



**Implementing the new
Electromagnetic Compatibility
(EMC) Directive in the United
Kingdom**

**DTI Response to the Public
Consultation**

December 2006

URN 06/2236

Introduction

The DTI issued a consultation document On 3 May 2006 (Implementing the new EMC Directive in the United Kingdom) seeking views on the draft Statutory Instrument transposing the new EMC Directive 2004/108/EC.

The consultation closed on 3 August 2006. 32 responses were received in total. These included trade associations, consultants, trading standards, businesses, professional institutions and Government organisations.

The DTI is grateful to those that responded for their time and thought. The views expressed have been carefully analysed and have been of help in finalising the draft Regulations to implement the Directive.

This document provides an overview of the responses received to the consultation, addresses the issues raised in the responses. A list of those that responded can be found at Annex A. Copies of the original responses are available on request.

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Background

The draft Electromagnetic Compatibility Regulations 2006 ("EMC Regulations 2006") are intended to implement the new Directive 2004/108/EC on Electromagnetic Compatibility ("EMCD"). The EMC Regulations 2006 apply to most electrical and electronic equipment (that is, finished apparatus and fixed installations). They seek to

regulate the electromagnetic compatibility of equipment. The intention is to ensure, via appropriate protection requirements, that electromagnetic disturbance produced by such equipment does not affect the correct functioning of other equipment, including telecommunication and electricity distribution networks and that equipment has an appropriate level of immunity to electromagnetic disturbances so that it can function as intended.

There are specific exemptions from the Regulations for equipment covered by the Radio Equipment & Telecommunications Terminal Equipment Directive, certain aeronautical products, certain radio equipment used by radio amateurs, and electromagnetically benign equipment. In addition, the new Regulations maintain the disapplication in the previous Regulations for products covered by other, product specific directives that make provision for EMC essential requirements, such as the Automotive EMC Directive and the Medical Devices Directive.

The EMC Regulations 2006 introduce a simplified regulatory procedure for manufacturers of apparatus. The conformity assessment procedure under the previous regulations required the mandatory involvement of an independent body in cases when manufacturers had not applied harmonised European standards in full. Under the new Regulations, manufacturers will themselves be able to establish the conformity of their products in all cases. However, if they wish, manufacturers will still be able to make use of the services of an independent body to assist them with the conformity assessment of their products.

The EMC Regulations 2006 introduce stricter requirements concerning information and documentation for products. They require manufacturers or their agents to provide enforcement authorities with additional means of control, such as clearer identification of a product and indication of the name and address of the manufacturer or his agent and, if necessary, of the importer established in the territory of the European Union. This will improve product traceability and make it easier for the authorities to monitor the market and ensure fair competition.

Fixed installations have been brought within the scope of the new regulations, but are subject to a separate regime from apparatus. A fixed installation is required to be installed applying good engineering practices, respecting the information on the intended use of components, with a view to meeting the protection requirements. These good engineering practices will have to be documented and the documentation held by the person responsible for the installation for as long as it is in operation. Apparatus incorporated within a fixed installation is not required to undergo conformity assessment unless it is separately commercially available. The EMC Regulations 2006 do not affect the application of UK legislation regulating the safety of equipment.

Responses to the consultation and DTI response

Those consulted were invited to respond to 19 questions about the proposals, and to add any other comments they might have. The analysis below summarises the responses received from consultees regarding the questions, and DTI's responses. The Consultation Document contained questions that specifically addressed the draft regulations (1,2,3,8,9,10,11,12,13,16,19 and the last question) and questions specifically addressed to draft guidance (4,5,6,7,14,15,17 and 18). For convenience we have divided the responses and DTI comments on them into two parts. Part One deals with responses to

questions on the draft Regulations. Part Two deals with responses to questions related to draft guidance.

In addition, a number of responses contained editorial comments have been made. These have not been identified in the following analysis, but have been accepted where appropriate.

Some responses have not been included where these were specifically about the Directive and not our transposition of it.

Each response to a question is followed by the DTI Comments on the response made. In some cases responses have been grouped where the DTI comments on them is the same for each. You will see that in several cases we mention the need to avoid “gold plating”. By this we mean that the Regulations should not introduce requirements that go beyond those of the Directive.

Part 1: Responses to the Consultation and DTI response to questions relating to the draft Regulations

Question 1 We would appreciate your general views on whether or not we have correctly identified the main issues for transposition and on our proposals for implementation of the EMC Directive.

Responses

In general, respondents agreed that DTI had identified the main issues for transposition, although they raised a number of points of detail that have been dealt with under the other questions below.

DTI Comments

The responses have been provided to the appropriate question, or under the general comments section.

Question 2 Do you think the provision in the Regulations for Notified Bodies to be appointed from 20 January 2007 makes appropriate provision for manufacturers who wish to make use of the services of such Bodies to apply the Regulations immediately they come into force on 20th July 2007? If not, please provide reasons.

Responses

2.1 A users' association said that existing Competent Bodies should be able to anticipate the coming into force of the new Regulations. If not, provision should be made to enable this.

2.2 An industry association said that in their opinion Notified Bodies should be appointed in accordance with these Regulations, including the transfer of this information to the Commission for publishing in the OJEU, by 20th January 2007 to give manufacturers wishing to make use of these Bodies sufficient time to comply with the new Regulations by 20th July 2007.

2.4 A transportation vehicle manufacturer and a public transport operator indicated that the change from Competent to Notified Body should not cause difficulties, although the public transport operator suggested that the date when the regulations relating to the appointment of Notified Bodies come into force could be made clearer.

DTI Comments

It is not possible to appoint Notified Bodies to an earlier timetable than that set out in the draft Regulations for a number of reasons. The timescales for the drafting process for the Regulations would not allow them to be published significantly in advance of the date required by the Directive; prospective Notified Bodies would need to apply for appointment once the Regulations were published; the Department would require time to process the applications and approve the bodies. The Department considers that if such bodies apply for appointment promptly, they will have sufficient time to deal with applications from manufacturers. They will not be able to issue statements until 20 July 2007, since the Regulations in general may not be applied before that date. Manufacturers cannot issue declarations of conformity to 2004/108/EC before 20 July 2007 under any circumstances. The Department has sought to publicise the relevant dates of coming into force, and will continue to do so.

Response

2.5 Another industry association's comments related to the use of other bodies for demonstrating due diligence

DTI comments

The use by a manufacturer of other bodies to assist in their demonstration of due diligence is outside the scope of the Regulations.

Question 3 Do you agree that the definition of a responsible person in relation to a fixed installation is clear? If not, please provide reasons.

Response

3.1 An EMC consultant said that it was confusing to have the same term with two different meanings, 'responsible person' in the context of the Declaration of Conformity where the manufacturer is outside the EU, and 'responsible person' in the context of fixed installations. The latter could be termed 'nominated person', for example.

DTI Comments

Responsible person in respect of apparatus continues the usage of SI 2005 No. 281. The term "nominated" would not be suitable since there is a requirement for a responsible person whether one is nominated or not. Since apparatus and fixed installations are separate entities, the Department does not believe that the use of the same phrase will cause confusion.

Response

3.2 A users association said that in their view the definition in Regulation 3 was ambiguous. The responsibility rests with the person, who is presumably either corporate or individual, who is in either ownership or control of the installation. Whilst in most cases it might be clear which of these applied, there could be instances where, as in fixed telecommunications networks for example, the owner may not be in control, having leased operation to someone else. In the event of non-compliance of such an installation there could be dispute over the responsible person. In our view it can be simplified and made clear by holding only the person in control to be responsible.

DTI Comments

The Department accepts that the use of "ownership or control" is ambiguous and the definition will be amended to "by virtue of their control".

Responses

3.3 A telecommunications company said that the definition of a fixed installation was not clear.

3.4 An offshore installations company said that the draft regulation and guidance only uses the singular term for responsible person whereas the Directive uses person or persons. They asked whether the 'responsible persons' could be a group or company subcontracted to maintain the installation for example.

DTI Comments

The definition of fixed installation in the Regulations has been corrected to be identical to that in the Directive. Any difference would create the possibility of a conflict with the requirements of the Directive.

Response

3.5 A conformity assessment body group wanted clarification that the responsible person might need to delegate control of one or more sections of the fixed installation to another person or organisation.

DTI Comments

The matters of responsible persons will be dealt with in UK guidance, however if a fixed installation is sub-divided, the resulting parts become separate fixed installations.

Question 8 Do you agree that regulation 15 correctly consolidates and transposes the placing on the market requirements of the Directive? If not, please provide reasons.

Response

8.1 A trade association outlined some inconsistencies with the draft Regulation 15 in particular the references to “essential requirements” and “protection requirements” and they also mentioned other problems with Regulation 15. Amongst these were the following: Regulation 15(c) should read “...available for inspection by enforcement authorities”. Regulation 15(f) – Regs or guidance should explain what is meant by “be identified”. Suggested rewording for Regulation 15(h) “each apparatus shall be accompanied by the name and address of the person established in the Community responsible for compliance with these Regulations.” Regulation 15(h) is too narrowly construed because the requirement to provide the described EMC-specific information falls on whoever places the product on the market and the thing in question may not be apparatus but could be an installation, which is taken in to service.

DTI Comments

Regulation 15 has been revised to improve clarity and consistency. The term “essential requirements” will be used throughout the Regulations. The requirement for technical documentation will include the qualification “available to the enforcement authority on request”.

Response

8.2 A manufacturer said that in Regulation 15 there were various references to Regulation 23. Regulation 23 has the effect of introducing requirements that go beyond the directive. Regulation 22 already covers some of these requirements, while others are not necessary.

DTI Comments

Draft Regulation 23 (declaration of conformity issued in the UK) will be removed from the published Regulations.

Responses

8.3 A Trading Standards department said that Regulation 15 makes no reference to “put into service” whereas Article 3 of the Directive refers to both “placing on the market/putting in to service” and does not differentiate between the two.

8.4 Another Trading Standards department said there was no definition of placing on the market and putting into service, which should go in guidance.

DTI Comments

The Department believes that Regulations 15 and 16, as redrafted, correctly implement the intent of the Directive.

Question 9 In relation to regulations 15 and 16, where there is a duty on a person placing apparatus on the market or putting it into service to comply with the requirements of that regulation, do you agree that it is clear in each case who is responsible for meeting each requirement set out in that regulation? If not, please provide reasons.

Question 10 Do you agree that Regulation 16 correctly consolidates and transposes the putting into service requirements of the Directive? If not, please provide reasons.

The responses to questions 9 and 10 have been taken together.

Response

9/10.1 A users association said there was some ambiguity with Regulation 15 and 16. Regulation 16 applies to equipment put into service but not placed on market. However, their view is that Article 3 of the Directive should apply whether equipment is placed on market or not so therefore to all equipment should meet essential requirements of Regulation 15.

DTI Comments

The Department believes that Regulations 15 and 16, as redrafted, correctly implement the intent of the Directive.

Response

9/10.2 A telecommunications company said they interpreted “installed, maintained and used” as meaning a manufacturer has to consider the EMC performance of the equipment of its intended lifetime. This means enforcement actions can be taken to resolve EMC interference to telecoms networks from other equipment that has become non-compliant with essential requirement during its operational lifetime.

DTI Comments

The Department believes that the effect of draft Regulation 16 is the same as that of Regulation 31 taken with Regulation 5, of SI 2005 No. 281. There are no “in-use” requirements in the Directive and the Regulations reflect this.

Response

9/10.3 A manufacturer said that it was not clear who is responsible in each case.

DTI Comments

Regulation 15 is non-specific in relation to persons where the Directive is also non-specific. To exceed the requirements of the Directive risks gold plating, or implementing the Directive inadequately.

Question 11 Do you agree that Regulation 19 correctly transposes the internal production control requirements of the Directive? If not, please provide reasons.

Response

11.1 A users association said that Schedule 3 referred to in Regulation 19(5) should include a reference to “harmonised” not “national” standards. A trade association made the same point.

DTI Comments

The Department agrees that all references to “national” standards should be to “harmonised” standards and the draft Regulations would be amended accordingly.

Responses

11.2 A trade association said that while Regulation 19 correctly copies out the provisions of Annex II of the Directive (internal production control), there would be companies importing in the EU that are neither manufacturers nor authorised representatives. Importers should be able to legally present themselves as manufacturers by following Regulation 15(1)(g) and possibly using a brand name. Therefore there is a need to provide a definition in the Regs of a “manufacturer” for legal certainty. They suggested DTI use something on the lines of the definition of a “producer” used in the General Product Safety Regulations 2005

11.3 A Trading Standards department said that Regulation 19(1) should place duties on the “responsible person” not manufacturer as most goods are now made abroad and outside the jurisdiction of enforcement bodies in EU. They also suggested using definition of “producer” used in General Product Safety Regulations as an alternative.

DTI Comments

The Department considers that the concept of “manufacturer” is dealt with adequately in the Guide to the Implementation of Directives Based on the New Approach and the Global Approach (the “Blue Guide”) and consequently no further guidance is necessary either at European or UK level.

Response

11.4 A manufacturer suggested that points 6 and 7 of Annex II of the Directive are not covered.

DTI Comments

Requirements for holding the declaration of conformity (points 6 and 7 of Annex II) are set out elsewhere in the Regulations (24(1) in the version distributed with the consultation).

Question 12 Do you agree with the Department’s interpretation of the role of a Notified Body? If not, please provide reasons.

Response

12.1 A trade association said they were not clear on the role of a Notified Body as set out in the draft Regulations, particularly where only a partial assessment is required. There needs to be clarification given in DTI guidance.

DTI Comments

The DTI believes that we have correctly transposed the requirements of the Directive. We will consider whether any additional UK guidance is needed.

Response

12.2 Another trade association said that Regulation 20(5) transposes Annex III in a way that subtly changes the meaning of the Directive. The Directive says that the Notified Body statement is incorporated and becomes part of the technical

documentation, but the draft Regulation the Notified Body statement as an adjunct to, and not part of the technical documentation. While this might not have any practical difference a straight copy out was more appropriate.

DTI Comments

The wording of the Regulations has been amended to follow that of the Directive more closely.

Response

12.3 A conformity assessment body Group said that the Regulations should make it clear that when a Notified Body issues a negative statement; a manufacturer cannot use this statement as part of a positive EMC assessment.

DTI Comments

If a Notified Body issues a negative statement, a manufacturer may choose, at his own risk, to add it to his technical documentation, for due diligence purposes and explain why he disagrees with the assessment.

Question 13 Do you agree that regulation 35 correctly consolidates and transposes the exemption provided for in the Directive for apparatus intended for incorporation into a given fixed installation and which is otherwise not commercially available? If not, please provide reasons.

Response

13.1 A trade association said that clarification was needed in Regulation 35 (1) (i) that the manufacturer is not responsible for the EMC characteristics of a fixed installation.

DTI Comments

The Department considers that Regulation 35(1)(ii) (now renumbered as Regulation 34(1)(ii)) does not have the meaning suggested above.

Response

13.2 A manufacturer said that Regulation 35(2) regarding “certain apparatus” needs to be better highlighted.

DTI Comments

The Department considers that the requirements of draft Regulation 35(2) are sufficiently clear.

Response

13.3 A conformity assessment association said that it should be explicit that when the manufacturer invokes this Regulation he should write instructions for the specific installation and no other.

DTI Comments

It is not possible to state that instructions must be for the specific installation and no other. Simple apparatus may maintain the compliance of any given fixed installation by the installer following the same instructions. Adding the suggested requirement could be considered to be gold plating. The Regulation requires that the fixed installation and its electromagnetic compatibility characteristics be identified.

Question 16 Do you agree that regulation 36 correctly consolidates and transposes the putting into service requirements of the Directive. If not, please provide reasons

Responses

16.1 A trade association said that there should be a requirement for apparatus to be installed in accordance with manufacturer installation instructions.

DTI Comments

The Regulation reflects the requirement of the Directive. To go further risks gold plating.

Question 19 Do you agree that the enforcement provisions are appropriate? If not, please provide reasons.

Responses

19.1 A trade association said that General Product Safety Regulations permit local authorities to enforce outside their home areas – the EMC Regulations should do the same. In addition the Regulations should require the enforcement authority to act in a way proportionate to the risk.

19.3 A Trading Standards department said that the power in Regulation 44 to issue a suspension notice to last six months should be increased to one year to give enough time for an investigation to take place. The EMC Regulations should also allow trading standards to enforce extra-territorially.

19.7 Another Trading Standards department said that it should be clearer that the powers contained in Regulations 40 and 41 can be used by enforcement officers across the UK and are not confined to their local area. This also applies to suspension notices.

DTI Comments

The possibility of enforcement by trading standards outside home areas has been considered, but it was felt that the enforcement regulations as drafted are appropriate for this Directive.

Response

19.2 Representatives of Trading Standards officers said they did not believe there are adequate resources for trading standards to enforce the EMC Regs. The enforcement of fixed installations will be problematic due to a lack of experience of EMC issues. An alternative would be to provide EMC experts to carry out joint inspections.

DTI Comments

The level of resources provided for enforcement by Trading Standards is a matter for Local Authorities. However, in cases where additional expertise is required the DTI will consider requests for assistance.

Response

19.4 A telecommunications company said that Regulation 17 has the effect of meaning that a suspension notice issued under Regulation 44 can only be issued in respect of apparatus placed on the market after 20 July 2009. They are aware of numerous cases of interference to broadband services from apparatus that is faulty or from installations that are poorly maintained. They would like to see suspension

notices issued in all cases of interference regardless of age of equipment since there is no other legislation that protects telecommunications networks from this type of interference.

DTI Comments

Regulation 17 has been modified to follow the placing on the market and putting into service provisions of the Directive.

Response

19.5 A manufacturer said there was no need to differentiate between penalties for apparatus and fixed installations and so there is no reason to have Regulation 57(3)

DTI Comments

Regulation 57(3) will be removed.

Response

19.6 An offshore installations company said that local enforcement authorities would have no influence over the identification and responsibilities of responsible persons on offshore oil & gas facilities.

DTI Comments

The question of enforcement of offshore installations is a matter for the appropriate authority concerned.

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

Response

L.1 A Government Department asked why the specific exclusion for military, included in the current EMC Regulations, had been taken out of the new draft Regulations. They thought this might cause confusion. Another respondent from the same Government Department also raised this point

DTI Comments

Military equipment is excluded from the single market by virtue of the Treaty to establish the European Union. It is not mentioned in the Directive; consequently, it is not mentioned in the draft Regulations.

Response

L.2 A Public Transport provider said that the requirement to update documentation for fixed installations must be clearer. They also felt that additional time [transitional period] should be allowed to apply the Regulations in particular for fixed installations. They suggested that in Regulation 5 “shall hold” needs to be changed to “shall make available” in relation to documentation requests.

DTI Comments

(a) The Regulations cannot add to the requirements of the Directive in respect of documentation requirements. However, consideration will be given to providing more information in UK guidance.

(b) The transitional arrangements have been clarified by the European Commission and cannot be varied. They will be reflected in the provisions of the Regulations and described in an annex of the European Guide.

(c) It is normal practice for enforcement authorities to allow a reasonable time for documentation to be produced.

Response

L.3 A users association made two points:

- 1) The Regulations should require documentation to be made available to anyone who has a reasonable reason for seeing them, not just to enforcement authorities.
- 2) Why is it necessary to reserve prosecution in Scotland for the Procurator Fiscal in Regulations 38(4)?

DTI Comments

- (a) To allow organisations other than enforcement authorities to have sight of technical documentation would exceed the requirements of the Directive.
- (b) The wording in the draft Regulations concerning enforcement in Scotland are a consequence of Scottish Law.

Response

L.4 A telecommunications company said that in order to adequately protect its network it would like to clarification regarding what items are considered to be Fixed Installations or nested Fixed Installations. They would like to see a means by which they can initiate enforcement action in particular in the case of apparatus causing interference to broadband services. Specific comments on Regulations:
Regulation 19(4) should explicitly state that “all normal intended operating conditions” includes standby state.
Regulation 25(3) a harmonised standard sets requirements on apparatus not people
Regulation 44(1) it is unclear to whom the suspension notice will be served in the case of Fixed Installations.

DTI Response to these comments

- (a) The Directive and regulations define fixed installations. Clarification will be provided in guidance.
- (b) The telecommunications company can refer a complaint to an enforcement authority.
- (c) The Regulations cannot exceed the provisions of the Directive and cannot therefore be more explicit in respect of intended use.
- (d) Regulation 25(3) makes reference to harmonised standards for conformity assessment bodies such as EN ISO/IEC 17020.
- (e) Regulation 44(1) has been amended to show that the suspension notice will be served on the responsible person or user.

Part 2: Responses to the Consultation and DTI response to questions related to the draft guidance

The wording of the UK guidance will be reviewed in the light of changes to the European Guide, and the comments received on this consultation.

Question 4 Do you think the draft guidance in Annex C is sufficiently clear to identify who may be considered, on a case-by-case basis, to be the responsible person for a specific fixed installation? If not, please provide reasons.

Response

4.1 A Public Transport provider said that it would be helpful if the guidance clarified that the responsible person does not have to be an EMC expert.

DTI Comments

The DTI will provide guidance that will indicate that the responsible person for a fixed installation may seek appropriate advice in fulfilling their obligations. The guidance will be revised for consistency with the changes to the draft Regulations.

Response

4.2 A trade association said that the guidance for a responsible person for a high voltage substation was not adequate. They added that only the owner of the fixed installation can take responsibility for the EMC characteristics and the responsibility cannot be transferred contractually as suggested in guidance.

DTI Comments

The guidance has to deal with a variety of circumstances. In some cases the responsible person may be other than the owner. The responsible person may seek appropriate advice in fulfilling their objectives. Guidance will be augmented to clarify these aspects.

Response

4.3 A telecommunications company said that they understood the guidance to mean that in the case of Local Loop Unbundling, the communication provider will need to identify a responsible person for the fixed installation within the host communication provider's fixed installation to ensure the compliance of their particular part of the installation. In the case of a shared metallic path facility it is impractical to identify a single responsible person and in these cases co-operation will be required between communication providers

DTI Comments

In the case of interference being caused, the source of which is traced to a source within the boundary of the larger fixed installation, the authorities may be expected to approach the responsible person for the larger fixed installation in the first instance, but the responsible person for any smaller fixed installation would also be expected to cooperate in the investigation.

Response

4.4 An offshore installations company was concerned about what happens when the owner/operator of a fixed installation does not identify the responsible person. This could have an impact on supplier of apparatus or smaller fixed installation. The supplier might not wish to inform authorities through fear of losing the client. It is

possible that without a fall back the regulation for identifying responsible persons could be ignored.

DTI Comments

It is not the responsibility of a supplier to ensure that the fixed installation has an appropriate Responsible Person. The supplier needs only to fulfil his own responsibilities. This will be covered in UK guidance.

Response

4.5 A Trading Standards department said that they were concerned that the guidance provided in general in Annex C of the consultation could be seen as an extension of the law.

DTI Comments

As is the case for the current guidance URN 05/1162 of July 2005, the published text will indicate that it is not an authoritative interpretation of the Regulations, which is a matter for the Courts.

Question 5 Do you agree with our interpretation in Annex C of the term “permanently” used in regulation 3 in relation to a fixed installation? If not, please provide reasons.

Response

5.1 An EMC consultant said that the guidance does not take account of temporary fixed installations. Fixed installations can be moved with in a short period of time to other sites – the requirements for mobile installations cannot be applied. What is required is official interpretation of the directive regarding temporary fixed Installations that don't meet the permanent requirement.

DTI Comments

The Directive does not use the word “temporary”. It regulates the EMC of equipment, which is either apparatus or a fixed installation. If equipment in question does not satisfy the definition of a fixed installation then it is deemed to be apparatus (Article 2.2(b)). A temporary installation would satisfy the definition of “mobile installation” of Article 2.2(b). As a temporary installation is not a fixed installation, it does not have to satisfy the documentation requirements for fixed installations.

Response

5.2 Another EMC consultant asked who would set definition of ‘lifetime’ as a fixed installation could have different lifetimes according to the harshness of the environment.

DTI Comments

Each fixed installation has to be considered separately. The draft guidance of Annex C indicates that the definition for a particular installation is not fulfilled if constituent parts are intended to be moved during their expected lifetime, whatever that lifetime is.

Response

5.3 A professional body said that in relation to definition of Fixed Installations the DTI had used with the word “located” in draft Regs whereas the Directive uses “installed”. Suggest we revert to word used in Directive. This point was also raised by a Government Department.

DTI Comments

The definition of fixed installation has been brought into line with that of the Directive by replacing the word “located” with “installed” in Regulation 3.

Responses

5.4 A trade association said that a very small minority of substations had equipment that could be relocated to deal with extreme situations. These are termed mobile substations. However, it only becomes a substation when connected to supply system. The guidance here is not appropriate in this case and should be taken into consideration.

5.4 A telecommunications company said that they interpreted the guidance as meaning that a trial installation built for operation over a short period of time would be outside the interpretation of “permanently” and therefore would not need to meet requirements for Fixed Installations.

5.5 A Public Transport provider sought clarification in respect of a train that will be used in a number of locations.

DTI Comments

The examples given in respect of power substations, trial telecom installations, and trains do not meet the definition of fixed installation and are therefore not fixed installations, or apparatus for a given fixed installation.

Question 6 Do you agree with our interpretation in Annex C of the term “state of the art” used in regulation 4(2)? If not, please provide reasons.

Response

6.1 An EMC consultant said that harmonised standards are not concerned with state of the art in relation to product design. They specify required performance.

DTI Comments

Harmonised standards provide a presumption of conformity but are not the only way of demonstrating compliance with the relevant essential requirements. Harmonised standards are subject to a transition period, usually for three years following publication of a superseding edition, where the superseded standard remains valid as the equivalence of carrying out the electromagnetic compatibility assessment of Annex II point 1 of the Directive. Standards evolve as a result of a changing electromagnetic environment and manufacturers will need to take this into account if they do not apply the latest edition of a standard.

Responses

6.2 Another person thought that DTI is mistaken in explaining that state of the art is “highest degree of development”. They referred to WTO Agreement on Technical Barriers to Trade and ISO/IEC Guide 2 *Standardisation and related activities*. They suggested that Regulation 4.2 should not imply any more than “taking account of latest published editions of relevant standards”.

6.3 A trade association said they would like to see the term defined in the Regulations.

6.4 A users association said that in their view state of the art should be what is considered best at the time of conformity assessment.

DTI Comments

The guidance will be amended before publication to improve its clarity and reflect the wording of ISO/IEC Guide 2:2004 in respect of the definition of state of the art. The Department considers it to be inappropriate to include definitions of concepts such as state of the art within the Regulations.

Response

6.5 A manufacturer was concerned about the process of who arbitrates on the matter and how State of the Art is qualified over a period of time and with regard to the cost.

DTI Comments

The Regulations require only that regard is taken of the state of the art. Manufacturers must ensure that equipment meets the essential requirements. In terms of cost, the manufacturer is free to use any technique that achieves this.

Response

6.6 A telecommunications company supported the definition and said they understood it to mean that it is not a requirement to use latest harmonised standard in proving compliance of for example a fixed installation. Requirement limited to first installation or major upgrade.

DTI Comments

It is not necessary to use harmonised standards to demonstrate conformity of a fixed installation; indeed for many fixed installation types, harmonised standards do not exist.

Question 7 Do you agree with our interpretation in Annex C of the term “Good Engineering Practice” used in regulation 5? If not, please provide reasons.

Response

7.1 A Public Transport provider said reference to supporting installation and mitigation guidelines would be helpful.

DTI Comments

The DTI guidance will be reviewed before publication to provide guidance including mitigation measures.

Responses

7.2 An EMC Consultant suggested some modifications to the wording in the Regulations that would add “EMC” to the phrase “good engineering practice” as most electrical engineers follow IEE Wiring Regs (BS7671), which does not cover EMC.

7.3 A trade association said that the phrase “accumulated scientific technology” does not provide a useful explanation of good engineering practice (GEP). A reference to science implies a deep understanding of why a techniques works – this is not necessary for GEP. They suggested alternative wording.

DTI Comments

It is not appropriate to change the form of wording in the Regulations regarding good engineering practices from that used in the Directive. The phrase in the final version of the Regulations “with a view to meeting the essential requirements set out in

Regulation 4” indicates that the good engineering practices relate to EMC. This point will be reinforced by guidance.

Response

7.4 A manufacturer said that they were concerned about subjective and unqualified nature of this term. Usually directives deal with this by proper use of harmonised standard.

DTI Comments

Meeting the essential requirements of the EMC Directive would imply that good EMC engineering practices have been used. In general, harmonised standards do not describe good (EMC) engineering practices; rather they describe performance requirements and the method of their assessment.

Response

7.5 A telecommunications company was concerned about the enforcement of GEP in respect of fixed installations and who would be able to assess whether the GEP used were appropriate.

DTI Comments

It is not expected that good engineering practice will be assessed by enforcement authorities in isolation from the essential requirements of Regulation 4(2). These authorities may involve third parties as necessary.

Responses

7.6 A standards body said that further documentation on GEP will be required if the standards are to be applied efficiently.

7.7 A Trading Standards Department said the definition of good engineering practice differs from that given in draft guidance circulated by the European Commission. Perhaps it would be better to refer to Commission guidance except where the Commission guidance is not adequate.

DTI Response to these comments

In the event that the European Commission publishes guidance on good engineering practice in respect of EMC, the DTI will take that into account in updating its own guidance.

Question 14 Do you agree with our interpretation in Annex C of the term “given fixed installation” that is used in regulation 35? If not, please provide reasons.

Responses

14.1 An EMC consultant said that the draft guidance did not address the technical issues correctly. They added that simply identifying the EMC characteristics of fixed installations was not enough to ensure satisfactory operation. They offered the following alternative working for the Guidance:

‘The Directive, in recital 20, indicates that such apparatus may be incorporated into more than one identical fixed installation. In such cases, for the manufacturer of the apparatus to be satisfied that Regulation 35 applies in place of Regulation 15, he shall carry out and document an EMC assessment of each installation together with

the relevant apparatus in sufficient detail to ensure that the provisions of Regulation 4 are met.'

14.2 Another EMC Consultant said the definition in the guidance requires more detail.

DTI Comments

The guidance on this aspect will be reviewed in the light of the comments received.

Response

14.3 A users association said that examples of fixed installations would be helpful. They were concerned with the development of PLT (Power Line Telecommunications) and VSDL and whether telecommunications networks are considered to be fixed Installations or not. They understood cables to be exempt from the requirements of the previous directive but the position appears to be different now.

DTI Comments

Commission guidance is likely to provide some examples of fixed installations. Networks are included within the definition of fixed installations, as indicated in Recital 18 of the Directive.

Response

14.4 A trade association said that there is too much emphasis on a specific location of a fixed installation, and that the emphasis in the guidance should be on the fact that the equipment is for incorporation into a fixed installation where an appropriate assessment has been made for that given fixed installation. The EMC characteristics form part of the specification supplied to the manufacturer. The manufacturer has to meet that specification.

DTI Comments

The draft Regulations are not specific in respect of who identifies the EMC characteristics, but the manufacturer has to provide this information, and any specific precautions, in documentation that accompanies the apparatus. The comment suggests that meeting a customer specification is equivalent to meeting the requirements of the Regulations, but the two are separate requirements. The manufacturer has to meet the requirements of the Regulations for his apparatus. The responsible person for the fixed installation has to ensure that the requirements for the putting into service of the fixed installation are met.

Question 15 Do you agree with our interpretation in Annex C of the term “electromagnetic compatibility characteristics” that is used in Regulation 35?

Response

15.1 An EMC consultant said it does not clarify what is meant by “EMC characteristics”. It would be better to use the term “EMC environment”.

DTI Response to this comment

The Directive uses the term “EMC characteristics” and to use another term could risk gold plating or a relaxation. The term “environment” could imply external factors only.

Response

15.2 Another EMC consultant asked what happens if the supplier of apparatus does not have information on the EMC environment. Some definitions should be given to ensure research data could be used to help the supplier.

DTI Comments

It remains his responsibility to obtain the necessary information because only he knows the characteristics of his apparatus, and he has to provide the information required by the Directive in order to benefit from the exemption from conformity assessment. If insufficient information is available on the EMC characteristics of the fixed installation, a manufacturer of apparatus always has the option of following the conformity assessment procedures for placing the apparatus on the market.

Response

15.3 A trade association said that the manufacturer couldn't identify the EMC characteristics. Both the owner and the supplier should have a joint role, as both are technically knowledgeable. They therefore think the "judgement" statement is not correct, though the owner may of course use help from consultants and contractors to enable him to ensure the specification is correct decision.

DTI Comments

The issue of "judgement" in the draft guidance relates to the level of detail of EMC characteristics that needs to be known before the appropriate precautions can be decided. It is appropriate that the manufacturer has this responsibility.

Response

15.4 An offshore installations company also said there needed to be a joint responsibility between the owner of the installation and the apparatus supplier to perform an assessment to determine the EMC characteristics. They added that this might raise confidentiality and Intellectual Property rights issues that which would need to be addressed.

DTI Comments

Intellectual property issues are outside the scope of the Regulations and DTI guidance.

Response

15.5 A users' association felt that it was right that the responsibility was placed on the supplier.

DTI Comments

The apparatus manufacturer may use any source of information, including the person responsible for the fixed installation. However, the Directive does not place any responsibility on the responsible person for the fixed installation to supply such information.

It remains his responsibility to obtain the necessary information because only he knows the characteristics of his apparatus, and he has to provide the information required by the Directive in order to benefit from the exemption from conformity assessment. If insufficient information is available on the EMC characteristics of the fixed installation, a manufacturer always has the option of following the conformity assessment procedures for placing the apparatus on the market.

Question 17 Do you consider that the draft guidance at Annex C on compliance of fixed installations is sufficiently clear to enable a responsible person for a specific fixed installation to determine what would be the appropriate documentation? If not, please provide reasons.

Response

17.1 A Public Transport provider said that some examples what documentary evidence is required should be given.

DTI Comments

It is difficult to provide specific guidance since there are many circumstances to be taken into account.

Response

17.2 Fixed installations should not be regarded as compliant if taken into service before 20 July 2007 – they are simply outside the scope of the Directive.

DTI Comments

The wording of the guidance in respect of fixed installations already in service on 20 July 2007 will be revised accordingly.

Response

17.3 A trade association said that evidence of good engineering practice is a rather broad term and it would not be practical for a responsible person to hold the range of information required. It might be more appropriate to have sector specific guidance developed to ensure the aims and spirit of the Directive is met.

DTI Comments

It is not intended to produce sector-specific guidance at this stage, but this may be reconsidered in the light of experience in the operation of the legislation.

Response

17.4 A telecommunications company said they understood this to mean that a fixed installation comprised of equipment that individually complies will be deemed to be documented sufficiently if the manufacturer's original installation instructions are retained together with any modification notes.

DTI Comments

The telecommunications company's understanding is consistent with the draft guidance if the apparatus concerned is in conformity with the essential requirements of the Directive when used in accordance with the intended environment and when interconnected with other equipment identified as suitable by the manufacturer(s).

Response

17.5 A Government Department said there should be a presumption of compliance if the Regulations and installation instructions and precautions have been met otherwise the responsible person will have to be highly trained in EMC to be able to identify when the documentation is not sufficient.

DTI Comments

The Directive does not indicate a presumption of compliance if particular procedures are followed in respect of compliant apparatus in fixed installations, so guidance to that effect cannot be given.

Response

17.6 An offshore installation company said that the documentation should be able to characterise the environment in a way that is helpful to suppliers of apparatus to a fixed installation. The responsible person may require specific technical details of the apparatus in order to maintain documentation. Some suppliers will be required to provide confidential documentation and this will be an added responsibility for the Fixed Installation Responsible Person to maintain this confidentiality. If these scenarios are not addressed then it is possible the requirement of the Regs will be ignored.

DTI Comments

The Regulations and supporting draft guidance do not require the EMC characteristics of individual apparatus to be identified. Commercial issues are outside the scope of the guidance. However the Department does appreciate that guidance has to be practicable, and will consider the implications for the scenarios described before guidance is published.

Question 18 Do you consider that the draft guidance at Annex C sufficiently explains how it is expected that cases of reported interference will be resolved? If not, please provide reasons.

Response

18.1 An EMC Consultant said the guidance only appeared to cover the case of one installation embodied in another. Guidance should be provided to cover other situations such as adjacent fixed installations. They suggested some alternative wording for the last sentence of the first paragraph:

‘Where interference occurs as a result of interaction between two or more fixed installations, that are otherwise compliant, the authorities may require the responsible persons to co-operate to remedy the non-compliance.’

DTI Comments

This part of the guidance will be expanded to cover situations in addition to a fixed installation within another fixed installation.

Response

18.2 A telecommunications company was unclear which authority has necessary experience to enforce compliance of fixed installations. They were also unclear as to how Regulation 15(1)(l) regarding use in residential areas will be enforced and also how interference to telecommunications networks will be resolved from apparatus or fixed installation that is compliant with this or the earlier directive.

DTI Comments

- (a) Enforcement authorities may involve third parties with the required expertise, if considered necessary.
- (b) In respect of compliance not being ensured in residential areas, the Department will consider adding guidance in the UK guidance document to cover this issue.
- (c) The UK Regulations cannot exceed the requirements set out in the Directive, and therefore cannot incorporate the proposal of the telecommunications company.

Response

18.3 A conformity assessment body group said that the term “reported interference” does not appear in the draft Regs and they cannot see any procedure that could be said to meet this description.

DTI Comments

The guidance will be amended to more closely reflect the wording of Article 13.2 of the Directive.

List of those that responded to the EMC Consultation

Desiree Abrahams	Trading Standards Institute
Angus Annan	Radio Society of GB
Keith Armstrong	Consultant
Graham Barber	IET
Angela Blair	SCOTSS
John Bradshaw	London Underground
Richard Bryant	Ministry of Defence
Nic Bowker	PLASA
Jon Duerr	Mitsubishi
Alison Edwards	LACORS
Lorraine Fawn	BT
Matthew Garland	MHRA
Nigel Grant	BEAMA Power
Anthony Hayes	Consultant
Dave Holland	Cardiff Trading Standards
Richard Hughes	AMDEA
Dave Imeson	EMCTLA
Keven Kearney	Lighting Association
Peter Knight	Hewlett Packard
Hamish MacLeod	Mobile Broadband Group
Paul Mear	
Jonathan Miles	
Chris Nelson	Ingersoll-Rand
Geraldine Salt	BSI
David Sayer	North Yorkshire Trading Standards
Ian Shirtcliffe	Atkins Rail Solutions
Stuart Stirran	Bombardier
Geoff Strawbridge	
Keith Tench	Ministry of Defence
Ian Warwick	Dorset Trading Standards
Grahame Wilson	AKS
John Woodgate	Consultant