

**EXPLANATORY MEMORANDUM TO**  
**THE WIRELESS TELEGRAPHY (CONTROL OF INTERFERENCE FROM**  
**APPARATUS) REGULATIONS 2016**

**2016 No. 426**

**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 the maximum intensity of electromagnetic disturbance generated by apparatus after the apparatus has been placed on the EEA market<sup>1</sup> (or put into service in the EEA) and cannot be withdrawn from the EEA market in accordance with the provisions of Directive 2004/108/EC (OJ No L390, 31.12.2004, p.24) (the “EMC Directive”) or the Electromagnetic Compatibility Regulations 2006 (S.I. 2006 No. 3418) (the “EMC Regulations”). The instrument is made under section 54 of the Wireless Telegraphy Act 2006 (the “Act”).

**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 negative resolution 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 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.

---

<sup>1</sup> For the purpose of this instrument, “the EEA” means the States of the European Union and the other States in the European Economic Area.

- 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 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 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 instrument is to regulate the maximum intensity of electromagnetic disturbance generated by apparatus after the apparatus has been placed on the EEA market (or put into service in the EEA) and cannot be withdrawn from the EEA market in accordance with the provisions of the EMC Directive or the EMC Regulations. In other words, the instrument is to impose a requirement that applies *after* that apparatus has been placed on the market and/or put into service and is in use. The requirement is that apparatus, 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 Regulations.
- 4.8 Directive 1999/5/EC (OJ No L91, 7.4.1999, p.10)(the “RTTE Directive”) aims to regulate radio equipment and telecommunications terminal equipment. The Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (S.I.2000 No.730)(the “RTTE Regulations”) implemented the RTTE Directive in the United Kingdom. They provide that radio equipment and telecommunications terminal equipment must meet the protections requirements of the EMC Regulations including the essential requirements. The instrument is not to apply to apparatus covered by the RTTE Directive and the RTTE Regulations.
- 4.9 The instrument was notified in draft to the European Commission and to other Member States in accordance with the 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. Extent and Territorial Application**

- 5.1 This instrument extends to all parts of the United Kingdom.
- 5.2 The territorial application of this instrument is the whole of 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 policy objective of the instrument is to regulate the electromagnetic disturbance emitted by apparatus to ensure that it does not affect the correct function of communication networks, by causing undue interference to it. Communications networks form an important part of the UK's national infrastructure, both directly and as an input to other services including safety and security services, utilities and industry (e.g. banking). Communications networks are a key aspect on which these services depend for their organisation and operation and therefore it is important to protect their correct function from undue interference.
- 7.3 The policy objective is to be achieved by regulating the intensity of the electromagnetic disturbance at which electrical and electronic apparatus operates, which have already been made available (after it has been placed on the market and/or put into service), whilst not infringing on the underlying free movement and electromagnetic compatibility objectives of the EMC Directive and RTTE Directive.
- 7.4 The instrument will assist in reducing the risk of interference to wireless telegraphy (e.g. radio communications), as Ofcom will be able to take prompt enforcement action to require the cessation of relevant interference, enabling communications to be restored to an interference-free state and therefore to fulfil their purpose.
- 7.5 In addition to the over-riding general reason described in paragraphs 7.2 to 7.4 above, the reasons the instrument is necessary are as follows:
- certain apparatus placed on the market and/or put into service may have been improperly installed, assembled or maintained or 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. These circumstances (where apparatus cause electromagnetic disturbance and interference to wireless telegraphy when used by the end-user) are not currently subject to undue interference regulations (unless the apparatus falls within the narrow range of existing statutory instruments made under section 54 (or made under equivalent provisions of the Wireless Telegraphy Act 1949, and now treated as if made under section 54));
  - 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) is outdated and does not apply to apparatus that are now more likely to cause undue interference.
- 7.6 The instrument is aimed at addressing the risk of undue interference to wireless telegraphy. It does so by imposing a requirement that apparatus in use must operate in such a way that the maximum intensity of electromagnetic disturbance shall not

exceed the level permissible under the requirements of the EMC Regulations, when the apparatus was placed on the EEA market or put into service in the EEA. 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 with a notice 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) Regulations 2015”. In the notice, Ofcom explained in detail the purpose and effects of the instrument. The consultation ran from 5th January 2015 to 16th February 2015.
- 8.2 In total, OFCOM received 161 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) Regulations 2016,” available on OFCOM’s website ([www.ofcom.org.uk](http://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 A Decision Statement is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website and on OFCOM’s website ([www.ofcom.org.uk](http://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 50 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. The review will assess the number of cases reported to OFCOM of apparatus causing undue interference to wireless telegraphy 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](mailto:clive.corrie@ofcom.org.uk) can answer any queries regarding the instrument.