



Decision to make the Wireless
Telegraphy (Control of Interference
from Apparatus) (the London Olympic
Games and Paralympic Games)
Regulations 2012

Statement

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Section 1

Summary

- 1.1 This statement presents our decision to make the Wireless Telegraphy (Control of Interference from Apparatus) (the London Olympic Games and Paralympic Games) Regulations 2012 (the “Regulations”). It addresses the issues raised by stakeholders in response to our Statutory Notice entitled “*Notice of proposals to make the Wireless Telegraphy (Control of Interference from Apparatus) (the London Olympic Games and Paralympic Games) Regulations 2012*”¹ (the “Notice”), which we published in April 2012 and explains that we have decided to make the Regulations as proposed, with some minor changes.
- 1.2 The Regulations will regulate the intensity of the electromagnetic energy at which electrical and electronic apparatus operates such that it does not cause undue interference with wireless telegraphy apparatus used for public safety purposes within a specified protection area for the duration of the 2012 Olympic and Paralympic Games (referred to collectively as the “Games”). They will come into force in July 2012 prior to the commencement of the Games. Copies of the Regulations will be available via www.legislation.gov.uk.
- 1.3 In particular, the Regulations require that between 26 July 2012 and 10 September 2012 apparatus in use must operate at a sufficiently low intensity of electromagnetic energy such that it does not cause undue interference with wireless telegraphy apparatus used for public safety purposes within a protection area. A protection area is defined as one of the areas named in the Schedule to the Regulations and as having a centre point at a specified location (expressed by latitude and longitude coordinates in the Schedule) and a radius of the distance specified in the same Schedule.
- 1.4 Before deciding to make the Regulations, in accordance with the requirements of section 122(4) of the Wireless Telegraphy Act 2006 (the “Act”), we published the Notice setting out our proposal to make them, on 25 April 2012. It also contained a draft of the Regulations (the “Proposed Regulations”) and invited comments from stakeholders on whether the Proposed Regulations correctly gave effect to the policy proposals referred to in the Notice.
- 1.5 We received nine responses (two confidential and seven non-confidential) to the Notice. In accordance with section 122(4)(c) of the Act, we have considered these responses. After doing so, and for the reasons set out below, we have decided to adopt the Regulations as proposed (subject to some minor amendments, the details of which can be found in section 3 below).

¹<http://stakeholders.ofcom.org.uk/consultations/undueinterference-olympics-2012/>

Section 2

Background

Introduction

- 2.1 Section 54(1) of the Act enables Ofcom to make regulations prescribing the requirements to be complied with in the case of apparatus specified in the regulations, if the apparatus is to be used.
- 2.2 The Regulations prescribe a requirement imposed on the use of apparatus *after* it has been placed on the market² and/or put into service³. The Regulations set out a requirement at regulation 5 (regulation 4 in the Proposed Regulations) that applies to apparatus in relation to a “protection area”. 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 certain wireless telegraphy. Where the use of apparatus does not meet that requirement, Ofcom may, where conditions prescribed in section 55 of the Act are met, serve on the person in possession of the apparatus a notice prohibiting its use, breach of which would be a criminal offence.
- 2.3 The requirement is that between 26 July 2012 and 10 September 2012 apparatus must when in use operate at a sufficiently low intensity of electromagnetic energy such that it does not cause undue interference with wireless telegraphy used for public safety purposes within a protection area.
- 2.4 This power goes to discharging a number of Ofcom’s 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.
- 2.5 In order to protect wireless telegraphy used for safety purposes at the Games from undue interference, Ofcom considers that we should exercise our powers to make the Regulations.

Statutory Notice

- 2.6 Under section 122(4) to (6) of the Act, we are required to publish a notice of any proposal to make regulations. The notice must state that Ofcom proposes to make the regulations in question, must set out their general effect, say where a copy may be obtained and give any person or party an opportunity to make representations about them.
- 2.7 We published the Notice, meeting the statutory requirements, on 25 April 2012. The Notice included a copy of the Proposed Regulations. The Notice gave any person or party who wished to do so until 28 May 2012 to make representations.

²“A product is placed on the [European] Community market when it is made available for the first time.” *Guide to the Implementation of Directives based on the New Approach and the Global Approach*, p.18.

³“Putting into service takes place at the moment of first use within the [European] Community by the end user.” *Guide to the Implementation of Directives based on the New Approach and the Global Approach*, p.19.

- 2.8 The Notice explained that the Proposed Regulations set out a requirement to protect wireless telegraphy used for public safety purposes within a protection area from undue interference.
- 2.9 We received nine (two confidential and seven non-confidential) responses to the Notice and these are detailed in the next section of this document.

Section 3

Scope of Regulations

Introduction

- 3.1 This section outlines the responses we received to the Notice and our response to these.
- 3.2 Of the nine responses we received, five broadly welcomed the Proposed Regulations (adding that the scope of protection against such interference should be extended to other wireless telegraphy and/or that Ofcom should make use of its other powers in relation to undue interference). Two more expressed no negative view and offered suggestions and asked questions. Only two responded negatively to the Proposed Regulations. The non-confidential responses are published on our website⁴.
- 3.3 Following consideration of the responses as outlined below, we have decided to make the Regulations. We did not consider that any of the responses provide a basis for significantly amending the Proposed Regulations, and we have decided to adopt them (subject to some amendments, the details of which are explained below).

Responses to the Notice

- 3.4 The majority of the respondents welcomed the Proposed Regulations. The most significant other point they raised was that the policy (and the accompanying regulations) should be extended:
- 3.4.1 to protect wireless telegraphy used for purposes other than (but including) public safety purposes;
 - 3.4.2 to a wider geographic scope than the protection areas; and
 - 3.4.3 for a duration longer than the Games.
- 3.5 Examples of relevant comments include the following.
- 3.6 The British Broadcasting Corporation (the “BBC”) stated that it “... *welcomes these proposals and the policy objective of regulating the electromagnetic energy emitted by apparatus, to ensure that it does not affect the correct function of communication networks used for safety purposes, by causing undue interference to it, during the Games.*” Likewise, the Radio Society of Great Britain (“RSGB”) said it, “... *welcomes the general proposals for games-specific Regulations.*”
- 3.7 The BBC and the RSGB both also expressed the view that the Proposed Regulations should be extended to address undue interference with wireless telegraphy used for purposes other than public safety:
- 3.7.1 the BBC considered that they should also make provision for undue interference caused to wireless telegraphy used for *broadcasting purposes*, saying “*Given the crucial role of broadcasting in bringing the Games to citizens and consumers of the U.K. and the world, the BBC suggests that the*

⁴<http://stakeholders.ofcom.org.uk/binaries/consultations/undueinterference-olympics-2012/statement/consultation-responses.pdf>

addition of regulations which would also allow for swift resolution of harmful interference to the broadcasting of the Games is worth Ofcom's serious consideration....;" and

- 3.7.2 the RSGB considered that the Proposed Regulations should not be limited *at all* in terms of the purpose for which protected wireless telegraphy is used, saying:
- a) the requirements which may be prescribed in section 54(1) regulations are not limited to wireless telegraphy used for public safety purposes;
 - b) "*public safety*" is not defined in the Proposed Regulations and is not a term compatible with the Act's provisions;
 - c) wireless telegraphy used for safety of life and services on which the safety of persons depend are already distinguished from wireless telegraphy used for other purposes in section 55 of the Act; and
 - d) limiting the regulations leaves unprotected "*a wide range of radio use that is essential to the Games*".
- 3.8 One individual respondent, Peter Chadwick, stated that "*..... the powers that are conferred under these proposed regulations to prevent harmful interference should not be limited either geographically, or in time, this legislation is needed to generally protect radiocommunications, and not just for the period of the Games. This is because the level of electromagnetic pollution is steadily rising, even from devices meeting the requirements of Harmonised EMC standards.*"
- 3.9 Another individual respondent, C.J. Langley, agreed with the Proposed Regulations for use during the Games but hoped, "*.... Ofcom will make full use of the research and statistics that have gone into providing evidence for this application, to act as a lasting benefit after the Olympic Games is over. Namely, the introduction of new permanent regulations to enable Ofcom to carry out its work under the WTA 2006 [the Act] and resolve efficiently more cases of undue radio interference from non-radio sources which pollute the scarce radio frequency spectrum in the U.K.*"
- 3.10 A third individual respondent (who asked not to be named) said, "*I welcome this move by Ofcom. Certainly Ofcom should take action to prevent "undue interference" during the Games, from whatever cause, but, this must be extended to cover all users of the spectrum and in the years to come not just for the next few months.*"
- 3.11 Three respondents submitted that Ofcom already has powers under the Act and the Electromagnetic Compatibility Regulations 2006⁵ (the "EMC Regulations") to take action where undue interference is caused to wireless telegraphy apparatus used for safety purposes. One (who requested not to be named), for example, said, "I believe that Ofcom already have these powers under the Wireless Telegraphy Act." Another, Tim Hague, said that "*if the existing EMC regulations laid down in European law are policed correctly 24/7, then none of this would be necessary.*"

Other points

⁵S.I. 2006 No. 3418.

- 3.12 The RSGB also raised a number of other issues, particularly in relation to the drafting of the Proposed Regulations, as follows.
- 3.13 The RSGB questioned the definition of “*apparatus*” in the Proposed Regulations submitting that it:
- 3.13.1 was too broad;
 - 3.13.2 should make express provision for fixed installations to be within its scope; and
 - 3.13.3 should not include the words “... or the performance of which is liable to be affected by such disturbance,” on the basis that immunity of apparatus cannot be the subject of such regulations.
- 3.14 The RSGB also said:
- 3.14.1 regulation 4(2) of the Proposed Regulations, providing for the regulations to apply, “...even if the maximum intensity of electromagnetic energy emitted by that apparatus is lower than a level permissible under the essential requirements,” should be amended since there is no “field strength” level set in the Essential Requirements;
 - 3.14.2 radio equipment and telecommunications terminal equipment to which Directive 1995/5/EC⁶ (the “RTTE Directive”) applies should not be excluded from the scope of the Proposed Regulations on the bases that such exclusion is unnecessary and it is “*crucial*” that telecommunications terminal equipment is within scope;
 - 3.14.3 the Proposed Regulations do not make clear whether the apparatus causing undue interference to wireless telegraphy used for public safety purposes must also be within a protection area; and
 - 3.14.4 existing secondary legislation made under section 54 of the Act, or made under equivalent provisions of the Wireless Telegraphy Act 1949,⁷ “...should be disapplied, at least so far as the Proposed Regulations are concerned,” or there would be two requirements applying to certain apparatus.
- 3.15 One other respondent suggested that the co-ordinates for Hadleigh Farm (a Games cycling venue) in South Essex should be included in the event zone table in the Schedule to the Regulations (and that a map indicating the events zones should be posted on the Ofcom website). Another sought clarification on the types of interference sources to which the Proposed Regulations would apply.

Ofcom’s response to stakeholders’ comments

Scope of the Regulations

- 3.16 Ofcom responds to the points that the Regulations should extend beyond the Games and be unlimited in terms of time, geographic scope and/or the wireless telegraphy

⁶ on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity

⁷ and now treated as if made under section 54 of the Act

protected, and that we should use our other powers to tackle undue interference, as follows.

- 3.17 The Regulations are a specific response to possible undue interference issues, relating to public safety (which is not defined in the Regulations, but which has its ordinary meaning) at the Games, and which are not fully addressed by existing legislation, as set out in the consultation document. Ofcom's use of our existing powers, and the extension of similar protection to other wireless telegraphy, are for separate consideration.
- 3.18 The limitation of the Regulations to the protection of wireless telegraphy used for safety purposes is derived from European Union law: Directive 2004/108/EC⁸ (the "EMC Directive"). It says Member States cannot impede, for reasons relating to electromagnetic compatibility, the placing on the market and/or putting into service in their territory of equipment which complies with the Directive.
- 3.19 Article 4(2) of the EMC Directive, however, provides that this shall not prevent the application in any Member State of special measures concerning the putting into service or use of equipment:
- 3.19.1 to overcome an existing or predicted electromagnetic compatibility problem at a specific site;
- 3.19.2 taken for safety reasons to protect public telecommunications networks or receiving or transmitting stations when used for safety purposes in well-defined spectrum situations.
- 3.20 To the extent necessary, the Regulations are such a special measure. They concern the "*use of equipment*," imposing a requirement that applies *after* that apparatus has been placed on the market and/or put into service and is in use. They are "... *to overcome a predicted electromagnetic compatibility problem at a specific site*" (the Games, as set out in the consultation document), and to protect wireless telegraphy used for safety purposes, so as clearly to fall within Article 4(2) of the Directive.
- 3.21 In other words, the Regulations are structured so as to ensure they address specific issues relating to the Games in a way clearly compatible with the EMC Directive.
- 3.22 Ofcom also takes into account the provisions of section 55 of the Act, providing for us to serve prohibition notices where a requirement under section 54 regulations (like the Regulations) is breached. The effect of section 55 is that only in cases affecting public safety may a prohibition notice take effect in less than 28 days. In other words, during a period that would be effective during the Games. Consequently, extending the Regulations to protect wireless telegraphy used for other purposes at the Games would have limited practical effect.
- 3.23 So far as the BBC's references to protecting wireless telegraphy used for broadcasting purposes, and to the "*Spectrum Plan for the London 2012 Games: final update*"⁹ (the "Spectrum Plan"), are not dealt with by the foregoing, our comments are as follows.

⁸ on the approximation of the laws of the Member States relating to electromagnetic compatibility and repealing Directive 89/336/EEC (OJ No L390, 31.12.2004, p.27)

⁹ <http://stakeholders.ofcom.org.uk/consultations/london2012/london2012-spectrum-plan-update/>

- 3.24 The Regulations are only one element of the monitoring and management of spectrum for the Games. The Spectrum Plan sets out how the spectrum will be protected from interference during the Games. Such action is not limited to protecting wireless telegraphy used for public safety purposes and will protect a range of wireless telegraphy uses and users, including broadcasting and broadcasters. Ofcom will also have a dedicated spectrum engineering team present at the Games' venues.

Response to other points

Apparatus

- 3.25 As to the RSGB's comment that the Proposed Regulations defined "apparatus" too broadly, Ofcom disagrees.
- 3.26 Section 54(1) of the Act provides that, "*OFCOM may make regulations prescribing the requirements to be complied with in the case of apparatus specified in the regulations, if the apparatus is to be used.*" We do not consider this precludes a broad definition of "apparatus" like that in the Regulations.
- 3.27 That definition specifies a number of characteristics, all of which have to be satisfied for a device to constitute "apparatus." It must:
- 3.27.1 be a finished appliance or combination of appliances made commercially available as a single functional unit;
 - 3.27.2 be intended for use by the end user;
 - 3.27.3 be liable to generate electromagnetic disturbance or to be affected by such disturbance; and
 - 3.27.4 generate or be designed to generate, or is liable to generate fortuitously, electromagnetic energy at frequencies not exceeding 3,000 gigahertz.
- 3.28 This definition, in Ofcom's view, is sufficiently specific to be the subject of regulations made under section 54. We note that regulations made in the past under provisions to similar effect to section 54, such as the Wireless Telegraphy (Control of Interference from Household Appliances, Portable Tools Etc.) Regulations 1978, S.I. 1978 No. 1267¹⁰ have also specified apparatus in a broad way.

Fixed installations

- 3.29 Ofcom does not consider it necessary for the Regulations to apply to fixed installations.
- 3.30 Under the EMC Regulations, for as long as a fixed installation is in operation, the responsible person¹¹ is under an obligation to demonstrate its compliance with the essential requirements¹² by having available appropriate documentation. The regulations applicable to apparatus are different, however.

¹⁰ As amended by S.I. 1985 No. 808 and S.I. 1989 No. 562

¹¹ A "responsible person" in relation to a fixed installation is defined in regulation 3 of the EMC Regulations as "*the person who, by virtue of their control of the fixed installation is able to determine that the configuration of the installation is such that when used it complies with the essential requirements.*"

¹² See Regulation 36 of the EMC Regulations.

- 3.31 So, for example, where apparatus is compliant at the time of being placed on the market and distributed to an end user, but subsequently deteriorates in a way which causes undue interference, the end user is not a responsible person under the EMC Regulations. Unlike the responsible person in relation to a fixed installation, they do not owe an obligation under the EMC Regulations to demonstrate compliance.
- 3.32 By contrast to mass-manufactured commercially available devices, therefore, fixed installations are less likely to give rise to interference problems which need to be addressed by the Regulations. As a result, Ofcom has not extended the Regulations to cover them.

Subject matter

- 3.33 We agree with the RSGB that the subject of the Regulations is the control of undue interference from apparatus, not the immunity of the apparatus.
- 3.34 The wording “*liable to be affected by such disturbance*” in the Regulations’ definition of “apparatus” does not change that. Those words specify one characteristic a device must have for it to be such “apparatus”, the interference caused by which the Regulations limit. That does not make its immunity the subject of the Regulations.

Application even if maximum intensity is lower than essential requirement level

- 3.35 The provision made at regulation 5(2) of the Regulations (regulation 4(2) of the Proposed Regulations), that the requirement in the Regulations “*....applies even if the maximum intensity of electromagnetic energy emitted by that apparatus is lower than a level permissible under the essential requirements*” is a provision included for the avoidance of doubt. Ofcom considers that inclusion helpful.

Radio Equipment and Telecommunications Terminal Equipment

- 3.36 The RSGB’s contention that the exclusion of radio equipment from the Proposed Regulations was unnecessary is based on its assertion that regulations made under section 54 of the Act cannot apply to such equipment in any event. However, it appears to Ofcom possible that such regulations may apply to such equipment, and the exclusion is necessary.
- 3.37 In particular, section 54 is in Part 3 of the Act. That part of the Act, and regulations made under section 54, may be broad enough to apply to wireless telegraphy apparatus (radio equipment), like other (non-wireless telegraphy) apparatus. This is demonstrated by, for example, sections 62 and 68, other provisions in Part 3 of the Act, which clearly apply to wireless telegraphy apparatus. Further, and in any event, as set out above, the Regulations fall within the exemption at Article 4(2) of the EMC Directive. That Directive expressly excludes from its scope radio equipment and telecommunications terminal equipment regulated by the RTTE Directive. The relevant exemption cannot, therefore, apply to such equipment. Consequently, it is necessary expressly to make clear the exclusion of that equipment from the scope of the Regulations.

Protection area

- 3.38 The requirement set out in the Regulations is that apparatus must not cause undue interference within a protection area. It follows sufficiently clearly from the way the Regulations are drafted that this requirement applies regardless of the location of the apparatus causing the interference.

Existing secondary legislation

- 3.39 In response to the RSGB's submission that existing secondary legislation made under section 54¹³ should be disapplied, Ofcom responds as follows.
- 3.40 We agree that apparatus falling within two sets of relevant regulations would be subject to two requirements. Ofcom does not regard that as necessarily problematic, however. Both requirements go to the protection of wireless telegraphy against undue interference. One is a general requirement applying to certain kinds of apparatus subject to existing regulations which are of broad application. The other is a requirement applying to more broadly specified apparatus specifically to protect wireless telegraphy used for safety purposes within protection areas at the Games.
- 3.41 Ofcom, nonetheless, intends to carry out, in due course, a review of whether existing secondary legislation made under section 54 should be revoked.

Hadleigh Farm

- 3.42 We agree that, as a Games venue, Hadleigh Farm should be included in the Schedule to the Regulations. We have done so.

Amendments to Regulations

- 3.43 Notwithstanding our decision to make the Regulations substantially as proposed, for the reasons in the Notice and above, we have made some minor amendments to the proposed version.
- 3.44 Firstly, the Regulations have been revised to reflect the decision made, following consultation with the authorities in Jersey, Guernsey and the Isle of Man, not to extend the Regulations to those places.
- 3.45 Secondly, we have amended the term "*protection radius*" to "*protection area*" and revised its meaning to be more precise. Protection area in the Regulations means:
- "a circular area surrounding an Olympic or Paralympic sports venue which is-*
- named in column 1 of the Schedule; and*
- has a centre point at the location (expressed by latitude and longitude coordinates) in columns 2 and 3 (in the same row of the Schedule as the name) and a radius of the distance specified in column 4 (also in the same row of the Schedule as the name)."*
- 3.46 This revised definition of "*protection area*" obviated the need for reference to, and a definition of, "*event zone*". Accordingly, the definition of "*event zone*" has been removed in the Regulations along with any references to it.
- 3.47 Thirdly, we have revised the table in the Schedule to the Regulations. For ease of reference, the protection areas have been named. The protection area of Hadleigh Farm has been added. The table has been revised to reflect the definition of "*protection area*," so that column 1 now refers to the name of the protection area, column 2 to latitude, column 3 to longitude and column 4 to distance.

¹³ Or made under equivalent provisions of the Wireless Telegraphy Act 1949, and now treated as if made under section 54 of the Act.

- 3.48 Fourthly, the Explanatory Note (which is not part of the Regulations) has been revised to reflect the revised definition of “*protection area*” and to describe the effect of the Regulations more succinctly. To this end, it also includes the statement that non compliance is a ground for Ofcom giving notice under section 55 of the Act.
- 3.49 Finally, the Secretary of State’s approval is expressly indicated by way of signing the Regulations prior to the making by Ofcom of such Regulations. This is reflected in the execution block in the Regulations.

Final scope of Regulations

Ofcom’s decision

- 3.50 For the reasons given, Ofcom has decided to make the Regulations as proposed, subject to the amendments described above. The Regulations will come into force on 23 July 2012. They are summarised below.

Extent of application

- 3.51 The Regulations will apply in the United Kingdom. The subject matter of the Regulations relates to protection areas in specified places in the United Kingdom.

The Regulations

- 3.52 Regulation 5(1) provides that between 26 July 2012 and 10 September 2012 apparatus must when in use operate at a sufficiently low intensity of electromagnetic energy such that it does not cause undue interference with wireless telegraphy used for public safety purposes within a “*protection area*”.
- 3.53 Regulation 5(2) adds clarity to regulation 5(1) by providing that regulation 5(1) applies even if the maximum intensity of electromagnetic energy emitted by the apparatus is lower than a level permissible under the essential requirements set out in the EMC Regulations.
- 3.54 The “*protection area*” is defined in regulation 3 by reference to the table in the Schedule to the Regulations. These areas have a centre point at specified locations and cover a specified radii distance. The radii are between 25 and 35 kilometres.

Annex 1

Regulatory Impact Assessment

Introduction

- A1.1 Ofcom acts consistently with the Government practice that, where a statutory regulation is to be made, a Regulatory Impact Assessment (“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.
- A1.2 The analysis in this RIA, together with that set out in the Notice¹⁴ and statement¹⁵ (<http://stakeholders.ofcom.org.uk/consultations/undueinterference-olympics-2012/>), is an impact assessment relating to the Regulations. It is consistent with the Government practice on RIAs and Ofcom’s duty under the 2003 Act.
- A1.3 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/consult/policy_making/guidelines.pdf.
- A1.4 This RIA is substantially the same as the RIA annexed to the Notice. The reason for this is that the Regulations have not changed substantially from the draft proposed (and annexed) to the Notice.
- A1.5 This impact assessment relates to our decision to make the Regulations in order to regulate:

for the duration of the Games 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 used for public safety purposes within a protection area.

Background

Policy objectives and how the Regulations address the problem

- A1.6 The policy objectives of the Regulations are set out in section 4 of the Notice. Likewise, the ways in which Ofcom considers that the Regulations achieve the policy objectives and address the problems they are designed to resolve are set out in the Notice at section 4. Ofcom does not repeat, but nonetheless relies for the purposes of this impact assessment, on what we say in section 4.

¹⁴ “Notice of proposals to make the Wireless Telegraphy (Control of Interference from Apparatus) (the London Olympic Games and Paralympic Games) Regulations 2012”

¹⁵ “Decision to make the Wireless Telegraphy (Control of Interference from Apparatus) (the London Olympic Games and Paralympic Games) Regulations 2012”

The citizen and/or consumer interest

- A1.7 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.
- A1.8 Further in performing the principal duty of furthering the interests of citizens in communications matters¹⁶, Ofcom must have regard to, amongst other things, the desirability of preventing crime and disorder¹⁷. Ofcom considers that undue interference caused by apparatus could compromise communications systems used for safety purposes at the Games, including for the prevention of disorder and crime.
- A1.9 Ofcom has decided, in exercise of the powers conferred by sections 54(1) and 122(7) of the Wireless Telegraphy Act 2006 (the "Act") to make the 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 in the Notice, 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 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 for public safety purposes.
- A1.10 Ofcom has considered the wider impact beyond immediate stakeholders in the communications community. We believe that the Regulations are of benefit to citizens as it helps manage, and averts threats to, public safety. For example, communications systems functioning free from interference can be used to manage large crowds safely and warnings/safety announcements for public safety purposes are capable of being conveyed without interference or interruption.

Evidence of need for Regulations

- A1.11 Ofcom set out in section 4 of the Notice why we considered the Regulations were necessary. Additional evidence of that need was provided by the following.
- A1.12 Interference complaints handled by Ofcom's advice and assistance service¹⁸ during 2011 were:

2011 Electromagnetic disturbance case statistics	Volume of cases
Complaints where undue interference was caused to wireless telegraphy apparatus and capable of resolution by regulations under section 54	167

¹⁶ Section 3(1)(a) of the Communications Act, 2003.

¹⁷ Section 3(4)(j) of the Communications Act, 2003.

¹⁸ A service Ofcom provides to persons complaining of interference pursuant to section 4 of the Act.

Complaint resolution possible using existing regulations under section 54(1)	3
Number of cases requiring resolution by cooperation	164
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)	11
Numbers of different types of apparatus causing undue interference to wireless telegraphy.	14

A1.13 Accordingly, in 2011 there were 167 complaints involving 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). However, of those, only 3 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.

A1.14 This meant that 164 complaints (note that 3 were resolved using the existing regulations) required resolution by seeking the voluntary cooperation of the person using the apparatus (normally by repair or replacement of apparatus). In other words, the resolution of those 164 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.

A1.15 The risk to which this gives rise is borne out by the following. In 11 cases, delays were incurred resolving undue interference affecting emergency communications systems.¹⁹ 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 used for public safety purposes within a protection area could be highly significant.

A1.16 In addition, from relevant complaints set out in Table 1, 14 different types of apparatus were found to be causing interference. These are listed in Table 2 below.²⁰ Table 2 demonstrates that 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 2
Control Equipment
Domestic Electric Cables
Electric Fence
High Voltage Power Cables

¹⁹ Delays were incurred in resolving nine cases affecting business wireless systems.

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

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

A1.17 In light of these statistics, together with the assessment set out in section 4 of the Notice, Ofcom identified a distinct and important need for intervention (in the form of the Regulations), at least as far as the Games are concerned (whether there is a need for broader intervention is for separate assessment). The Regulations respond to this need in a correspondingly limited way (i.e. in respect of the Games), being restricted in time and, as far as the effects of interference are concerned, geographical scope and the uses of wireless telegraphy affected.

Options considered

- A1.18 The main options which were open to Ofcom for taking action against undue interference, and which Ofcom considered, were:
- 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 interference.

Analysis of options

A1.19 The following is an assessment of the impact of options which were open to Ofcom.

Make new regulations

A1.20 Ofcom considered that the benefits of making the Regulations included the following.

A1.21 First, the Regulations meet the needs and legislative shortfalls described in the Notice. In particular, they provide part of the means, for Ofcom to take action in respect of apparatus in use which causes undue interference to wireless telegraphy used for public safety purposes within a protection area. For those millions of people attending the Games, the Regulations assist in securing their safety. As previously noted, a key aspect of an event of the Games' magnitude is the safety and security arrangements. A key part of those arrangements is the communications networks on which they depend for their organisation and operation. By helping to ensure that Ofcom is able to take action against relevant undue interference, the Regulations ensure that communications systems used for public safety purposes can be restored to an interference-free state. This enables them effectively to play their proper role in managing and securing public safety.

Likewise, should there be public safety emergencies, that those communications systems can effectively be used in aversion or alleviation of the emergency.

- A1.22 Second, the investment, in financial and manpower terms, being made in the Games' safety and security arrangements is similarly set out elsewhere in the Notice. By enabling Ofcom to take action in respect of the relevant undue interference, the Regulations offer the benefit of helping to secure the efficacy of those arrangements and the value of the investment made in them.
- A1.23 Third, the Regulations 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 provide incentives to comply with the Regulations' requirement, under threat of a prohibition notice if necessary, and any notice should, with its threat of possible prosecution should deter continued use of apparatus causing relevant undue interference. As a result, the Regulations 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.
- A1.24 Additionally, in circumstances where there is undue interference to wireless telegraphy apparatus used for public safety purposes and Ofcom takes action under the Regulations, a consequential and indirect benefit will be that, where the same interference is affecting apparatus not used for safety purposes, the interference will also be resolved in respect of that apparatus.
- A1.25 There are some costs in making, and in complying with, the Regulations.
- A1.26 In terms of the costs to Ofcom of making and applying the Regulations, there are some one-off administrative costs associated with making the regulations²¹. These include the costs of providing guidance and training for spectrum enforcement staff allocated enforcement responsibilities. Ofcom have considered these costs to be limited as the Regulations require limited guidance and training given that the spectrum enforcement staff are already familiar with the legislative framework upon which the Regulations are based.
- A1.27 We have considered that the additional costs to Ofcom in applying the Regulations are limited, for two reasons:
- we anticipated these costs being lower than Ofcom would otherwise incur in seeking voluntary resolution of relevant interference absent the Regulations; and
 - those Ofcom officers likely to be involved in applying the Regulations in connection with the Games would be deployed at the Games, with similar costs to Ofcom and the Games budget in any event.
- A1.28 There are also some costs to individuals and businesses using apparatus and to whom the Regulations and/or enforcement notices apply. Although very difficult to

²¹ Given the significant benefits of the Regulations (namely, the mitigation of risks to public safety in an event the size of the Games), we did not believe it is necessary to quantify these costs for the purposes of this impact assessment.

estimate the costs of the Regulations on these users, Ofcom have considered that these costs are likely to be limited for the following reasons:

- The statistics set out in Table 1 above (which relate to the U.K. as a whole) suggested that only a small number of users will be deprived of the right to use apparatus under the Regulations. Moreover, delays in reaching voluntary resolution were incurred in only a small minority of cases, which suggested that an even smaller number of users would face material *additional* costs from the Regulations (relative to not making the Regulations). This is because, in Ofcom's view, the additional costs of the Regulations to users that would have cooperated voluntarily are likely to be very small;
- In addition, the costs to those using apparatus and to whom the Regulations and/or enforcement notices may apply would relate only to the deprivation of the right to use apparatus for a limited time in a limited area; and
- Ofcom notes that the Regulations principally place obligations on those using apparatus, end-users, not its manufacturers or sellers. Specifically, the 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 is also likely to go towards complying with the requirement under the Regulations, limiting any additional costs.

A1.29 There are some costs in making, and in complying with, the Regulations.

A1.30 Overall, Ofcom have considered that the costs of the Regulations are likely to be limited and outweighed by the significant benefits that come from mitigating the risks to public safety arising from interference to wireless telegraphy used for safety purposes within the defined protection areas. Moreover, the Regulations respond to the need to maintain public safety in a correspondingly limited way (i.e. in respect of the Games), being restricted in time and, as far as the effects of interference are concerned, geographical scope and the uses of wireless telegraphy affected.

Do nothing

A1.31 Ofcom's main alternative option was to do nothing: not make the Regulations and to continue to rely on the reasonable cooperation of apparatus users to resolve any relevant undue interference.

A1.32 Whilst this option would not have imposed any of the additional costs of making or applying the 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 used for safety purposes within Games' protection areas could be compromised by undue interference would have remained unmitigated, which would have represented a significant risk to public safety. The costs of this risk, especially if they were realised, would have been highly significant.

A1.33 In addition, in respect of many types of relevant apparatus, had Ofcom decided not to make the Regulations, they would have had to continue to incur the costs of

seeking voluntarily resolution of interference problems that could have been avoided.

Overall impact

A1.34 Ofcom has assessed the overall impact of the Regulations.

A1.35 The scope and consequential impact, of the requirement set out in the 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 limits the intensity of the electromagnetic energy with which apparatus operates so that it will not cause undue interference with wireless telegraphy used for public safety purposes;
- c) the requirement only applies between 26 July 2012 and 10 September 2012;
- d) the requirement only applies to apparatus when in use that has effects within a protection area (as defined in the Regulations);
- e) the requirement of the Regulations (and consequential provisions of the Act) will only serve to prohibit the use of apparatus and the causing of undue interference temporarily and with the limited scope summarised above; and
- f) the requirement does not apply to apparatus covered by Directive 1995/5/EC (the "RTTE Directive").²²

Preferred option (and adopted option)

A1.36 In light of all the above, Ofcom's preferred and adopted option is to make (and apply) the Regulations in order to continue to meet our spectrum management duties and reinforce public safety at the Games. The 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.

A1.37 In particular, the Regulations are likely, in Ofcom's view, to yield the significant benefits described above. We have concluded that those benefits, including the aversion of the risks and costs to public safety communications in use at and for the Games, would outweigh costs which Ofcom assesses would only be limited for the reasons given.

A1.38 Moreover, if we did not make the Regulations we risk the inefficient use of spectrum. We would not be acting consistently with our wider spectrum management duties because, if wireless telegraphy used for public safety purposes 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. This shortfall in our ability to take enforcement action is particularly acute given the need to maintain public safety in an event the size of the Games.

²²OJ No.L91, 7.4.99, p.10 as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29.9.2003 (OJ L 284, 31.10.03, p.1).

A1.39 For the reasons identified in the preceding paragraphs we consider the benefits of making the Regulations to outweigh the costs. We have therefore made the Regulations.

Equality Impact Assessment

A1.40 Following an assessment of our policy proposals we have considered that it was reasonable to assume that any impacts on consumers and citizens arising from the Regulations would not differ significantly between groups or classes of UK consumers and citizens.

A1.41 In addition, we note that there is no available evidence to suggest that the 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 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.

A1.42 As the Regulations are limited in geographical scope to areas in and around the greater London area, the Regulations do not have any direct impact in Northern Ireland.

A1.43 In the same way that any apparatus may cause 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 interference problems concerned specifically with apparatus used by disabled persons.

A1.44 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 Regulations 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.

Annex 2

Respondents

Name withheld 1

Name withheld 2

Name withheld 3

Tim Hague

Andrew Howlett

Peter Chadwick

C.J. Langley

Radio Society of Great Britain

The British Broadcasting Corporation