



**The Radio Equipment and
Telecommunications Terminal Equipment
Regulations 2000**

S.I. 2000 No. 730

Proposal to amend the Regulations

Analysis of Consultation Responses

June 2003

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**THE RADIO EQUIPMENT AND TELECOMMUNICATIONS
TERMINAL EQUIPMENT REGULATIONS 2000
S.I. 2000 No. 730**

PROPOSAL TO AMEND THE REGULATIONS

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Introduction

The Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (“the Principal Regulations”) implement Directive 1999/5/EC of the European Parliament and of the Council on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (O.J. L91, 7.4.1999 page 10). (“the Directive”) and came into force on 8th April 2000. The Radio Equipment and Telecommunications Terminal Equipment Directive is a “New Approach” Directive, enabling products which meet the prescribed Essential Requirements to be freely traded within the European Economic Area.

The **consultation** on proposed amendments to the Regulations was circulated to interested parties on 7 March 2003 and closed on 12 May 2003. The consultation period extended over nine weeks rather than 12 in order to ensure that the Regulations would take effect on 25th July. The consultation was sent out to more than 50 external individuals, associations and other bodies. Two industry responses were received by the closing date of 12 May. In drawing up the Consultation, account was taken of Criteria for Government Consultations. These are reproduced at the end of this document for reference purposes.

There are no foreseen effects on costs for industry.

These amending regulations are cited as the Radio Equipment and Telecommunications Terminal Equipment (Amendment) Regulations 2003 and will come into force on 25th July 2003.

Background to the amendments:

The main reason for the amendments to the Principal Regulations is to take account of major changes to be introduced to the licensing of electronic communications networks and services under a package of European Directives. Four directives - 2002/19/EC ("Access Directive"), 2002/20/EC ("Authorisation Directive"), 2002/21/EC ("Framework Directive"), 2002/22/EC ("Universal Service Directive") are due for implementation in the Member States by 25 July 2003. Either the new Communications Act or alternative implementing measures will be used in the United Kingdom.

As part of the process of giving effect to the Directives, the Government introduced the Communications Bill into the House of Commons on 19 November 2002; this Bill introduces a new regulatory framework for electronic communications. One of the objectives of the Communications Bill is the eventual transfer to the Office of Communications (OFCOM) of the functions, property, rights and liabilities of the bodies and officeholders that currently regulate the communications sector, and who each operate within a separate strategic framework. As part of the process of giving effect to these changes, OFCOM was set up under the Office of Communications Act 2002. OFCOM will take over, amongst others, the regulatory role of the Radiocommunications Agency (RA). The RA is an executive agency of the Department of Trade and Industry. OFCOM will have regulatory powers covering broadcasting and electronic communications networks and the services delivered on them. When OFCOM comes into being it will, because of its functions, also become a regulatory authority for the purposes of certain provisions of the Principal Regulations and will also have responsibility for enforcement of those provisions.

The proposed regulations extend references to Member States in the Principal Regulations to include the EEA States.

They clarify requirements relating to certain markings on radio and terminal equipment apparatus when placed on the market and remove the prohibition against putting apparatus into service (but not placing on the market) without *inter alia* CE marking providing that the essential requirements are met.

A new provision provides that the Secretary of State and OFCOM may only restrict putting compliant radio equipment into service for the following reasons: spectrum management; avoidance of harmful interference or public health and safety.

The Principal Regulations previously imposed requirements relating to the connection of apparatus and the publication of interfaces on operators of public telecommunications networks, in the form of conditions in telecommunications licences. As indicated above, once the Communications Bill comes into force all telecom licences will cease. The proposed regulations will have the effect of maintaining these particular requirements on operators of public telecommunications networks. These provisions will be enforced using OFCOM's powers contained in Clause 41 of the Communications Bill.

The amendments also clarify certain marking and user information requirements and the notification procedure for placing on the market certain radio equipment using non-harmonised spectrum – specifically where use of such frequency bands is consistent with the UK plan for frequency authorisation published under Clause 148 of the Communications Bill.

In addition, the amendments extend recognition to notified bodies appointed by states other than EEA States under Mutual Recognition Agreements concluded with those states.

Overview of responses

The majority of points raised were from the mobile communications industry (Mobile Operators' Association and T-Mobile) and comprised requests for clarification.

Issues addressed

Requests for Clarification

1. Is the Person responsible for CE and other markings, the manufacturer of the relevant equipment or the network operator?

The substituted Regulation 5(2)(d) on CE marking and labelling retains responsibility as before “ ... no person shall place on the market or put into service any apparatus unless...”

2. Exceptions for equipment not placed on the market

New Regulation 5(4) makes exceptions with regard to putting into service.

3. Format for publication of technical interface specifications

No constraints on publication format have been added. On-line publication will continue to be the recommended format.

4. Definition of “interface” in relation to the mobile network

- The definition of “interface” has not changed.

The word “user” is relevant only to part (i) of the interface definition. This part requires a physical connection as a network termination point, which clearly does not pertain in the case of a mobile terminal.

Part (ii) of the interface definition makes it clear that is the air interface that relates to radio (mobile) equipment.

The Regulations apply to radio equipment and/or terminal equipment, as defined. They are not intended to address inter-connection between networks, real or virtual.

5. Exercise of powers to restrict compliant radio equipment

New Regulation 6(4) strictly limits the reasons for which compliant radio equipment may be restricted (in principle, there should be no need to restrict compliant equipment). Any radio equipment, as defined, may be restricted

for the stated reasons. This includes network operators' radio equipment. The restriction may be applied at any time one of the relevant reasons is identified.

Substantive Issues

1. Information was requested as to the process of disconnection to the network by the Secretary of State and OFCOM. This relates to proposed Regulation 7(3) giving powers of (re)connection

Article 7.4 of the Directive requires the Member State to authorise disconnection (with an obligation to notify the European Commission) and not the operators themselves. The original R&TTE Regulations reflected this Member State responsibility in Schedule 8, Condition 5.4. Subsequent amendment of licence conditions removed it and the proposed Regulation 7(3) aims to ensure Member State compliance with the Directive.

2. The date on which OFCOM will be able to take up relevant enforcement powers

At the time of writing, OFCOM has already been formed as a legal entity but will not be in a position to assume relevant responsibilities under these regulations until the end of 2003.

Conclusions and further actions

It was noted that the majority of responses related to the need for clarification and briefing material, explaining the reason and context for amendments, was prepared for both those who had submitted responses and other industry bodies.

Actions will occur in two phases:

Phase 1: Amending regulations in force in July will exclude the transfer of powers to OFCOM. The precise form, which these regulations take, will depend upon whether or not the Communications Act comes into force in July. Whatever form is taken, the regulations will leave licence enforcement responsibilities with the Secretary of State and with Oftel.

Phase 2: In the autumn of 2003, further amending regulations will be made when OFCOM takes over the relevant responsibilities. Enforcement responsibilities will be reviewed in the light of the absorption of RA and Oftel into OFCOM and the authority afforded to OFCOM. At the present time it appears unlikely that there will be any further consultation on these matters as there will be no material change.

June 2003

Criteria for Government Consultations

(Annex)

The criteria in this code apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

The criteria should be reproduced in consultation documents, with an explanation of any departure, and confirmation that they have otherwise been followed

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken
7. Departments should monitor and evaluate consultations, designating a consultation coordinator who will ensure the lessons are disseminated