparatus already in use by the end-user may, nonetheless, issue excessive levels or intensity of electromagnetic energy for a number of reasons, including for example as a result of deterioration over time, poor installation, maintenance, or improper use. This falls outside the EMC Regulations. Consequently, there is a shortfall in the regulation of apparatus in use, which causes undue interference to wireless telegraphy.
- 4.8 The Proposed Regulations are intended to catch individual examples of apparatus which exceeds the permissible level because it has, for example, become faulty or has been installed incorrectly or is being used improperly.
- 4.9 Ofcom considers the electromagnetic energy (and disturbance) generated by apparatus could compromise communications systems, raising major concerns, in particular about public safety and the use of important communications systems.
- 4.10 As to the second reason, and as set out elsewhere in this document, the enforcement provisions in section 55 of the Act are dependent on secondary legislation made under section 54. Before action can be taken by Ofcom under the former, secondary legislation must be made under the latter section.
- 4.11 Turning to the third reason, existing secondary legislation has failed to keep pace with technological developments.¹⁶ It regulates older apparatus by reference to

¹⁴ Or made under equivalent provisions of the Wireless Telegraphy Act 1949, and now treated as if made under section 54 of the Act

¹⁵ The Wireless Telegraphy (Control of Interference from Fluorescent Lighting Apparatus) Regulations 1978, S.I. 1978 No.1268 as amended by S.I. 1985 No. 807 and S.I. 1989 No. 561; The Wireless Telegraphy (Control of Interference from Household Appliances, Portable Tools Etc.) Regulations 1978, S.I. 1978 No. 1267 as amended by S.I. 1985 No. 808 and S.I. 1989 No. 562; The Wireless Telegraphy (Control of Interference from Radio-Frequency Heating Apparatus) Regulations 1971, S.I. 1971 No. 1675; The Wireless Telegraphy (Control of Interference from Citizens’ Band Radio Apparatus) Regulations 1982, S.I. 1982 No. 635; The Wireless Telegraphy (Control of Interference from Electro-Medical Apparatus) Regulations 1963, S.I. 1963 No. 1895; and, The Wireless Telegraphy (Control of Interference from Ignition Apparatus) Regulations 1973 No. 1217.

¹⁶ Ofcom, intends to carry out, in due course, a review of whether existing secondary legislation made under section 54 should be revoked.

largely out of date technical standards. Consequently, although there is secondary legislation in force, these statutory instruments only deal with limited types of apparatus in an anachronistic way and there are a number of apparatus which are not regulated.

- 4.12 For these reasons, Ofcom's ability to act in particular cases where apparatus is in use and causes interference to wireless telegraphy apparatus, such that the wireless telegraphy apparatus cannot function as intended, is fundamentally limited. The importance of remedying this shortfall is particularly acute given the need, for example, to maintain public safety (and the underlying communications networks used to secure it).

How the Proposed Regulations will address the problem

- 4.13 The Proposed Regulations would be directed at overcoming an interference problem caused by electromagnetic disturbance to wireless telegraphy from each individual apparatus (as distinct from a batch or range). The provision under which those Regulations would be made, section 54(1) of the Act, allows Ofcom to make regulations prescribing the requirements to be complied with in respect of apparatus, if the apparatus is to be used.
- 4.14 In other words, the requirement will apply to apparatus when in use by the end-user. The requirement Ofcom proposes here is one we think fit for the purpose of ensuring that the use of the apparatus does not cause undue interference to wireless telegraphy.
- 4.15 In particular, the requirement will regulate the intensity of the electromagnetic energy at which apparatus operates, so that it is consistent with the maximum intensity of electromagnetic energy which was permissible at the time the apparatus was put into service or made available on the market. In doing so, it will fulfil the purpose of ensuring that it does not cause undue interference with wireless telegraphy.
- 4.16 As a result of making the Proposed Regulations, Ofcom would then be able, where in our opinion apparatus does not meet the prescribed requirement and other conditions are met (see above), to serve an enforcement notice under section 55 of the Act. This would, as previously described, prohibit the use of the offending apparatus.
- 4.17 Accordingly, the Proposed Regulations would help address the risk of communications systems suffering undue interference. They would provide an essential, and currently lacking, part of the means by which Ofcom could take enforcement action in respect of apparatus causing such interference.
- 4.18 In addition, the requirement in the Proposed Regulations would be capable of application to a range of apparatus (and notwithstanding technological advancements). In particular, the Proposed Regulations are not confined to single types of apparatus. Instead, the definition of "apparatus" they contain is based on that in the EMC Regulations (but is limited to "apparatus which generates, or is designed to generate, or is liable to generate fortuitously, electromagnetic energy at frequencies not exceeding 3,000 gigahertz" as required by section 54(5) of the Act).

4.19 In these ways, the Proposed Regulations would enable Ofcom to have adequate powers (including enforcement powers) to protect wireless telegraphy used from undue interference.

Annex 1

Consultation question

- A1.1 As required by Section 122 of the Wireless Telegraphy Act 2006, we must give notice of proposals that we intend to make and consider any representations that we receive. This document gives notice of our proposal to make the Wireless Telegraphy (Control of Interference from Apparatus) Regulations 2015 (the “Proposed Regulations”).

Do you agree that the Proposed Regulations correctly give effect to the policy proposals referred to, and to the other intentions set out, in this document?

Annex 2

Responding to this consultation

How to respond

- A2.1 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on Monday 16 February 2015.
- A2.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/undueinterference/howtorespond/for>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 4), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A2.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email Andrew.cutting@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A2.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation:
- Andrew Cutting
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 0207 981 3910
- A2.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A2.6 It would be helpful if your response could include direct answer to the question asked in this document, which are listed together at Annex 1. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A2.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Andrew Cutting using the email address or fax number above or alternatively at 0300 123 3333.

Confidentiality

- A2.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A2.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A2.11 Following the end of the consultation period, Ofcom intends to publish a statement by March 2015.
- A2.12 Please note that you can register to receive free mail updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A2.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A2.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 3

Ofcom's consultation principles

A3.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A3.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction.

During the consultation

A3.3 We will be clear about who we are consulting, why, on what questions and for how long.

A3.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A3.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A3.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A3.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A3.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 4

Consultation response cover sheet

- A4.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A4.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A4.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A4.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the “Consultations” section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>
- A4.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing Name/contact details/job title

Whole response Organisation

Part of the response If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 5

Regulatory Impact Assessment

Introduction

- A5.1 The analysis in this annex is a Regulatory Impact Assessment (“RIA”) relating to the Proposed Regulations.
- A5.2 Ofcom acts consistently with the Government practice that, where a statutory regulation is to be made, a RIA should be undertaken. We also comply with our duty under section 7 of the Communications Act 2003 (“the 2003 Act”) to undertake impact assessments. This document and this Annex in particular, are an impact assessment for the purposes of section 7 of the 2003 Act.
- A5.3 You should send any comments on this impact assessment to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- A5.4 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the 2003 Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities. However, as a matter of policy we are committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom’s approach to impact assessment, which are on our website: <http://www.ofcom.org.uk/about/policies-and-guidelines/better-policy-making-ofcoms-approach-to-impact-assessment/>
- A5.5 This impact assessment relates to our proposal to regulate:
- The intensity of electromagnetic energy at which apparatus operates (when in use), for the purpose of ensuring that it does not cause undue interference with wireless telegraphy.

Background

Policy objectives and how the Proposed Regulations will address the problem

- A5.6 The policy objectives of the Proposed Regulations are set out in section 4 of this document. Likewise, the ways in which Ofcom considers that the Proposed Regulations will achieve the policy objectives and address the problems they are designed to resolve are set out in section 4. Ofcom does not repeat, but nonetheless relies for the purposes of this impact assessment, on what we say in section 4.

The citizen and/or consumer interest

- A5.7 Ofcom’s principal duty under section 3 of the 2003 Act is to further the interests of citizens in relation to communications matters; and of consumers in relevant markets, where appropriate by promoting competition. We take account of the impact of our decisions upon both citizen and consumer interests in the markets we regulate. We must, in particular, secure the optimal use for wireless telegraphy of

spectrum and have regard to the principle under which all regulatory activities should be targeted only at cases in which action is needed.

A5.8 Further in performing the principal duty of furthering the interests of citizens in communications matters¹⁷, Ofcom must have regard to, amongst other things, the desirability of preventing crime and disorder¹⁸. Ofcom considers that undue interference caused by apparatus could compromise communications systems including those used for safety purposes for the prevention of disorder and crime.

A5.9 In exercise of the powers conferred by sections 54(1) and 122(7) of the Act Ofcom may make the Proposed Regulations prescribing the requirements to be complied with in the case of apparatus specified in the regulations, if the apparatus is to be used. As noted elsewhere in this document, the enforcement provisions under section 55 which are dependent on secondary legislation made under section 54, permit Ofcom to serve an enforcement notice prohibiting the use of apparatus, where in the opinion of Ofcom, apparatus does not comply with the requirements set out in the Proposed Regulations and either condition in section 55(2) or (3) of the Act is satisfied. This goes to discharging our spectrum management duties, as people's interests will be protected as a result of secure uncompromised communications.

A5.10 In proposing new regulations, Ofcom has considered the wider impact beyond immediate stakeholders in the communications community. We believe that the proposal will be of benefit to citizens as it will help manage, and avert threats to, amongst other things, public safety. For example, communications systems functioning free from interference in use by the emergency services, air traffic control, and the coastguard.

Evidence of need for Regulations

A5.11 Ofcom sets out in section 4 of this document reasons why we consider the Proposed Regulations are necessary. Additional evidence of that need is provided by the following.

A5.12 Interference complaints handled by Ofcom's advice and assistance service¹⁹ during 2013 & 2014 were:

Table 1		
Electromagnetic disturbance case statistics	2013 - Volume of cases	2014 -Volume of cases
Number of cases where undue interference was caused to wireless telegraphy apparatus and capable of resolution under proposed regulations made under section 54.	158	114
Number of cases where complaint resolution possible using existing regulations under section 54(1)	3	3

¹⁷ Section 3(1)(a) of the Communications Act, 2003.

¹⁸ Section 3(4)(j) of the Communications Act, 2003.

¹⁹ A service Ofcom provides to persons complaining of interference pursuant to section 4 of the Act.

Number of cases requiring resolution by cooperation	155	111
Number of cases involving undue interference to emergency services communications where resolution of the problem was delayed due to inadequate secondary legislation under section 54(1)	24	20
Numbers of different types of apparatus causing undue interference to wireless telegraphy.	13	10

Table 2	2013	2014
Cases where complaint resolution possible using existing regulations under section 54(1)	3 (1.90%) Average resolution time per case: 10hrs 30 mins	3 (2.63%) Average resolution time per case: 7hrs 10 mins
Cases requiring resolution by cooperation	155 (98.10%) Average resolution time per case: 14hrs 25 mins	111 (97.37%) Average resolution time per case: 12hrs 30 mins
Total cases (capable of being resolved under regs made under s54 i.e. existing and proposed regs)	158 (100%) Average resolution time per case: 14hrs 20 mins	114 (100%) Average resolution time per case: 12hrs 30 mins

A5.13 Accordingly, in 2013 and 2014, there were 158 and 114 complaints respectively, involving undue interference caused by apparatus in use that might have been capable of resolution by means of regulations made under section 54 of the Act (and the related provisions of the Act). As table 2 shows the average time it took to reach resolution within the 2013 cases was 14 hours and 20 minutes. In 2014, the average was 12 hours and 20 minutes. However, of those, only 3 cases from each year were complaints in which Ofcom would have been able to take action pursuant to the existing regulations made under section 54. The remainder fell outside those regulations.

A5.14 This meant that in 2013, 155 complaints (note that 3 were resolved using the existing regulations), taking an average of 14 hours and 25 minutes, required resolution by seeking the voluntary cooperation of the person using the apparatus (normally by repair or replacement of apparatus). In 2014, this number was 111 which took an average of 12 hours and 30 minutes. In other words, the resolution of those complaints was totally reliant on the goodwill of the person in possession of the relevant apparatus, which they were under no obligation to act upon.

A5.15 The risk to which this gives rise is borne out by the following. In 24 (2013) and 20 (2014) cases, delays were incurred resolving undue interference affecting emergency communications systems. Although this represents a small minority of the total cases capable of resolution by means of regulations made under section 54 of the Act (and the related provisions of the Act), the risks to public safety associated with similar cases affecting wireless telegraphy could be highly significant.

A5.16 In addition, from relevant complaints set out in Table 1, over 2013 and 2014, 13 different types of apparatus were found to be causing undue interference. These are listed in Table 3 below.²⁰ Table 3 demonstrates that undue interference caused by apparatus in use is caused by a much broader range of apparatus than is covered by the existing regulations made under section 54.

Table 3
Control Equipment
Domestic Electric Cables
High Voltage Power Cables
Industrial Scientific Medical Equipment
IT Equipment
IT Power Supply Unit
Lighting
Power Line Adaptor
Power Supply Unit Battery Charger
Security Equipment
Transformer
TV Aerial Amplifier
TV Equipment

A5.17 In light of these statistics, together with the assessment set out in section 4 of this document, Ofcom has identified a distinct and important need for intervention (in the form of the Proposed Regulations). The Proposed Regulations respond to this need.

²⁰As table two below shows, the apparatus was usually a relatively low cost device (and, in some instances, the undue interference would have been resolved by simple adjustment or repair at low cost). Past Ofcom experience has shown that for larger more costly apparatus, undue interference is more likely to be as a result of maladjustment or failing components that can be adjusted or replaced.

Options considered

- A5.18 For present purposes, the main options open to Ofcom for taking action against undue interference, and which Ofcom has considered, are:
- i) to make regulations imposing requirements on apparatus so as to enable Ofcom to take enforcement action in respect of undue interference; or
 - ii) not to make any new regulations and to rely on the cooperation of the apparatus user to cease the undue interference.

Analysis of options

A5.19 The following assesses the impact of options open to Ofcom.

Make new regulations

- A5.20 Ofcom considers that the benefits of making the Proposed Regulations will include the following.
- A5.21 First, the Proposed Regulations will meet the needs and legislative shortfalls described elsewhere in this document. In particular, they provide part of the means, currently lacking, for Ofcom to take action in respect of apparatus in use which causes undue interference to wireless telegraphy. The Proposed Regulations will allow Ofcom to take enforcement action against persons responsible for such apparatus. By helping to ensure that Ofcom is able to take action against relevant undue interference the Proposed Regulations will ensure that affected communications systems can be restored to an interference-free state.
- A5.22 Second, the Proposed Regulations will help to secure the efficacy of those arrangements and the value of the investment made in them as they will keep pace with technological advancements, something which current regulations prohibit.
- A5.23 Third, the Proposed Regulations should also, in themselves and together with the prohibition notices to which breach of them may give rise, have incentive and deterrent effects. That is, they will provide incentives to comply with the Proposed Regulations' requirement, under threat of a prohibition notice if necessary, and any notice should, with its threat of possible prosecution, deter continued use of apparatus causing relevant undue interference. As a result, the Proposed Regulations will enable Ofcom to resolve undue interference without the costs of:
- Ofcom's time and money associated with negotiating voluntary resolutions with apparatus users; and
 - formal criminal proceedings.
- A5.24 There would be some costs in making, and in complying with, the Proposed Regulations.
- A5.25 In terms of the costs to Ofcom of making and applying the Proposed Regulations, there would be some one-off administrative costs associated with making the

regulations²¹. These would include the costs of providing guidance and training for spectrum enforcement staff allocated enforcement responsibilities. Ofcom considers these costs likely to be limited as the Proposed Regulations will require limited guidance and training given that the spectrum enforcement staff are already familiar with the legislative framework upon which the Proposed Regulations are based.

A5.26 We consider that the additional costs to Ofcom in applying the Proposed Regulations would be limited, for the following reasons:

- we anticipate these costs being lower than Ofcom would otherwise incur in seeking voluntary resolution of relevant interference absent the Proposed Regulations; and
- a reduction in time solving such cases as the Proposed Regulations will allow immediate action; and
- a lessening of the administration burden currently associated with solving such cases.

A5.27 There would also be some costs to individuals and businesses using apparatus and to whom the Proposed Regulations and/or enforcement notices apply. Although it is very difficult to estimate the costs of the Proposed Regulations on these users, Ofcom considers that these costs are likely to be limited for the following reasons:

A5.28 The statistics set out in Table 1 above (which relate to the UK as a whole) suggest that only a small number of users will be deprived of the right to use apparatus under the Proposed Regulations. Although these numbers are relatively small, Ofcom considers that the risk to citizens and consumers as a result of undue interference to wireless telegraphy (including risks to public safety where wireless telegraphy is used for public safety purposes) is potentially significant and therefore a quick resolution is required. The Proposed Regulations are intended to expedite resolution, thereby reducing such risks.

- Ofcom notes that the Proposed Regulations principally place obligations on those using apparatus, end-users, not its manufacturers or sellers. Specifically, the Proposed Regulations do not impact or impose any additional costs for the placement of apparatus on the market and/or the putting of apparatus into service. The costs complying with obligations in those regards apply in any event under other, existing legislation (i.e. the EMC Regulations). Complying with those obligations would also be likely to go towards complying with the requirement under the Proposed Regulations, limiting any additional costs that would arise.

A5.29 Overall, Ofcom considers that the costs of the Proposed Regulations are likely to be limited and outweighed by the significant benefits of reducing the risk of undue interference to wireless telegraphy and the reduction in time it takes to resolve such cases.

²¹ Given the significant benefits of the Proposed Regulations (namely, the mitigation of risks to public safety), we do not believe it is necessary to quantify these costs for the purposes of this impact assessment.

Do nothing

- A5.30 Ofcom's main alternative option would be to do nothing: not making the Proposed Regulations and continue to rely on the reasonable cooperation of apparatus users to resolve any relevant undue interference.
- A5.31 Whilst this option would not impose any of the additional costs of making or applying the Proposed Regulations, Ofcom would not be able to take action in respect of apparatus in use causing relevant undue interference unless the apparatus was in the limited categories covered by existing secondary legislation. As a result, the risk that communications systems will be compromised by undue interference remains unmitigated, representing a significant risk to public safety and to businesses. The costs of this risk, especially if realised, could be highly significant.
- A5.32 In addition, in respect of many types of relevant apparatus, Ofcom would continue to incur the costs of seeking voluntarily resolution of undue interference problems that could be avoided were the Proposed Regulations made and applied.

Overall impact

- A5.33 Ofcom has assessed the overall impact of the Proposed Regulations.
- A5.34 The scope and consequential impact, of the requirement set out in the Proposed Regulations is limited, as:
- a) the requirement only applies to apparatus which has already been placed on the market or put into service;
 - b) the requirement only restricts the intensity of the electromagnetic energy to a level consistent with the maximum intensity of electromagnetic energy which was permissible at the time when the apparatus was put into service or made available on the market;
 - c) the requirement only applies to apparatus when in use;
 - d) any electromagnetic disruption suffered by wireless telegraphy must meet 'undue interference' as described in section 115(3) – (5) of the Act;

Preferred option

- A5.35 In light of all the above, Ofcom's preferred option is to make (and apply) the Proposed Regulations in order to continue to meet our spectrum management duties. The Proposed Regulations are likely to impose only limited costs on stakeholders and, although they are difficult to quantify, we believe that the benefits are likely to exceed those costs.
- A5.36 In particular, the Proposed Regulations are likely, in Ofcom's view, to yield the significant benefits described above. We conclude that those benefits, including the aversion of the risks and costs to public safety communications in use and the ability to keep pace with technological advances, would outweigh costs which Ofcom assesses would only be limited for the reasons given.

A5.37 Moreover, if we did not make the Proposed Regulations we risk the inefficient use of spectrum. We would not be acting consistently with our wider spectrum management duties because, if wireless telegraphy were compromised by undue interference, and the user of the apparatus causing the interference is unwilling to co-operate with Ofcom's requests, Ofcom would be unable to take enforcement action.

Competition assessment

A5.38 European Union harmonisation legislation (which includes the EMC Directive) applies when apparatus is placed on the European Union market and to any subsequent operation which constitutes making available until it reaches the end-user. Whereas the Proposed Regulations apply once the apparatus has reached the end-user (it is no longer considered a new product). The end-user is not one of the economic operators (e.g. manufacturers, importers and distributors) who bear responsibilities under harmonisation legislation and the Proposed Regulations do not impose impositions on the economic operators or restraints on market activities. The essential requirements under the harmonisation legislation continue to apply to economic operators and the total harmonisation approach is not infringed by the Proposed Regulations. Ofcom considers that the Proposed Regulations are very unlikely to impact on competition within the affected market.

Equality impact assessment

A5.39 Following an initial assessment of our policy proposals we considered that it was reasonable to assume that any impacts on consumers and citizens arising from the Proposed Regulations would not differ significantly between groups or classes of UK consumers and citizens.

A5.40 In addition, we note that there is no available evidence to suggest that the Proposed Regulations would have a greater financial impact on groups based on gender, race or disability or for consumers and citizens relative to citizens in general. This is because one would not expect the impact of complying with the Proposed Regulations' requirement to differ significantly between these groups and consumers in general. One would also not expect the financial impact of any enforcement action necessitated by a failure to comply with the requirement, to differ significantly between these groups and consumers in general.

A5.41 In the same way that any apparatus may cause undue interference, there may be a possibility that apparatus used by disabled persons may cause interference. However, we have no evidence to suggest that this is any more likely than in respect of other apparatus. Since Ofcom was established we have not been aware of undue interference problems concerned specifically with apparatus used by disabled persons.

A5.42 We have not, therefore, carried out an Equality Impact Assessment in relation to race equality or equality schemes under the Northern Ireland and disability equality schemes. This is because we are not aware that the proposals being considered here are intended (or would, in practice) have a significant differential impact on different gender or racial groups, on citizens in Northern Ireland or on disabled citizens compared to citizens in general.

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Annex 6

Proposed Regulations

The Wireless Telegraphy (Control of Interference from Apparatus) Regulations 2015 (the “Proposed Regulations”) can be found using the following link:

<http://stakeholders.ofcom.org.uk/binaries/consultations/wta-notice-proposals/annexes/Annex6.pdf>

A copy of this consultation can be found by using this link:

<http://stakeholders.ofcom.org.uk/consultations/undueinterference/>