

RADIO SOCIETY OF GREAT BRITAIN RESPONSE TO OFCOM CONSULTATION ON:

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

The RSGB is pleased to be able to respond to this consultation for two reasons.

First, our over-riding interest is in the spectrum and ensuring that it is properly protected during the Olympics and Paralympics. We recognise the importance of the radio spectrum for a variety of applications during the events.

Second, we understand that these games-specific Regulations are to be precursors to more generally applicable Regulations following the games. The present consultation is an opportunity to get the principles behind the Regulations correct and to ensure no detrimental precedents are set for the future.

The RSGB notes that it has been urging Ofcom to update the existing Regulations for many years and it has recorded many cases of interference where the regulator is unable to act for lack of enforcement powers under s54 of the Wireless Telegraphy Act 2006. While we understand the imperative to progress with Regulations to protect the Olympic games, it is essential that Ofcom does not abandon its plans for more general Regulations afterwards. Many studies have been done which show the essential need for spectrum to be as clear as possible from interference for the benefit of business, the media and leisure purposes in the modern world. This would be a very good Olympic legacy for the radio spectrum. The Society will be watching carefully to ensure that this is carried forward.

The Society has expertise that is directly applicable to the drafting and operation of this class of Regulations and thus feels competent to comment.

The consultation question is:

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?

The RSGB welcomes the general proposals for games-specific Regulations, for the reasons set out above. We are pleased to see that the difference between the EMC Regulations and the s54 requirements is clearly enunciated, both as regards the requirements for placing on the market against that of continuing use, and that the Essential Requirement* does not necessarily equate to the s54 requirement not to cause undue interference.

As regards the options in the Impact Assessment, we consider it correct to disregard the “do nothing” option. While it may be that in many cases – as has been so in the past – it will be possible to rely on the co-operation of apparatus users to resolve any undue interference, this may not always be so. Users are sometimes unwilling to accept that their own equipment is causing interference to radio use. As their own equipment appears to function perfectly properly for their purpose, they are unwilling to take remedial action especially if this requires even a small financial outlay. Such cases are known to the RSGB so far as amateurs are concerned and we have no doubt they occur in other areas of radio use. It is therefore essential that adequate enforcement powers are available in the circumstances of non co-operation by users.

However, we also feel that there are flaws in both the policy and drafting of the proposed Regulations which could limit their effectiveness and indeed which, as they stand, might render them legally defective. Our reasons for saying this are set out below.

1. Apparatus.

While we can appreciate that applying the Regulations to a broad definition of “apparatus” avoids the need to be specific and thus allows a very wide range of apparatus to be covered, we are concerned that this is not a permissible way to draft such Regulations. Section 54 WTA 2006 is clear that apparatus in Regulations must be “specified”. The intention in the Act appears to be that certain defined types of apparatus should be specified because of their potential to cause interference. This has been the case with the existing Regulations. A blanket definition of “apparatus” that simply repeats the definition in the Act makes a circular argument: if it were the case that all apparatus could be covered, there would be no need to provide enabling legislation to allow certain “specified” types of apparatus to be defined.

2. Apparatus.

While the inclusion of mobile installations is welcome, it is not clear that fixed installations are within scope. The Society is aware, for example, of existing cases where solar photovoltaic energy generation installations cause interference and Ofcom appear powerless to act. The Regulations should be clear that these and other large fixed installations such as factory production lines and telecommunications networks are within scope. Similarly, non-permanent installations such as PLT data networks employing power line adapters should also be clearly within scope.

3. Apparatus.

The definition of apparatus includes the words “or the performance of which is liable to be affected by such disturbance”. This concerns the immunity of apparatus and should be removed since immunity of the apparatus concerned cannot be the subject of s54 Regulations. This appears to have come about as the definition of “apparatus” seems to be an amalgamation of the description of applicable apparatus in s54 itself and the definition of apparatus from the EMC Regulations. The latter Regulations clearly do concern both emissions and immunity, but the transfer of words concerning immunity from them is erroneous.

4. Regulation 4(1).

The aim of the Regulations is to protect only wireless telegraphy used for “public safety”. However, this is not defined in the Regulations, nor is it compatible with the WT Act provisions. As it stands it would also exclude from protection other essential, if not “public safety”, use of the spectrum at the Olympics.

It is assumed, but is not explicit in the consultation, that “public safety” includes safety of life. However, it does explicitly include wider matters such as crowd control and the prevention of crime. This is at odds with the way that the regulation of undue interference provisions of the Wireless Telegraphy Act work.

First, there is no provision for limitation of the radio services that can be covered by s54 Regulations. The requirement is simply to ensure undue interference is not caused to wireless telegraphy in general. This is reinforced by previous Regulations having no such limitation.

Second, there is already a distinction, in s55, as to how interference to radio use for safety of life and services on which the safety of persons, etc depends, is handled, as opposed to radio use for other purposes. In essence, interfering apparatus affecting safety services can be closed down immediately, while those responsible for interfering apparatus affecting other services must be given 28 days notice. It does not appear that the proposed limitation to “public safety” would fall completely within the safety of life definition in the Act. Either way, if our belief is correct that all radio use is covered by Regulations there is no need to confuse matters by introducing a new, and perhaps dubious, undefined, term like “public safety”.

Third, while some highlighting of the requirement to protect “public safety” may be desirable in terms of a “for the avoidance of doubt” insertion, to limit the effect of the Regulations to only that would leave unprotected a wide range of radio use that is essential to the games. For example the games are a world media event and there must be some provision to enable interference to broadcast links to be tackled. Timing telemetry and event management radio use between officials must also be similarly protected.

5. Regulation 4(2).

The requirement applies even if the interfering source is at a lower level than that of the Essential Requirements. However, there is no level set in terms of field strength in the EMC Regulations: it is just a written Requirement. This Regulation needs re-phrasing.

6. Regulation 5.

This disapplies the Regulations to those covered by the Radio Equipment and Telecommunications Terminal Equipment Directive. This Regulation is wrongly conceived and must be removed for the following reasons.

First, radio equipment (wireless telegraphy apparatus in UK parlance) is not covered by section 54. The use of wireless telegraphy apparatus is covered by Part 2 of the WT Act. The s54 description of apparatus does not include wireless telegraphy apparatus. This is clear from the Notes to Clauses of the equivalent clause in the 1949 WT Bill, which was transferred to the 2006 Act without policy change. Thus there is no need to exclude something that is not included in the first place.

Second and more crucial is that non-radio telecommunications terminal equipment must not be excluded from the scope of the Regulations. Rather, its inclusion is essential. This kind of equipment includes PLT power line adaptors, any IT equipment that includes an internet port and any other non-radio telecommunications terminal equipment capable of being connected to a public telecommunications network. It is precisely the interference potential of such kinds of apparatus that this Society and others have been so concerned about in recent years and against which Ofcom has been powerless to act when the apparatus is in use.

7. Protection radius.

The Regulations are intended to protect radio use within set event zones from interference from “apparatus”. However, it is not clear that offending apparatus could be situated both within and without the zones. Apparatus located outside the zones could cause interference within them, for example in the case of airborne radio use within the zones (heli-telly applications). Some clarification should be provided in the Regulations.

8. Existing Regulations.

The existing Regulations, mentioned in footnotes to the consultation and covering a wide range of apparatus, should be disapplied, at least so far as the proposed Regulations are concerned. If they stay in force it would mean that two sets of Regulations would be in force covering apparatus within their scope. There are also conflicting requirements for emission levels between the existing Regulations and the proposed ones.

The consultation also suggests that household appliances and portable tools are unlikely to be present in or cause interference in the event zones. The RSGB disagrees. Apparatus such as boiler thermostats are ubiquitous and are liable to become faulty without warning and cause interference over a wide area. The same is true of electrical tools where the suppression of motors fails. For this reason as well, the existing Regulations covering this type of apparatus should be disapplied in favour of the proposed Regulations.

* Although the draft Regulations refer only to the relevant interference Essential Requirement in 4(2) of the EMC Regulations, as opposed to the immunity requirement, the wording in the draft Regulations refers to the Essential Requirements (plural). To be strictly correct, they should refer only to a singular Essential Requirement.