The Secretary of State, being a Minister designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to measures relating to the approval of telecommunications terminal equipment, in exercise of the powers conferred on him by the said section 2(2) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART I
PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Telecommunications Terminal Equipment Regulations 1992 and shall come into force on 6th November 1992.

Disapplication of legislation to telecommunications terminal equipment and consequential modification of approvals thereunder and of telecommunication system licences

2.—(1) Sections 22 and 84 of the Telecommunications Act 1984(3) and approvals given under either of those sections shall cease to apply to applicable terminal equipment on 6th November 1992.

(2) The said sections 22 and 84 shall be modified in their application to exempt terminal equipment so that the power to vary an approval given thereunder to the extent that it relates to such
equipment shall not, on and after 6th November 1992, include the power to vary such an approval so as to—

(a) permit the connection of the terminal equipment concerned to any additional public telecommunication system; or

(b) relax the conditions which must be complied with if the approval is to apply.

(3) On 6th November 1992, the orders listed in Schedule 1 hereto (being orders made under sections 28 and 29 of the said Act of 1984 imposing certain requirements relating to the marking, labelling and advertisement of telecommunication apparatus) shall cease to apply in respect of—

(a) applicable terminal equipment; and

(b) connection-capable equipment and radio connection-capable equipment.

(4) Where a licence granted under section 7 of the said Act of 1984 to run a telecommunication system or a licence granted, or regulations made, under section 1 of the Wireless Telegraphy Act 1949 contain provisions (howsoever expressed) which are framed by reference to apparatus for the time being approved under section 22 or section 84 as the case may be of the said Act of 1984, then, on and after 6th November 1992, such provisions shall have effect, in so far as they relate to applicable terminal equipment, as if a reference (howsoever expressed) to apparatus for the time being approved under the said section 22 or section 84 as the case may be were a reference to applicable terminal equipment which complies with the requirements of regulation 8 of these Regulations.

Interpretation


(2) In these Regulations—

“the 1984 Act” means the Telecommunications Act 1984;

“additional approval” means an additional approval issued by—

(a) a United Kingdom notified body pursuant to regulation 21 below; or

(b) a notified body appointed by a member State other than the United Kingdom pursuant to point 6 of Annex I of the TTE Directive;

“applicable terminal equipment” shall be construed in accordance with regulation 4(2) to (6) below;

“approved product” means a type, or any of the several versions thereof, in respect of which an EC type-examination certificate is in force;

“authorised representative” means a person established within the Community appointed by the manufacturer (whether or not established within the Community) to act on his behalf;

“CE mark” has the meaning given by regulation 10(5)(a) below;

“the Commission” means the Commission of the European Communities;

“the Community” means the European Economic Community;

“conformity assessment requirements” shall be construed in accordance with regulation 9 below;

“conformity to type” shall be construed in accordance with regulation 24 below;

“connection-capable equipment” has the meaning given by regulation 4(4) below;
“connection marking requirements” shall be construed in accordance with regulation 10 below;
“connection symbol” has the meaning given by regulation 10(5)(c) below;
“the Council” means the Council of the European Communities;
“designated test laboratory” has the meaning given by regulation 57(b) below;
“EC declaration of conformity” means a written declaration that applicable terminal equipment satisfies the relevant requirements of the TTE Directive drawn up by a manufacturer who has chosen to comply with the conformity assessment requirements pursuant to the EC declaration of conformity procedure pursuant to point 1 of Annex IV to the TTE Directive;
“EC declaration of conformity procedure” shall be construed in accordance with regulations 9(b) and 38(2) below;
“EC declaration of conformity to type” means a written declaration that applicable terminal equipment conforms with a type or modification as the case may be drawn up by a manufacturer (or, in the case of (a) below, alternatively by his authorised representative) who has chosen to comply with the conformity assessment requirements pursuant to the EC type-examination procedure pursuant to—
(a) point 1 of Annex II to the TTE Directive where he has carried out conformity to type; or
(b) point 1 of Annex III to that Directive, where he has carried out production quality assurance;
“EC type-examination certificate” means an EC type-examination certificate issued in respect of a type by—
(a) a United Kingdom notified body pursuant to regulation 18 below as varied, where applicable, pursuant to regulation 22 below; or
(b) a notified body of a member State pursuant to point 5 of Annex I of the TTE Directive;
“EC type-examination procedure” shall be construed in accordance with regulations 9(a) and 14(1) below;
“enforcement authority” shall be construed in accordance with regulation 61 below;
“exempt terminal equipment” has the meaning given by regulation 6(3) below;
“full quality assurance” has the meaning given by regulation 6(3) below;
“full quality assurance approved quality system” means a quality system for design, manufacture and final product inspection and testing which is for the time being approved by—
(a) a United Kingdom notified body pursuant to regulation 43 below, as modified where applicable pursuant to regulation 45 or 47 below; or
(b) a notified body of a member State other than the United Kingdom pursuant to point 3 of Annex IV of the TTE Directive, including, where applicable, as modified pursuant to point 3.4 of the said Annex, for the purposes of the EC declaration of conformity procedure;
“intended purpose declaration” has the meaning given by regulation 12(4) below;
“the Low Voltage Directive” means Council Directive 73/23/EEC on the harmonization of the laws of the Member States relating to electrical equipment designed for use within certain voltage limits(7);

(7) OJ No. L77, 26.3.73, p.29. The Low Voltage Directive was implemented by S.I. 1989/728.
“modification” means a change to an approved product where the change may affect the conformity with the essential requirements or the prescribed conditions for use of the product;
“non-connection symbol” has the meaning given by regulation 12(1)(d)(ii) below;
“notified body” means a body for carrying out the certification, product checks and associated surveillance tasks pertaining to the procedures referred to in Article 9 of the TTE Directive which is—
(a) for the time being a United Kingdom notified body pursuant to regulation 50 below; or
(b) for the time being recognised, and notified to the Commission, as a notified body for the purposes of that Directive, by a member State other than the United Kingdom pursuant to Article 10.1 of that Directive;
“notified body symbol” has the meaning given by regulation 10(5)(b) below;
“production quality assurance” shall be construed in accordance with regulation 27 below;
“production quality assurance approved quality system” means a quality system for production, final product inspection and testing which is for the time being approved by—
(a) a United Kingdom notified body pursuant to regulation 31 below, as modified where applicable pursuant to regulation 33 or 35 below; or
(b) a notified body of a member State other than the United Kingdom pursuant to point 3 of Annex III of the TTE Directive, including, where applicable, as modified pursuant to point 3.4 of the said Annex,
for the purposes of the production quality assurance part of the type-examination procedure;
“public telecommunications network” means—
(a) in the United Kingdom, all public telecommunication systems; and
(b) in any member State other than the United Kingdom, the public telecommunications infrastructure which permits the conveyance of signals between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means and which is recognised as a public telecommunications network in accordance with the laws of that member State;
“public telecommunication system” means any telecommunication system for the time being designated as a public telecommunication system by order made under section 9 of the 1984 Act;
“radio” means wireless telegraphy as defined in section 19(1) of the Wireless Telegraphy Act 1949;
“radio connection-capable equipment” has the meaning given by regulation 4(6) below;
“radio frequency spectrum” means that part of the electromagnetic spectrum at frequencies not exceeding 3,000 GHz;
“recognised test laboratory” has the meaning given by regulation 57(a) below;
“responsible person” means—
(a) in relation to equipment manufactured in the United Kingdom, the manufacturer;
(b) in relation to equipment manufactured outside the United Kingdom which is supplied or put into service, whichever is the earlier, without previously having been supplied or put into service in another member State, the manufacturer’s authorised representative established in the United Kingdom or the supplier or person who puts the equipment into service, as the case may be;
“supply” includes offering to supply, agreeing to supply, exposing for supply and possessing for supply, and cognate expressions shall be construed accordingly;
“technical documentation” means such documentation as is necessary to enable the conformity of a type (or all the versions thereof, where applicable) with the essential requirements to be assessed, and, without prejudice to the generality of the foregoing, so far as is relevant for such assessment, documentation covering the design, manufacture and operation of the product; and “additional technical documentation” in relation to a modification means such documentation, when taken together with the technical documentation in respect of the approved type from which the modification derives, as is necessary to enable the conformity of the modification with the essential requirements or the prescribed conditions for use to be assessed;

“telecommunication apparatus”, “telecommunication service” and “telecommunication system” have the meanings respectively given by section 4 of the 1984 Act;

“third country relevant body” has the meaning given by regulation 57(c) below; and

“type” means a specimen of applicable terminal equipment, representative of the production envisaged, and a type may cover several versions of the product provided that the differences between the versions do not affect the level of safety and the other requirements concerning the performance of the product, and “version” shall be construed accordingly.

(3) For the purposes of these Regulations, a common technical regulation is a measure adopted by the Commission in accordance with Article 6.2 of the TTE Directive, a reference of which has been published in the Official Journal of the European Communities, and which may be applied by any person from the date of such publication, and shall be applied from the date specified in it.

(4) For the purposes of these Regulations—

(a) a harmonized standard (except in regulations 31(2), 43(2), 51(3) and 58(10)) is a technical specification (European standard or harmonization document)—

(i) adopted for the purposes of Article 6.1 of the TTE Directive on the basis of a remit from the Commission in accordance with the provisions of Directive 83/189/EEC(8) by one of the bodies competent to adopt harmonized standards, that is to say—

(aa) the European Committee for Standardization (CEN);

(bb) the European Committee for Electrotechnical Standardization (CENELEC); or

(cc) the European Telecommunications Standards Institute (ETSI); and

(ii) the reference number of which has been published in the Official Journal of the European Communities pursuant to that sub-article and which has not been withdrawn from the said Official Journal pursuant to Article 7 of the TTE Directive; and

(b) a relevant national standard is a standard—

(i) of a member State which implements a harmonized standard; and

(ii) in the case of a national standard of the United Kingdom, the reference number of which has been published by the Secretary of State in a notice in the London, Edinburgh and Belfast Gazettes in recognition of it as such and not withdrawn by means of a further such notice.

(5) For the purposes of these Regulations, terminal equipment shall be regarded as connected to a public telecommunications network, whether the system of connection may be by wire, radio, optical or other electromagnetic system, if—

(a) it is directly connected thereto, that is to say, it would be regarded as connected thereto for the purposes of the 1984 Act in accordance with section 4 thereof; or

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(b) it is connected indirectly thereto, that is to say, it is not connected directly thereto but would be regarded as connected thereto for the purposes of the 1984 Act were section 4(6) omitted therefrom, and “connected”, “connected directly” and “connected indirectly”, and expressions cognate to those expressions, shall be construed accordingly.

Terminal equipment

4.—(1) Subject to paragraphs (2) and (3) below, a reference to terminal equipment is a reference to connectable equipment, that is to say, equipment intended to be connected to the public telecommunications network, that is to say—

(a) to be connected directly to the termination of a public telecommunications network; or

(b) to interwork with a public telecommunications network being connected directly or indirectly to the termination of a public telecommunications network, in order to send, process or receive information; and for purposes of these Regulations, equipment shall, subject to paragraphs (4) to (6) below, be taken to be intended for connection to a public telecommunications network if it is designed so as to be capable of such connection.

(2) Terminal equipment (other than equipment excluded from the scope of these Regulations by regulation 6(3) and (4) below) shall, subject to paragraphs (3), (4) and (6) of this regulation, be applicable terminal equipment.

(3) Terminal equipment in respect of which no common technical regulation is in force shall not be applicable terminal equipment; and for the purposes of these Regulations, a common technical regulation shall not be taken to be in force in respect of any terminal equipment, until the date specified in it from which it shall be applied.

(4) Terminal equipment other than equipment which makes use of a system of communication employing the radio frequency spectrum which would, except for the operation of this paragraph, be applicable terminal equipment, shall not be applicable terminal equipment if—

(a) the requirements of regulation 12 (relating to the intended purpose declaration) have been complied with; and

(b) the intended purpose of the equipment does not involve connection to a public telecommunications network, and for the purposes of this sub-paragraph, the intended purpose of the equipment shall be justified having regard to all the circumstances, and, without prejudice to the generality of the foregoing, in particular to—

(i) its relevant technical characteristics;

(ii) its functions; and

(iii) indications of the market segment it is intended for,

and equipment which is not applicable terminal equipment pursuant to this paragraph is referred to in these Regulations as “connection-capable equipment”.

(5) Subject to paragraph (6) below, terminal equipment which makes use of a system of communication employing the radio frequency spectrum shall for the purposes of these Regulations be taken to be intended for connection to a public telecommunications network and accordingly shall, save as provided by paragraph (3) of this regulation and regulation 6(3) and (4) below, be taken to be applicable terminal equipment.

(6) Where equipment employing the radio frequency spectrum is designed to be capable of connection to a public telecommunications network if an adjustment were made thereto or a blocking mechanism were unblocked, that equipment shall not be regarded as applicable terminal equipment pursuant to paragraph (5) above unless such adjustment is made or such mechanism is unblocked,
as the case may be, and equipment which is not applicable terminal equipment pursuant to this paragraph is referred to in these Regulations as “radio connection-capable equipment”.

**Essential requirements**

5.—(1) Subject to paragraphs (2) and (3) below, in these Regulations a reference to the essential requirements is a reference to the following requirements—

(a) user safety, in so far as this requirement is not covered by the Low Voltage Directive;

(b) safety of employees of public telecommunications networks operators, in so far as this requirement is not covered by the Low Voltage Directive;

(c) electromagnetic compatibility requirements in so far as they are specific to applicable terminal equipment;

(d) protection of the public telecommunications network from harm;

(e) effective use of the radio frequency spectrum, where appropriate;

(f) interworking of terminal equipment with public telecommunications network equipment for the purpose of establishing, modifying, charging for, holding and clearing real or virtual connection; and

(g) interworking of terminal equipment via the public telecommunications network, in justified cases.

(2) For the purposes of these Regulations, there shall be a presumption “the presumption of conformity”) that, unless the contrary is proved, applicable terminal equipment complies with the requirements referred to in sub-paragraphs (a) and (b) of paragraph (1) above if that equipment is in conformity with relevant national standards covering all of the relevant characteristics of the equipment.

(3) A reference to the requirements referred to in sub-paragraphs (c) to (g) of paragraph (1) above is a reference to those requirements as implemented in common technical regulations pursuant to the second indent of Article 6.2 of the TTE Directive.

(4) The essential requirements concerning interworking of applicable terminal equipment via the public telecommunications network in justified cases shall be the requirements provided for in measures adopted by the Commission pursuant to Article 4(g), and paragraph 3 or 4, as the case may be, of Article 14 of the TTE Directive.

(5) In this regulation, “justified cases” means the cases where terminal equipment supports—

(a) a reserved service according to Community law; or

(b) a service for which the Council has decided that there should be Community-wide availability.

**Application and transitional provisions**

6.—(1) These Regulations, except for regulation 12(1) and Schedules 4 and 5, apply to applicable terminal equipment which is not excluded from their application by paragraphs (3) and (4) below.

(2) Regulation 12(1) and Schedules 4 and 5 apply to connection-capable equipment and radio connection-capable equipment except where such equipment was first supplied or put into service within the Community before 6th November 1992.

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(3) Save for regulations 2(2), 3(2) and 4 above and this paragraph, these Regulations do not apply to terminal equipment which is approved under an approval given before 6th November 1992 under section 22 or 84 of the 1984 Act in respect of terminal equipment which satisfies a specification which is a common type approval specification within the meaning of Article 2.14 of Council Directive 86/361/EEC (including a NET within the meaning of Article 2.15 thereof) where such approval is in force on the date on which the equipment is supplied or put into service, as the case may be (in these Regulations referred to as “exempt terminal equipment”).

(4) These Regulations do not apply to terminal equipment which the supplier believes (with reasonable cause) will not be put into service either in the United Kingdom or in another member State.

PART II
GENERAL REQUIREMENTS

General duty for applicable terminal equipment

7. No person shall—
   (a) supply;
   (b) connect, or permit to remain connected, to a public telecommunications network, or
   (c) put into service;

applicable terminal equipment unless the requirements of regulation 8 below are complied with.

Requirements for supply, putting into service and connection of applicable terminal equipment to a public telecommunications network

8. The requirements of this regulation are that—
   (a) the applicable terminal equipment satisfies the essential requirements;
   (b) the conformity assessment requirements have been complied with; and
   (c) the connection marking requirements are complied with.

Conformity assessment requirements

9. The conformity assessment requirements are that, according to the choice of the manufacturer or his authorised representative the requirements of either—
   (a) Part III (in these Regulations referred to as “the EC type-examination procedure”); or
   (b) Part IV (in these Regulations referred to as “the EC declaration of conformity procedure”),

are complied with.

Connection marking requirements

10.—(1) The connection marking requirements are that there shall be affixed to applicable terminal equipment—
   (a) the following marks in the following order—
      (i) the CE mark;
      (ii) the notified body symbol; and
      (iii) the connection symbol; and
(b) an inscription identifying the equipment—
   (i) by means of—
      (aa) type; and
      (bb) batch or serial numbers or both; and
   (ii) by the name of the manufacturer or supplier responsible for first supplying it in the Community.

(2) Where applicable terminal equipment is the subject of Community Directives other than the TTE Directive providing for the affixing of a mark consisting of or including the symbol “CE”, the CE mark may only be affixed thereto for the purposes of these Regulations if the equipment conforms with the relevant requirements of those other Directives.

(3) No person shall affix the CE mark, or the connection symbol, or any other inscription liable to be confused with either such mark, to applicable terminal equipment which does not comply with regulation 8(a) and (b) above.

(4) No person shall affix the CE mark, or any inscription liable to be confused therewith, in relation to any terminal equipment other than applicable terminal equipment; provided that nothing in this paragraph shall prohibit the affixing of the CE mark to any terminal equipment pursuant to any Community right or obligation other than the TTE Directive.

(5) In these Regulations—
   (a) “CE mark” means a mark consisting of the symbol “CE” in the form shown in Schedule 2 hereto;
   (b) “notified body symbol” means the identifying symbol of the notified body responsible, that is to say, the symbol notified to the Commission pursuant to Article 10.1 of the TTE Directive in respect of the notified body which has been chosen by the manufacturer to carry out the product check procedure, has approved the production quality assurance quality system, or approved the full quality assurance approved quality system, as the case may be, such symbol being affixed in the form shown in Schedule 3 hereto; and
   (c) “connection symbol” means the symbol shown in the said Schedule 3 indicating that the equipment is intended and is suitable to be connected to the public telecommunications network.

Retention of documentation

11.—(1) Where applicable terminal equipment is—
   (a) manufactured in the United Kingdom; or
   (b) first supplied or put into service, whichever is the earlier, in the United Kingdom without previously having been supplied or put into service in the Community,
the responsible person shall hold at the disposal of the Secretary of State for ten years beginning with the date on which the last item of applicable terminal equipment is manufactured, the following—
   (i) where the manufacturer has complied with the conformity assessment requirements pursuant to the EC type-examination procedure—
      (aa) the EC type-examination certificate, and, where applicable, the documentation evidencing additional approval;
      (bb) the technical documentation;
      (cc) the EC declaration of conformity to type; and
      (dd) where the manufacturer has carried out production quality assurance—
(A) the documentation referred to in the second indent of point 3.1 of Annex III of the TTE Directive;
(B) the updating referred to in the second paragraph of point 3.4 of that Annex; and
(C) the decisions and reports from the notified body which are referred to in the final paragraphs of points 3.4, 4.3 and 4.4. of that Annex;

(ii) where the manufacturer has complied with the conformity assessment requirements pursuant to the EC declaration of conformity procedure—
(aa) the EC declaration of conformity;
(bb) the documentation referred to in the second indent of point 3.1 of Annex IV to the TTE Directive;
(cc) the updating referred to in the second paragraph of point 3.4 of that Annex; and
(dd) the decisions and reports from the notified body which are referred to in the final paragraphs of points 3.4, 4.3 and 4.4 of that Annex.

(2) Any documentation to be retained by the responsible person pursuant to the requirements of paragraph (1) above may be kept by recording the matters in question in a manner other than material form provided, however, adequate precautions shall be taken for guarding against falsification.

(3) The power conferred on a responsible person in paragraph (2) above includes power to keep the documentation by recording those matters otherwise than in legible form, so long as the recording is capable of being reproduced in a legible form.

(4) If the responsible person records the documentation in question otherwise than in a legible form, any duty imposed on him by these Regulations to allow inspection of, or to furnish a copy of, the documentation or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the document or the relevant part of it in legible form.

General duty for terminal equipment not intended for connection

12.—(1) No person shall supply or put into service connection-capable equipment or radio connection-capable equipment unless—

(a) the manufacturer or person who first supplies the equipment within the Community has made an intended purpose declaration;
(b) at the time when such equipment is first supplied in the Community (or, if it is put into service without being supplied in the Community, when it is so put into service) a copy of the intended purpose declaration is transmitted to a notified body;
(c) such equipment is accompanied by—
   (i) a copy of the intended purpose declaration; and
   (ii) the operating manual; and
(d) there is affixed to such equipment—
   (i) the CE mark; and
   (ii) the symbol shown in Schedule 4 (“the non-connection symbol”) hereto in such a way that it follows the CE mark and visually forms an integral part of the total marking.

(2) No person shall affix to connection-capable equipment or radio connection-capable equipment—

(a) the CE mark, unless—
   (i) it is equipment to which paragraph (1) above applies; and
(ii) the requirements of that paragraph other than sub-paragraph (d)(i) are complied with: provided that nothing in this sub-paragraph shall prohibit the affixing of the CE mark to any such equipment pursuant to any Community right or obligation other than the TTE Directive; or

(b) the connection symbol.

(3) No person shall connect, or permit to remain connected, connection-capable equipment or radio connection-capable equipment to any public telecommunications network.

(4) In these Regulations “intended purpose declaration” means a declaration in English (or another language acceptable to the notified body) in the model provided for in Schedule 5 to these Regulations that equipment is not intended for connection to a public telecommunications network.

PART III

THE EC TYPE-EXAMINATION PROCEDURE

Application of Part III

13. This Part shall have effect for providing for the manner in which the conformity assessment requirements may be complied with where the manufacturer or his authorised representative chooses the EC type-examination procedure.

The EC type-examination procedure

14.—(1) The EC type-examination procedure shall consist of two parts, as follows—

(a) EC type-examination;

(b) the EC declaration of conformity to type procedure.

(2) The EC declaration of conformity to type procedure shall consist of—

(a) either—

(i) conformity to type; or

(ii) production quality assurance; and

(b) the drawing up by the manufacturer of an EC declaration of conformity to type (which it is hereby declared for the avoidance of doubt may relate to any number of items of applicable terminal equipment).

The conformity assessment requirements pursuant to the EC type-examination procedure

15. The conformity assessment requirements are complied with in relation to applicable terminal equipment pursuant to the EC type-examination procedure if—

(a) there is in force in respect of a type of that equipment an EC type-examination certificate issued by a notified body, or where the equipment is a modification, there is in force in respect thereof an additional approval issued by the notified body which issued the EC type-examination certificate in respect of the approved product from which the modification derives; and

(b) subject to regulation 36, the manufacturer has, having carried out conformity to type or production quality assurance, drawn up an EC declaration of conformity to type. EC type examination
EC type-examination

16. Regulations 17 to 23 below shall have effect in relation to EC type-examination, that is to say, that part of the procedure provided for in Annex I of the TTE Directive whereby a notified body ascertains and attests that a type meets the provisions of that Directive that apply to it.

Application for EC type-examination

17.—(1) The manufacturer of applicable terminal equipment or his authorised representative may lodge an application for the EC type-examination with a notified body of his choice.
    (2) An application for EC type-examination made to a United Kingdom notified body shall be in English (or another language acceptable to the notified body) and shall include—
        (a) the name and address of the manufacturer and, if the application is lodged by the authorised representative, his name and address in addition;
        (b) a written declaration that the same application has not been lodged with any other notified body and that the applicable terminal equipment is intended for connection to the public telecommunications network; and
        (c) the technical documentation,
    and the applicant shall—
        (i) place the type at the disposal of the United Kingdom notified body; and
        (ii) comply with any request made by the United Kingdom notified body for further specimens if needed for carrying out the test programme.

EC type-examination by a United Kingdom notified body

18.—(1) In carrying out EC type-examination, a United Kingdom notified body shall—
        (a) examine the technical documentation, verify that the type has been manufactured in conformity with it and identify the elements which have been designed in accordance with the relevant provisions of the harmonized national standards, as well as the components of those standards;
        (b) perform, or have performed by a recognised test laboratory, the appropriate examinations and necessary tests to check whether the solutions adopted by the manufacturer meet the essential requirements referred to in sub-paragraphs (a) and (b) of regulation 5(1) above; and
        (c) perform, or have performed by a recognised test laboratory, the appropriate examinations and necessary tests to check that the type meets the relevant common technical regulations.
    (2) The United Kingdom notified body shall agree with the applicant on the location where the examinations and necessary tests referred to in paragraph (1) above which are to be conducted by or on behalf of that body are to be carried out.
    (3) Where it appears to a United Kingdom notified body carrying out EC type-examination that the type does not meet the provisions of the TTE Directive, it shall, subject to regulation 54 below, refuse to grant the EC type-examination certificate.
EC type-examination certificates issued by United Kingdom notified bodies

19.—(1) Where it appears to a United Kingdom notified body carrying out EC type-examination that the type meets the provisions of the TTE Directive, it shall issue an EC type-examination certificate to the applicant.

(2) An EC type-examination certificate issued pursuant to paragraph (1) above shall contain—
(a) the name and address of the manufacturer;
(b) conditions for its validity and prescribed conditions for use of the product; and
(c) the necessary data for identification of the approved type,
and a list of the relevant parts of the technical documentation shall be annexed to the certificate.

Modifications to the approved type

20.—(1) An application for additional approval in respect of a modification to an approved product shall be made to the notified body that holds the technical documentation concerning the EC type-examination certificate for the approved product.

(2) An application for additional approval made to a United Kingdom body shall include—
(a) the name and address of the manufacturer and, if the application is lodged by the authorised representative, his name and address in addition;
(b) identifying particulars of the approved product to which the modification relates and its EC type-examination certificate; and
(c) the additional technical documentation,
and the applicant shall—
(i) place a specimen of the modification at the disposal of the United Kingdom notified body; and
(ii) comply with any request made by the United Kingdom notified body for further specimens if needed for carrying out the test programme.

(3) Regulation 18 above shall apply to an application made to a United Kingdom notified body for an additional approval as if references to the type were references to the modification, and references to the EC type-examination certificate were references to the additional approval, provided that the United Kingdom notified body shall only be required to carry out the procedures referred to in paragraph (1) thereof to the extent that it appears necessary to that body to determine the application.

Additional approvals issued by United Kingdom notified bodies

21.—(1) Where it appears to a United Kingdom notified body to which an application for additional approval has been made that the modification meets the provisions of the TTE Directive, it shall issue an additional approval to the applicant.

(2) An additional approval issued pursuant to paragraph (1) above shall contain—
(a) the name and address of the manufacturer;
(b) conditions for its validity and prescribed conditions for use of the modification; and
(c) the necessary data for identification of the modification, and the approved type to which it relates and the EC type-examination certificate in respect thereof,
and a list of the relevant parts of the additional technical documentation shall be annexed to the approval.
Variation of EC type-examination certificates and additional approvals issued by United Kingdom notified bodies

22. A United Kingdom notified body which issued an EC type-examination certificate or an additional approval—

(a) may, at the request of the holder; or

(b) shall, subject to regulation 54 below, where it appears to that body to be necessary to ensure that products manufactured in accordance therewith meet the provisions of the TTE Directive,

vary the conditions for its validity or the prescribed conditions for use of the approved product or modification as the case may be.

Withdrawal of EC type-examination certificates and additional approvals

23. Subject to regulation 54 below, where a United Kingdom notified body is satisfied that a type or modification in respect of which it issued an EC type-examination certificate or an additional approval as the case may be does not comply with the provisions of the TTE Directive, it shall withdraw the certificate or approval.

Conformity to type

The conformity to type part of the procedure

24. Regulations 25 and 26 below shall have effect in relation to a manufacturer or his authorised representative who chooses to carry out the EC declaration of conformity to type procedure pursuant to the conformity to type part of the procedure, that is to say, that part of the procedure provided for in Annex II of the TTE Directive whereby the manufacturer, or his authorised representative ensures and declares pursuant to that Annex that the applicable terminal equipment concerned is in conformity with the type as described in the EC type-examination certificate, or with the modification described in the additional approval, as the case may be, and satisfies the requirements of the TTE Directive which apply to it.

Manufacturer’s duty

25. In producing applicable terminal equipment to an approved type, the manufacturer shall take all measures necessary to ensure that the manufacturing process assures compliance of the manufactured products with the type as described in the EC type-examination certificate and additional approval where appropriate and with the requirements of the TTE Directive that apply to them.

Product check procedure

26.—(1) The manufacturer shall choose a notified body to carry out random product checks as provided for in the procedure set out in paragraph (2) below (“the product check procedure”), and shall permit that notified body to carry out that procedure, and without prejudice to the generality of the foregoing, he shall—

(a) allow the notified body access for the purpose of taking samples of the final products;

(b) provide the notified body with such access, information, facilities and assistance as it may reasonably require in carrying out that procedure.

(2) The conformity to type product check procedure shall consist of—
(a) the notified body carrying out, or having carried out by a recognised test laboratory, product checks at random intervals;

(b) the taking of an adequate sample of the final products, by the notified body or on its behalf, and the notified body carrying out or having carried out by a recognised test laboratory an examination and appropriate tests to check the conformity of products with the relevant requirements of the TTE Directive.

(3) Where it appears to a United Kingdom notified body acting pursuant to paragraph (1) above that one or more of the products checked do not fulfil the relevant conditions, it shall report the matter—

(a) to the notified body (if not itself) which issued the EC type-examination certificate or additional approval, as the case may be;

(b) where the products are manufactured, or the body is aware that products manufactured in accordance with the type or modification concerned are to be or have been supplied or put into service or connected to the public telecommunications network in the United Kingdom, to the enforcement authority;

(c) where the products are manufactured, or the body is aware that products manufactured in accordance with the type or modification concerned are to be or have been supplied or put into service or connected to a public telecommunications network in a member State other than the United Kingdom, to the appropriate authorities in that member State; or

(d) where the body is aware that products manufactured in accordance with the type or modification concerned are to be or have been connected to a public telecommunications network in the United Kingdom or another member State, to the operator thereof.

(4) For the avoidance of doubt, it is hereby declared that the notified body referred to in paragraph (1) above need not be the same notified body as the one which granted the EC type-examination certificate or additional approval, as the case may be.

(5) If the manufacturer fails to comply with his obligations under paragraph (1)(a) and (b) above—

(a) where that United Kingdom notified body is the body which granted the EC type-examination certificate, it shall suspend the certificate; and

(b) where another notified body granted the EC type-examination certificate, it shall report the matter to that other body for appropriate action and, where that other body is a United Kingdom notified body, that other body shall suspend the certificate;

and a certificate suspended pursuant to this paragraph shall remain suspended until the manufacturer complies with the requirements of paragraph (1)(a) and (b) above.

Production quality assurance

The production quality assurance part of the procedure

27. Regulations 28 to 35 below shall have effect in relation to a manufacturer who chooses to carry out the EC declaration of conformity to type procedure pursuant to the production quality assurance part of the procedure, that is to say, that part of the procedure provided for in Annex III of the TTE Directive whereby the manufacturer who operates a production quality assurance approved quality system ensures and declares pursuant to that Annex that the applicable terminal equipment concerned fulfills the relevant conditions.

Manufacturer’s duty

28. The manufacturer shall operate a production quality assurance approved quality system.
Application for approval of a production quality assurance quality system

29.—(1) The manufacturer shall lodge an application for approval of his quality system with a notified body of his choice, for the products concerned.

(2) An application for approval of a quality system made to a United Kingdom notified body shall include—

(a) all relevant information for the product category envisaged;
(b) the documentation concerning the quality system; and
(c) if applicable, the technical documentation of the approved type and a copy of the EC type-examination certificate, and, where the application relates to the production of a modification, the additional technical documentation and the additional approval.

Requirements for the approval of quality systems by a United Kingdom notified body

30. A United Kingdom notified body shall not approve a quality system unless—

(a) it ensures that products fulfil the relevant conditions;
(b) all the elements, requirements and provisions of the quality system are documented in a systematic and orderly manner in the form of written policies, procedures and instructions;
(c) the quality system documentation permits a consistent interpretation of the quality programmes, plans, manuals and records;
(d) the quality system documentation contains an adequate description of—

(i) the quality objectives and the organisational structure, responsibilities and powers of the management with regard to product quality;
(ii) the manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used;
(iii) the examinations and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out;
(iv) the quality records; and
(v) the means to monitor the achievement of the required product quality and the effective operation of the quality system.

Assessment of quality systems by a United Kingdom notified body

31.—(1) A United Kingdom notified body with which an application has been lodged for the approval of a quality system shall assess the quality system to determine whether it satisfies the requirements of regulation 30 above, and the following provisions of this regulation shall have effect in relation to the conduct of the assessment.

(2) The United Kingdom notified body shall presume conformity with those requirements in respect of quality systems that implement a standard which is for the time being a relevant harmonized standard for the purposes of point 3.3 of Annex III of the TTE Directive(10).

(3) The auditing team shall have at least one member with experience of evaluation in the product technology concerned.

(4) The evaluation procedure shall include an inspection visit to the manufacturer’s premises concerned.

(10) EN 29002 supplemented if necessary to take into account the specific nature of the procedure for which it is implemented.
(5) Subject to regulation 54 below, the United Kingdom notified body shall inform the manufacturer by notice in writing of the decision on whether to approve the quality system, and such notice shall contain the conclusions of the examination and the reasoned assessment decision.

Manufacturer’s undertaking

32. Where a United Kingdom notified body informs the manufacturer pursuant to regulation 31(5) above that it has decided to approve the quality system, the approval shall not have effect until the manufacturer has deposited with that body a written undertaking to fulfil the obligations arising out of the quality system as approved and to uphold it so that it remains adequate and effective.

Modifications to quality systems

33.—(1) Where a manufacturer intends to update a production quality assurance approved quality system approved by a United Kingdom notified body, the manufacturer or his authorised representative shall apply to that body for the approval of the quality system as modified in accordance with the proposed modifications.

(2) Subject to regulation 54 below, the United Kingdom notified body shall, on application made pursuant to paragraph (1) above, evaluate the proposed modifications and decide whether the amended quality system will satisfy the requirements of regulation 30 above or whether a re-assessment pursuant to regulation 31 would be required to evaluate the system as modified in accordance with the proposals.

(3) The United Kingdom notified body shall inform the manufacturer by notice in writing of the decision on whether to approve the proposed modifications to the quality system, and such notice shall contain the conclusions of the examination and the reasoned assessment decision.

(4) Where a United Kingdom notified body informs the manufacturer pursuant to paragraph (3) above that it has decided to approve the proposed modifications to an approved quality system—

(a) the approval of the quality system shall have effect as if the modifications were made; and

(b) the written undertaking referred to in regulation 32 shall have effect as if it were an undertaking to fulfil the obligations arising out of the quality system as approved as so modified and to uphold it as so modified so that it remains adequate and effective.

Surveillance procedure

34.—(1) The notified body shall carry out surveillance as provided for in the procedure set out in paragraph (2) below (“the production quality assurance surveillance procedure”) and the manufacturer shall permit that notified body to carry out that procedure, and, without prejudice to the generality of the foregoing, he shall—

(a) allow the notified body access for the purpose of inspection to the location of manufacture, inspection and testing, and storage;

(b) provide the notified body with such information (including the quality system documentation and the quality records), facilities and assistance as it may reasonably require in carrying out that procedure.

(2) The purpose of the production quality assurance surveillance procedure is to make sure that the manufacturer duly fulfils the obligations arising out of the production quality assurance approved quality system, and the procedure shall consist of—

(a) the carrying out by the notified body of audits at reasonable intervals to make sure that the manufacturer maintains and applies the approved quality system and the provision of an audit report to the manufacturer; and
(b) should the notified body consider it necessary, the paying of unexpected visits to the manufacturer, during which the notified body may carry out, or cause to be carried out, tests to verify that the quality system is functioning correctly, and, where such a visit has been paid, the provision of a visit report and a report upon any such tests.

(3) Where it appears to a United Kingdom notified body acting pursuant to paragraph (1) above that the manufacturer is not fulfilling his obligations under the production quality assurance approved quality system, it shall report the matter—

(a) to the notified body (if not itself) which issued the EC type-examination certificate or additional approval, as the case may be;

(b) where the products are manufactured, or the body is aware that products manufactured in accordance with the type or modification concerned are to be or have been supplied or put into service or connected to the public telecommunications network in the United Kingdom, to the enforcement authority;

(c) where the products are manufactured, or the body is aware that products manufactured in accordance with the type or modification concerned are to be or have been supplied or put into service or connected to a public telecommunications network in a member State other than the United Kingdom, to the appropriate authorities in that other member State;

(d) where the body is aware that products manufactured in accordance with the type or modification concerned are to be or have been connected to a public telecommunications network in the United Kingdom or another member State, to the operator thereof.

(4) If the manufacturer fails to comply with his obligations under paragraph (1)(a) and (b) above—

(a) the notified body shall suspend the approval, and where it granted the EC type examination certificate, it shall suspend that certificate; and

(b) where another notified body granted the EC type-examination certificate, it shall report the matter to that other body for appropriate action and, where that other body is a United Kingdom notified body, that other body shall suspend the certificate;

and a certificate or approval suspended pursuant to this paragraph shall remain suspended until the manufacturer complies with the requirements of paragraph (1)(a) and (b) above.

Withdrawal and compulsory modification of approved quality systems

35. Subject to regulation 54 below, where a United Kingdom notified body which approved a production quality assurance approved quality system is satisfied that—

(a) the manufacturer is not fulfilling his obligations under the system or that one or more products to which the system relates do not fulfil the relevant conditions, that body may withdraw the approval;

(b) the system does not ensure, when operated as intended, that products to which it relates fulfil the relevant conditions, that body shall withdraw the approval;

(c) in order for the system to ensure that products to which it relates fulfil the relevant conditions, it is necessary to modify the system, that body shall require the manufacturer to modify the system accordingly, and the approval of the system shall have effect in accordance with the modification.
Final provisions

EC declaration of conformity to type where equipment submitted for approval in the United Kingdom

36. Where applicable terminal equipment is submitted for approval in accordance with a type or modification in the United Kingdom, the manufacturer shall draw up the EC declaration of conformity to type in English, or another language acceptable to the notified body concerned.

Interpretation

37. In this Part—

“quality records” include inspection reports and test data, calibration data and qualification reports of the personnel concerned;

“relevant conditions” are that the products conform with the type or modification described in the EC type-examination certificate or additional approval as the case may be and with other relevant requirements of the TTE Directive; and

“specimen” in relation to a type or a modification means a specimen of the production envisaged in relation thereto.

PART IV

EC DECLARATION OF CONFORMITY PROCEDURE

Application of Part IV

38.—(1) This Part shall have effect for providing for the manner in which the conformity assessment requirements may be complied with where the manufacturer or his authorised representative chooses the EC declaration of conformity procedure.

(2) The EC declaration of conformity procedure shall consist of full quality assurance, that is to say, the procedure provided for in Annex IV of the TTE Directive whereby the manufacturer who operates a full quality assurance approved quality system ensures and declares pursuant to that Annex that the products concerned satisfy the requirements of the TTE Directive that apply to them.

The conformity assessment requirements pursuant to the EC declaration of conformity procedure

39. The conformity assessment requirements are complied with in relation to applicable terminal equipment pursuant to the EC declaration of conformity procedure if the manufacturer has, having carried out full quality assurance, drawn up, subject to regulation 48, an EC declaration of conformity (which it is hereby declared for the avoidance of doubt may relate to any number of items of applicable terminal equipment).

Full quality assurance

Manufacturer’s duty

40. The manufacturer shall operate a full quality assurance approved quality system.
Application for approval of a quality system

41.—(1) The manufacturer shall lodge an application for approval of his quality system with a notified body of his choice.

(2) An application for approval of a quality system made to a United Kingdom notified body shall include—

(a) all relevant information for the products envisaged; and
(b) the quality system’s documentation.

Requirements for the approval of quality systems by a United Kingdom notified body

42. A United Kingdom notified body shall not approve a quality system unless—

(a) it ensures compliance of the products with the requirements of the TTE Directive that apply to them;
(b) all the elements, requirements and provisions of the quality system are documented in a systematic and orderly manner in the form of written policies, procedures and instructions;
(c) the quality system documentation ensures a common understanding of the quality policies and procedures;
(d) the quality system documentation contains an adequate description of—

(i) the quality objectives and the organisational structure, responsibilities and powers of the management with regard to design and product quality;
(ii) the technical specifications, including the harmonized standards and common technical regulations as well as relevant test specifications that will be applied and, where the harmonized standards will not be applied in full, the means which will be used to ensure that the essential requirements that apply to the products will be met;
(iii) the design control and design verification techniques, processes and systematic actions that will be used when designing the products pertaining to the product category covered;
(iv) the corresponding manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used;
(v) the examinations and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out, as well as the results of the tests carried out before manufacture where appropriate;
(vi) the means by which it is ensured that the test and examination facilities respect the appropriate requirements for the performance of the necessary tests;
(vii) the design quality records and production quality records; and
(viii) the means to monitor the achievement of the required design and product quality and the effective operation of the quality system.

Assessment of quality systems by a United Kingdom notified body

43.—(1) Subject to regulation 54 below, a United Kingdom notified body with which an application has been lodged for the approval of a quality system shall assess the quality system to determine whether it satisfies the requirements of regulation 42 above, and the following provisions of this regulation shall have effect in relation to the conduct of the assessment.
(2) The United Kingdom notified body shall presume conformity with those requirements in respect of quality systems that implement a standard which is for the time being a relevant harmonized standard for the purposes of point 3.3 of Annex IV of the TTE Directive.

(3) The United Kingdom notified body shall assess in particular whether the quality control system ensures conformity of the products with the requirements of the TTE Directive in the light of the relevant documentation supplied pursuant to regulations 41(2) and 42 above including, where relevant, test results supplied by the manufacturer.

(4) The auditing team shall have at least one member experienced as an assessor in the product technology concerned.

(5) The evaluation procedure shall include an inspection visit to the manufacturer’s premises concerned.

(6) The United Kingdom notified body shall inform the manufacturer by notice in writing of the decision on whether to approve the quality system, and such notice shall contain the conclusions of the examination and the reasoned assessment decision.

Manufacturer’s undertaking

44. Where a United Kingdom notified body informs the manufacturer pursuant to regulation 43(6) above that it has decided to approve the quality system, the approval shall not have effect until the manufacturer has deposited with that body a written undertaking to fulfil the obligations arising out of the quality system as approved and to uphold it so that it remains adequate and effective.

Modifications to approved quality systems

45.—(1) Where a manufacturer intends to update a full quality assurance approved quality system approved by a United Kingdom notified body, the manufacturer or his authorised representative shall apply to that body for the approval of the quality system as modified in accordance with the proposed modifications.

(2) Subject to regulation 54 below, the United Kingdom notified body shall, on application made pursuant to paragraph (1) above, evaluate the proposed modifications and decide whether the amended quality system will satisfy the requirements of regulation 42 above or whether a re-assessment pursuant to regulation 43 would be required to evaluate the system as modified in accordance with the proposals.

(3) The United Kingdom notified body shall inform the manufacturer by notice in writing of the decision on whether to approve the proposed modifications to the quality system, and such notice shall contain the conclusions of the examination and the reasoned assessment decision.

(4) Where a United Kingdom notified body informs the manufacturer pursuant to paragraph (3) above that it has decided to approve the proposed modifications to an approved quality system—

(a) the approval of the quality system shall have effect as if the modifications were made; and

(b) the written undertaking referred to in regulation 44 shall have effect as if it were an undertaking to fulfil the obligations arising out of the quality system as approved as so modified and to uphold it as so modified so that it remains adequate and effective.

Surveillance procedure

46.—(1) The notified body shall carry out surveillance as provided for in the procedure set out in paragraph (2) below (“the full quality assurance surveillance procedure”) and the manufacturer

(11) EN 29001 supplemented if necessary to take into account the specific nature of the products for which it is implemented.
shall permit that notified body to carry out that procedure, and, without prejudice to the generality of the foregoing, he shall—

(a) allow the notified body access for the purpose of inspection to the location of design, manufacture, inspection and testing, and storage;

(b) provide the notified body with such information (including the quality system documentation, the design quality records and the production quality records), facilities and assistance as it may reasonably require in carrying out that procedure.

(2) The purpose of the full quality assurance surveillance procedure is to make sure that the manufacturer duly fulfils the obligations arising out of the full quality assurance approved quality system, and the procedure shall consist of—

(a) the carrying out by the notified body of audits at reasonable intervals to make sure that the manufacturer maintains and applies the approved quality system and the provision of an audit report to the manufacturer; and

(b) should the notified body consider it necessary, the paying of unexpected visits to the manufacturer, during which the notified body may carry out, or cause to be carried out, tests to check the proper functioning of the quality system, and, where such a visit has been paid, the provision of a visit report and a report upon any such tests.

(3) Where it appears to the United Kingdom notified body acting pursuant to paragraph (1) above that one or more of the products checked do not conform with the relevant requirements of the TTE Directive, it shall report the matter—

(a) where the products concerned are to be or have been supplied or put into service or connected to the public telecommunications network in the United Kingdom, to the enforcement authority;

(b) where the products concerned are to be or have been supplied or put into service or connected to a public telecommunications network in a member State other than the United Kingdom, to the appropriate authorities in that other member State; or

(c) where the body is aware that the products concerned are to be or have been connected to a public telecommunications network in the United Kingdom or another member State, to the operator thereof.

(4) If the manufacturer fails to comply with his obligations under paragraph (1)(a) and (b) above the notified body shall suspend the approval of the quality system; and an approval suspended pursuant to this paragraph shall remain suspended until the manufacturer complies with the requirements of paragraph (1)(a) and (b) above.

Withdrawal and compulsory modification of approved quality systems

47. Subject to regulation 54 below, where a United Kingdom notified body which approved a full quality assurance approved quality system is satisfied that—

(a) the manufacturer is not fulfilling his obligations under the system or that one or more products to which the system relates do not conform with the relevant requirements of the TTE Directive, that body may withdraw the approval;

(b) the system does not ensure, when operated as intended, that products to which it relates so conform, that body shall withdraw the approval;

(c) in order for the system to ensure that products to which it relates so conform, it is necessary to modify the system, that body shall require the manufacturer to modify the system accordingly, and the approval of the system shall have effect in accordance with the modification.
Final provisions

EC declaration of conformity to type where quality system approved by a United Kingdom notified body

48. Where the quality system is approved by a United Kingdom notified body, the manufacturer shall draw up the EC declaration of conformity in English, or in another language acceptable to the notified body.

Interpretation

49. In this Part—

“design quality records” includes the result of analyses, calculations and tests;

“production quality records” includes inspection reports and test data, calibration data and qualification reports of the personnel concerned; and

“quality policies and procedures” include quality programmes, plans, manuals and records.

PART V

UNITED KINGDOM NOTIFIED BODIES

Appointment

50.—(1) Subject to regulation 51 below, the Secretary of State may appoint a body as a United Kingdom notified body in accordance with the following provisions of this regulation.

(2) An appointment under this regulation shall be in writing and shall, subject to paragraph (7) of this regulation and regulations 51(4) and 53(3) below, be subject to such conditions as the Secretary of State may impose for the time being, and such conditions may include conditions which are to apply on or following the termination or expiry of the appointment.

(3) Subject to regulation 51(2), an appointment under this regulation shall have effect in respect of such descriptions of applicable terminal equipment as the Secretary of State may for the time being authorise, and in these Regulations, “authorised” and cognate expressions shall be construed accordingly.

(4) An appointment under this regulation shall have effect in respect of such of the functions as are exercisable by a United Kingdom notified body pursuant to Part III or Part IV of these Regulations as the Secretary of State may for the time being authorise.

(5) In exercising the power conferred by paragraph (1) above, the Secretary of State may (in addition to the matters of which he is required to satisfy himself pursuant to regulation 51(2)) have regard to any matter appearing to him to be relevant, and, without prejudice to the generality of the foregoing, he may have regard to any standards relating to the accreditation of laboratories or certification bodies appearing to him to be appropriate.

(6) Subject to regulation 52, an appointment under this regulation may be for—

(a) the time being; or

(b) such period as may be specified in the appointment.

(7) Where the Commission informs the Secretary of State pursuant to Article 10.4 of the TTE Directive that, in the opinion of the Committee referred to in Article 13 thereof, changes are necessary in the conditions to which an appointment of a United Kingdom notified body is subject or in the authorised descriptions of applicable terminal equipment in respect of which the appointment
has effect if that body is to retain its recognised status, the Secretary of State shall vary the conditions or authorised descriptions, as the case may require, to give effect to such changes.

(8) The Secretary of State shall from time to time publish lists of United Kingdom notified bodies indicating the descriptions of applicable terminal equipment in respect of which each body is authorised, and the functions which each body is entitled to exercise, for the time being; and such lists may include information concerning any condition to which the appointment of any body is for the time being subject.

Eligibility

51.—(1) Subject to paragraph (2) below, any person resident, incorporated, or carrying on an undertaking in the United Kingdom shall be eligible for appointment as a United Kingdom notified body.

(2) The criteria listed in Schedule 6 hereto (being the minimum criteria listed in Annex V to the TTE Directive to be taken into account by member States when designating notified bodies in accordance with article 10.1) (“the minimum criteria”) must be satisfied in relation to any person if that person is to be appointed or remain a United Kingdom notified body, and accordingly the Secretary of State shall not—

(a) make an appointment under regulation 50(1) above unless he is satisfied that the person concerned meets the minimum criteria; or

(b) authorise under regulation 50(3) the appointment to have effect in relation to any description of applicable terminal equipment unless he is satisfied that the body meets the minimum criteria in respect of that description of equipment.

(3) A person who complies with the assessment criteria fixed by a standard which is a relevant harmonized standard for the purposes of Article 10.1 of the TTE Directive shall be presumed to satisfy the minimum criteria.

(4) An appointment under regulation 50 may be subject to the condition that only a defined part of the undertaking of the appointed person may exercise the functions of a notified body, and where an appointment is, or is to be, subject to such a condition—

(a) a reference in these Regulations to a notified body shall be construed in relation to that person as a reference to the part of that person’s undertaking so defined; and

(b) the conditions of the appointment shall include provision for ensuring that the confidentiality of confidential information held by the part of the undertaking so defined in pursuance of its function as a United Kingdom notified body is protected from disclosure to other parts of the undertaking.

(5) Upon the expiry of an appointment under regulation 50, the United Kingdom notified body shall be eligible for re-appointment.

Termination of appointment and transfer of functions

52.—(1) The Secretary of State, by notice in writing (a “notice of termination”)—

(a) shall terminate the appointment of a United Kingdom notified body where—

(i) the body so requests; or

(ii) it appears to the Secretary of State that—

(aa) the body no longer satisfies the minimum criteria; or

(bb) it is necessary in the interests of manufacturers, suppliers or users of applicable terminal equipment, or of operators of public telecommunications networks, to terminate the body’s appointment; and
(b) may terminate such appointment if the body is in breach of a condition of appointment.

(2) Where the Secretary of State exercises the power conferred by paragraph (1) above—

(a) the notice of termination shall take effect on such date as shall be specified therein; and

(b) the Secretary of State shall inform the appropriate authorities of the member States and the Commission thereof.

(3) Where the Secretary of State—

(a) withdraws the authorisation of a United Kingdom notified body to exercise functions in relation to any description of apparatus pursuant to regulation 50(3); or

(b) terminates the appointment of such a body pursuant to paragraph (1) above,

he may give such directions (either to the body the subject of the withdrawal or termination, as the case may be, or to another authorised United Kingdom notified body) for the purposes of making such arrangements for the determination of outstanding applications as he considers appropriate.

(4) Without prejudice to the generality of the power conferred by paragraph (3) above, such directions may include the manner in which fees already received pursuant to regulation 53 below in respect of outstanding applications by the body the subject of the withdrawal or termination, as the case may be, are to be disposed of, having regard to the work already done on such applications by that body.

(5) The Secretary of State shall, where he takes an action referred to in paragraph (3)(a) or (b) in relation to a United Kingdom notified body, give such directions as he considers appropriate to provide for the exercise by another United Kingdom notified body or himself of any power conferred by a provision of Part III or IV of these Regulations exercisable by the first mentioned United Kingdom notified body, and where such directions have been given, a reference in those Parts to the United Kingdom notified body which issued any certificate or approval, or which carries out the product check or surveillance procedure, shall be construed as a reference to that other United Kingdom notified body or to the Secretary of State, as the case may require.

Power of United Kingdom notified body to charge fees

53.—(1) Subject to paragraphs (2) to (4) below, a United Kingdom notified body may charge applicants such fees in connection with, or incidental to, the exercise of any of its powers as the body may determine; and such fees may include an amount on account of profit which is reasonable in the circumstances having regard to—

(a) the character and extent of the work done or to be done by the body in the determination of such applications; and

(b) the commercial rate normally charged on account of profit for that work or similar work.

(2) The power in paragraph (1) above includes, except in relation to surveillance, power to require the payment of fees or a reasonable estimate thereof with the application.

(3) Without prejudice to the generality of regulation 50(2) above, the conditions to which an appointment under regulation 50(1) may be subject may include a requirement to publish from time to time the scale of fees which the United Kingdom notified body charges pursuant to this regulation, or such information about the basis of calculation thereof as may be specified in the condition.

(4) Where a United Kingdom notified body carries out product checks or surveillance, in a case where the fees remain unpaid 28 days after either the work has been completed or payment of the fees has been requested in writing, whichever is the later, that body shall have power to suspend—

(a) in the case of the conformity to type product check procedure, the EC type-examination certificate or additional approval, as the case may require;
(b) in the case of the production quality assurance surveillance procedure, the EC type-examination certificate or additional approval, as the case may require, and the approval for the production quality assurance approved quality system; and

(c) in the case of the full quality assurance surveillance procedure, the approval for the full quality assurance approved quality system,

by 14 days notice in writing that, unless the fees are paid before the expiry of the notice, the certificate or approval, as the case may be, shall be suspended until payment of the fees has been received, and, where that body is not the notified body which issued the certificate or approval, it shall notify in writing the notified body which issued it of any suspension which takes effect.

Procedure where United Kingdom notified body is minded to make a decision unfavourable to the manufacturer

54. Before making an unfavourable decision in respect of a manufacturer, that is to say—

(a) refusing to—

(i) an EC type-examination certificate pursuant to regulation 18 above; or

(ii) an additional approval pursuant to regulation 21 above;

(b) varying an EC type-examination certificate pursuant to regulation 22(b) above;

(c) withdrawing an EC type-examination certificate or additional approval pursuant to regulation 23 above;

(d) refusing to—

(i) approve a quality system pursuant to regulation 31 or 43 above; or

(ii) approve a quality system as modified pursuant to regulation 33 or 45 above; or

(e) withdrawing or modifying compulsorily a quality system pursuant to regulation 35 or 47 above,

the United Kingdom notified body shall give notice in writing to the applicant of the reasons why it proposes to make the unfavourable decision; and give the applicant the opportunity of making representations within 28 days as to why it should make a favourable decision, and consider any representations which are made by the applicant within that period.

Information to other notified bodies

55. A United Kingdom notified body shall—

(a) communicate to the other notified bodies the relevant information concerning—

(i) EC type-examination certificates and additional approvals;

(ii) the quality systems approvals, issued or withdrawn by it;

(b) provide to the other notified bodies on request copies of EC type-examination certificates and additional approvals issued by it, and keep the annexes thereto at the disposal of those bodies.

Administrative requirements

56.—(1) A United Kingdom notified body shall, when issuing—

(a) an EC type-examination certificate, where the manufacturer or his authorised representative has chosen the EC type-examination procedure; or
(b) a decision on full quality assurance, where the manufacturer has chosen the EC declaration of conformity procedure, issue at the same time an administrative approval for the connection of the applicable terminal equipment concerned to the public telecommunications network.

(2) Where a United Kingdom notified body issues an EC type-examination certificate or an additional approval pursuant to regulation 19(1) or 21(1), as the case may be, it shall keep a copy of the list of the relevant parts of the technical documentation annexed to the said certificate or approval, as the case may be.

(3) In carrying out its functions under these Regulations, a United Kingdom notified body shall have regard to the result of any test or assessment carried out by a recognised test laboratory, whether at the request of that body or the manufacturer; provided that nothing in these Regulations shall authorise a United Kingdom notified body to rely on the opinion of a recognised test laboratory with regard to whether any applicable terminal equipment satisfies the essential requirements except in the case of a third country relevant body which has issued documentation which certifies that the equipment complies with all the essential requirements.

PART VI
RECOGNISED TEST LABORATORIES

Recognised test laboratories, designated test laboratories and third country relevant bodies

57. For the purposes of these Regulations—

(a) a recognised test laboratory is either—

(i) a designated test laboratory; or

(ii) a third country relevant body;

(b) a designated test laboratory is a test laboratory designated pursuant to Article 10.2 of the TTE Directive by—

(i) the Secretary of State pursuant to regulation 58 below as a United Kingdom designated test laboratory; or

(ii) a member State other than the United Kingdom as a designated test laboratory of that member State,

for the purposes of carrying out the tests pertaining to the procedures referred to in Article 9 of that Directive (being the EC type-examination procedure and the EC declaration of conformity procedure); and

(c) a third country relevant body is a body of a country or territory other than a member State which is recognised by the Community pursuant to Article 10.5 of the TTE Directive as competent to issue documentation for the purposes of facilitating the determination of conformity of applicable terminal equipment with common technical regulations, harmonized standards or national standards pursuant to an agreement between the Community and the country or territory concerned.

Designation of United Kingdom designated test laboratories

58.—(1) Subject to the following provisions of this regulation, the Secretary of State may designate a laboratory as a United Kingdom test laboratory.
(2) A designation under this regulation shall be in writing and shall be subject to such conditions as the Secretary of State may impose for the time being, and such conditions may include conditions which are to apply on or following the termination or expiry of the designation.

(3) A designation under this regulation shall have effect in respect of such descriptions of applicable terminal equipment as the Secretary of State may for the time being authorise.

(4) Subject to paragraph (5) below, in exercising the power conferred by paragraph (1) above, the Secretary of State may have regard to any matter appearing to him to be relevant, provided however that he shall not designate a laboratory as a United Kingdom test laboratory unless he is satisfied that it satisfies the relevant criteria.

(5) Notwithstanding paragraph (4) above, the Secretary of State may, before 6th May 1994, designate a laboratory as a designated test laboratory if that laboratory is an approved testing laboratory without considering whether that laboratory satisfies the relevant criteria, provided however that the designation of such a laboratory shall lapse on that date if, before that date, such laboratory has not satisfied the Secretary of State that it satisfies the relevant criteria; and in this paragraph, “approved testing laboratory” means a laboratory which is an approved testing laboratory within the meaning of Article 2.8 of Council Directive 86/361/EEC and which is, on 6th November 1992, approved by the United Kingdom in the manner provided for in Article 7.2 of that Directive.

(6) The Secretary of State may, for the purposes of satisfying himself that a test laboratory satisfies the relevant criteria, have regard to an assessment of that laboratory against such criteria by a United Kingdom notified body.

(7) Subject to regulation 59 below, a designation under this regulation may be for—

(a) the time being; or

(b) such period as may be specified in the designation.

(8) Where the Commission informs the Secretary of State pursuant to Article 10.4 of the TTE Directive that, in the opinion of the Committee referred to in Article 13 thereof, changes are necessary in the conditions to which a designation of a United Kingdom designated test laboratory is subject or in the authorised descriptions of applicable terminal equipment in respect of which the designation has effect if that laboratory is to retain its recognised status, the Secretary of State shall vary the conditions or authorised descriptions, as the case may require, to give effect to such changes.

(9) Nothing in these Regulations shall require a United Kingdom designated test laboratory to carry out any test or assessment upon request from a manufacturer of applicable terminal equipment or a notified body; and it is hereby declared for the avoidance of doubt that where a United Kingdom designated test laboratory carries out any test or assessment, it may charge such fees (which may include an amount on account of profit) as it may determine.

(10) In this regulation and regulation 59 below, “relevant criteria” means the criteria fixed by the appropriate parts of standards which are relevant harmonized standards for the designation of such laboratories for the purposes of Article 10.2 of the TTE Directive.

Termination of designation

59. The Secretary of State, by notice in writing (a “notice of termination”)—

(a) shall terminate the designation of a United Kingdom designated test laboratory where—

(i) the laboratory so requests; or

(ii) it appears to the Secretary of State that—

(aa) the laboratory no longer satisfies the relevant criteria; or

(bb) it is necessary in the interests of manufacturers, suppliers or users of applicable terminal equipment, or of operators of public
telecommunications networks, to terminate the laboratory’s appointment; and
(b) may terminate the designation if the laboratory is in breach of a condition of designation;
and where the Secretary of State terminates appointment of a United Kingdom designated test laboratory, he shall inform the appropriate authorities of the member States and the Commission thereof.

Tests and assessments carried out by recognised test laboratories

60. A United Kingdom notified body may have any test or assessment of any applicable terminal equipment which it could carry out itself in the course of its functions under these Regulations carried out by a recognised test laboratory; and where a recognised test laboratory carries out such a test or assessment in the course of a visit to the manufacturer’s premises pursuant to one of the procedures provided for in regulation 26, 34 or 46 above, a reference in those Regulations to allowing the notified body access and providing the notified body with information, facilities and assistance shall be construed as a reference to allowing the recognised test laboratory access or providing the recognised test laboratory with information, facilities and assistance, as the case may be.

PART VII
ENFORCEMENT

Enforcement authorities and powers

Enforcement authorities

61.—(1) It shall be the duty of the following authorities to enforce these Regulations—
(a) in Great Britain, weights and measures authorities; and
(b) in Northern Ireland, the Department of Economic Development.
(2) The Secretary of State may enforce these Regulations.
(3) Nothing in this regulation shall authorise a weights and measures authority to bring proceedings in Scotland for an offence.
(4) In these Regulations, “enforcement authority” means any person who is, pursuant to the provisions of this regulation, authorised to act as an enforcement authority.

Test purchases

62.—(1) The enforcement authority shall have power, for the purpose of ascertaining whether applicable terminal equipment complies with the requirements of regulation 8 or 12 above to make, or to authorise an officer of the authority to make, any purchase of terminal equipment, connection-capable equipment or radio connection-capable equipment.
(2) Where—
(a) any equipment purchased under this regulation by or on behalf of the enforcement authority is submitted to a test; and
(b) the test leads to—
(i) the bringing of proceedings for an offence under regulation 70, 71 or 73 below in relation to the equipment or the forfeiture of equipment of the same description under regulation 82 or 83 below; or
(ii) the serving of a suspension notice in respect of any equipment; 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 equipment was purchased or any person who is a party to the proceedings or has an interest in any equipment to which the notice relates to have the equipment tested.

Powers of search etc

63.—(1) Subject to regulation 64 below, a duly authorised officer of the 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 II of these Regulations—
(a) inspect any terminal equipment, connection-capable equipment or radio connection-capable equipment 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 such equipment.
(3) If the officer has reasonable grounds for suspecting that there has been a contravention of any of the requirements of Part II 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 terminal equipment, connection-capable equipment or radio connection-capable equipment.
(4) The officer may seize and detain—
(a) any terminal equipment, connection-capable equipment, radio connection-capable equipment, document, record or information of which the officer may require production under regulation 69 below, or any other thing, which he has reasonable grounds for believing may be required as evidence in proceedings for an offence under these Regulations; or
(b) any terminal equipment, connection-capable equipment or radio connection-capable equipment which he has reasonable grounds for suspecting may be liable to be forfeited under regulation 82 or 83 below.
(5) The officer may, for the purpose of the exercise of his powers under paragraph (3) or (4) above to seize any 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 subparagraph (a) above in relation to the container has not been complied with.

Provisions supplemental to regulation 63

64.—(1) An officer seizing any equipment, records, documents, information or other thing under regulation 63 above shall inform the person from whom they are seized that such equipment, 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 equipment, documents, records, information or other thing which any officer has power to inspect under regulation 63 above are on any premises (which may
be premises occupied only as a person’s residence) and that, if their inspection reveals that the equipment is applicable terminal equipment or connection-capable equipment or radio connection-capable equipment to which regulation 12(1) above applies or that the documents, records, information or other thing relates to such equipment, such inspection is likely to disclose evidence that there has been a contravention of any provision of Part II 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 the enforcement authority to enter the premises, if need be by force.

(3) An officer entering any premises by virtue of regulation 63 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 equipment seized by an officer under regulation 63 above is submitted to a test, the officer shall inform the person 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 equipment of any provision of these Regulations or for the forfeiture of any equipment under regulation 82 or 83 below, or a suspension notice is served in respect of any equipment; 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 party to the proceedings or, as the case may be, has an interest in the equipment to which the notice relates to have the equipment 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 equipment

65.—(1) Any person having an interest in any equipment, document, record, information or other thing which is for the time being detained under any provision of this Part by the enforcement authority or by an officer of such authority may apply for an order requiring the equipment 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 70, 71 or 73 below; or
(ii) for the forfeiture of the equipment under regulation 82 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 equipment to be released shall be made only if the court or sheriff is satisfied—

(a) that proceedings—

(i) for an offence under regulation 70, 71 or 73 below in respect of the equipment; or
(ii) for the forfeiture of the equipment under regulation 82 or 83 below,

have not been brought or, having been brought, have been concluded without the equipment being forfeited; and

(b) where no such proceedings have been brought, that more than six months have elapsed since the equipment 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 provisions 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(12) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981(13) (statement of case)).

Prohibition notices

66.—(1) Where the Secretary of State considers that—

(a) any applicable terminal equipment does not comply with the requirements of regulation 8 above; or

(b) any connection-capable equipment or radio connection-capable equipment to which paragraph (1) of regulation 12 above applies does not comply with the requirements of that paragraph,

he may serve on the manufacturer, supplier or user of such equipment, or on the operator of any public telecommunication system to which such equipment is connected, a notice (“a prohibition notice”) prohibiting—

(i) that manufacturer, supplier or user from manufacturing, supplying, putting into service, connecting or permitting to remain connected to any telecommunication system or using that equipment as the case may require; or

(ii) that operator from permitting—

(a) such equipment to remain connected to that system; or

(bb) the supply of telecommunication services by means of that system to a person using such equipment,

except with the consent of the Secretary of State.

(12) 1980 c. 43.

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

67.—(1) Where the enforcement authority has reasonable grounds for suspecting that regulation 8 or 12 above has been, is being or is likely to be contravened, the authority may serve a notice (“a suspension notice”) on the manufacturer, supplier, or user of the terminal equipment, connection-capable equipment or radio connection-capable equipment concerned or on the operator of any public telecommunication system to which such equipment is connected, prohibiting—

(a) that manufacturer, supplier or user from manufacturing, supplying, putting into service, connecting or permitting to remain connected to any public telecommunication system or using the equipment concerned as the case may require; or

(b) that operator from permitting—

(i) such equipment to remain connected to that system; or

(ii) the supply of telecommunication services by means of that system to a person using such equipment,

for such period ending not more than six months after the date of the notice as is specified therein, without the consent of that authority.

(2) A suspension notice served by the enforcement authority in respect of any such equipment shall—

(a) describe the equipment to which it relates in a manner sufficient to identify it;

(b) set out the grounds on which the authority suspects that regulation 8 or 12 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 68 below.

(3) A consent given by the 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 equipment in which that person has an interest.

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

(a) proceedings against that person for an offence under regulation 70, 71 or 73 below; or

(b) proceedings for the forfeiture of the equipment under regulation 82 or 83 below,

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

Appeals against suspension notices

68.—(1) Any person having an interest in any equipment 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 70, 71 or 73 below; or
(bb) for the forfeiture of the equipment under regulation 82 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 equipment of regulation 8 or 12 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 70, 71 or 73 below; or
(b) proceedings for the forfeiture of the equipment under regulation 83 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.

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

(a) any person who is required by regulation 11 above to retain any document, to produce such document;
(b) any person who is in possession of any such document or a copy thereof at any time to produce it;
(c) a manufacturer or his authorised representative, supplier or user of terminal equipment, connection-capable equipment or radio connection-capable equipment to produce such documents or records relating to such equipment as are in his possession or under his control; or
(d) a manufacturer or his authorised representative, supplier or user of any such equipment 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, putting into service, connecting or permitting to remain connected equipment in contravention of regulation 8 or 12

70.—(1) Any person who—
(a) supplies;
(b) puts into service; or
(c) connects, or permits to remain connected to a public telecommunications network, applicable terminal equipment in contravention of regulation 8 above shall be guilty of an offence.

(2) Any person who—
(a) supplies; or
(b) puts into service;
connection-capable equipment or radio connection-capable equipment to which paragraph (1) of regulation 12 above applies in contravention of that paragraph shall be guilty of an offence.

(3) Any person who connects, or permits to remain connected connection-capable equipment or radio connection-capable equipment to a public telecommunications network in contravention of regulation 12(3) above shall be guilty of an offence.

Contravention of prohibition notice or suspension notice

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

False or misleading information

72. Any person who, in giving any information which he is required to give under regulation 69(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 mark etc.

73.—(1) Any person who affixes the CE mark or the connection symbol, or the non-connection symbol, or an inscription liable to be confused with any such mark, to any equipment in contravention of regulation 10(2) or 12(1) or (2) above shall be guilty of an offence.

(2) Any person who issues an EC declaration of conformity to type or an EC declaration of conformity in relation to applicable terminal equipment in contravention of regulation 36 or 48 above shall be guilty of an offence.

Obstruction etc of officers of the enforcement authority etc.

74.—(1) Any person who—
(a) intentionally obstructs any officer of the 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 the enforcement authority under any provision of this Part;
(c) without reasonable cause fails or refuses to give any officer of the 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 81 below,

shall be guilty of an offence.

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

**Failure to retain documentation**

75. Any person who contravenes regulation 11 above shall be guilty of an offence.

**Defence of due diligence**

76.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 70 or 73 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**

77.—(1) Where the commission by any person of an offence under regulations 70 to 75 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

78. Notwithstanding section 127 of the Magistrates' Courts Act 1980 and section 331 of the Criminal Procedure (Scotland) Act 1975, proceedings for an offence under regulations 70 to 75 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 shall be presumed to be such a certificate unless the contrary is proved.

Inference of condition of equipment at time of supply or putting into service

79. It is hereby declared that, in any proceedings in which it is in issue whether any applicable terminal equipment complied with the requirements of regulation 8 above at the time when it was supplied, put into service or connected to a public telecommunications network as the case may be, a court may infer that such equipment 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, put into service or so connected; and

(b) having regard to all the circumstances of the case, it appears to the court that the failure of the equipment to comply at the time referred to in paragraph (a) above is not attributable to any cause arising subsequent to its having been supplied, put into service or so connected.

Powers of the court

Penalties

80.—(1) A person guilty of an offence under regulation 71, 72, or 74(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 70, 73, 74(1) or 75 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

81.—(1) Where a person is convicted of an offence under regulation 70 or 73 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 70 or 73 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

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

(a) any applicable terminal equipment on the grounds that there has been a contravention in relation thereto of regulation 8 above;

(b) either—

(i) any terminal equipment other than applicable terminal equipment; or

(ii) any connection-capable equipment or radio connection-capable equipment other than equipment to which regulation 12(1) applies, on the grounds that there is affixed to it either the CE mark or the connection symbol or the non-connection symbol or any inscription liable to be confused with any such mark in contravention of regulation 10;

(c) any connection-capable equipment or radio connection-capable equipment to which paragraph (1) of regulation 12 above applies on the grounds either that—

(i) it does not comply with the requirements of that paragraph; or

(ii) there is affixed to it the connection symbol or any inscription liable to be confused therewith in contravention of regulation 12.

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

(a) where proceedings have been brought in a magistrates' court for an offence in respect of an offence in relation to some or all of the equipment under regulation 70, 71 or 73, to that court;

(b) where an application with respect to some or all of the equipment has been made to a magistrates' court under regulation 65 or 68 above, to that court; and

(c) where no application for the forfeiture of the equipment has been made under sub-paragraph (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 equipment only if it is satisfied that there has been a contravention in relation thereto of regulation 8 or 12 above.

(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 equipment of regulation 8 or 12 above if it is satisfied that that regulation has been contravened in relation to equipment which is representative of that equipment (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 equipment 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 equipment 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 equipment to any person otherwise than—

(i) to a person who carries on a business of buying equipment of the same description
as the first mentioned equipment and repairing or recondition-ing it; or

(ii) as scrap (that is to say, for the value of materials included in the equipment rather
than for the value of the equipment itself); and

(b) complies with any order to pay costs or expenses (including any order under regulation 84
below) which has been made against that person in the proceedings for the order for
forfeiture.

Forfeiture: Scotland

83.—(1) In Scotland a sheriff may—

(a) on an application by the procurator-fiscal made in the manner specified in section 310 of
the Criminal Procedure (Scotland) Act 1975(15); or

(b) where a person is convicted of any offence in any of the circumstances mentioned in sub-
paragraphs (i) to (iii) below, in addition to any other penalty which the sheriff may impose,
make an order for forfeiture of—

(i) any applicable terminal equipment on the grounds that there has been a contravention in
relation thereto of regulation 8 above;

(ii) either—

(aa) any terminal equipment other than applicable terminal equipment; or

(bb) any connection-capable equipment or radio connection-capable equipment other than
equipment to which regulation 12(1) applies,
on the grounds that there is affixed to it either the CE mark or the connection symbol or the non-
connection symbol or any inscription liable to be confused with any such mark in contravention
of regulation 10;

(iii) any connection-capable equipment or radio connection—capable equipment to which
paragraph (1) of regulation 12 above applies on the grounds either that—

(aa) it does not comply with the requirements of that paragraph; or

(bb) there is affixed to it the connection symbol or any inscription liable to be confused
therewith in contravention of regulation 12.

(2) The procurator-fiscal making an application under paragraph (1)(a) above shall serve on
any person appearing to him to be the owner of, or otherwise to have an interest in, the equipment
to which the application relates a copy of the application, together with a notice giving him the

(15) Section 310 was amended by paragraph 53 of Schedule 7, and Schedule 8, to the Criminal Justice (Scotland) Act 1980 (c. 62);
there are extensions of section 310 not relevant to these Regulations.
opportunity to appear at the hearing of the application to show cause why the equipment 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 1975.

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

(5) The sheriff shall not make an order following an application under paragraph (1)(a) 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 equipment of regulation 8 or 12 above.

(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 equipment of regulation 8 or 12 above if he is satisfied that that regulation has been contravened in relation to equipment which is representative of that equipment (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 equipment is made following an application by the procurator-fiscal under paragraph (1)(a) 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 452(4)(a) to (e) of the Criminal Procedure (Scotland) Act 1975(16) shall apply to an appeal under this paragraph as it applies to a stated case under Part II of that Act.

(9) An order following an application under paragraph (1)(a) 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)(b) 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 1975; or

(b) if an appeal is made within that period, until the appeal is determined or abandoned.

(11) Subject to paragraph (12) below, equipment 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 equipment (instead of being destroyed) to be 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 equipment of the same description as the first-mentioned equipment and repairing or reconditioning it; or

(b) as scrap (that is to say, for the value of materials included in the equipment rather than for the value of the equipment itself).

(16) A new section 452 was substituted by paragraph 11 of Schedule 3 to 1980 c. 62.
Recovery of expenses of enforcement

84.—(1) This regulation applies where a court—
(a) convicts a person of an offence under regulation 70, 71 or 73 above; or
(b) makes an order under regulation 82 or 83 above for the forfeiture of any equipment.

(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 equipment 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 equipment tested;
(b) in connection with any seizure or detention of the equipment 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 equipment.

PART VIII
MISCELLANEOUS AND SUPPLEMENTAL

Restrictions on disclosure of information

85.—(1) Subject to the following provisions of this regulation, a person shall be guilty of an offence if he discloses any information—
(a) which was obtained by him in consequence of the exercise by any person of any power conferred by Part VII of these Regulations; or
(b) which consists in a secret manufacturing process or a trade secret and was obtained by him in consequence of the inclusion of the information—
(i) in written or oral representations made for the purposes of Schedule 7 hereto; or
(ii) in a statement of a witness in connection with any such oral representations.

(2) Paragraph (1) above shall not apply to a disclosure of information if the information is publicised information or the disclosure is made—
(a) for the purposes of facilitating the exercise of a relevant person’s functions under these Regulations;
(b) for the purpose of facilitating the exercise of a relevant person’s enforcement or regulatory functions under any enactment (whether passed or made before or after the making of these Regulations);
(c) for the purposes of compliance with a Community obligation; or
(d) in connection with the investigation of any criminal offence or for the purposes of any civil or criminal proceedings.

(3) In paragraph (2)(b) above the reference to a person’s functions shall include a reference to the function of making, amending or revoking any regulations or order.

(4) A person guilty of an offence under this regulation shall be liable—
(a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
(b) on conviction on indictment, to—
(i) imprisonment for a term not exceeding two years; or
(ii) a fine,
or to both.

(5) In this regulation—

“publicised information” means any information which has been disclosed in any civil or criminal proceedings; and

“relevant person” means—

(a) a Minister of the Crown, Government department or Northern Ireland department;
(b) an enforcement authority; or
(c) any other person on whom enforcement or regulatory functions are conferred by or under any enactment.

Service of documents etc.

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

(a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address;
(b) if the person is a body corporate, by serving it in accordance with sub-paragraph (a) above on the secretary or clerk of that body; or
(c) if the person is a partnership, by serving it in accordance with that sub-paragraph on a partner or on a person having control or management of the partnership business.

(2) For the purposes of paragraph (1) above, and for the purposes of section 7 of the Interpretation Act 1978 (which relates to the service of documents by post) in its application to that paragraph, the proper address of any person on whom a document is to be served by virtue of these Regulations shall be his last known address except that—

(a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate;
(b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership;

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

Duty of enforcement authority to inform the Secretary of State of action taken

87. The enforcement authority shall, where action has been taken by it to prohibit or restrict the supply or putting into service (whether under these Regulations or otherwise) of any applicable terminal equipment, forthwith inform the Secretary of State of the action taken, and the reasons for it, with a view to this information being passed by him to the Commission.

Savings for certain privileges

88.—(1) Nothing in these Regulations shall be taken as requiring any person to produce any documents or records if he would be entitled to refuse to produce those documents or records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, that they contain a confidential communication made by or to an advocate or solicitor...
in that capacity, or as authorising any person to take possession of any documents or records which are in the possession of a person who would be so entitled.

(2) Nothing in these Regulations shall be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person’s spouse.

Savings for action taken under other enactments

89.—(1) Nothing in these Regulations shall be construed as preventing the taking of any action in respect of any equipment under the provisions of any other enactment.

(2) For the avoidance of doubt, it is hereby declared that nothing in these Regulations shall be construed as dispensing with any requirement—

(a) of a licence granted under—

(i) section 7 of the 1984 Act to run a telecommunication system within the meaning of that Act;

(ii) section 1(18) of the 1949 Act to establish and use any station for wireless telegraphy or to instal and use any wireless telegraphy apparatus within the meaning of that Act;

(b) that equipment complies with the Electromagnetic Compatibility Regulations 1992(19);

(c) regulations made under section 1 of the 1949 Act; or

(d) an order made under—

(i) section 7 of the Wireless Telegraphy Act 1967(20);

(ii) section 85 or 86 of the 1984 Act.

E. Leigh
Parliamentary Under Secretary of State,
Department of Trade and Industry

11th October 1992

(18) Section 1 was amended by paragraph 1 of Schedule 18 to the Broadcasting Act 1990 (c. 40).
(20) 1967 c. 72.
SCHEDULE 1

ORDERS MADE UNDER SECTIONS 28 AND 29 OF THE 1984 ACT IMPOSING CERTAIN REQUIREMENTS RELATING TO THE MARKING, LABELLING AND ADVERTISEMENT OF TELECOMMUNICATION APPARATUS WHICH CEASE TO APPLY TO APPLICABLE TERMINAL EQUIPMENT ON 6TH NOVEMBER 1992

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SCHEDULE 2

THE CE MARK

In the CE mark, the symbol “CE” shall be set out in the form shown below—

![CE Mark](image)

SCHEDULE 3

FORM OF THE NOTIFIED BODY SYMBOL AND THE CONNECTION SYMBOL

The notified body symbol shall be enclosed as shown below—

![Notified Body Symbol](image)

The connection symbol shall be in the form set out below—
SCHEDULE 4

Regulations 6(2) and 12(1)(d)(ii)

FORM OF THE NON-CONNECTION SYMBOL

The non-connection symbol shall be in the form set out below—

SCHEDULE 5

Regulations 6(2) and 12(4)

MODEL OF THE INTENDED PURPOSE DECLARATION FOR CONNECTION-CAPABLE EQUIPMENT AND RADIO CONNECTION-CAPABLE EQUIPMENT

An intended purpose declaration shall be in the form of the model set out below—

The manufacturer/supplier (a) …………………………………………………………………………………………………………………………………………………………………………

………………………………………………………………………………………………………………………………………………………………………………

………………………………………………………………………………………………………………………………………………………………………………

Declarations (b) …………………………………………………………………………………………………………………………………………………………………………

………………………………………………………………………………………………………………………………………………………………………………

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is not intended to be connected to a public telecommunications network.

The connection of such equipment to a public telecommunications network in the Community Member State will be in violation of the national law implementing Directive 97/26/EC on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity.

DATE, PLACE AND SIGNATURE

(a) Name and address

(b) Equipment identification.
SCHEDULE 6

MINIMUM CRITERIA TO BE SATISFIED BY UNITED KINGDOM NOTIFIED BODIES

The criteria (being the criteria to be taken into account by member States when designating notified bodies in accordance with article 10.1 of the TTE Directive) which a person is required to meet to be eligible for appointment as a United Kingdom notified body are as follows—

1. The notified body, its director and the staff responsible for carrying out the tasks for which the notified body has been designated shall not be a designer, manufacturer, supplier or installer of terminal equipment, or a network operator or a service provider, nor the authorised representative of any of such parties. They shall not become directly involved in the design, construction, marketing or maintenance of terminal equipment, nor represent the parties engaged in these activities. This does not preclude the possibility of exchanges of technical information between the manufacturer and the notified body.

2. The notified body and its staff must carry out the tasks for which the notified body has been designated with the highest degree of professional integrity and technical competence and must be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of any inspection, especially from persons or groups of persons with an interest in such results.

3. The notified body must have at its disposal the necessary staff and facilities to enable it to perform properly the administrative and technical work associated with the tasks for which it has been designated.

4. The staff responsible for inspections must have—
   (a) sound technical and professional training;
   (b) satisfactory knowledge of the requirements of the tests or inspections that are carried out and adequate experience of such tests or inspections; and
   (c) the ability to draw up the certificates, records and reports required to authenticate the performance of the inspections.

5. The impartiality of inspection staff must be guaranteed. Their remuneration must not depend on the number of tests or inspections carried out nor on the results of such inspections.

6. The notified body must take out liability insurance unless its liability is assumed by the government of the United Kingdom in accordance with law, or the government of the United Kingdom is directly responsible.

7. The staff of the notified body are bound to observe professional secrecy with regard to all information gained in carrying out its functions pursuant to these Regulations (except in relation to the Secretary of State and the enforcement authorities).

SCHEDULE 7

PROHIBITION NOTICES

1. A prohibition notice in respect of any equipment shall—
   (a) state that the Secretary of State considers that the equipment does not comply with the requirements of regulation 8 or 12, as the case may be, or did not so comply when it was supplied or put into service;
   (b) set out the reasons why the Secretary of State so considers;
(c) specify the day on which the notice is to come into force: and

(d) state that the manufacturer, supplier or user of the equipment, or operator of the public telecommunication system, as the case may be, may at any time make representations in writing to the Secretary of State for the purpose of establishing that that equipment so complies or did so comply, as the case may require.

2.—(1) If representations in writing about a prohibition notice are made by the manufacturer, supplier or user of the equipment, or operator of the public telecommunication system, as the case may be, to the Secretary of State, it shall be the duty of the Secretary of State to consider whether to revoke the notice and—

(a) if he decides to revoke it, to do so;

(b) in any other case, to appoint a person to consider those representations, any further representations made (whether in writing or orally) by the notified person about the notice and the statements of any witnesses examined under this Schedule.

(2) Where the Secretary of State has appointed a person to consider representations about a prohibition notice, he shall serve a notification on the notified person which—

(a) states that the notified person may make oral representations to the appointed person for the purpose of establishing that the equipment to which the notice relates complies or did comply with regulation 8 or 12 as the case may require; and

(b) specifies the place and time at which the oral representations may be made.

(3) The time specified in a notification served under sub-paragraph (2) above shall not be before the end of the period of twenty-one days beginning with the day on which the notification is served, unless the notified person otherwise agrees.

(4) A person on whom a notification has been served under sub-paragraph (2) above or his representative may, at the place and time specified in the

(a) make oral representations to the appointed person for the purpose of establishing that the equipment in question complies or did so comply; and

(b) call and examine witnesses in connection with the representations.

3.—(1) Where representations in writing about a prohibition notice are made by the notified person to the Secretary of State at any time after a person has been appointed to consider representations about that notice, then, whether or not the appointed person has made a report to the Secretary of State, the following provisions of this paragraph shall apply instead of paragraph 2 above.

(2) The Secretary of State shall, before the end of the period of one month beginning with the day on which he receives the representations, serve a notification on the notified person which states—

(a) that the Secretary of State has decided to revoke the notice, has decided to vary it or, as the case may be, has decided neither to revoke nor to vary it: or

(b) that, a person having been appointed to consider representations about the notice, the notified person may, at a place and time specified in the notification, make oral representations to the appointed person for the purpose of establishing that the equipment to which the notice relates complies or did comply with regulation 8 or 12 as the case may require.

(3) The time specified in a notification served for the purposes of sub-paragraph (2)(b) above shall not be before the end of the period of twenty-one days beginning with the day on which the notification is served, unless the notified person otherwise agrees or the time is the time already specified for the purposes of paragraph 2(2)(b) above.
(4) A person on whom a notification has been served for the purposes of sub-paragraph (2)(b) above or his representative may, at the place and time specified in the notification—

(a) make oral representations to the appointed person for the purpose of establishing that the equipment in question complies or did so comply; and

(b) call and examine witnesses in connection with the representations.

4.—(1) Where a person is appointed to consider representations about a prohibition notice, it shall be his duty to consider—

(a) any written representations made by the notified person about the notice, other than those in respect of which a notification is served under paragraph 3(2)(a) above;

(b) any oral representations made under paragraph 2(4) or 3(4) above; and

(c) any statements made by witnesses in connection with the oral representations;

and, after considering any matters under this paragraph, to make a report (including recommendations) to the Secretary of State about the matters considered by him and the notice.

(2) It shall be the duty of the Secretary of State to consider any report made to him under sub-paragraph (1) above and, after considering the report, to inform the notified person of his decision with respect to the prohibition notice to which the report relates.

5.—(1) The Secretary of State may revoke or vary a prohibition notice by serving on the notified person a notification stating that the notice is revoked or, as the case may be, is varied as specified in the notification.

(2) The Secretary of State shall not vary a prohibition notice so as to make the effect of the notice more restrictive for the notified person.

(3) The service of a notification under sub-paragraph (1) above shall be sufficient to satisfy the requirement of paragraph 4(2) above that the notified person shall be informed of the Secretary of State’s decision.

6.—(1) Where in a notification served on any person under this Schedule the Secretary of State has appointed a time for the making of oral representations or the examination of witnesses, he may, by giving that person such notification as the Secretary of State considers appropriate, change that time to a later time or appoint further times at which further representations may be made or the examination of witnesses may be continued; and paragraphs 2(4) and 3(4) above shall have effect accordingly.

(2) For the purposes of this Schedule the Secretary of State may appoint a person (instead of the appointed person) to consider any representations or statements, if the person originally appointed, or last appointed under this sub-paragraph, to consider those representations or statements has died or appears to the Secretary of State to be otherwise unable to act.

7. In this Schedule—

“the appointed person” in relation to a prohibition notice means the person for the time being appointed under this Schedule to consider representations about the notice;

“notification” means a notification in writing; and

“notified person”, in relation to a prohibition notice, means the manufacturer, supplier or user of equipment, or the operator of a public telecommunication system, on whom the notice is or was served.
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which impose requirements concerning the conformity of certain telecommunications terminal equipment (TTE) if such equipment is to be supplied, put into service or connected, and allowed to remain connected, to a public telecommunications network (PTN), implement Council Directive 91/263/EEC on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity (the TTE Directive).

These Regulations disapply sections 22 and 84 of the Telecommunications Act 1984 (c. 12), and approvals given thereunder, insofar as TTE to which these Regulations apply is concerned (regulation 2).

TTE is terminal equipment intended to be connected to a PTN, either directly to the termination of a PTN or to interwork with a PTN being connected directly or indirectly to the termination of the PTN (regulation 4).

These Regulations provide that TTE is equipment to which its provisions apply (applicable TTE) if it is covered by a common technical Regulation, or regulations (CTR) other than TTE which is not intended for connection to the PTN in which case its provisions apply in modified form (regulation 4); a CTR is a measure adopted by the Commission in accordance with the TTE Directive, a reference of which has been published in the Official Journal of the European Communities, which will prescribe the technical specification applicable TTE is required to meet from a specified date (regulation 3(3)). Any TTE which is not covered by a CTR is outside the scope of these Regulations.

TTE using the radio frequency spectrum for communications, when covered by a CTR, is treated as applicable TTE whether it is intended to be connected to a PTN or not (regulation 4).

In addition, these Regulations do not apply to certain TTE approved before their coming into force under section 22 or 84 of the 1984 Act where such TTE satisfies a common type approval specification within the meaning of Article 2.14 of Council Directive 86/361/EEC (OJ L217, 5.8.86, p.21) (regulation 6).

Essential requirements for applicable TTE are set out in regulation 5.

Part II sets out the general requirements of the Regulations. Regulation 7 provides that applicable TTE may not be supplied, put into service or connected (and remain connected) to a PTN unless the requirements of regulation 8 are complied with, which are—

(a) the applicable TTE satisfies the essential requirements;
(b) the conformity assessment requirements have been complied with (regulation 9); and
(c) the connection marking requirements are complied with (regulation 10).

The conformity assessment requirements are satisfied by the manufacturer of applicable TTE choosing to follow one of two routes—

(a) the EC type-examination procedure, set out in Part III, which is satisfied when the manufacturer or his authorised representative has obtained an EC type-examination certificate from a notified body of one of the member States and the manufacturer has drawn up an EC declaration of conformity to type, after having carried out conformity to type or production quality assurance in respect of the equipment or his quality system (regulations 15 to 37); or
(b) the EC declaration of conformity procedure, set out in Part IV, which is satisfied when the manufacturer has drawn up an EC declaration of conformity, after having carried out full quality assurance in respect of his quality system (regulations 38 to 48).

Conformity to type procedure includes random product checks undertaken by a notified body of the manufacturer’s choice (regulation 26), production quality assurance procedure involves approval by a notified body of the manufacturer’s choice of his production quality assurance approved quality system (regulation 31) and includes surveillance of the system (regulation 34) and the EC declaration of conformity procedure involves approval by a notified body of the manufacturer’s choice of his full quality assurance approved quality system (regulation 43) and its surveillance (regulation 46).

Regulation 12 makes provision for TTE which is not intended for connection to a PTN.

Part V of these Regulations makes provision for the appointment and functions of notified bodies including the charging of fees and Part VI makes provision for the designation of test laboratories which may test and assess applicable TTE.

Part VII makes provision for enforcement of these Regulations. Regulation 61 provides for enforcement authorities. Regulations 62 to 67 make provision in respect of powers of enforcement authorities, including powers to make test purchases, to search, to seize and detain equipment and so forth. Regulation 68 and Schedule 7, respectively make provision for appeals against suspension and prohibition notices.

Regulations 70 to 75 provide that certain actions are to be offences—

(a) supplying, putting into service or connecting TTE in contravention of regulation 8 or regulation 12 (regulation 70);
(b) contravening a prohibition or suspension notice (regulation 71);
(c) giving false or misleading information (regulation 72);
(d) misusing the CE mark, the connection symbol or the non-connection symbol (regulation 73);
(e) obstructing officers of enforcement authorities, etc (regulation 74); and
(f) failing to retain documentation (regulation 75).

Regulation 80 provides that offences are punishable only on summary conviction as follows—

(a) for offences under regulations 71, 72 or 74(2)—
   (i) imprisonment for a term not exceeding three months; or
   (ii) to a fine not exceeding level 5 on the standard scale; or both;
(b) for offences under regulation 70, 73, 74(1) or 75, a fine not exceeding level 5 on the standard scale.

Level 5 on the standard scale was raised to £5000 on 1st October 1992 for Great Britain, other than Northern Ireland where it remains £2000. These Regulations make provision for forfeiture of TTE in certain circumstances (regulations 82 and 83).

Part VIII makes provision in respect of certain miscellaneous and supplemental matters.