

EXPLANATORY MEMORANDUM TO
THE RADIO EQUIPMENT REGULATIONS 2017

2017 No. 1206

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of the instrument is to implement Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC.
- 2.2 In implementing Directive 2014/53/EU, the Regulations will require economic operators (manufacturers, importers and distributors) to ensure that radio equipment products placed on the market or put into service in the UK meet the essential safety requirements set out in the Regulations in order to ensure the health and safety of persons and domestic animals and the protection of property, promote efficient use of the radio spectrum and to prohibit any harmful interference with the radio spectrum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument is being made in order to implement the provisions of Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment (“the Directive”).
- 4.2 The Directive replaces the Directive on Radio and Telecommunications Terminal Equipment (RTTE) 1999/5/EC. This instrument accordingly will revoke and replace the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (S.I 2000/730) (which implemented Directive 1999/5/EC) save in respect of equipment placed on the market in accordance with the 2000 Regulations before the commencement date of these new Regulations.
- 4.3 Directive 2014/53/EU entered into force on 13 June 2016. The implementation of the Directive was delayed for reasons beyond the control of BEIS, however, the European Commission has granted an extension to 14 December 2017.

- 4.4 The Regulations contain a number of ambulatory references. These are all of a technical nature. Thus there is an ambulatory reference to Regulation EU 1025/2012 on European standardisation. This is in order to keep pace with technical updates to harmonised standards, set at European level and which, although not legally binding, where met create a presumption of conformity with the essential safety requirements in the Regulations. There are also several ambulatory references to Regulation (EC) 765/2008 on the requirements for accreditation and market surveillance relating to the marketing of products (“RAMS”) in order to avoid the need to amend the Regulations each time a definition taken from RAMS is changed. Similarly there is one to Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services for the definition of “harmful interference”. And finally there are some to the Directive itself in order to keep pace with any changes to the EU safeguard procedures as well as a further one to RAMS in respect of the procedures for restrictive measures taken by a member state.
- 4.5 A transposition note has been prepared for the Commission and is at Annex A.

5. Extent and Territorial Application

- 5.1 The instrument extends to the UK.
- 5.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

- 6.1 The Minister for Small Business, Consumers and Corporate Responsibility, Margot James, has made the following statement regarding Human Rights:

“In my view the provisions of the Radio Equipment Regulations 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 These Regulations implement the Directive which the UK was under an EU obligation to give full effect to by 13 June 2016. This obligation can only be met by way of implementing regulations.
- 7.2 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of the exit negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.
- 7.3 The Directive ensures that radio equipment placed on the market or put into service in the EU and European Economic Area (EEA), meets essential safety requirements. The Directive also contains requirements for avoidance of harmful interference with the radio spectrum.
- 7.4 The Directive is one of a number of legislative instruments that support the free movement of goods within the EU and EEA and help make up the “New Legislative Framework”. The New Legislative Framework (“NLF”) was created in response to a

review into the functioning of the internal market for goods by the European Commission in 2006 which concluded that the EU harmonised legislation was not as effective as it should be. The NLF consists of a Decision (768/2008/EC) on a common framework for the marketing of products, and a Regulation (765/2008) on accreditation and market surveillance. The core principles of the NLF are that:

- (a) legislation governing products should be clear and more consistent across sectors;
- (b) the obligations of all economic operators in the supply chain should be set out in more detail;
- (c) provision should be made to ensure that products are more traceable
- (d) those bodies which carry out conformity assessments should have certain attributes (e.g. independence and capability) and certain operational obligations; and
- (e) each Member State should have robust, but proportionate, market surveillance and enforcement mechanisms in place based on a set of common requirements.

- 7.5 In giving effect to the Directive, the Regulations will clarify, simplify and streamline the safety requirements for radio equipment, improve the level of compliance with the requirements and promote optimal use of the radio spectrum.
- 7.6 The Regulations differ in scope to the Radio Equipment and Telecommunications Terminal Equipment Regulations, which they replace; while clarifying the scope (eg radio determination) and additionally covering equipment such as broadcast receivers (e.g. Television receivers) and equipment using the radio spectrum at frequencies less than 9kHz they also remove from scope fixed-line (wired) telecommunications terminals e.g. wired telephones. This should help to reduce existing ambiguity and unnecessary complexity.
- 7.7 In accordance with the NLF principles and as required by the Directive, the Regulations specify specific duties relevant to each economic operator. The Regulations also set out the conformity assessment requirements (the process which determines whether a radio equipment product meets the essential requirements); provisions for conformity assessment bodies and their notification; and for market surveillance and enforcement.
- 7.8 BEIS submitted an Explanatory Memorandum on a number of proposals for the Directive 6 November 2012 which was cleared by both the Lords and Commons Scrutiny Committees. This included the Proposal for a Directive of the European Parliament and of the Council on the Harmonisation of the laws of the Member States relating to the making available on the market of radio equipment 15339/12 COM(12) 584 + ADDs 1–2.
- 7.9 The House of Commons European Scrutiny Committee found the Explanatory Memorandum to be legally and politically important and cleared it (Report 36, Session 13/14). The House of Lords European Union Committee cleared the EM (Sift 1485, Session 12/13).

8. Consultation outcome

- 8.1 BEIS undertook a public consultation on the proposed Regulations in the period 14 July to 14 August. The reason for a 4 week period only was the need to progress the

Regulations as quickly as possible following the delays (referred to in paragraph 4.3) in order to minimise the risk of the EU infringement proceedings progressing to a judgment against the UK for non-implementation and a potentially large fine.

- 8.2 The consultation sought views on 3 key areas of the proposed implementation of the Directive, namely the draft Regulations, the provisions for their enforcement and the Impact Assessment. The content of the Directive was previously consulted on in March 2013¹.
- 8.3 BEIS received 14 responses to the consultation which drew broad support for the clarification the proposed Regulations bring. There was a range of responses indicating individual experiences of costs and benefits, but there was no strong discernible consensus. The information received was varied and not comprehensive enough to infer an accurate picture. Some concerns were raised about guidance and the need for effective enforcement when the Regulations come into force. A number of comments were received which were outside the scope of the consultation. Where responses indicated inaccuracies with the Directive text these were considered and where appropriate, the Regulations were revised accordingly. The Government response to the consultation gives an analysis of the responses received and sets out the government position. The response is available at <https://www.gov.uk/government/consultations/radio-equipment-directive>

9. Guidance

- 9.1 BEIS has produced guidance on the Regulations, detailing the various obligations on each of the economic operators, as well as the enforcement and market surveillance provisions. The guidance is available at <https://www.gov.uk/government/publications/radio-equipment-regulations-2017>

10. Impact

- 10.1 The Impact Assessment for the Directive published alongside the July 2017 public consultation of the Regulations set out the anticipated costs and benefits from the implementation of the Directive and is also published alongside these regulations on legislation.gov.uk. The number of products affected by the Directive is large and data on the number of economic operators affected is scarce despite attempts to identify those affected through discussions with trade associations etc. Additional information received as a result of the formal consultation exercise and in following up on comments made has been factored into the analysis and it has been concluded that whilst there is uncertainty around the precise figures, the net costs to business are likely to fall below the £5 million per annum de minimis threshold agreed by the Better Regulation Executive and Regulatory Policy Committee. Therefore, no further Impact Assessment has been required. The evidence considered in reaching this conclusion is set out below. The key costs to business relate to the introduction of the requirements of the Directive which necessitate the setting up and running of systems to retain information for traceability and post-obligation purposes. Most companies already have these in relation to other legislation made under NLF Directives in

¹ The Government consulted on the proposal for a European Directive in March 2013 (URN 13/658). The outcome of that consultation can be found on GOV.UK:

<https://www.gov.uk/government/consultations/radio-equipment-directive-proposal>

related subject areas. The number of new firms brought into scope of the Directive is considered to be low.

- 10.2 Further, reductions in administrative burdens from simplified Declarations of Conformity, changes to equipment class identifiers, removal of the existing notification procedure and removal of non-radio equipment from the scope) are considered to offset a significant part of any potential costs to business such as familiarisation with the new Regulations.
- 10.3 There is no impact on the public sector.
- 10.4 For the reasons given above, no second Impact Assessment has been prepared for this instrument, at the post-consultation stage.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 The Government considers that the legislation is not expected to impose a disproportionate cost on small businesses and to minimise any impact of the Regulations on small businesses guidance on the legislation has been produced.

12. Monitoring & review

- 12.1 The Regulations provide for periodic review of their regulatory provision and set out report requirements. The first review report must be published before the 5 year anniversary of the coming into force of the Regulations, with subsequent review reports being published at intervals not exceeding 5 years.
- 12.2 It is a government priority to ensure safety of products onto the UK market and to deliver more efficient use of the Radio Spectrum to facilitate new mobile telephone and internet of things initiatives. Without efficient use of the radio spectrum it will become increasingly difficult to deliver on the Internet of Things (IoT) and 5G demands. The reviews will monitor and report on how far the Regulations have enabled progress to be made towards these aims.

13. Contact

- 13.1 Mr Bulent ISMAIL at the Department for Business, Energy and Industrial Strategy, Bulent.ismail@beis.gov.uk can answer any queries regarding the instrument.