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STATUTORY INSTRUMENTS

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**2005 No. 281**

**The Electromagnetic Compatibility Regulations 2005**

**PART VII**

**ENFORCEMENT**

*Enforcement authorities and powers*

**Enforcement authorities**

**75.**—(1) Except in relation to the descriptions of apparatus mentioned in paragraph (3) below, it shall be the duty of the following authorities to enforce these Regulations—

(a) in Great Britain :

(i) OFCOM insofar as action taken to enforce a regulation relates to the protection and management of the radio spectrum; and

(ii) local weights and measures authorities within their area; and

(b) in Northern Ireland:

(i) OFCOM insofar as action taken to enforce a regulation relates to the protection and management of the radio spectrum; and

(ii) the Department of Enterprise, Trade and Investment.

(2) Except in relation to the descriptions of apparatus mentioned in paragraph (3) below, the Secretary of State may enforce these Regulations.

(3) These Regulations may be enforced—

(a) by the CAA, in relation to wireless telegraphy apparatus of a description listed in paragraph 1 of Schedule 6 hereto; and

(b) in relation to electricity meters other than those which are wireless telegraphy apparatus—

(i) in Great Britain, by the Gas and Electricity Markets Authority; and

(ii) in Northern Ireland, by the Northern Ireland Authority for Energy Regulation.

(4) Nothing in this regulation shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

**Test purchases**

**76.**—(1) An enforcement authority shall have power, for the purpose of ascertaining whether any relevant apparatus complies with the requirements of regulation 32 above to make, or to authorise an officer of the authority to make, any purchase of electrical apparatus.

(2) Where—

(a) any apparatus purchased under this regulation by or on behalf of any enforcement authority is submitted to a test; and

- (b) the test leads to—
  - (i) the bringing of proceedings for an offence under regulation 85, 86 or 88 below in relation to the apparatus or the forfeiture of apparatus of the same description under regulation 97 or 98 below; or
  - (ii) the serving of a suspension notice in respect of any apparatus; and
- (c) the authority is requested to do so and it is practicable for the authority to comply with the request,

the authority shall allow the person from whom the apparatus was purchased or any person who is a party to the proceedings or has an interest in any apparatus to which the notice relates to have the apparatus tested.

#### **Powers of search etc.**

**77.**—(1) Subject to regulation 78 below, a duly authorised officer of an enforcement authority may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by the following provisions of this regulation.

(2) The officer may, for the purpose of ascertaining whether there has been a contravention of any of the requirements of Part III of these Regulations—

- (a) inspect any electrical apparatus and enter any premises other than premises occupied only as a person's residence; or
- (b) examine any procedure (including any arrangements for carrying out a test) connected with the production of any electrical apparatus.

(3) If the officer has reasonable grounds for suspecting that there has been a contravention of any of the requirements of Part III of these Regulations, he may for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain any electrical apparatus.

(4) The officer may seize and detain—

- (a) any electrical apparatus, any document, record or information which the officer may require production of under regulation 84 below, or any other thing, which he has reasonable grounds for believing may be required—
  - (i) as evidence in proceedings for an offence under these Regulations;
  - (ii) by a competent authority of a member State other than the United Kingdom for the purpose of the exercise of its functions; or
- (b) any electrical apparatus which he has reasonable grounds for suspecting may be liable to be forfeited under regulation 97 or 98 below.

(5) The officer may, for the purpose of the exercise of his powers under paragraphs (3) or (4) above to seize any electrical apparatus, any document or record or any other thing—

- (a) require any person having authority to do so to open any container; and
- (b) himself open or break open any such container where a requirement made under paragraph (a) above in relation to the container has not been complied with.

#### **Provisions supplemental to regulation 77**

**78.**—(1) An officer seizing any electrical apparatus, records, documents, information or other thing under regulation 77 above shall inform the person from whom they are seized that such apparatus, records or other thing have been so seized.

(2) If a justice of the peace—

- (a) is satisfied by any written information on oath that there are reasonable grounds for believing either—
  - (i) that any electrical apparatus, documents, records, information or other thing which any officer has power to inspect under regulation 77 above are on any premises (which may be premises occupied only as a person's residence) and that, if their inspection reveals that the apparatus is relevant apparatus or that the documents, records, information or any other thing relates to relevant apparatus, such inspection is likely to disclose evidence that there has been a contravention of any provision of Part III of these Regulations; or
  - (ii) that such a contravention has taken place, is taking place or is about to take place on any premises; and
- (b) is also satisfied by any such information either—
  - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this paragraph has been given to the occupier; or
  - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the justice may by warrant under his hand, which shall continue in force for one month, authorise any officer of an enforcement authority to enter the premises, if need be by force.
- (3) An officer entering any premises by virtue of regulation 77 above or a warrant under paragraph (2) of this regulation may take with him such other persons and such equipment as may appear to him necessary.
- (4) On leaving any premises which a person is authorised to enter by a warrant under paragraph (2) of this regulation, that person shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.
- (5) Where any apparatus seized by an officer under regulation 77 above is submitted to a test, the officer shall inform the persons mentioned in paragraph (1) of this regulation of the result of the test and, if—
  - (a) proceedings are brought for an offence in respect of a contravention in relation to any relevant apparatus of any provision of these Regulations or for the forfeiture of any relevant apparatus under regulation 97 or 98 below, or a suspension notice is served in respect of any relevant apparatus; and
  - (b) the officer is requested to do so and it is practicable to comply with the request,

the officer shall allow any person who is a party to the proceedings or, as the case may be, has an interest in the relevant apparatus to which the notice relates to have the relevant apparatus tested.
- (6) In the application of this regulation to Scotland, the reference in paragraph (2) above to a justice of the peace shall include a reference to a sheriff and the references to written information on oath shall be construed as references to evidence on oath.
- (7) In the application of this regulation to Northern Ireland, the references in paragraph (2) above to any information on oath shall be construed as references to any complaint on oath.

### **Appeals against detention of apparatus**

**79.**—(1) Any person having an interest in any apparatus, document, record, information or other thing which is for the time being detained under any provision of this Part by an enforcement authority or by an officer of such an authority may apply for an order requiring the apparatus to be released to him or to another person.

- (2) An application under this regulation may be made—
- (a) to any magistrates' court in which proceedings have been brought in England and Wales and Northern Ireland—
    - (i) for an offence under regulation 85, 86 or 88 below; or
    - (ii) for the forfeiture of the apparatus under regulation 97 below;
  - (b) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or
  - (c) in Scotland, by summary application to the sheriff.
- (3) On an application under this regulation to a magistrates' court or to the sheriff, an order requiring apparatus to be released shall be made only if the court or sheriff is satisfied—
- (a) that proceedings—
    - (i) for an offence under regulation 85, 86 or 88 below in respect of the apparatus; or
    - (ii) for the forfeiture of the apparatus under regulation 97 or 98 below,
 have not been brought or, having been brought, have been concluded without the apparatus being forfeited; and
  - (b) where no such proceedings have been brought, that more than six months have elapsed since the apparatus was seized.
- (4) Any person aggrieved by an order made under this regulation by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—
- (a) in England and Wales, to the Crown Court;
  - (b) in Northern Ireland, to the county court,

and an order so made may contain such provision as appears to the court appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 (1) or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981(2) (statement of case)).

### **Compliance notices**

**80.**—(1) Subject to paragraph (4) below, in the relevant circumstances, no notice may be served pursuant to regulation 81 or 82 below, and no proceedings may be commenced pursuant to regulation 85, 88, 97 or 98 below, unless the requirements of this regulation are satisfied.

(2) The relevant circumstances are that it is established that the CE mark or CE marking has been affixed unduly to electrical apparatus.

(3) The requirements of this regulation are that—

- (a) there has been served upon the manufacturer or his authorised representative a notice in writing obliging the person on whom the notice is served to make the electrical apparatus conform as regards the provisions concerning the CE mark or CE marking and its due affixation and to end the infringement under conditions imposed in, or in relation to, the said notice; and
- (b) the non-conformity continues after the period specified in, or in relation to, the said notice during which the infringement must be ended has expired.

(4) Without prejudice to paragraph 3(a) and (b), a notice served pursuant to paragraph (1) above shall include, but not by way of limitation,

(1) 1980 c. 43.

(2) S.I. 1981/1675 (N.I.26).

- (a) a description of the electrical apparatus in respect of which the notice is served on the manufacturer or his authorised representative in a manner sufficient to identify it;
- (b) a statement that the CE mark or CE marking affixed to either the electrical apparatus or the apparatus' packaging, instructions for use or guarantee certificate is unduly affixed, or that the CE mark or CE marking is affixed to some other item accompanying the apparatus;
- (c) a statement of the grounds upon which it is established that the CE mark or CE marking has been or is being unduly affixed in relation to the electrical apparatus; and
- (d) an indication as to which of the following procedures cannot be commenced unless the requirements of this regulation are satisfied:—
  - (i) a notice pursuant to regulation 81 or 82 below; or
  - (ii) proceedings pursuant to regulation 85, 88, 97 or 98 below,

and may include such other information as may be considered expedient to enable the person to whom the notice is addressed to decide what action should be taken to end the particular infringement.

(5) This regulation does not apply where it is found that apparatus bearing the CE mark or CE marking does not comply with the protection requirements.

### **Prohibition notices**

**81.**—(1) The Secretary of State may serve on—

- (a) the manufacturer or supplier of any relevant apparatus which the Secretary of State considers does not comply with the protection requirements or the requirements of regulation 32 above as the case may be; or
- (b) the user of relevant apparatus which the Secretary of State considers did not so comply at the time when it was supplied or taken into service as the case may be,

a notice (“a prohibition notice”) prohibiting that manufacturer, supplier or user from manufacturing, supplying, taking into service or using that apparatus as the case may be, except with the consent of the Secretary of State.

(2) Schedule 7 hereto shall have effect with respect to prohibition notices.

(3) A consent given by the Secretary of State for the purposes of a prohibition notice may impose such conditions on the doing of anything for which the consent is required as the Secretary of State considers appropriate.

### **Suspension notices**

**82.**—(1) Where an enforcement authority has reasonable grounds for suspecting that regulation 30, 31 or 36(4) above has been, is being or is likely to be contravened, the authority may serve a notice (“a suspension notice”)—

- (a) in relation to relevant apparatus or electrical apparatus other than relevant apparatus, prohibiting the manufacturer, supplier or user on whom it is served, for such period ending not more than six months after the date of the notice as is specified therein, from manufacturing, supplying, taking into service or using the apparatus; or
- (b) in relation to an excluded installation, where the enforcement authority is unable to establish upon reasonable inquiry which item of relevant apparatus or system incorporated therein the suspected contravention relates to, for such period ending not more than six months after the date of the notice as is specified therein, from taking into service or using the excluded installation,

without the consent of that authority.

(2) A suspension notice served by an enforcement authority in respect of any apparatus or excluded installation shall—

- (a) describe the apparatus or installation to which it relates in a manner sufficient to identify it;
- (b) set out the grounds on which the authority suspects that regulation 30, 31 or 36(4) above has been, is being or is likely to be contravened, as the case may be; and
- (c) state that, and the manner in which, the person on whom the notice is served may appeal against the notice under regulation 83 below.

(3) A consent given by an enforcement authority for the purposes of a suspension notice may impose such conditions on the doing of anything for which the consent is required as that authority considers appropriate.

(4) A suspension notice may require the person on whom it is served to keep the enforcement authority which served the notice informed of the whereabouts throughout the period during which the notice has effect of any of the apparatus, or the excluded installation, in which that person has an interest.

(5) Where a suspension notice has been served on any person in respect of any apparatus or excluded installation, no further such notice shall be served on that person in respect of the same apparatus unless—

- (a) proceedings against that person for an offence under regulation 85, 86 or 88 below; or
- (b) proceedings for the forfeiture of the apparatus under regulation 97 or 98 below,

are pending at the end of the period specified in the first-mentioned notice.

### **Appeals against suspension notices**

**83.**—(1) Any person having an interest in any apparatus or excluded installation in respect of which a suspension notice is for the time being in force may apply for an order setting aside the notice.

(2) An application under this regulation may be made—

- (a) in England and Wales or Northern Ireland—
  - (i) to any magistrates' court in which proceedings have been brought—
    - (aa) for an offence under regulation 85, 86 or 88 below; or
    - (bb) for the forfeiture of the apparatus under regulation 97 below; or
  - (ii) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or
- (b) in Scotland, by summary application to the sheriff.

(3) On an application under this regulation to a magistrates' court in England and Wales or Northern Ireland the court shall make an order setting aside the suspension notice only if the court is satisfied that there has been no contravention in relation to the apparatus, or any item of relevant apparatus or system included in the excluded installation, of regulation 30, 31 or 36(4) above as the case may be.

(4) On an application under this regulation to the sheriff he shall make an order setting aside the suspension notice only if he is satisfied that at the date of making the order—

- (a) proceedings for an offence under regulation 85, 86 or 88 below; or
- (b) proceedings for the forfeiture of the apparatus under regulation 98 below,

have not been brought or, having been brought, have been concluded.

(5) Any person aggrieved by an order made under this regulation by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, to the county court,

and an order so made may contain such provision as appears to the court appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

#### **Power to require production of documents and information etc.**

**84.** An officer of an enforcement authority may, for the purposes of exercising his functions under this Part, require—

- (a) any person who is required by regulation 37 above to retain an EC declaration of conformity, technical construction file or EC type-examination certificate, during the period in which that person is required to retain that document, to produce such document;
- (b) any person who is in possession of an EC declaration of conformity, technical construction file or EC type-examination certificate, or of a copy of such document, at any time to produce it;
- (c) a responsible person, or a manufacturer, importer, supplier or user of electrical apparatus to produce such documents or records relating to such apparatus as are in his possession or under his control; or
- (d) a responsible person, or a manufacturer, importer, supplier or user of any electrical apparatus, to give him such information as he may reasonably require,

and such officer may inspect any thing which he may require to be produced under this regulation, and take a copy thereof or of any part thereof.

#### *Offences*

#### **Supplying or taking into service apparatus in contravention of regulation 30 or 31**

**85.** Any person who supplies or takes into service relevant apparatus in contravention of regulation 30 or 31 above shall be guilty of an offence.

#### **Contravention of prohibition notice or suspension notice**

**86.** Any person who contravenes a prohibition notice or a suspension notice shall be guilty of an offence.

#### **False or misleading information**

**87.** Any person who, in giving any information which he is required to give under regulation 84(c) or (d) above—

- (a) makes any statement which he knows is false or misleading in a material particular; or
- (b) recklessly makes any statement which is false or misleading in a material particular,

shall be guilty of an offence.

**Misuse of the CE marking etc.**

**88.**—(1) Any person who, in relation to any relevant apparatus, or any electrical apparatus other than relevant apparatus, affixes the CE marking or any other inscription or marking in contravention of regulation 35(5), (6) or (7) above, shall be guilty of an offence.

(2) Any person who issues an EC declaration of conformity in relation to—

- (a) any relevant apparatus in contravention of regulation 36(3) above; or
- (b) any electrical apparatus in contravention of regulation 36(4) above,

shall be guilty of an offence.

**Obstruction etc. of officers of enforcement authorities etc.**

**89.**—(1) Any person who—

- (a) intentionally obstructs any officer of an enforcement authority who is acting in pursuance of any provision of this Part;
- (b) intentionally fails or refuses to comply with any requirement made of him by any officer of an enforcement authority under any provision of this Part;
- (c) without reasonable cause fails or refuses to give any officer of an enforcement authority who is so acting any other assistance which the officer may reasonably require of him for the purposes of the exercise of the officer's functions under any provision of this Part; or
- (d) fails to comply with a court order under regulation 96 below,

shall be guilty of an offence.

(2) Any person who falsely pretends to be an officer of an enforcement authority shall be guilty of an offence.

**Failure to retain documentation**

**90.** Any person who contravenes regulation 37 above shall be guilty of an offence.

**Defence of due diligence**

**91.**—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 85 or 88 above it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided by paragraph (1) above involves an allegation that the commission of the offence was due—

- (a) to the act or default of another; or
- (b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings (or, in Scotland the trial diet), he has served a notice under paragraph (3) below on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) above by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—



- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

### **Liability of persons other than the principal offender**

**92.**—(1) Where the commission by any person of an offence under any of regulations 85 to 90 above is due to the act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1) above) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

### **Extension of time for bringing summary proceedings**

**93.** Notwithstanding section 127 of the Magistrates' Courts Act 1980 and section 136 of the Criminal Procedure (Scotland) Act 1995(3), proceedings for an offence under regulations 85 to 90 above may be commenced at any time within three years from the date of the offence, or one year from the date on which there comes to the knowledge of the prosecutor evidence sufficient to justify a prosecution for that offence, whichever is the earlier; and for the purposes of this regulation—

- (a) a certificate of the prosecutor stating that such evidence came to his knowledge on a specified date shall be conclusive evidence of that fact; and
- (b) a document purporting to be such a certificate and to be signed by or on behalf of the prosecutor in question shall be presumed to be such a certificate unless the contrary is proved.

### **Inference of condition of apparatus at time of supply or taking into service**

**94.** In any proceedings in which it is in issue whether any relevant apparatus complied with the protection requirements or the requirements of regulation 32 above as the case may be at the time when it was supplied or taken into service as the case may be, a court may infer that such apparatus did not so comply at that time if—

- (a) it is proved that it does not so comply or did not so comply at a time subsequent to its having been supplied or taken into service; and
- (b) having regard to all the circumstances of the case, it appears to the court that the failure of the apparatus to comply at the time referred to in sub-paragraph (a) above is not attributable to any cause arising subsequent to its having been supplied or taken into service.

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(3) 1995 c. 46.

*Powers of the court***Penalties**

**95.**—(1) A person guilty of an offence under regulation 86, 87 or 89(2) above shall be liable on summary conviction—

- (a) to imprisonment for a term not exceeding three months; or
- (b) to a fine not exceeding level 5 on the standard scale,

or to both.

(2) A person guilty of an offence under regulation 85, 88, 89(1) or 90 above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Power of the court to require matter to be remedied**

**96.**—(1) Where a person is convicted of an offence under regulation 85 or 88 above in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.

(2) The time fixed by an order under paragraph (1) above may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) above to remedy any matters, that person shall not be guilty of an offence under regulation 85 or 88 above as the case may be in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2) above.

**Forfeiture: England and Wales and Northern Ireland**

**97.**—(1) An enforcement authority in England and Wales or Northern Ireland may apply under this regulation for an order for the forfeiture of any—

- (a) relevant apparatus on the grounds that there has been a contravention in relation thereto of regulation 30 or 31 above; or
- (b) electrical apparatus other than relevant apparatus, on the grounds that the CE marking, or an inscription liable to be confused therewith, is affixed in relation to it in contravention of regulation 35(7) above.

(2) An application under this regulation may be made—

- (a) where proceedings have been brought in a magistrates' court in respect of an offence in relation to some or all of the apparatus under regulation 85, 86 or 88, to that court;
- (b) where an application with respect to some or all of the apparatus has been made to a magistrates' court under regulation 79 or 83 above, to that court; and
- (c) where no application for the forfeiture of the apparatus has been made under subparagraph (a) or (b) above, by way of complaint to a magistrates' court.

(3) On an application under this regulation the court shall make an order for the forfeiture of the apparatus only if it is satisfied that there has been a contravention in relation thereto of regulation 30, 31 or 35(6) above as the case may be.

(4) For the avoidance of doubt it is hereby declared that a court may infer for the purposes of this regulation that there has been a contravention in relation to any apparatus of regulation 30, 31 or 35(6) above as the case may be if it is satisfied that that provision has been contravened in relation to

apparatus which is representative of that apparatus (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) Any person aggrieved by an order made under this regulation by a magistrates' court, or by a decision of such court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, to the county court,

and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of an order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

(6) Subject to paragraph (7) below, where any apparatus is forfeited under this regulation it shall be destroyed in accordance with such directions as the court may give.

(7) On making an order under this regulation a magistrates' court may, if it considers it appropriate to do so, direct that the apparatus to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person—

- (a) does not supply the apparatus to any person otherwise than—
  - (i) to a person who carries on a business of buying apparatus of the same description as the first mentioned apparatus and repairing or reconditioning it; or
  - (ii) as scrap (that is to say, for the value of materials included in the apparatus rather than for the value of the apparatus itself); and
- (b) complies with any order to pay costs or expenses (including any order under regulation 99 below) which has been made against that person in the proceedings for the order for forfeiture.

### **Forfeiture: Scotland**

**98.**—(1) In Scotland an order for forfeiture of any—

- (a) relevant apparatus in relation to which there has been a contravention of regulation 30 or 31 above as the case may be; or
- (b) electrical apparatus other than relevant apparatus, on the grounds that the CE marking, or an inscription liable to be confused therewith, is affixed in relation to it in contravention of regulation 35(7) above,

may be made by the sheriff—

- (i) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995; or
- (ii) where a person is convicted of any offence in respect of any such contravention, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under paragraph (1)(i) above shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the apparatus to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the apparatus should not be forfeited.

(3) Service under paragraph (2) above shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.

(4) Any person upon whom a notice is served under paragraph (2) above and any other person claiming to be the owner of, or otherwise to have an interest in, the apparatus to which an application

under this regulation relates shall be entitled to appear at the hearing of the application to show cause why the apparatus should not be forfeited.

(5) The sheriff shall not make an order following an application under paragraph (1)(i) above—

- (a) if any person on whom notice is served under paragraph (2) above does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under paragraph (2) above has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The sheriff shall make an order under this regulation only if he is satisfied that there has been a contravention in relation to the apparatus of regulation 30, 31 or 35(6) above as the case may be.

(7) For the avoidance of doubt it is hereby declared that the sheriff may infer for the purposes of this regulation that there has been a contravention in relation to any apparatus of regulation 30, 31 or 35(6) above if he is satisfied that that provision has been contravened in relation to apparatus which is representative of that apparatus (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(8) Where an order for the forfeiture of any apparatus is made following an application by the procurator-fiscal under paragraph (1)(i) above, any person who appeared, or was entitled to appear, to show cause why it should not be forfeited may, within twenty-one days of the making of the order, appeal to the High Court by Bill of Suspension on the ground of an alleged miscarriage of justice; and section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under this paragraph as it applies to a stated case under Part X of that Act.

(9) An order following an application under paragraph (1)(i) above shall not take effect—

- (a) until the end of the period of twenty-one days beginning with the day after the day on which the order is made; or
- (b) if an appeal is made under paragraph (8) above within that period, until the appeal is determined or abandoned.

(10) An order under paragraph (1)(ii) shall not take effect—

- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995; or
- (b) if an appeal is made within that period, until the appeal is determined or abandoned.

(11) Subject to paragraph (12) below, apparatus forfeited under this regulation shall be destroyed in accordance with such directions as the sheriff may give.

(12) If he thinks fit, the sheriff may direct the apparatus to be (instead of being destroyed) released to such person as he may specify, on condition that that person does not supply it to any person otherwise than—

- (a) to a person who carries on a business of buying apparatus of the same description as the first-mentioned apparatus and repairing or reconditioning it; or
- (b) as scrap (that is to say, for the value of materials included in the apparatus rather than for the value of the apparatus itself).

### **Recovery of expenses of enforcement**

99.—(1) This regulation applies where a court—

- (a) convicts a person of an offence under regulation 85, 86 or 88 above; or
- (b) makes an order under regulation 97 or 98 above for the forfeiture of any apparatus.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted or, as the case may be, any person having an interest in the apparatus the subject of

the order for forfeiture, to reimburse an enforcement authority for any expenditure which has been or may be incurred by that authority—

- (a) in investigating the offence, and, without prejudice to the generality of the foregoing, in having the apparatus tested;
- (b) in connection with any seizure or detention of the apparatus by or on behalf of the authority; or
- (c) in connection with any compliance by that authority with directions given by the court for the purposes of any order for the forfeiture of the apparatus.