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STATUTORY INSTRUMENTS

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**2006 No. 2647**

**The Measuring Instruments (Gas Meters) Regulations 2006**

**PART 3**

**ENFORCEMENT**

**Enforcement authority**

**14.**—(1) The following authorities shall enforce these Regulations—

- (a) GEMA, in relation to England, Wales and Scotland;
- (b) NIAER, in relation to Northern Ireland;
- (c) GEMA, in relation to Northern Ireland, to the extent that any arrangements entered into in accordance with regulation 25 provide that GEMA is to act on behalf of NIAER for, or in connection with, the carrying out of the functions conferred on NIAER under this Part;
- (d) any other third party designated to act on behalf of GEMA or (in relation to Northern Ireland) NIAER.

(2) No proceedings for an offence under these Regulations may be instituted in England and Wales, except by or on behalf of an enforcement authority.

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

**Unauthorised application of authorised marks**

**15.**—(1) Subject to paragraphs (2) and (3), a person shall be guilty of an offence if, in the case of an relevant instrument, he—

- (a) affixes an authorised mark to the instrument otherwise than in accordance with these Regulations;
- (b) alters or defaces an authorised mark affixed to the instrument;
- (c) removes an authorised mark affixed to the instrument; or
- (d) affixes any other marking to the instrument which is likely to deceive any person as to the meaning or form, or both, of an authorised mark.

(2) Where the alteration or defacement of an authorised mark is occasioned solely in the course of the adjustment or repair of a relevant instrument by a person regularly engaged in the business of repair of such instruments, or by his authorised agent, that person or his authorised agent, shall not be guilty of an offence under paragraph (1)(b).

(3) Where the alteration or defacement of an authorised mark is occasioned solely in the course of a duty imposed by regulation 4 of the Gas (Meters) Regulations 1983(1) by a meter examiner (within the meaning of those Regulations), that person shall not be guilty of an offence under paragraph (1) (b).

(4) A person shall be guilty of an offence if he places on the market or puts into use a relevant instrument—

(a) which, to his knowledge, bears—

- (i) an authorised mark affixed otherwise than in accordance with these Regulations;
- (ii) an authorised mark that has been altered or defaced otherwise than in the circumstances referred to in paragraph (2) or (3); or
- (iii) any marking which is likely to deceive any person as to the meaning or form, or both, of an authorised mark; or

(b) from which, to his knowledge, an authorised mark has been removed.

(5) Where an offence under this regulation has been committed in respect of a relevant instrument which has not been put into use, the instrument, and any implement used in the commissioning of the offence, shall be liable to be forfeited.

(6) A reference in this regulation to other provisions of these Regulations includes a reference to corresponding provisions under the laws of other member States.

(7) In this regulation, “authorised mark” means the CE marking, the M marking or the identification number of the notified body which carried out the conformity assessment procedure in respect of the relevant instrument.

### **Compliance notice procedures**

**16.**—(1) Where an enforcement authority establishes that, in the case of a relevant instrument that has been placed on the market or put into use, the CE marking or the M marking has, or both have, been affixed unduly, the following provisions of this regulation shall have effect.

(2) The enforcement authority shall serve a compliance notice on the manufacturer or his authorised representative which shall—

- (a) be in writing;
- (b) describe the relevant instrument to which it relates in a manner sufficient to identify that instrument;
- (c) state that the enforcement authority is of the opinion that the CE marking or the M marking has, or both have, been affixed unduly to the relevant instrument and give reasons for its opinion;
- (d) require the person on whom the notice is served to end the infringement under conditions specified in the notice;
- (e) specify the date, being not less than 21 days from the date of the notice, by which the infringement must be ended; and
- (f) warn that person that, where the non-conformity continues beyond the date specified in sub-paragraph (e), the enforcement authority may take further action under regulation 17 in respect of that relevant instrument.

(3) For the purposes of paragraph (1)—

- (a) the CE marking shall be considered to have been affixed unduly if it is not compliant with the requirements of regulation 12(3)(a); and
- (b) the M marking shall be considered to have been affixed unduly if it is not compliant with the requirements of regulation 12(3)(b).

(4) Where an enforcement authority other than GEMA or NIAER serves a compliance notice, it shall at the same time send a copy of the notice to GEMA (or to NIAER, if it is acting on its behalf).

(5) Where GEMA, acting in accordance with regulation 25, serves a compliance notice, it shall at the same time send a copy of the notice to NIAER.

### **Immediate enforcement action**

17.—(1) Where an enforcement authority has reasonable grounds for considering that—

- (a) the manufacturer or his authorised representative has failed to comply with a compliance notice;
- (b) a relevant instrument, which is placed on the market or put into use, does not bear one or more of the CE marking, the M marking and the identification number of the notified body which carried out the conformity assessment procedure in respect of that instrument; or
- (c) a relevant instrument which bears the marking and identification requirements referred to in sub-paragraph (b) does not meet the essential requirements when placed on the market, or properly installed and put into use in accordance with the manufacturer's instructions,

the following provisions of this regulation shall have effect.

(2) The enforcement authority shall serve an enforcement notice on the manufacturer or his authorised representative which shall—

- (a) be in writing;
- (b) describe the relevant instrument to which it relates in a manner sufficient to identify that instrument;
- (c) specify, with reasons, the respects in which, in the opinion of the enforcement authority, the requirements of these Regulations have not been complied with;
- (d) specify the date, being not less than 21 days from the date of the notice, by which the person to whom the notice is given is required to comply with it; and
- (e) inform that person of the judicial remedies available to him and of the time limits to which those remedies are subject.

(3) A notice under paragraph (2) may—

- (a) require the relevant instrument to be withdrawn from the market; or
- (b) prohibit or restrict the placing on the market or putting into use of the relevant instrument; and
- (c) specify that unless steps are taken which ensure—
  - (i) that the relevant instrument is compliant with the requirements of these Regulations; or
  - (ii) that the manufacturer or his authorised representative acts as required under sub-paragraph (a) or (b),

any certificate or notification, issued by a notified body in accordance with the relevant conformity assessment procedure applicable to the relevant instrument that the instrument satisfies the essential requirements, may be withdrawn by that notified body.

(4) Where an enforcement authority other than GEMA or NIAER serves an enforcement notice, it shall at the same time send a copy of the notice to GEMA (or to NIAER, if it is acting on its behalf).

(5) Where GEMA, acting in accordance with regulation 25, serves an enforcement notice, it shall at the same time send a copy of the notice to NIAER.

(6) If, in the case of a certificate or notification granted by a United Kingdom notified body, GEMA (in relation to a notified body which it has designated) or NIAER (in relation to a notified body which it has designated) is of the opinion that consideration ought to be given to whether the

certificate or notification should be withdrawn, GEMA (or, as the case may be, NIAER) shall inform that notified body of that fact.

(7) If, in the case of a certificate or notification granted under the law of another member State, GEMA or NIAER is of the opinion that consideration ought to be given to whether the certificate or notification should be withdrawn, it shall inform the relevant competent authority of that fact.

### **Powers of entry and inspection**

**18.**—(1) Subject to the production if so requested of his credentials, an enforcement officer may for the purpose of these Regulations, at all reasonable times—

- (a) inspect and test, or remove for testing, any relevant instrument which has not been put into use in such manner as he considers appropriate;
- (b) inspect and take copies of any document relating to such a relevant instrument; and
- (c) enter any premises at which he has reasonable cause to believe there to be such a relevant instrument, not being premises used only as a private dwelling house.

(2) Subject to the production if so requested of his credentials, an enforcement officer may, at any time, seize and detain—

- (a) a relevant instrument which he has reasonable cause to believe is liable to be forfeited under these Regulations; and
- (b) any document or goods which he has reason to believe may be required as evidence in proceedings for an offence under these Regulations.

(3) If a justice of the peace, on written information on oath—

- (a) is satisfied that there are reasonable grounds to believe that any such relevant instrument or document as is mentioned in paragraph (1) or (2) is on any premises, or that an offence under these Regulations has been, is being or is about to be committed on any premises; and
- (b) is also satisfied either that—
  - (i) admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant has been given to the occupier; or
  - (ii) an application for admission, or the giving of such a notice would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise the enforcement officer to enter the premises, if need be by force.

(4) In the application of paragraph (3) to Scotland, “justice of the peace” includes a sheriff and references to written information on oath shall be construed as references to evidence on oath.

(5) An enforcement officer entering any premises by virtue of this regulation may take such other persons and such equipment as may appear to him necessary, and on leaving such premises which he has entered by virtue of a warrant under paragraph (3), being premises which are unoccupied or the occupier of which is temporarily absent, he shall leave them as effectively secured against a trespasser as he found them.

(6) If an enforcement officer or other person who enters any work-place by virtue of this regulation discloses to any person any information obtained by him in the work-place with regard to any secret manufacturing process or trade secret, he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.

(7) It shall not be an offence under paragraph (6) for a person to disclose information in circumstances where—

- (a) the person from whom the information was received has consented to its disclosure; or
  - (b) the information is disclosed more than 50 years after it was received.
- (8) Nothing in this regulation shall authorise any person to stop any vehicle on a highway.
- (9) In this regulation, “credentials” means evidence of appointment or designation as an enforcement officer.

#### **Obstruction of enforcement officer**

- 19.—(1) A person shall be guilty of an offence if he—
- (a) wilfully obstructs an enforcement officer in the execution of any of his functions under these Regulations; or
  - (b) without reasonable cause fails to give that officer any assistance or information which the officer has reasonably required of him for the purpose of the performance by the enforcement authority of its functions under these Regulations.
- (2) A person shall be guilty of an offence if, in giving an enforcement officer such information as is mentioned in paragraph (1)(b), that person gives any information he knows to be false.

#### **Review of decisions of enforcement authority**

- 20.—(1) Where a person is aggrieved by a compliance notice or an enforcement notice served by an enforcement authority other than GEMA or NIAER, that person may apply to GEMA (or to NIAER, where the enforcement authority is acting on NIAER’s behalf) to review such notice.
- (2) An application under paragraph (1) shall—
- (a) be in writing;
  - (b) state the grounds on which the application is made;
  - (c) be sent to GEMA (or, as the case may be, NIAER) within 21 days from the date of the notice referred to in paragraph (1).
- (3) GEMA (or, as the case may be, NIAER) may—
- (a) hold an inquiry in connection with the notice which is the subject of its review; and
  - (b) appoint an assessor for the purposes of assisting it with its review.
- (4) GEMA (or, as the case may be, NIAER) shall, within a reasonable time, inform the aggrieved person and the enforcement authority referred to in paragraph (1) in writing of its decision whether to uphold the decision of that authority, together with reasons for its decision.
- (5) Where GEMA (or, as the case may be, NIAER) does not uphold any notice referred to in paragraph (1), it shall give reasons for the withdrawal of that notice.

#### **Penalties for offences**

21. A person guilty of an offence under these Regulations shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

#### **Defence of due diligence**

- 22.—(1) Subject to the following provisions of this regulation, in proceedings against a person for an offence under these Regulations, 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 proceedings against a person for such an offence the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) 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 7 clear days before the hearing of the proceedings (or, in Scotland, the trial diet), he has served a notice in accordance with paragraph (3) on the person bringing the proceedings.

(3) A notice under this regulation 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) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows it was reasonable in all the circumstances for him to have relied on the information, having regard in particular to—

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

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

**23.**—(1) Where the commission by a person of an offence under these Regulations is due to the act or default of another person in the course of any business of his, that other person shall be guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person.

- (2) Where a body corporate commits an offence and it is proved that the offence was committed—
- (a) with the consent or connivance of an officer of the body corporate; or
  - (b) as a result of the negligence of an officer of the body corporate,

the officer, as well as the body corporate, shall be guilty of the offence.

- (3) In paragraph (2) a reference to an officer of a body corporate includes a reference to—
- (a) a director, manager, secretary or other similar officer of the body corporate;
  - (b) a person purporting to act as a director, manager, secretary or other similar officer; and
  - (c) if the affairs of the body corporate are arranged by its members, a member.

(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.