

EXPLANATORY MEMORANDUM TO
THE WIRELESS TELEGRAPHY (CONTROL OF INTERFERENCE FROM
APPARATUS) (THE LONDON OLYMPIC GAMES AND PARALYMPIC GAMES)
REGULATIONS 2012

2012 No. 1519

1. Introduction

1.1 This explanatory memorandum has been prepared by the Office of Communications (“OFCOM”) (originating department) together with the Department for Culture, Media and Sport (department responsible) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 OFCOM protects the electromagnetic spectrum. The instrument is to regulate, for the duration of the London 2012 Olympic and Paralympic Games (the “Games”), the intensity of the electromagnetic energy at which electrical and electronic apparatus (“apparatus”) operates such that it does not cause undue interference to wireless telegraphy used for public safety purposes within a defined protection area. The instrument is made under section 54 of the Wireless Telegraphy Act 2006 (the “Act”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument is made under section 54(1) of the Act. That provision allows OFCOM to make regulations prescribing the requirements to be complied with in respect of apparatus specified in the regulations, if the apparatus is to be used.

4.2 The operation of the enforcement provisions under section 55 of the Act is dependent on secondary legislation made under section 54. Under section 55, where apparatus does not comply with requirements in section 54(1) regulations and certain conditions relating to undue interference are met, OFCOM may serve a notice prohibiting the use of the apparatus.

4.3 Failure to comply with such a notice is an offence under section 58 of the Act. Section 57 of the Act provides for an appeal mechanism for persons served with a notice under section 55.

4.4 The instrument does not implement European Union law. However, European Union legislation does apply in a similar area and is relevant as follows.

4.5 European Union law, by way of Directive 2004/108/EC (OJ No L390, 31.12.2004, p.27) (the “EMC Directive”), aims to regulate the electromagnetic compatibility of apparatus. That is, the extent to which such apparatus can co-exist and function without causing excessive electromagnetic disturbance to one another.

4.6 The Electromagnetic Compatibility Regulations 2006 (S.I. 2006 No. 3418) (the “EMC Regulations”) implemented the EMC Directive in the United Kingdom. They provide that, *before* apparatus can be placed on the market or put into service in the United Kingdom, it is required to comply with the essential requirements in those regulations. These requirements aim to ensure that:

- the electromagnetic disturbance generated by apparatus does not exceed a level above which other apparatus cannot operate as intended; and
- the apparatus itself has an adequate level of immunity to such disturbance.

4.7 The EMC Directive also says that 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. However, Article 4(2) of the Directive provides that this shall not prevent the application in any Member State of special measures concerning the putting into service or use of equipment:

- to overcome an existing or predicted electromagnetic compatibility problem at a specific site;
- taken for safety reasons to protect public telecommunications networks or receiving or transmitting stations when used for safety purposes in well-defined spectrum situations.

Such measures must be notified to the European Commission and other Member States.

4.8 To the extent necessary, the instrument is such a special measure of the kind described in paragraph 4.7. It imposes a requirement in respect of the use of apparatus where undue interference is caused to wireless telegraphy used for safety purposes. In other words, a requirement that applies *after* that apparatus has been placed on the market and/or put into service and is in use.

4.9 The instrument was notified in draft to the European Commission and to other Member States in accordance with the EMC Directive and Directive 98/34/EC (OJ No L204 21.7.1998, p.37) as amended by Directive 98/48/EC (the “Technical Standards Directive”) (OJ No L217 5.8.1998, p.18.). The Technical Standards Directive relates to European Union notification requirements for goods and electronic services.

4.10 Notice of the intention to make this instrument has been given in accordance with the requirements of section 122(4) and (5) of the Act and the Secretary of State has approved the making of this instrument in accordance with section 54(7) of the Act.

5. Territorial Extent and Application

5.1 This instrument extends to all parts of the United Kingdom.

5.2 The subject matter of the instrument relates to protection areas in specified places in the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Act regulates wireless telegraphy in the United Kingdom. It gives Ofcom a number of 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. It includes powers to make regulations like those set out in the present instrument.

7.2 The Games will attract in excess of eight million spectators and staff. A key aspect of the safety and security arrangements is the communications networks on which those arrangements will depend for their organisation and operation. It is important, in terms of the number of persons attending the Games, and the extensive arrangements made for their safety, that Ofcom can require the cessation of undue interference so that it does not compromise communications used for safety purposes.

7.3 This instrument is, therefore, to ensure that the electromagnetic energy emitted by apparatus does not affect the correct function of communications networks used for safety purposes, by causing undue interference to it, during the Games. This is to be achieved by regulating, for a defined period of time and within a defined protection area, the intensity of the electromagnetic energy at which apparatus operates.

7.4 In addition to the over-riding general reason described in paragraphs 7.2 and 7.3 above, the reasons the instrument is necessary are as follows:

- certain apparatus placed on the market and/or put into service may cease to function correctly or be used as other than as intended at the time it was first made available, causing excessive electromagnetic disturbance and undue interference to wireless telegraphy used for safety purposes such that it cannot function properly;

- taking effective formal action against undue interference under the enforcement provisions in section 55 of the Act is dependent on the existence of secondary legislation made under section 54; and
- existing secondary legislation made under section 54 (or made under equivalent provisions of the Wireless Telegraphy Act 1949, and now treated as if made under section 54) is outdated and does not apply to apparatus more likely to cause undue interference at the Games.

7.5 The instrument addresses the risk of undue interference to wireless telegraphy used for safety purposes. It does so by imposing a requirement that for the duration of the Games, 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 defined protection area. Where apparatus does not meet this requirement and certain conditions in section 55(2) or 3 of the Act, relating amongst other things to public safety, are met, OFCOM will be able to serve on the person in possession of the apparatus, an enforcement notice under section 55 of the Act. Such a notice will prohibit the use of the apparatus. Failure to comply would be a criminal offence.

8. Consultation outcome

8.1 OFCOM consulted on making this instrument by publishing a statutory notice of the proposal to do so and annexing a draft of the instrument, entitled “Notice of proposals to make The Wireless Telegraphy (Control of Interference from Apparatus) (the London Olympic Games and Paralympic Games) Regulations 2012”. In the notice, Ofcom explained in detail the purpose and effects of the instrument. The consultation ran from 25th of April 2012 to 28th of May 2012.

8.2 In total, OFCOM received 9 responses to the consultation. Those responses and OFCOM’s views on them are set out in a document entitled “Decision to make the Wireless Telegraphy (Control of Interference from Apparatus) (the London Olympic Games and Paralympic Games) Regulations 2012,” available on OFCOM’s website (www.ofcom.org.uk).

9. Guidance

9.1 Guidance and publicity on the instrument is in the document referred to at paragraph 8.2 above. That document is available on OFCOM’s website.

10. Impact

10.1 There will be no specific impact on business, charities or voluntary bodies arising from implementation of this legislation. However, there may be some costs to individuals and those bodies, including businesses, using apparatus if that apparatus breaches the

requirement set out in the instrument and they are served with enforcement notices under section 55 of the Act.

10.2 The impact on the public sector is limited. There will be small one-off administrative costs associated with making the instrument. This would include the costs of providing guidance and training for Ofcom's enforcement officers.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum at www.legislation.gov.uk and on OFCOM's website (www.ofcom.org.uk).

11. Regulating small business

11.1 The instrument does not impose any specific requirements on any size of business, including small firms employing up to 20 people. The limited impact on all businesses is described in paragraph 10 above.

12. Monitoring & review

12.1 The effects of the instrument will be subject to internal OFCOM review after the Games. The review will assess the number of cases reported to OFCOM during the Games of apparatus causing undue interference to wireless telegraphy used for safety purposes and the number of cases requiring enforcement action under section 55 of the Act.

13. Contact

13.1 Clive Corrie at OFCOM, Tel: +44 (0) 121 423 5205 or email: clive.corrie@ofcom.org.uk, can answer any queries regarding the instrument.