



Annex A

Ofcom Consultation on Updated Interference Regulations – January /February 2015. Commentary and Guidance for RSGB Members

1. On 5 January Ofcom announced a consultation on updating the interference Regulations made under section 54 of the Wireless Telegraphy Act 2006. The consultation included a set of draft new Regulations. The full consultation can be found at <http://stakeholders.ofcom.org.uk/consultations/undueinterference>. The consultation closes on 16 February.

2. This document is intended to provide background to the proposals and to guide readers through some of the issues. We hope members will make their own response to the consultation to Ofcom. We would appreciate a copy or alternatively members can make an input direct to us which will help shape the Society's response. This document has been drafted within RSGB, independently of Ofcom, although some clarifying questions have been asked of the regulator. This document must not be taken as a legal interpretation, but it is intended to put the legal terminology in layman's terms as far as possible.

Summary Position

3. In general RSGB supports and welcomes the Ofcom proposals. The Regulations are a prime means of tackling interference to radio use from non-radio apparatus. Their updating is long overdue; the Society has been pressing for this for several years. In welcoming Ofcom's proposals however, a number of issues need to be made clear. We mention these below.

Background

4. Interference Regulations are made under the Wireless Telegraphy Act (WTA). That's the same Act under which our licences are issued. Ofcom can make these Regulations for any apparatus which is liable to produce electromagnetic energy in the radio spectrum and is liable to cause "undue interference". That term is defined in the WTA and includes the ITU term "harmful interference". Regulations can define the maximum level of electromagnetic emissions that apparatus can produce.

5. If undue interference is caused, Ofcom can serve a notice on the user to stop using the apparatus in 28 days time. In effect this provides time for remedial action to be taken. For safety of life services the notice can have immediate effect. Not complying with such a notice is a criminal offence. There is an appeal process against a served notice in non-safety of life cases. We understand that notices under existing Regulations, covering ISM machines, electric motors and household electrical items, very rarely need to be served and the powers are backstop ones. However these Regulations are very old. There is nothing covering modern technology.

6. In section 3 of the condoc. Ofcom rightly draw the distinction between the WTA provisions and the Electromagnetic Compatibility (EMC) and Radio and Telecommunications Terminal Equipment (RTTE) Directives and their UK implementing legislation. As they explain, the EMC and RTTE Directives are concerned with the state of electrical, electronic, radio and non-radio telecommunications equipment when it is first placed on the market or otherwise taken into service. Of particular importance is the Directive's Essential Requirement concerning electromagnetic emissions:

" Equipment shall be designed and manufactured, having regard to the state of the art, so as to ensure

that—

(a) the electromagnetic disturbance it generates does not exceed a level above which radio and telecommunications equipment or other equipment cannot operate as intended;”

7. This and other requirements should be satisfied if the apparatus is to be declared compliant, CE marked and able to be moved freely around the EU market. This means that equipment should be built so that any emissions are weak enough not to cause undue interference. An intention to protect the Amateur Radio Service is specifically provided by the EMCD Directive. The Directives, however, do not provide a means of control in actual interference cases.

8. Thus while the EMC and RTTE Regulations govern the state of, for all intents and purposes, new apparatus, the WTA interference regulations provide means for Ofcom to take action against individual cases where apparatus is in actual use and causes undue interference through for example faulty installation, assembly, or ageing, deterioration, or being used for the wrong purpose.

Ofcom Proposals

9. The Ofcom proposals are set out in section 4 of the condoc. Rather than set out maximum emission limits for individual types of equipment, Ofcom has taken a different view. They propose that where apparatus causes undue interference the emission levels it produces should be restored to the level of the Essential Requirement on emissions that it met when first placed on the market or taken into service - in effect what it had been declared to meet when it was new. This avoids mention of specific product standards, which may be subject to change and which do not have to be used for EMCD compliance purposes anyway. It also provides a means of future proofing the Regulations against changing technology as they do not refer to specific types of apparatus (as the old Regulations do). This is also set out in the draft Regulations at Annex 6. On the face of it this seems a very reasonable way to go forward.

There are however several issues that arise.

Resources

10. Taking new powers will inevitably raise expectations of action. We recognise that Ofcom has to manage this. We would not support frivolous complaints or those from amateurs who expect every noise that they detect to be investigated whether or not it is causing interference. However, there have been several worthy cases in recent years where Ofcom has said they can do nothing. This may be the result of Ofcom not having up to date powers. Some members also believe that there is no point asking for Ofcom help as they believe no action would be taken. We hope that in future genuine cases, whether they come with RSGB support or not, will be investigated. However we are concerned that with field staff cuts in recent years there are insufficient staff to cope with genuine complaints from ourselves and other radio users. This may result in Ofcom saying they cannot protect weak signal services such as amateur radio but while we recognise Ofcom have priorities, neither the WTA or EMCD discriminate against amateur radio.

Criterion For Action

11. We note that where complaints are from non-safety of life services, such as ourselves, Ofcom may not take action unless

the case is one where OFCOM consider that all reasonable steps to minimise interference have been taken in relation to the wireless telegraphy station or wireless telegraphy apparatus receiving the telegraphy interfered with. (WTA 2006 s55(3)(c)

It is not clear what “reasonable steps” Ofcom considers an amateur could take. Might they suggest for example switching to an unaffected band (were there may be unsuitable propagation), or changing a beam heading away from an offending source (which may mean losing a favoured direction for communication).

We would not consider such steps reasonable.

Definitions

12. The RSGB can see difficulties with definitions used in the draft Regulations at Annex 6 of the condoc.

13. First, the definition of apparatus in Regulation 3. This is taken from the UK EMC Regulations (SI2006/3418):

“apparatus” means any finished appliance or combination of appliances, liable to generate electromagnetic disturbance, or the performance of which is liable to be affected by such disturbance and which generates, or is designed to generate, or is liable to generate fortuitously, electromagnetic energy at frequencies not exceeding 3,000 gigahertz and includes—

(a) components or sub-assemblies intended for incorporation into an apparatus by an end-user, which are liable to generate electromagnetic disturbance, or the performance of which is liable to be affected by such disturbance;

(b) mobile installations defined as a combination of apparatus and, where applicable, other devices, intended to be moved and operated in a range of locations; “

14. This is narrower than the simple meaning of apparatus which is all that is mentioned in the WTA, but it seems to have been done to restrict the apparatus covered to that which can be tested to the Essential Requirements. This gives a problem in cases like interference from Power Line Adapter systems, high speed broadband VDSL systems and solar power generation systems (called Solar Photovoltaic or Solar PVs). The various appliances and combinations of appliances used in these systems may well meet the Essential Requirements but high levels of interference may still be experienced. This is because the emissions can be radiated by out of balance cables. These are outside the scope of the EMC regime and cannot be tested to the Essential Requirements.

15. We wondered whether the addition of words such as “appliances.... in their environment” would help, but if the environment of cabling cannot be tested this does not solve the problem. Furthermore, the requirement in the EMC Regulations (15(h)) for apparatus to carry information to ensure that when installed it meets the Essential Requirements does not help as it is not the apparatus concerned that is at question. It appears to the RSGB therefore that however well intentioned, the draft new Regulations would not control interference from the things that presently concern amateurs most.

16. Second, page 7 of the condoc. Has a footnote 4 concerning Fixed Installations. It suggests that Fixed Installations, which are defined in the EMC Regulations and are subject to a regime that does not require CE marking, are exempt from the draft new Regulations. This is said to be because the person responsible for the Fixed Installation is under an obligation to demonstrate its compliance with the Essential Requirements by having appropriate documentation. The implication is of an ongoing responsibility for compliance. However, the only requirement is for the person to hold the appropriate documentation that is compiled at the time compliance is declared, that is, when it is first taken into service, for the lifetime of the installation, for inspection. RSGB can see no requirement for on-going compliance or for remedial action to be taken if it is not within the Essential Requirements when in use. Thus it is not obvious why there should be an exemption.

17. Moreover, the supposed exemption is simply an explanation of policy. As the draft Regulations stand they neither specifically include nor exclude Fixed Installations since that concept is not recognized in the WTA or the draft Regulations, nor is there any specific exemption. The draft Regulations simply cover “appliances or combination of appliances”.

Limitation On Action

18. Draft Regulation 4(b) inhibits Ofcom from taken action while the offending apparatus can be withdrawn from the market in accordance with the EMCD Directive or the UK EMC implementing Regulations. The UK EMC Regulations permit action to be taken through the courts up to three years after an offence for placing on the market of non-compliant apparatus – this could lead to withdrawal from the market. It would seem that an individual piece of apparatus that caused interference could not be stopped from being used under the interference Regulations within three years as action to withdraw it from the market could still be taken. This seems to go against the policy intention of being able to take action once apparatus is in use. Ofcom might consider replacing 4(b) with wording in the sense that apparatus must be in actual use in service as opposed to being first placed on the market or taken into service.

Measurements

19. To meet the Essential Requirements of the EMC Directive much apparatus is tested to a Harmonised Standard. These are written for test laboratory use. It could be necessary to take measurements of interfering apparatus *in situ* (it may be too big to move easily) to prove it is not in it's original state, due to deterioration, poor maintenance etc, or to show it has had remedial work done to restore it to its original state. It is not clear how Ofcom can make reliable measurements in the field in such cases. In addition standards are not mandatory and manufacturers can rely instead on technical documentation to show compliance. Again it is not clear how tests contained in such documentation can be replicated.

Other Points

20. It may be useful to set out our understanding of some other matters in the condoc.

Channel Islands and Isle of Man

21. Section 3.28 and the draft Regulations are clear that they do not extend to the Channel Islands or the Isle of Man. We understand it is not within the gift of Ofcom or the WTA to do so. The administrations of those states would need to enact their own local legislation. If it is felt there is a need, RSGB would gladly assist members in those states to approach the appropriate authorities.

Radio and Telecommunications Terminal Equipment (RTTE)

22. Regulation 56 of the draft Regulations exempts equipment under the RTTE Directive from its scope. We understand that where apparatus containing radio equipment causes interference it will be treated as a breach of the conditions governing the radio authorisation (licence or exemption), in effect unauthorised use.

23. Non-radio telecommunications terminal equipment already has to meet the Essential Requirements of the EMC Directive but the imminent implementation of a new Radio Equipment Directive means that the EMC Directive will be directly applicable to such equipment.

24. The new draft Regulations will include TV receivers which are currently within the scope of the EMC Directive. Plasma screen TVs have given rise to many interference cases. However TVs and other broadcast receivers will move to be within the ambit of the new Radio Equipment Directive. We understand that some amendment will be required to keep them within scope of the proposed Regulations at the appropriate time.

CONCLUSION

25. There may be other matters that RSGB has not picked up and we would appreciate being kept informed of any found by members. However, we hope this document, when read in conjunction with the Ofcom condoc. will help members to understand the proposals better and formulate their responses.