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STATUTORY INSTRUMENTS

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**2000 No. 730**

The Radio Equipment and Telecommunications  
Terminal Equipment Regulations 2000

PART I

INTRODUCTORY

**Citation, commencement, revocations and disapplications**

1.—(1) These Regulations may be cited as the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 and shall come into force on 8th April 2000.

(2) The following Orders and Regulations are hereby revoked:

Telecommunication Apparatus (Advertisements) Order 1982(1)

Telecommunication Apparatus (Advertisements) Order 1985(2)

Telecommunication Apparatus (Advertisements) (Amendments) Order 1985(3)

Telecommunication Apparatus (Marking and Labelling) Order 1982(4)

Telecommunication Apparatus (Marking and Labelling) Order 1985(5)

Telecommunication Apparatus (Marking and Labelling) (Amendment) Order 1985(6)

Telecommunication Apparatus (Bell Noise Labelling) Order 1985(7)

Telecommunication Apparatus (Approval Fees) (British Approvals Board for Telecommunications) Order 1990(8)

Telecommunication Apparatus (Approval Fees) (British Approvals Board for Telecommunications) Order 1992(9)

Telecommunications Terminal Equipment Regulations 1992(10)

Telecommunications Terminal Equipment (Amendment and Extension) Regulations 1994(11)

Telecommunications Terminal Equipment (Amendment) Regulations 1995(12)

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- (1) S.I.1982/490.  
(2) S.I. 1985/719.  
(3) S.I. 1985/1030.  
(4) S.I. 1982/491.  
(5) S.I. 1985/717.  
(6) S.I. 1985/1031.  
(7) S.I. 1985/718.  
(8) S.I. 1990/1679.  
(9) S.I. 1992/1875.  
(10) S.I. 1992/2423.  
(11) S.I. 1994/3129.  
(12) S.I. 1995/144.

(3) Sections 22 and 84 of the Act, the Electromagnetic Compatibility Regulations 1992, except for regulations 5 and 31(13), and the Electrical Equipment (Safety) Regulations 1994, except for regulations 5 and 7(14), shall cease to apply to apparatus covered by these Regulations.

## Interpretation

2.—(1) In these Regulations (except in Schedule 9)—

“the Act” means the Telecommunications Act 1984(15);

“active implantable medical device” shall have the meaning in Article 1 of Council Directive 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices(16);

“apparatus” means any equipment that is either radio equipment or telecommunications terminal equipment or both;

“the CE marking” has the meaning given in regulation 10;

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

“a component or a separate technical unit of a vehicle” shall have the meaning in Article 2 of Council Directive 92/61/EEC(17);

“the Directive” means Directive 1999/5/EC of the European Parliament and of the Council on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity(18);

“the Director” means the Director General of Telecommunications appointed under section 1 of the Act;

“enforcement authority” has the meaning given in paragraphs 1 and 2 of Schedule 9;

“equipment class” means a class identifying particular types of apparatus which under the Directive are considered similar and those interfaces for which the apparatus is designed. Apparatus may belong to more than one equipment class;

“harmful interference” means interference which endangers the functioning of a radio navigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with the applicable Community or national regulations;

“harmonised standard” means a technical specification adopted by a recognised standards body under a mandate from the Commission in conformity with the procedures laid down in Directive 98/34/EC of the European Parliament and of the Council(19) for the purpose of establishing a European requirement, compliance with which is not compulsory;

“interface” means either or both of—

- (i) a network termination point which is a physical connection point at which a user is provided with access to public telecommunications network, and
- (ii) an air interface specifying the radio path between radio equipment and their technical specifications;

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(13) S.I. 1992/2372.

(14) S.I. 1994/3260.

(15) 1984 c. 12.

(16) OJL No. 189, 20.7.1990, p 17.

(17) OJL No. 225, 10.8.1992, p 72.

(18) OJL No. 91, 7.4.1999, p 10.

(19) OJL No. 204, 21.7.1998, p 37.

“medical device” shall have the meaning in Article 1 of Council Directive [93/42/EEC](#) of 14 June 1993 concerning medical devices<sup>(20)</sup>;

“public telecommunications networks” means telecommunications networks used wholly or partly for the provision of publicly available telecommunications services;

“radio equipment” means a product, or a relevant component thereof, capable of communication by means of the emission and/or reception of radio waves utilising the spectrum allocated to terrestrial/space radio communication;

“radio waves” means electromagnetic waves of frequencies from 9 kHz to 3,000 GHz, propagated in space without artificial guide;

“responsible person” means the manufacturer of apparatus or his authorised representative within the Community, or any other person who places the apparatus on the market;

“technical construction file” means a file describing the apparatus and providing information and explanations as to how the essential requirements (within the meaning of regulation 4) applicable to the apparatus have been met;

“telecommunications terminal equipment” means a product enabling communication, or a relevant component thereof, which is intended to be connected directly or indirectly by any means whatsoever to interfaces of public telecommunications networks;

and any other expression used in these Regulations which is also used in the Directive has the same meaning in these Regulations as it has in the Directive.

(2) For the purposes of these Regulations, unless the context otherwise requires, a reference to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations and a reference—

- (i) in a regulation to a paragraph is a reference to a paragraph in that regulation;
- (ii) to an Annex is a reference to an Annex of the Directive.

(3) For the purposes of these Regulations, Annexes I, II, III, IV, V, VI and VII are respectively set out in Schedules 1, 2, 3, 4, 5, 6 and 7, and a reference to a paragraph in an Annex is a reference to a paragraph in that Annex as set out in the respective Schedule.

## PART II

### GENERAL PRINCIPLES

#### Scope and Exclusions

- 3.—(1) Subject to paragraphs (4) and (5), these Regulations shall apply to all apparatus.
- (2) Where apparatus incorporates, as an integral part or as an accessory—
- (a) a medical device; or
  - (b) an active implantable medical device,

nothing in these Regulations shall affect the application of Council Directive [93/42/EEC](#) of 14 June 1993<sup>(20)</sup>; or Council Directive [90/385/EEC](#) of 20 June 1990<sup>(21)</sup>; or the Medical Devices Regulations 1994<sup>(22)</sup>; or the Active Implantable Medical Devices Regulations 1992<sup>(23)</sup>.

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<sup>(20)</sup> OJL No. 169, 12.7.1993, p 1.  
<sup>(20)</sup> OJL No. 169, 12.7.1993, p 1.  
<sup>(21)</sup> OJL No. 189, 20.7.1990, p 17.  
<sup>(22)</sup> S.I. [1994/3017](#).  
<sup>(23)</sup> S.I. [1992/3146](#).

(3) Where apparatus constitutes a component or a separate technical unit of a vehicle, nothing in these Regulations shall affect the application of Council Directive [72/245/EEC](#) of 20 June 1972<sup>(24)</sup>; or Council Directive [92/61/EEC](#) of 30 June 1992<sup>(25)</sup>; or the Motor Vehicles (Type Approval) Regulations 1980<sup>(26)</sup>; or the Motorcycle (EC Type Approval) Regulations 1995<sup>(27)</sup>.

(4) These Regulations shall not apply to apparatus exclusively used for the purposes of public security, defence, State security (including the economic well-being of the State) or the activities of the State in the area of criminal law.

(5) These Regulations shall not apply to equipment listed in Schedule 1.

### Essential Requirements

4.—(1) Apparatus when properly installed and maintained and used for its intended purpose shall satisfy the essential requirements set out in this regulation.

(2) The following essential requirements shall apply to all apparatus:

- (a) the protection of the health and safety of the user and any other person, including the objectives with respect to safety requirements contained in Council Directive [73/23/EEC](#)<sup>(28)</sup> (but as if there were no voltage limit);
- (b) the protection requirements with respect to electromagnetic compatibility contained in Council Directive [89/336/EEC](#)<sup>(29)</sup>;

(3) In addition, radio equipment shall be so constructed that it effectively uses the spectrum allocated to terrestrial/space radio communication and orbital resources so as to avoid harmful interference.

(4) When a measure has been adopted by the Commission pursuant to Articles 3.3, 6.2 and 15 of the Directive and published in the Official Journal of the European Communities determining that apparatus shall be so constructed that—

- (a) it interworks via networks with other apparatus and that it can be connected to interfaces of the appropriate type throughout the community; or that
- (b) it does not harm the network or its functioning nor misuse network resources, thereby causing an unacceptable degradation of service; or that
- (c) it incorporates safeguards to ensure that the personal data and privacy of the user and of the subscriber are protected; or that
- (d) it supports certain features ensuring avoidance of fraud; or that
- (e) it supports certain features ensuring access to emergency services; or that
- (f) it supports certain features in order to facilitate its use by users with a disability,

apparatus within the scope of that measure shall meet the requirements of that measure from the date specified in that measure.

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(24) OJL No. 152, 6.7.1972, p 15 as last amended by Commission Directive [95/54/EC](#) (OJL 266.8.11.1995, p 1).

(25) OJL No. 225, 10.8.1992, p 72.

(26) S.I. [1980/1182](#).

(27) S.I. [1995/1513](#).

(28) OJL No. 77, 26.3.1973, p 29.

(29) OJL No. 139, 23.5.1989, p 19.

## PART III COMPLIANCE

### **General duty relating to the placing on the market and putting into service of apparatus**

5.—(1) Subject to regulations 6, 7 and 8, no person shall place on the market or put into service any apparatus unless the requirements of paragraph (2) and (in the case of radio equipment) the requirements of paragraph (3) have been complied with in relation to it.

(2) The requirements in respect of any apparatus are that:

- (a) it satisfies the essential requirements set out in regulation 4: and without prejudice to other means of complying for the purpose of satisfying those requirements, where a harmonised standard covers one or more of the relevant essential requirements, any apparatus or part thereof constructed in accordance with that harmonised standard or part thereof shall be presumed to comply with that or, as the case may be, those essential requirements;
- (b) the information has been provided in accordance with regulation 11;
- (c) the appropriate conformity assessment procedures in respect of the apparatus have been carried out in accordance with regulation 9;
- (d) the CE marking has been affixed to it by the manufacturer of the apparatus or other responsible person in accordance with regulation 10 and Schedule 7; and
- (e) a declaration of conformity has been drawn up in respect of it by the manufacturer of the apparatus or other responsible person in accordance with Schedule 2, 3, 4 or 5.

(3) In respect of radio equipment using frequency bands whose use is not harmonised throughout the Community it is also a requirement that notification of intention to place it on the market shall have been given in accordance with regulation 12.

### **Exceptions in respect of placing on the market and putting into service**

6.—(1) For the purposes of regulation 5, apparatus shall not be regarded as being placed on the market where that apparatus—

- (a) is intended to be exported to a country outside the Community; or
- (b) is imported into the Community for re-export to a country outside the Community; or
- (c) is transferred from the manufacturer in a third country to his authorised representative established within the Community who is responsible on behalf of the manufacturer for ensuring compliance with the Directive; or
- (d) is transferred to a manufacturer for further processing (for example, to modify the product or to integrate it into another product, or to put his own name on the product);

save that this paragraph shall not apply if the CE marking, or any inscription liable to be confused therewith, is affixed thereto.

(2) The following principles shall apply in respect of the application of the Act and the Wireless Telegraphy Acts 1949 to 1967<sup>(30)</sup>:

- (a) the display at trade fairs, exhibitions and demonstrations of apparatus which does not comply with the provisions of these Regulations is permitted if a notice is displayed in relation to the apparatus to the effect—
  - (i) that it does not satisfy those provisions; and

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<sup>(30)</sup> 1949 c. 54 and 1967 c. 72.

- (ii) that it may not be placed on the market or put into service until those provisions are satisfied by a responsible person; and
- (b) the switching on of radio equipment may be restricted for reasons related to the effective and appropriate use of the radio spectrum, avoidance of harmful interference or public health.

### **The right to connect**

7.—(1) Operators of public telecommunications networks shall not refuse to connect telecommunications terminal equipment to appropriate interfaces on technical grounds, where that equipment complies with the requirements of regulation 4.

(2) Where they consider that apparatus declared to be compliant with the provisions of the Directive causes serious damage to a network or harmful interference or harm to the network or its functioning, the Secretary of State and the Director shall, in exercising their functions under Part II and sections 47 to 49 of the Act, ensure that public telecommunications operators may refuse connection, disconnect such apparatus or withdraw it from service.

(3) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that in case of emergency, a public telecommunications operator may disconnect apparatus if the protection of the network requires the apparatus to be disconnected without delay, provided that the user is offered an alternative solution without delay and without cost to the user.

### **Transitional provisions in respect of placing on the market and putting into service**

8. Notwithstanding the provisions of regulation 5, apparatus may be placed on the market before 8 April 2001, and apparatus so placed on the market may be put into service, if (in either case) it is in accordance with the provisions of Council Directive [98/13/EC\(31\)](#), the Telecommunications Terminal Equipment Regulations 1992(32), or section 22 or 84 of the Act.

### **Conformity assessment procedures for apparatus**

9.—(1) For the purposes of regulation 5(2)(c), the appropriate conformity assessment procedure for apparatus shall, subject to paragraph (2), be chosen from the procedures set out in Schedules 2, 3, 4 and 5 as follows:

- (a) for telecommunications terminal equipment which does not make use of the spectrum allocated to terrestrial/space radio communications and for the receiving parts of radio equipment, the conformity assessment procedures which may be chosen from are those laid down in Schedules 2, 4 and 5;
- (b) where radio equipment is not within the scope of subparagraph (a) above and the manufacturer has fully applied harmonised standards, the conformity assessment procedures which may be chosen from are those laid down in Schedules 3, 4 and 5;
- (c) where radio equipment is not within the scope of subparagraph (a) above and the manufacturer has not applied harmonised standards or has applied them only in part, the conformity assessment procedures which may be chosen from are those laid down in Schedules 4 and 5.

(2) As an alternative to the procedures set out in paragraph (1), compliance of the apparatus with the essential requirements identified in—

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(31) OJL No. 74, 12.3.1998, p 1.

(32) S.I. [1992/2423](#), amended by S.I. [1994/3129](#), [1995/144](#).

- (a) regulation 4(2)(a) may be demonstrated by using the procedures specified in Council Directive 73/23/EEC, and
- (b) regulation 4(2)(b) may be demonstrated by using the procedures specified in Article 10(1) and 10(2) of Directive 89/336/EEC,

where apparatus is within the scope of either of those Directives.

(3) Any technical documentation or other information in relation to apparatus required to be retained under the conformity assessment procedure used shall be retained by the person specified in that respect in that conformity assessment procedure for the appropriate period specified in that procedure.

### **CE marking**

**10.**—(1) In these Regulations, “the CE marking” means a marking in the form set out in paragraph 1 of Annex VII as set out in Schedule 7.

(2) The CE marking shall be accompanied by—

- (a) the identification number of all notified bodies used where the conformity assessment procedure is carried out in accordance with Schedule 3, 4 or 5;
- (b) in the case of radio equipment, the equipment class identifier where one has been assigned.

(3) There shall be marked on the apparatus, on any instructions accompanying it or on any packaging relating to it—

- (a) the name of the responsible person; and
- (b) the type and batch or serial number assigned to the apparatus by the manufacturer.

(4) Where apparatus is subject to other directives concerning other aspects and which also provide for the affixing of the CE marking, the markings shall indicate that the apparatus in question is also presumed to conform to the provisions of those other directives. However, should one or more of those directives allow the manufacturer, during a transitional period, to choose which arrangements to apply, the CE marking shall indicate conformity to the provisions only of those directives applied by the manufacturer. In this case the particulars of those directives, as published in the Official Journal, must be given in the documents, notices or instructions required by those directives and accompanying such products.

(5) Subject to paragraph (6) any other marking may be affixed to apparatus provided that the visibility and legibility of the CE marking is not thereby reduced.

(6) The affixing of markings on apparatus which are likely to mislead third parties as to the meaning or form of the CE marking is prohibited.

### **Information accompanying apparatus**

**11.** There shall be prominently displayed on or accompany the apparatus information for the user as follows:

- (a) in the case of all apparatus—
  - (i) its intended use; and
  - (ii) a declaration of its conformity to the applicable essential requirements;
- (b) in the case of radio equipment, sufficient information on the packaging and the instructions for use to identify the Member States or the geographical area within the Member States where it is intended to be used; and marking on the apparatus as provided for in paragraph 5 of Schedule 7 shall be used when appropriate to alert the user that restrictions or requirements for authorisation of the use of the radio equipment apply in certain Member States;

- (c) in the case of telecommunications terminal equipment, sufficient information to identify the interfaces of public telecommunications networks to which the equipment is intended to be connected.

#### **Notice to be given to the Secretary of State before placing radio equipment on the market**

**12.**—(1) The responsible person shall, not less than four weeks before the date it is intended to place on the market in the United Kingdom radio equipment using frequency bands whose use is not harmonised throughout the Community, give notice in writing to the Secretary of State at the Radiocommunications Agency which contains—

- (a) such information as is required by the Secretary of State about the radio characteristics of the equipment, in particular its frequency bands, channel spacing, type of modulation and RF power; and
- (b) where appropriate the identification number of all the notified bodies used.

(2) Notice given under paragraph (1) shall be effective in respect of all items of equipment, whether placed on the market at the same time or at different times, which are in all material respects identical to each other.

#### **Publication of and access to information**

**13.** In exercising their functions under Part II of the Act, the Secretary of State and the Director shall ensure that operators of public telecommunications networks shall—

- (a) publish and make readily available accurate and adequate technical specifications of all interfaces offered by them before services provided through such interfaces are made publicly available, and shall regularly publish any updated specifications, and
- (b) provide in such publication the following information:
  - (i) sufficient details of technical interface specifications to permit the design of telecommunications terminal equipment capable of utilising all services provided through the corresponding interface;
  - (ii) details of changes in existing interface specifications, including information on network characteristics which are found to affect the correct operation of terminal equipment;
  - (iii) all the information necessary to allow manufacturers to carry out relevant tests, at their choice, for the essential requirements applicable to telecommunications terminal equipment.

#### **Notified bodies**

**14.** For the purposes of these Regulations, a notified body is a body which has been—

- (a) appointed as a notified body pursuant to regulation 15; or
- (b) appointed by a Member State other than the United Kingdom and notified to the Commission and the other Member States pursuant to Article 11 of the Directive.

#### **Notified bodies appointed by the Secretary of State**

**15.**—(1) The Secretary of State, applying the criteria in Schedule 6 and such other criteria as he thinks fit, may from time to time appoint such persons as he thinks fit to be notified bodies.

- (2) An appointment—



- (a) may relate to such descriptions of apparatus as the Secretary of State may from time to time determine;
  - (b) may be made subject to such conditions as the Secretary of State may from time to time determine, and such conditions may include conditions which are to apply upon or following termination of the appointment;
  - (c) shall, without prejudice to the generality of subparagraph (b) and subject to paragraph (4), require the appointed body to carry out the procedures and specific tasks for which it has been appointed including (where so provided as part of those procedures) surveillance to ensure that the responsible person duly fulfils the obligations arising out of the relevant conformity assessment procedure;
  - (d) shall be terminated upon 90 days' notice in writing given to the Secretary of State by the notified body; and
  - (e) may be terminated if it appears to the Secretary of State that any of the conditions of the appointment are not complied with.
- (3) Subject to paragraph (2)(d) and (e), an appointment under this regulation may be for the time being or for such period as may be specified in the appointment.
- (4) A notified body appointed by the Secretary of State shall not be required to carry out the functions referred to in paragraph (2)(c) if—
- (a) the documents submitted to it in relation to carrying out such functions are not in English or another language acceptable to that body; or
  - (b) the responsible person has not submitted with his application the amount of the fee which the body requires to be submitted with the application pursuant to regulation 16.
- (5) If for any reason the appointment of a notified body is terminated under this regulation, the Secretary of State may—
- (a) give such directions (either to the body the subject of the termination or to another notified body) for the purpose of making such arrangements for the determination of outstanding applications as he considers appropriate; and
  - (b) without prejudice to the generality of the foregoing, authorise another notified body to take over its functions in respect of such cases as he may specify.

## **Fees**

- 16.**—(1) A notified body appointed by the Secretary of State may charge such fees in connection with, or incidental to, the performance of its functions as it may determine: provided that such fees shall not exceed the sum of the following—
- (a) the costs incurred or to be incurred by the notified body in performing the relevant function; and
  - (b) an amount on account of profit which is reasonable in the circumstances having regard to—
    - (i) the character and extent of the work done or to be done by the body on behalf of the applicant; and
    - (ii) the commercial rate normally charged on account of profit for that work or similar work.
- (2) A notified body may require the payment of fees or a reasonable estimate thereof in advance of carrying out the work requested by the applicant.

## Modification of Licences

17.—(1) The following amendments shall be made to Schedule 1 to the Telecommunications (Licence Modification) (Standard Schedules) Regulations 1999(33) (“the Standard Schedule Regulations”):

- (a) in Part 1 of Schedule 1 thereof—
  - (i) for the definitions of “Applicable Terminal Equipment”, “Approved Apparatus” and “Compliant Terminal Equipment”, there shall be substituted the definitions set out in Part I of Schedule 8; and
  - (ii) after the definition of “Revised Voice Telephony Regulations” there shall be inserted the following definition:

““RTTE Regulations” means the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000”;
- (b) in Part 2 of Schedule 1 thereof—
  - (i) there shall be substituted for conditions 5 and 15 the conditions set out in Part II of Schedule 8;
  - (ii) in condition 20.8, after the word “Regulations” there shall be inserted the words “or the RTTE Regulations”; and
  - (iii) in condition 55.11, there shall be substituted for the words “Council Directive 91/263/EEC or Council Directive 93/97 EEC” the words “the Terminal Equipment Regulations or with the appropriate essential requirements of the RTTE Regulations”.
- (c) in Schedule 3 thereof for the definition of “Applicable Terminal Equipment” and “Compliant Terminal Equipment” there shall be substituted the definitions thereof set out in Part 1 of Schedule 8.

(2) Each licence issued under section 7 of the Act which, other than by virtue of incorporation of the standard Schedules as defined in regulation 2 of the Standard Schedule Regulations, contains—

- (a) a definition or condition substantially in the same terms as any of those referred to in subparagraphs (a)(i), (b)(i) and (c) of paragraph (1) shall be modified by the substitution therefor of the equivalent set out in Part I or II of Schedule 8; or
- (b) a condition substantially in the same terms as condition 20.8 or 55.11 in Part 2 of Schedule 1 to the Standard Schedule Regulations shall be modified by the substitution therefor of a condition in the same terms as condition 20.8 or 55.11 amended in accordance with subparagraph (ii) or (iii) of paragraph (1)(b); or
- (c) a condition relating to Technical Requirements or Approval of Equipment shall be modified by the substitution therefor of the condition relating thereto set out in Part III of Schedule 8;

and in each such licence there shall be inserted in the appropriate place in alphabetical order the definitions set out in paragraph (1)(a)(ii) and (if no such definition is in the licence already) the definition of “Terminal Equipment Regulations” set out in Part 1 of Schedule 1 to the Standard Schedule Regulations.

## PART IV ENFORCEMENT

### Enforcement Notices

**18.**—(1) Subject to paragraph (2), Schedule 9 shall have effect for the purposes of providing for the enforcement of these Regulations and for matters incidental thereto.

(2) Except in the case of apparatus which, in the opinion of an enforcement authority, is liable to endanger the safety of persons and, where appropriate, of property, where an enforcement authority has reasonable grounds for suspecting that the CE marking has been affixed to apparatus in relation to which any provision of these Regulations has not been complied with, it may serve notice in writing on—

- (a) the manufacturer of the apparatus or his authorised representative established within the Community; or
- (b) in a case where neither the manufacturer of the apparatus nor his authorised representative established within the Community has placed the apparatus on the market, the person who places it on the market in the United Kingdom;

and subject to paragraph (3), no other action pursuant to Schedule 9 may be taken in respect of apparatus until such notice has been given and the person to whom it is given has failed to comply with its requirements.

(3) Notwithstanding the provisions of paragraph (2), for the purpose of ascertaining whether or not the CE marking has been correctly affixed, action may be taken pursuant to section 29 of the Consumer Protection Act 1987<sup>(34)</sup> as it is applied by Schedule 9.

(4) A notice which is given under paragraph (2) shall—

- (a) state that the enforcement authority suspects that the CE marking has not been correctly affixed to the apparatus;
- (b) specify the respect in which it is so suspected and give particulars thereof;
- (c) require the person to whom the notice is given—
  - (i) to secure that any apparatus to which the notice relates conforms as regards the provisions concerning the correct affixation of the CE marking within such period as may be specified in the notice; or
  - (ii) to provide evidence within that period, to the satisfaction of the enforcement authority, that the CE marking has been correctly affixed; and
- (d) warn that person that if the non-conformity continues after, or if satisfactory evidence has not been provided within, the period specified in the notice, further action may be taken under the Regulations in respect of that apparatus or apparatus of the same type placed on the market by that person.

### Offences

**19.** Any person who—

- (a) contravenes or fails to comply with regulation 5(1) or 12; or
- (b) fails to supply or retain a copy of the appropriate documentation as required by regulation 9(3),

shall be guilty of an offence.

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<sup>(34)</sup> 1987 c. 43.

## **Penalties**

**20.**—(1) A person guilty of an offence under regulation 19(a) shall be liable on summary conviction—

- (a) to imprisonment for a term not exceeding 3 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 19(b) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **Defence of due diligence**

**21.**—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 19 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 in paragraph (1) 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) 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 in paragraph (1) 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**

**22.**—(1) Where the commission by any person of an offence under regulation 19 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)) 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) 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.

**Savings for action taken under other enactments**

**23.** Nothing in these Regulations shall be construed as preventing the taking of any action in respect of any relevant apparatus under the provisions of any other enactment.

9th March 2000

*Patricia Hewitt,*  
Minister for Small Business and E-Commerce,  
Department of Trade and Industry