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STATUTORY INSTRUMENTS

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**2005 No. 281**

The Electromagnetic Compatibility Regulations 2005

PART VII

ENFORCEMENT

*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<sup>(1)</sup>, 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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(1) 1995 c. 46.