

RSGB RESPONSE TO OFCOM CONSULTATION ON UPDATING INTERFERENCE REGULATIONS, s54 WIRELESS TELEGRAPHY ACT 2006

General

1. In general RSGB supports and welcomes the Ofcom proposals. The Regulations are a prime means of tackling interference to authorised radio communication services from non-radio apparatus. Their updating is long overdue; the Society has been pressing for this for several years. Apart from the existing and very old Regulations (listed at footnote 15, page 13) the spectrum in general—not just for the amateur radio service—has in fact been unprotected from undue interference from the use of any modern technology. This is clear from Ofcom's own statistics, at table 1, page 23 of the condoc, which show that in recent years only around 2 percent of cases were solved. We also note the frustration of our members who make legitimate complaints of undue interference only to be told, when the goodwill of the owner of the source is unwilling to do anything to take remedial action, that Ofcom have no powers to solve the issue.
2. The existing Regulations suffer from reference to outdated standards. While reference to a standard, compliance with which would assume emissions to be below the level of undue interference, is implicit in the Wireless Telegraphy Act (WTA) section 54, it is not mandatory. We understand Ofcom's proposal is instead to make the Requirement for a piece of interfering apparatus to be returned to meeting the EMC Directive's Essential Requirements. That means the state in it was when it was first placed on the market or taken into service. In this respect we are pleased to see that you draw a correct line between on one hand the WTA provisions and on the other the Electromagnetic Compatibility (EMC) and Radio and Telecommunications Terminal Equipment (RTTE) Directives and their UK implementing legislation.
3. The proposals are a good attempt to change the methodology away from a set of relatively static standards. They also allow for cases where, as with the EMC Directive, other means of assessment than using a standard to show that the apparatus in question meets the Essential Requirements can be used. That seems to provide a good deal of future proofing for the Regulations. We assume also that the use of this concept was a key part of the negotiating position for the EU Commission to agree the Regulations. We understand that these negotiations have taken some time, even though there is no conflict between

the WTA Regulations and the EMCD, RTTED (a point confirmed at footnote 12, page 12) or with Directive 98/34 on technical standards and regulations, or Community rules on the restrictions on trade). Ofcom are to be congratulated on this progress.

In welcoming Ofcom's proposals however, we believe there are some difficulties with both the concept and the implementation. We cover these below.

Definitions

Apparatus

4. The RSGB can see difficulties with definitions used in the draft Regulations at Annex 6 of the condoc.
5. 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; “

6. This is narrower than a simple meaning of “apparatus”, which is all that is mentioned without further definition in the WTA. We assume it has 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 (PLA) systems and high speed broadband VDSL systems, where emissions can be radiated by out of balance and unsuitable cables, or in solar power generation systems (called Solar Photovoltaic or Solar PVs) where insufficient attention is paid to stop emissions from interconnecting cables. Other real examples include radiation from overhead power lines or electric fences where deterioration or poor maintenance of insulators has caused widespread interference. 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. Such cables and otherwise passive components are outside the scope of the EMC regime and cannot be tested to the Essential Requirements.
7. It appears to the RSGB therefore that however well intentioned, the draft new Regulations would not control interference from some of the things that presently concern amateurs most. In short there is a substantial hole in the coverage of the proposals

8. We wondered whether the simple 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. Rather it seems that a substantial change to the definitions is required.
9. One way to achieve the coverage required is to split the definition of apparatus into two. A first section would retain reference to the EMC Regulations’ “*appliances*”. A second section would cover any other thing that was connected to appliances that could cause or propagate emissions. Such an expansion of the definition to cover all “apparatus” would also require a widening of the Requirement in draft Regulation 4 so as to cover that apparatus that needed corrective action but was not subject to the Essential Requirements. An example of how this might be achieved, which is not legally proofed text, is at the Annex.

Fixed Installations

10. Second, page 7 of the condoc. has a footnote 4 concerning Fixed Installations. It suggests that Fixed Installations, are exempt from the draft new Regulations. Such installations as are defined in the EMC Directive and UK Regulations are not required to be CE marked. The exemption from the proposed Regulations 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 holding the appropriate documentation for inspection. While you may consider the implication is of an ongoing compliance, we can see nothing that suggests that, only that the documentation that was compiled at the time of first taking into service needs to be retained. Any other interpretation would surely mean going beyond the EMC Directive’s boundary of first placing on the market or taking into service. Thus it is not obvious why there should be an exemption.
11. Moreover, the supposed exemption is simply an explanation of proposed policy. As the draft Regulations stand they neither specifically include nor exclude Fixed Installations since that concept is not recognized or defined in the WTA or the draft Regulations, nor is there any specific exemption. The draft Regulations simply cover “*appliances or combination of appliances*”. It seems to us both legally and pragmatically correct to allow the definition as drafted to cover all types of appliances and combinations of appliances (and, as we propose, “other things”) whether they are mobile, temporary or permanently fixed.

Criterion For Action

12. The WTA stipulates that where complaints are from non-safety of life services, such as ourselves, Ofcom may not take action to stop use of offending apparatus in 28 days and also 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 you suggest for example switching to an unaffected band (where 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. While each case may need considering on its merits, we believe that the basic steps amateurs should take could be set out, using perhaps a reference to our own Good Housekeeping guidance.

13. We should also make clear here that in general we do not accept the line given by Ofcom staff in some cases that they cannot protect small signal services. The amateur service is as entitled to protection from undue interference from non-radio sources as any other.

Limitation On Action

14. 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. Thus 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. This would also apply to the “other” apparatus we have described.

Measurements

15. 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 its 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.

Resources

16. Taking new powers will inevitably raise expectations of action. We recognise that Ofcom has to manage this. We do 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 staff have said they can do nothing. This is partly because it has not had up to date powers. We have also pointed out in para 13 above the excuse of being a small signal service. Some members also believe that there is no point asking for Ofcom help as they as there is a perception that 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. While we recognise Ofcom have priorities, and in the case of s54 there is a clear priority for safety of life services, neither the WTA or EMCD discriminate against amateur radio.

Receivers

17. 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.
18. Finally, although not directly part of the consultation there is a consequence in respect of the BBC TV licence. You have expressed some ambivalence over Ofcom's ability to enforce the non-interference provisions of the TV licence in respect of interference from TV receiving apparatus. DCMS doubt you have such powers. This despite s366 of the Communications Act 2003 being specifically drafted to give Ofcom powers in the absence of any WTA s54 Regulations. The proposed Regulations resolve this issue. To obviate a duality of powers between WTA and the BBC TV Licence we suggest Ofcom, DCMS and BBC should discuss removal of the non-interference clause from the TV licence.

RSGB February 2015

Annex

Proposed rewording to include apparatus not covered by the Essential Requirements

Interpretation

3. In these Regulations “apparatus” means

a) 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—

- 1) 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 ;
- 2) mobile installations defined as a combination of apparatus and, where applicable, other devices, intended to be moved and operated in a range of locations;

and

b) any other thing, including but not restricted to wires and cables, that may be attached or connected to anything in a) above and which causes, aids or propagates the said electromagnetic disturbance.

Requirement

5.

a) The requirement is that apparatus set out in regulation 4, when in use, must operate in such a way that the maximum intensity of electromagnetic disturbance generated shall not exceed the level permissible under the requirements of the EMC Directive, when it was placed on the Community market or put into service in the Community;

or

b) in the case of apparatus that was not required to meet the requirements of the EMC Directive when it was first placed on the Community market or taken into service in the community, the maximum level of electromagnetic intensity emitted shall be below the level at which undue interference is caused to any wireless telegraphy.