



Department for
Business, Energy
& Industrial Strategy

Regulatory Delivery

RADIO EQUIPMENT REGULATIONS 2017

Government response to consultation

December 2017

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Overview of the proposals

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on European Union on 29 March 2017 to begin the process of exit. 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 also continue to negotiate, implement and apply EU legislation.

The Regulations on which we consulted implement the Radio Equipment Directive 2014/53/EU (the Directive) into UK law. As noted above the UK continues to have EU obligations to implement law in the UK, and should have given full effect to the Directive by 13 June 2016. The Directive replaces the Directive on Radio and Telecommunications Terminal Equipment (RTTE) 1999/5/EC and when implemented, these Regulations will revoke the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000, subject to certain exemptions relating to equipment already placed on the market.

The proposed Regulations, like those already in place, will ensure that radio equipment products placed on the market in the UK are safe (in terms of the health and safety of persons and domestic animals and the protection of property) and do not interfere with the radio spectrum. The UK Regulations set out the enforcement and penalties regime in the event that a product is found to be in breach of the essential requirements of the Directive.

The Directive adopts the same essential requirements for safety, electro-magnetic compatibility and protection of the radio spectrum but with some changes to the protection of the radio spectrum; radio receivers are included to facilitate improvements to receiver performance so that better use of the radio spectrum can be facilitated and the lower frequency limit for products in scope is removed so that all products that make use of the radio spectrum can be regulated to address problems of interference between products using 9kHz and below. Telecommunications terminal equipment will no longer be regulated by this Directive and those products will now be regulated as non-radio equipment under the Electrical Equipment (Safety) Regulations, General Product Safety Regulations, Health and Safety at Work Act and Electro-Magnetic Compatibility Regulations as appropriate.

The Regulations further align with the New Legislative Framework which applies a number of principles across all EU Single Market Product Directives that improve consistency of approach and application, and result in more uniform administrative requirements. These principles address:

- the number of non-compliant products that reach the market through improved traceability through the supply chain and placing clearer requirements on the duties of manufacturers, importers and distributors; including co-operation with enforcement authorities; thus introducing the duties relevant to economic operators from the General Product Safety Regulations to these Regulations and in applying them additionally to non-consumer products;

- inconsistent performance between Notified Bodies through a reinforced notification and monitoring process; and
- the complexity of the current legislation through alignment of commonly used definitions and certain aspects of the conformity assessment process.

Purpose of the Government response

This publication analyses the responses to the Government's public consultation on the RED and gives the Government response.

BEIS thanks all those that took the time to respond to the Consultation. Those responses have been considered carefully and help to inform the update to the Impact Assessment and draft legislation specifically but also helps to shape the Government's approach to the policy in general.

Conducting the consultation

This was a UK-wide consultation. It was aimed at those with a known interest in the substance of the Radio Equipment Directive, including industry bodies, businesses including manufacturers and users of (including those embedding radio modules into) radio equipment.

Consultation and responses

The consultation exercise was launched on 14 July and closed 14 August 2017. It asked 8 questions covering the draft Regulations themselves, the impact assessment of the effects of legislation, whether there were any enforcement and or legislative guidance concerns.

The consultation drew a total of 14 responses from a variety of sources. None was received from individuals. There were 7 responses from individual companies, 5 from Representative Organisations and 2 from consultancies.

Government response – general comments

A number of the respondents made queries and comments that were outside the scope of the consultation and so, while noted, were not appropriate to include in developing the Impact Assessment or amending the Regulations. These comments have principally fallen into the following categories: requests to delay the implementation of the Regulations; comments about EU processes and the delay to the development of associated technical standards; additional responsibilities introduced by the Directives; changes relating to the scope and coverage of the EU Directive, and, general comments about the effects of the UK exit of the EU.

None of these have a direct bearing on the substance of the Regulations as they relate to aspects of the Directive which were finalised and agreed in 2014. These points were open for comment when the UK Government consulted on the Directive proposal from 8 March 2013 to 3 June 2013. The UK is therefore committed to the implementation of the Radio Equipment Directive as soon as possible.

Consultation responses relating to ‘new burdens’ on industry and ‘widened scope’ bringing more products under the Regulations were issues debated and negotiated when the Radio Equipment Directive was being developed in the Council of the European Union. While noted, the UK’s obligation to transpose the Directive faithfully into UK law means that it cannot lessen the burdens nor narrow the scope of the Directive which is now a binding obligation of the UK and others.

The Government notes the comments made about the delays in the development of associated technical standards by the European standards organisations however these are not aspects relevant to the consultation and the Directive was drafted in such a way as to be operable where harmonised standards are not available or are not wished to be used.

Finally, while the consultation response (to questions 3 and 4) provided a variation of costs information, there was not enough to discern a general costings picture for the wider market. Without more detailed examination and investigation, the figures provided were not capable of basing any assumptions on and have had to be discounted. We will however, continue to monitor and review and welcome any detailed information as compliance with the Regulations progresses.

Question 1

Does the draft Impact Assessment (IA) adequately reflect the effect of the new Regulations on micro businesses (less than 10 employees) in the radio industry? (See accompanying copy of the IA).

Consultation replies

Some responses indicated that there might be non-monetised costs associated with complying with the regulations on micro businesses. In some cases this was because the work they were engaged in would, after implementation, be within scope (and hence a new cost). Another response indicated that there might be transitional costs without quantifying. While another indicated that costs might be incurred through the need to understand and comply with the Regulations perhaps obtaining external advice. None of the respondents identified or provided clear examples or cost patterns to support assertions, although one respondent said that the standard NLF costs were not realistic and manufacturers were paying more to use NBs. Two respondents thought the IA was an adequate reflection of the effects of the regulations on micro-businesses.

Government response

The Government notes the responses to the consultation. The responses provide some useful general information that helps to build up the picture about costs on business. We have sought further detailed information from the respondents and this has been reflected in the updated assessment of the impacts. The Government will review the effects of the legislation (as part of the post implementation review to take place 5 years after the legislation comes into force).

Question 2

Does the draft IA adequately reflect the effect of the new Regulations as a whole? (See accompanying copy of the IA).

Consultation replies

Two respondents considered the IA an adequate reflection of the effect on the new regulations as a whole, eight respondents did not think the IA adequate and four simply offered comments; these ranging from; queries as to the impact of the expanded scope of the Directive; some welcoming the overall beneficial effect of the RED on UK, while noting also the lack of empirical evidence; and one concerned that conformity assessment cost for low volume and single product would have an impact on price to the end user. The overall thrust of the comments being that the IA underestimated the cost to business; particularly to SMEs.

Respondents, who considered the IA an inadequate reflection of the effects of the regulations, raised in particular concerns about:

- the delay in availability of associated radio equipment standards causing confusion to the industry and incurring additional (but unspecified) costs as a result: cost which would be passed onto the consumer;

- potential for compliance costs to be a disproportionately higher ratio against turnover for smaller businesses;
- IA being too narrow in focus and so not identifying costs; and
- a general underestimation of costs on business.

One respondent (with another concurring) provided some information that indicated that the costs provided in the impact assessment were underestimated. Another simply asserted that the costs were higher than the IA indicated, without any figures being cited.

Government response

We have sought further information from respondents to help inform the consideration of the impacts. Those that were contacted were not able to provide any further or more detailed information. We will monitor and review the effects of the Regulations in the post implementation review of the regulations.

The conformity assessment requirements are relaxed as to the RTTE and additionally the RTTE applied to both low volumes and single products. The scope has been extended to include both radio receivers and equipment utilising frequencies below 9kHz to address problems with inefficient usage of the radio spectrum.

Question 3

What is your estimate of the costs on a yearly basis for your business to comply with the draft Regulations?

Consultation replies

Eleven of the 14 respondents made substantive comments about costs.

Three indicated the question did not apply to them. Where there were substantive replies, these provided answers indicating a range of estimated annual costs to their businesses.

One respondent indicated that the costs were unknown while another indicated that the costs were marginally lower than those incurred through compliance with the previous legislative requirements (R&TTE). Another indicated there would be no costs as one-off costs had already been incurred. Of the replies that did give figures these ranged from £3,000 but as high as £750,000 for each device to be made compliant. The costs themselves were attributed to a variety of sources, but included costs of £8,000 for a Trade Association to obtain membership of ETSI the standards body drawing up the standards relevant to protection of the radio spectrum, necessitated by the widened scope of the new directive. Other costs were attributable to the need to employ people to analyse, and administer compliance with the Regulations. One respondent estimated this to be £10,000 pa across 10 people while another estimated £50,000 pa for one person.

Government response

We have considered the likelihood of the cited costs being an accurate reflection of the wider market and noted that one quoted figure was uniquely very high. We have sought further detailed information from respondents to help inform our further assessment of the impacts. In particular, we sought information on the ranges of costs across the market, but no more detailed information was obtainable. The Government notes the responses and will continue to monitor and will review the effects of the legislation as part of any of revised impact assessment and post implementation review.

Question 4

What is your estimate of the benefits on a yearly basis for your business to comply with the draft Regulations?

Consultation replies

Eight respondents indicated that no benefits would accrue. Another three said the question was not applicable. One replied that benefits were a function of the level of enforcement of the new regulations and positively correlated with good enforcement, while another simply indicated that any benefits were difficult to estimate as many new products were coming onto the market. Significantly, one respondent said that they would benefit annually by £100,000 as a consequence of the need for additional testing by manufacturers to demonstrate compliance with RED.

Government response

The Government will continue to monitor and will review benefits as part of any of revised impact assessment and post implementation review where concerns were raised.

It is encouraging that a distributor considers that manufacturers will need to take greater responsibility and thus significantly reduce final price to the end user and costs through the supply chain.

Question 5

Have you any concerns about how the Regulations will be effectively enforced in view of the new responsibilities for distributors and importers?

Consultation replies

All respondents made comments about enforcement, but no common theme emerged. Three respondents asked for more guidance. A majority commented on the sufficiency / adequacy of enforcement: one respondent stated enforcement needed to be sufficient, one said it was insufficient, while another thought enforcement activity needed increasing. One response remarked that success was dependent on enforcement activity and another that it depended on ensuring the right engineering expertise was available to the enforcement authority. One reply suggested that enforcement would be expensive (without giving any cost information) and another that that evasion of enforcement was possible.

Government response

The Government notes these responses. Guidance to the Regulations will be published taking into account the responses to the consultation. Enforcement continues to be a priority to safeguard consumers from unsafe product; to protect the radio spectrum and to protect those complying with the legislation from unfair competition.

Question 6

Could you suggest any areas covered by the Directive or the draft Regulations on which it would be beneficial to have more guidance for both consumers and manufacturers?

Consultation replies

All of the respondents took the opportunity to make comments to this question. The majority of respondents (11) asked specifically for either general or specific guidance on aspects of the regulations. Another two were concerned about the level of publicity and how the public were advised of the benefits of the Regulations. The final respondent observed (but did not ask for any guidance) that they thought there was confusion about when equipment had to be compliant, specifically those already in the supply chain.

Government response

The Government notes all of the responses. There is detailed European Guidance to ensure that the requirements of the Directive are enforced and understood in a uniform manner across the Single Market. This guidance can be found at:

http://ec.europa.eu/growth/sectors/electrical-engineering/red-directive_en

There is also extensive European guidance on the principles of the single market legislation available from the European Commission 'Europa' website known as the Blue Guide. This can be found at:

<http://ec.europa.eu/DocsRoom/documents/18027>

Substantial guidance is available at the European level which provides certainty to UK manufacturers as to a common understanding of the requirements across the internal market. In keeping with Cabinet Office advice, that all regulations should be accompanied with guidance on their provisions, specific supplementary guidance to address UK concerns and issues has been published on GOV.UK.

Question 7

In your view do the draft regulations impose requirements on you which go beyond the requirements set out in the Directive?

Consultation replies

The majority of the respondents (9) indicated that there were no requirements imposed by the Regulations that went beyond those of the Directive. Two respondents took the opportunity to request a delay in implementation until 2019. One respondent thought the monitoring and series production provisions of Regulation 19 seemed to be more than those of the Directive's Annex II – Module A.

Government response

The Government notes the responses. The Directive was negotiated in 2013 – 2014, some years before its introduction and coming into force (implementation) date, but follows usual European Union practice. As such, there is now no means of varying the implementation date, which has already elapsed. The UK Regulations will put the UK in the position it should have been as at June 2016.

The Government has reviewed the response highlighting the transposition proposal for Regulation 19 and will clarify to ensure that the Directive requirement is clearly reproduced in the UK Regulation.

Question 8

Do you have any other comments that might aid the consultation process as a whole?

Consultation replies

The responses to this question covered a wide range of issues all respondents except three making comments. The following issues were raised; a delay to the implementation of the regulation; confusion caused by the delay in UK implementation; new burdens under the regulations and the delay to availability of relevant harmonised standards were each made by two respondents. Also raised were issues about the wider scope of the regulations, comments about the UK's membership of the EU and exit and specific queries about the regulations were each raised by individual respondents.

Government response

The Government notes the responses. The responses raising queries about the substance of the Regulations have been carefully reviewed and where raised issues have been confirmed as requiring amendment to better align the Regulation text with the requirement of the Directive then amendment to the regulations has been made.

For the Government Response to all the other comments not relating to the questions themselves, these have been covered in general comments above.