
STATUTORY INSTRUMENTS

2016 No. 1091

The Electromagnetic Compatibility Regulations 2016

PART 5

Enforcement and market surveillance

Designation of enforcing authorities

52.—(1) Except in relation to the apparatus referred to in paragraph (3), it is the duty of the following authorities to enforce these Regulations and RAMS (in its application to apparatus)—

- (a) in Great Britain—
 - (i) OFCOM insofar as action taken to enforce these Regulations relates to the protection and management of the radio spectrum; and
 - (ii) within its area, the weights and measures authority.
- (b) in Northern Ireland—
 - (i) OFCOM insofar as action taken to enforce these Regulations relates to the protection and management of the radio spectrum; and
 - (ii) the Department of Enterprise, Trade and Investment.

(2) The Secretary of State, or a person appointed by the Secretary of State to act on behalf of the Secretary of State, may enforce these Regulations and RAMS (in its application to apparatus).

(3) In Northern Ireland, these Regulations may be enforced in relation to electricity meters, other than those which are wireless telegraphy apparatus, by the Northern Ireland Authority for Energy Regulation or a person appointed by the Northern Ireland Authority for Energy Regulation.

(4) Where the enforcing authority is not also the market surveillance authority, the enforcing authority must notify the market surveillance authority of its proposed action.

(5) In Scotland, only the Lord Advocate may commence proceedings for an offence.

Designation of market surveillance authorities

53.—(1) The market surveillance authority is—

- (a) in Great Britain, within its area, the weights and measures authority; and
- (b) in Northern Ireland, within its area, the district council.

(2) The market surveillance authority must make adequate arrangements for market surveillance under these Regulations and RAMS (in its application to apparatus).

(3) When a market surveillance authority carries out market surveillance under these Regulations, Part 1 of Schedule 7 has effect.

Enforcement powers

54.—(1) Part 1 of Schedule 7 (enforcement and investigatory powers conferred upon enforcing authorities and market surveillance authorities) is to have effect where the enforcing authority is—

- (a) a weights and measures authority;
- (b) OFCOM;
- (c) the Secretary of State; or
- (d) the Department of Enterprise, Trade and Investment.

(2) In addition to the powers available to an enforcing authority under paragraph (1) the authority may use the powers set out in Part 2 of Schedule 7 (compliance, withdrawal and recall notices).

Exercise of enforcement powers

55. When enforcing these Regulations, the enforcing authority must exercise its powers in a manner which is consistent with—

- (a) regulation 56 (evaluation of apparatus presenting a risk);
- (b) regulation 57 (enforcement action in respect of apparatus that is not in conformity and which present a risk);
- (c) regulation 58 (EU safeguard procedure);
- (d) regulation 59 (enforcement action in respect of formal non-compliance);
- (e) regulation 60 (restrictive measures).

Evaluation of apparatus presenting a risk

56.—(1) Where the market surveillance authority has sufficient reason to believe that apparatus presents a risk, the market surveillance authority must carry out an evaluation of that apparatus covering the relevant requirements of Part 2 in respect of that apparatus.

(2) Where the enforcing authority has sufficient reason to believe that apparatus presents a risk, the enforcement authority may carry out an evaluation of that apparatus covering the relevant requirements of Part 2 in respect of that apparatus.

Enforcement action in respect of apparatus that is not in conformity and which present a risk

57.—(1) Where in the course of the evaluation referred to in regulation 56 (evaluation of apparatus presenting a risk) the enforcing authority finds that the apparatus is not in conformity with Part 2, it must, without delay, require the relevant economic operator to—

- (a) take the appropriate corrective action to bring the apparatus into conformity with those requirements within a prescribed period;
- (b) withdraw the apparatus within a prescribed period; or
- (c) recall the apparatus within a prescribed period.

(2) The enforcing authority must inform the notified body that carried out the relevant conformity assessment procedure in relation to the apparatus of—

- (a) the respect in which the apparatus is not in conformity with Part 2; and
- (b) the actions which the enforcing authority is requiring the relevant economic operator to take.

(3) Where the enforcing authority is not the Secretary of State and it considers that the lack of conformity referred to in paragraph (1) is not restricted to the United Kingdom, it must notify the Secretary of State of—

- (a) the results of the evaluation; and
- (b) the actions which the enforcing authority has required the economic operator to take.

(4) Where the Secretary of State receives notice from an enforcing authority under paragraph (3), or otherwise considers that the failure of apparatus to conform with the requirements of Part 2 referred to paragraph (1) is not restricted to the United Kingdom, the Secretary of State must inform the European Commission and the other member States of—

- (a) the results of the evaluation; and
- (b) the actions which the enforcing authority has required the economic operator to take.

(5) Where the relevant economic operator does not take adequate corrective action within the prescribed period, the enforcing authority must take appropriate measures to—

- (a) prohibit or restrict the apparatus being made available on the market in the United Kingdom;
- (b) withdraw the apparatus from the United Kingdom market; or
- (c) recall the apparatus.

(6) Where the enforcing authority is not the Secretary of State and it takes measures under paragraph (5), it must notify the Secretary of State of those measures without delay.

(7) Where the Secretary of State receives a notice under paragraph (6), or takes measures under paragraph (5), the Secretary of State must notify the European Commission and the other member States of those measures without delay.

(8) The notices referred to in paragraphs (6) and (7) must include details about the apparatus and, in particular—

- (a) the data necessary to identify the apparatus that is not in conformity with Part 2;
- (b) the origin of the apparatus;
- (c) the nature of the lack of conformity alleged and the risk involved;
- (d) the nature and duration of the measures taken;
- (e) the arguments put forward by the relevant economic operator;
- (f) whether the failure of the apparatus to conform with the requirements of Part 2 is due to—
 - (i) the failure of the apparatus to meet the requirements of that Part relating to risk; or
 - (ii) shortcomings in the harmonised standards referred to in regulation 39 (presumption of conformity) which confer a presumption of conformity.

(9) In this regulation, “prescribed period” means a period which is—

- (a) prescribed by the enforcing authority; and
- (b) reasonable and commensurate with the nature of the risk presented by the apparatus.

EU safeguard procedure

58.—(1) Where another member State has initiated the procedure under Article 38 of the Directive (as amended from time to time), each enforcing authority (other than the Secretary of State) must, without delay, inform the Secretary of State of—

- (a) any measures taken by the enforcing authority in respect of the apparatus; and
- (b) any additional information which the enforcing authority has at its disposal relating to the lack of conformity of the apparatus.

(2) Where another member State has initiated the procedure under Article 38 of the Directive (as amended from time to time), the Secretary of State must, without delay, inform the European Commission and the other member States of—

- (a) any measure taken by an enforcing authority in respect of the apparatus;
- (b) any additional information which an enforcing authority has at its disposal relating to the lack of conformity of the apparatus; and
- (c) any objections that the Secretary of State may have to the measure taken by the member State initiating the procedure.

(3) Where a measure taken by another member State in respect of apparatus is considered justified under Article 38(7) of the Directive (as amended from time to time), the market surveillance authority must ensure that appropriate measures, such as the withdrawal of apparatus, are taken in respect of the apparatus without delay.

(4) Where a measure taken by another member State in respect of apparatus is considered justified by the European Commission under Article 39(1) of the Directive (as amended from time to time), the market surveillance authority must take the necessary measures to ensure that the apparatus is withdrawn from the United Kingdom market.

(5) Where the market surveillance authority is not the Secretary of State and it has taken action under paragraph (3) or (4), it must inform the Secretary of State.

(6) Where the Secretary of State receives a notice under paragraph (5) or has taken action under paragraphs (3) or (4), the Secretary of State must inform the European Commission of the action taken.

(7) If a measure taken by an enforcing authority pursuant to regulation 57 is considered unjustified by the European Commission under Article 39(1) of the Directive (as amended from time to time), the enforcing authority must withdraw that measure.

Enforcement action in respect of formal non-compliance

59.—(1) Where an enforcing authority makes one of the following findings relating to apparatus, it must require a relevant economic operator to put an end to the non-compliance within a specified period—

- (a) the CE marking
 - (i) has not been affixed; or
 - (ii) has been affixed otherwise than in accordance with regulations 35 (prohibition on improper use of CE marking) and 42 (CE marking);
- (b) the EU declaration of conformity—
 - (i) has not been drawn up; or
 - (ii) has been drawn up otherwise in accordance with regulation 10 (EU declaration of conformity and CE marking) and 41 (EU declaration of conformity);
- (c) the technical documentation is either not available or not complete;
- (d) the information set out in regulation 13 (information identifying manufacturer) is absent, false or incomplete;
- (e) any other administrative requirement imposed on the manufacturer or importer under Part 2 has not been fulfilled.

(2) Until the specified period has elapsed, the enforcing authority must not commence proceedings under these Regulations, or take any other enforcement action under these Regulations, against the relevant economic operator in respect of the non-compliance referred to in paragraph (1).

(3) Where the non-compliance referred to in paragraph (1) persists, the enforcing authority must take appropriate measures to—

- (a) restrict or prohibit the apparatus being made available on the market;
- (b) ensure that the apparatus is recalled;
- (c) ensure that the apparatus is withdrawn from the market.

(4) Where the non-compliance referred to in paragraph (1) persists and the apparatus has been imported for the person's own use, the enforcing authority must take appropriate measures to ensure that the apparatus is prohibited or restricted.

(5) This regulation does not apply where apparatus presents a risk.

Restrictive measures

60. When enforcing these Regulations, an enforcing authority must comply with the requirements of Article 21 of RAMS in relation to any measure to—

- (a) prohibit or restrict apparatus being made available on the market;
- (b) withdraw apparatus; or
- (c) recall apparatus.

Offences

61.—(1) It is an offence for a person to contravene or fail to comply with any requirement of regulations 7 to 15, 16(4), 17 to 24, 25(4), 26 to 30, 31(4), 33, 35 and 37.

(2) It is an offence for any person to contravene or fail to comply with any requirement of a withdrawal or recall notice served on that person by an enforcing authority under these Regulations.

Penalties

62.—(1) Subject to paragraph (2), a person guilty of an offence under regulation 61 (offences) is liable on summary conviction—

- (a) in England and Wales—
 - (i) to imprisonment for a term not exceeding 3 months; or
 - (ii) a fine; or
 - (iii) to both.
- (b) in Scotland and Northern Ireland—
 - (i) to imprisonment for a term not exceeding 3 months; or
 - (ii) a fine not exceeding level 5 on the standard scale; or
 - (iii) to both.

(2) A person guilty of an offence by reason of a contravention or failure to comply with regulations 11, 16, 24 and 31 is liable on summary conviction—

- (a) in England and Wales, to a fine;
- (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

63.—(1) Subject to paragraph (2), (4) and (6), in proceedings for an offence under regulation 61 (offences), it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under paragraph (1) which involves a third party allegation unless P has—

- (a) served a notice in accordance with paragraph (3); or
- (b) obtained the leave of the court.

(3) The notice must—

- (a) give any information in P’s possession which identifies or assists in identifying the person who—
 - (i) committed the act or default; or
 - (ii) supplied the information on which P relied; and
- (b) be served on the person bringing the proceedings not less than 7 clear days before—
 - (i) in England, Wales and Northern Ireland, the hearing of the proceedings;
 - (ii) in Scotland, the trial diet.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied upon the information, having regard in particular—

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

(5) In this regulation, “third party allegation” means an allegation that the commission of the offence was due—

- (a) to the act or default of another person; or
- (b) to reliance on information supplied by another person.

Liability of persons other than the principal offender

64.—(1) Where the commission of an offence by one person (“A”) under regulation 61 is due to anything which another person (“B”) did or failed to do in the course of any business, B is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against A.

(2) Where a body corporate commits an offence, a relevant person is also guilty of the offence where the body corporate’s offence was committed—

- (a) with the consent or connivance of the relevant person; or
- (b) as a result of the negligence of the relevant person.

(3) In paragraph (2), “relevant person” means—

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b) in relation to a body corporate managed by its members, a member of that body corporate performing managerial functions;
- (c) in relation to a Scottish partnership, a partner; or
- (d) a person purporting to act as a person described in sub-paragraphs (a), (b) or (c).

Service of documents

65.—(1) Any document required or authorised by these Regulations to be served on a person may be served by—

- (a) delivering it to that person in person;

- (b) leaving it at that person's proper address; or
- (c) sending it by post or electronic means to that person's proper address.
- (2) In the case of a body corporate, a document may be served on a director of that body.
- (3) In the case of a partnership, a document may be served on a partner or a person having control or management of the partnership business.
- (4) For the purposes of this regulation, "proper address" means—
 - (a) in the case of a body corporate or its director—
 - (i) the registered or principal office of that body; or
 - (ii) the email address of the secretary or clerk of that body;
 - (b) in the case of a partnership, a partner or person having control or management of the partnership business—
 - (i) the principal office of the partnership; or
 - (ii) the email address of a partner or person having that control or management;
 - (c) in any other case, a person's last known address, which includes an email address.
- (5) If a person to be served with a document has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept service, that address must also be treated as that person's proper address.
- (6) In this regulation, "partnership" includes a Scottish partnership.

Recovery of expenses of enforcement

- 66.**—(1) This regulation applies where a person commits an offence under regulation 61 (offences).
- (2) The court may (in addition to any other order it may make as to costs or expenses) order the person to reimburse the enforcing authority for any expenditure which the enforcing authority has incurred in investigating the offence.

Action by enforcing authority

- 67.**—(1) An enforcing authority may itself take any action which an economic operator could have been required to take by a notice served under these Regulations where the conditions for serving such a notice are met and either—
- (a) the enforcing authority has been unable to identify any economic operator on whom to serve such a notice; or
 - (b) the economic operator on whom such a notice has been served has failed to comply with it.
- (2) If the enforcing authority has taken action as a result of the condition in paragraph (1)(b) being met, the authority may recover from that person, as a civil debt, any costs or expenses reasonably incurred by the enforcing authority in taking the action.
- (3) A civil debt recoverable under paragraph (2) may be recovered summarily—
- (a) in England and Wales by way of a complaint pursuant to section 58 of the Magistrates' Courts Act 1980(1);
 - (b) in Northern Ireland in proceedings under article 62 of the Magistrates' Courts (Northern Ireland) Order 1981(2).

(1) 1980 c.43; section 58 was amended by the Crime and Courts Act 2013 (c.22), Schedule 10 paragraph 40.

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

Appeals against notices

68.—(1) Any application for an order to vary or set aside the terms of a notice served under these Regulations may be made—

- (a) by the economic operator on whom the notice has been served; and
- (b) by a person having an interest in the apparatus in respect of which the notice has been served, unless the notice is a recall notice.

(2) An application must be made before the end of the period of 21 days beginning with the day on which the notice was served.

(3) The appropriate court may only make an order setting aside a notice served under these Regulations if satisfied—

- (a) that the requirements of these Regulations and RAMS (in its application to apparatus) have been complied with in respect of the apparatus to which the notice relates; or
- (b) that the enforcing authority failed to comply with regulation 55 (exercise of enforcement powers) when serving the notice.

(4) On an application to vary the terms of a notice served under these Regulations, the appropriate court may vary the terms of the notice as it considers appropriate.

(5) In this regulation—

- (a) the “appropriate court” is to be determined in accordance with regulation 69 (appropriate court for appeals against notices); and
- (b) “notice” means any notice served in accordance with Part 2 of Schedule 7.

Appropriate court for appeals against notices

69.—(1) In England and Wales or Northern Ireland, the appropriate court for the purposes of regulation 68 (appeals against notices) is—

- (a) the court in which proceedings have been brought in relation to the apparatus for an offence under regulation 61 (offences); or
- (b) in any other case, a magistrates’ court.

(2) In Scotland, the appropriate court for the purposes of regulation 68 is the sheriff of the sheriffdom in which the person making the appeal resides or has a registered principal office;

(3) A person aggrieved by an order made by a magistrates’ court in England and Wales or Northern Ireland pursuant to an application under regulation 68, 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.

Time limit for prosecution of offences

70.—(1) Subject to paragraph (4), in England and Wales an information relating to an offence under regulation 61 that is triable by a magistrates’ court may be so tried if it is laid within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(2) Subject to paragraph (4), in Scotland—

- (a) summary proceedings for an offence under regulation 61 (offences) may be commenced before the end of 12 months after the date on which evidence sufficient in the Lord Advocate’s opinion to justify the proceedings came to the Lord Advocate’s knowledge; and

(b) section 136(3) of the Criminal Procedure (Scotland) Act 1995(3) (time limit for certain offences) applies for the purpose of this paragraph as it applies for the purpose of that section.

(3) Subject to paragraph (4), in Northern Ireland summary proceedings for an offence under regulation 61 may be instituted within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the knowledge of the prosecutor.

(4) No proceedings may be brought more than 3 years after the commission of the offence.

(5) For the purposes of this regulation a certificate of the prosecutor (or in Scotland, the Lord Advocate) as to the date on which the evidence referred to paragraphs (1), (2) or (3) came to their notice, is conclusive evidence.

Compensation

71.—(1) Where an enforcing authority serves a relevant notice in respect of apparatus, the enforcing authority is liable to pay compensation to a person having an interest in the apparatus for any loss or damage suffered by reason of the notice if both of the conditions in paragraph (2) are met.

(2) The conditions are that—

(a) the apparatus in respect of which the relevant notice was served neither—

(i) presents a risk; nor

(ii) contravenes any requirement of these Regulations; and

(b) the exercise of the power to serve the relevant notice was not attributable to neglect or default by a relevant economic operator.

(3) In this regulation, “relevant notice” means a suspension, withdrawal or recall notice served in accordance with these Regulations.

Power of the court to require a matter to be remedied

72.—(1) Where a person is convicted of an offence in relation to the contravention or failure to comply with a requirement of Part 2 or Part 3 of these Regulations in respect of a matter that appear to the court to be a matter which it is within that person’s power to remedy, the court may, in addition to or instead of imposing any punishment, order that person within such time as may be specified in that order, to take such steps as may be specified in the order for remedy the said matter.

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

(3) Where a person is ordered under paragraph (1) to remedy any matter, that person is not guilty of an offence under these Regulations insofar as those offences continued until the date specified in the order under paragraph (1) or the date to which the period specified in that order is extended under paragraph (2).