

2006 No. 3418

**ELECTROMAGNETIC COMPATIBILITY**

The Electromagnetic  
Compatibility Regulations  
2006

*Made - - - - - 18th December 2006*

*Laid before Parliament 20th December 2006*

*Coming into force in accordance with regulation 1*



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The Secretary of State is a Minister designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to measures relating to apparatus which is liable to cause electromagnetic disturbance and to apparatus the performance of which is liable to be affected by such disturbance.

The Secretary of State makes the following Regulations under the powers conferred on him by section 2(2) of that Act.

PART I  
PRELIMINARY

**Citation and commencement**

- 1.—(1) These Regulations may be cited as the Electromagnetic Compatibility Regulations 2006.

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<sup>(a)</sup> S.I. 1989/2393.  
<sup>(b)</sup> 1972 c.68.

(2) This regulation, regulations 3, 24 and 25 and Schedule 5 shall come into force on 20th January 2007.

(3) The remaining regulations shall come into force on 20th July 2007.

### **Revocation and disapplication**

2.—(1) The Electromagnetic Compatibility Regulations 2005(a) (“the 2005 Regulations”) are revoked.

(2) The regulations made under section 10 of the Wireless Telegraphy Act 1949(b) (“the WTA Regulations”) listed in Schedule 1, to the extent that they impose electromagnetic compatibility requirements which must be complied with if apparatus is—

- (a) to be supplied or taken into service and
- (b) used for the purpose for which it was intended,

shall cease to have effect, but nothing in these Regulations shall affect the WTA Regulations to the extent that they impose requirements for radio frequency spectrum planning or for the prevention of undue interference to wireless telegraphy from apparatus in use.

### **Interpretation**

3.—(1) In these Regulations,

“apparatus” means any finished appliance or combination of appliances made commercially available as a single functional unit, intended for the end user and liable to generate electromagnetic disturbance, or the performance of which is liable to be affected by such disturbance and includes—

- (a) components or sub-assemblies intended for incorporation into an apparatus by an end-user, which are liable to generate electromagnetic disturbance, or the performance of which is liable to be affected by such disturbance;
- (b) mobile installations defined as a combination of apparatus and, where applicable, other devices, intended to be moved and operated in a range of locations;

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

“CE marking” and “CE conformity marking” shall be construed in accordance with regulation 21 and Schedule 2;

“the Commission” means the European Commission;

“the Community” means the European Community;

“EC declaration of conformity” has the meaning given in regulation 22;

“the EMC Directive” means Directive 2004/108/EC of the European Parliament and of the Council on the approximation of the laws of the member States relating to electromagnetic compatibility(c);

“enforcement authority” means any person who is, pursuant to regulation 37, authorised to enforce these Regulations;

“essential requirements” means the requirements set out in regulation 4;

“equipment” means any apparatus or fixed installation;

“fixed installation” means a particular combination of several types of apparatus and, where applicable, other devices, which are assembled, installed and intended to be used permanently at a pre-defined location;

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(a) S.I. 2005/281.

(b) 1949 c.54.

(c) OJ No. L390, 31.12.04, p 24.

“harmonised standard” means a technical specification adopted by a recognised European standardisation 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 of 22nd June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society Services(a), as amended by Directive 98/48/EC(b) for the purpose of establishing a European requirement, the reference of which is published by the Commission in the Official Journal of the European Union;

“immunity” means the ability of equipment to perform as intended without degradation in the presence of an electromagnetic disturbance;

“notified body” means, except in relation to regulation 13(1)—

(c) a United Kingdom notified body; and

(d) for the purposes of regulations 15 (c), 18 and 20—

(i) a notified body of a member of the Community other than the United Kingdom pursuant to Article 12.3 of the EMC Directive; or

(ii) a body which is recognised for the purpose of carrying out those functions by inclusion in a mutual recognition agreement relating to the EMC Directive or a similar agreement (including a Protocol to the Europe Agreement, or other Agreement, on Conformity Assessment and Acceptance of Industrial Products) which has been concluded between the Community and a State other than an EEA State.

“OFCOM” means the Office of Communications established under the Office of Communications Act 2002(c);

“radio amateur apparatus” means wireless telegraphy apparatus designed or adapted for use in the amateur service, but excludes citizens’ band apparatus, and in this definition—

(e) ‘amateur service’ has the meaning given by Article 1, definition 1.56 of the 2001 edition of the Radio Regulations annexed to the Constitution and Convention of the International Telecommunication Union 1992 (d) pursuant to Articles 4 and 54 of that Constitution; and

(f) ‘citizens’ band apparatus’ means wireless telegraphy apparatus designed or adapted exclusively for the provision of voice radiocommunication in the frequency bands 26.960 MHz to 27.410 MHz and 27.60125 MHz to 27.99125 MHz;

“relevant requirements” means the requirements of these Regulations for which a statement has been requested from a notified body;

“responsible person” means—

(g) in relation to apparatus

(i) the manufacturer established in the Community;

(ii) the manufacturer’s authorised representative; or

(iii) where the manufacturer is not established in the Community and he has not appointed an authorised representative, the person who places the apparatus on the market or puts it into service;

(h) in relation to a fixed installation, the person who, by virtue of their control of the fixed installation is able to determine that the configuration of the installation is such that when used it complies with the essential requirements;

“statement” in respect of apparatus means a statement of compliance with the essential requirements issued by a notified body;

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(a) OJ No. L204, 21.7.98, p.37.

(b) OJ No. L217, 5.8.98, p.18.

(c) 2002 c.11.

(d) The Constitution and Convention of the International Telecommunication Union was adopted by the Additional Plenipotentiary Conference (Geneva 1992), as amended by the Plenipotentiary Conference (Kyoto 1994).

“technical documentation” shall be construed in accordance with Schedule 3; and  
“wireless telegraphy”, “wireless telegraphy apparatus” and “station for wireless telegraphy”  
have the meanings given respectively by section 19(1) of the Wireless Telegraphy Act 1949.

(2) For the purposes of these Regulations—

- (a) “electromagnetic compatibility” (“EMC”) is the ability of equipment to function satisfactorily in its electromagnetic environment without introducing intolerable electromagnetic disturbance to other equipment in that environment;
- (b) “electromagnetic disturbance” means any electromagnetic phenomenon which may degrade the performance of equipment. An electromagnetic disturbance may include:
  - (i) electromagnetic noise,
  - (ii) an unwanted signal, or
  - (iii) a change in the propagation medium itself;
- (c) “electromagnetic environment” means all electromagnetic phenomena observable at a given location.

(3) In these Regulations a reference to the Community includes a reference to a member State, Norway, Iceland and Liechtenstein<sup>(a)</sup>.

### **Essential requirements**

4.—(1) A reference to “essential requirements” in relation to equipment is a reference to the requirements set out in paragraph (2) and in the case of fixed installations shall include the requirements set out in regulation 5.

(2) Equipment shall be designed and manufactured, having regard to the state of the art, so as to ensure that—

- (a) the electromagnetic disturbance it generates does not exceed a level above which radio and telecommunications equipment or other equipment cannot operate as intended; and
- (b) it has a level of immunity to the electromagnetic disturbance to be expected in its intended use which allows it to operate without unacceptable degradation of its intended use.

### **Specific essential requirements for fixed installations**

5.—(1) A fixed installation shall be installed—

- (a) applying good engineering practices; and
- (b) respecting the information on the intended use of its components,

with a view to meeting the essential requirements set out in regulation 4.

(2) Such good engineering practices shall be documented.

(3) The responsible person in relation to a fixed installation shall hold such documentation at the disposal of the enforcement authority for inspection purposes for as long as the fixed installation is in operation.

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(a) The application of the EMC Directive was extended in 2006 to the European Economic Area by Decision 3/2006 of 27 January 2006 amending Annex II to the EEA Agreement.

## PART II

### APPLICATION

#### **General conditions of application**

6.—(1) The requirements of these Regulations apply to equipment placed on the market or put into service, or both, unless, pursuant to regulation 8 to 14 and regulation 17, it falls outside the scope of these Regulations.

(2) In the case of a fixed installation put into service before 20th July 2007, these Regulations shall apply if it is modified after that date in a way that may affect its electromagnetic compatibility.

#### **Existing legislation**

7. Nothing in these Regulations shall affect the application of Community legislation and national legislation as regards the safety of equipment.

#### *Exclusions*

#### **Electromagnetically benign equipment**

8. These Regulations do not apply to equipment the inherent qualities of which are such that—
- (a) it is incapable of generating or contributing to electromagnetic emissions which exceed a level allowing radio and telecommunication equipment and other equipment to operate as intended; and
  - (b) it will operate without unacceptable degradation in the presence of electromagnetic disturbance normally consequent upon its intended use.

#### **Regulation establishing common rules in the field of civil aviation**

9. These Regulations do not apply to aeronautical products, parts and appliances referred to in Regulation (EC) No. 1592/2002 of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Aviation Safety Agency(a).

#### **Radio Equipment and Telecommunications Terminal Equipment Directive**

10. These Regulations do not apply to equipment covered by 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(b).

#### **Radio amateur apparatus**

11. These Regulations do not apply to radio amateur apparatus used by radio amateurs which is not available commercially.

#### **Equipment covered by other Directives**

12. These Regulations do not apply to equipment to which the Directives specified in Schedule 4 apply, to the extent that those Directives specifically lay down, in whole or part, the essential requirements in relation to such equipment.

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(a) OJ No. L 240, 7.9.2002, p.1 as amended by Commission Regulation (EC) No. 1701/2003 (OJ No. L 243, 27.9.03, p. 5).

(b) OJ No. L 91, 7.4.99, p.10 as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29.9.2003 (OJ L 284, 31.10.03, p.1).



### **Measuring Instruments Directive**

13.—(1) These Regulations do not apply to a measuring instrument or sub-assembly covered by Directive 2004/22/EC of the European Parliament and of the Council on measuring instruments<sup>(a)</sup> which bear the—

- (a) CE marking;
- (b) M marking; and
- (c) identification number of the notified body responsible for carrying out the conformity assessment of the instrument or sub-assembly

in accordance with the requirements of that Directive, as regards the immunity of such instrument or sub-assembly.

(2) For the purposes of this regulation—

- (a) “measuring instrument” and “sub-assembly” have the meanings defined in that Directive; and
- (b) “notified body” means the body designated pursuant to Article 11.1 of that Directive.

### **Equipment presented at trade fairs or similar events**

14.—(1) These Regulations do not apply to equipment which is not compliant with the requirements of these Regulations and which is displayed, demonstrated or presented at any trade fair, exhibition or similar event if a sign displayed visibly on or near the equipment clearly indicates that it—

- (a) is not compliant with these Regulations; and
- (b) cannot be placed on the market or put into service or both until it is made compliant with those requirements.

(2) Demonstration of equipment pursuant to paragraph (1) may only take place provided that adequate measures are taken to avoid electromagnetic disturbance.

## **PART III**

### **GENERAL REQUIREMENTS – APPARATUS**

#### **Requirements for placing on the market**

15. No person shall place on the market apparatus unless either the following requirements, or the corresponding requirements of the EMC Directive as implemented under the law of another state in the Community, are met—

- (a) the apparatus is compliant with the essential requirements;
- (b) compliance with the essential requirements has been demonstrated in accordance with regulation 18;
- (c) the technical documentation including any statement issued by a notified body under regulation 20 has been prepared and is available to the enforcement authority on request;
- (d) the CE marking has been properly affixed by the manufacturer or his authorised representative in accordance with regulation 21;
- (e) an EC declaration of conformity has been issued in accordance with the requirements of regulation 22;
- (f) each apparatus is identified in terms of type, batch, serial number or any information allowing for identification of the apparatus;

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(a) OJ No. L135, 30.4.04, p.1.

- (g) each apparatus is accompanied by the name and address of the manufacturer and if he is not established in the Community, the name and address of the responsible person;
- (h) the manufacturer has provided information on any specific precautions that must be taken when the apparatus is assembled, installed, maintained or used in order to ensure that when put into service the apparatus complies with the essential requirements;
- (i) apparatus for which compliance with the essential requirements is not ensured in residential areas is accompanied by a clear indication of this restriction of use and where appropriate this indication is also on the packaging; and
- (j) the information required to enable the apparatus to be used in accordance with its intended purpose is contained in the instructions accompanying the apparatus.

#### **Requirements for putting into service**

**16.** No person shall put into service apparatus unless it complies with the essential requirements when properly installed, maintained and used for its intended purpose.

#### **Exception from regulation 15 and 16**

**17.** The requirements in regulation 15 and 16 shall not apply to—

- (a) the placing on the market of apparatus before 20th July 2009; and
- (b) the putting into service of apparatus placed on the market before 20th July 2009,

where, on or before 19th July 2007, a declaration of conformity in respect of such apparatus has been issued by the manufacturer or his authorised representative pursuant to Article 10.1 or 10.2 of Directive 89/336/EEC as implemented in the United Kingdom to enable it to be placed on the market or put into service, or both.

#### **Compliance with the essential requirements**

**18.** Compliance with the essential requirements shall be demonstrated—

- (a) by the internal production control procedure set out in regulation 19; or
- (b) by the internal production control procedure set out in regulation 19 followed by the involvement of a notified body as set out in regulation 20.

#### **The internal production control procedure**

**19.—(1)** The manufacturer shall perform an electromagnetic compatibility assessment of the apparatus, on the basis of the relevant phenomena, with a view to meeting the essential requirements.

(2) The electromagnetic compatibility assessment shall take into account all normal intended operating conditions. Where the apparatus is capable of taking different configurations, the electromagnetic compatibility assessment shall confirm that the apparatus meets the essential requirements in all the possible configurations identified by the manufacturer as representative of its intended use.

(3) The requirements of paragraph (1) shall be complied with if the manufacturer correctly applies a harmonised standard which make complete provision in respect of the apparatus.

(4) Apparatus which is compliant with the applicable harmonised standard shall be presumed to be compliant with the essential requirements. Where the apparatus is compliant only in part with the harmonised standard, it shall be presumed to be compliant only with those parts of the essential requirements which correspond to the elements of the harmonised standard with which the apparatus is compliant.

(5) The manufacturer shall draw up technical documentation in accordance with the provisions of Schedule 3 providing evidence of the compliance of the apparatus with the essential requirements.

(6) The compliance of apparatus with the essential requirements shall be attested by an EC declaration of conformity issued by the manufacturer or his authorised representative in the Community in accordance with regulation 22.

(7) The manufacturer shall take all measures necessary to ensure that the apparatus is manufactured in accordance with the technical documentation referred to in paragraph (5) and with the provisions of these Regulations that apply to it.

### **Involvement of a notified body**

**20.**—(1) The manufacturer or his authorised representative may involve a notified body in order to demonstrate compliance with all or some of the essential requirements.

(2) The manufacturer or his authorised representative shall specify to the notified body which aspects of the essential requirements are to be assessed by the notified body.

(3) Having completed the internal production control procedure in respect of those aspects to be assessed by the notified body, the manufacturer or his authorised representative shall present the appropriate technical documentation to a notified body and request the notified body for an assessment of such documentation.

(4) The notified body shall review the technical documentation and assess whether the technical documentation properly demonstrates that the requirements of these Regulations that it has to assess are met.

(5) The notified body shall, if satisfied with the technical documentation demonstrating that the apparatus is compliant with those aspects of the essential requirements it has been asked to assess, issue a statement to the manufacturer or his authorised representative confirming the compliance of the apparatus.

(6) The statement shall be limited to those aspects of the essential requirements which have been assessed by the notified body.

(7) The manufacturer or his authorised representative shall add the statement of the notified body to the technical documentation.

### **The CE marking**

**21.**—(1) For the purposes of these Regulations, the CE marking shall be regarded as properly affixed in relation to apparatus if the requirements of this regulation are complied with.

(2) Where—

- (a) the apparatus is compliant with the essential requirements; and
- (b) the responsible person has demonstrated conformity with the essential requirements in accordance with regulation 18,

the manufacturer or his authorised representative shall affix the CE marking to the apparatus or to its data plate.

(3) Where it is not possible to affix the CE marking to the apparatus or to its data plate or this is not warranted on account of the nature of the apparatus, it shall be affixed to the apparatus' packaging, if any, and to accompanying documents.

(4) Subject to paragraph (5), where the apparatus is the subject of other directives covering other aspects and which also provide for the CE marking, the CE marking shall indicate that the apparatus also conforms with those other Directives.

(5) Where one or more of the other directives referred to in paragraph (4) allow the manufacturer, during a transitional period, to choose which arrangements to apply, the CE marking shall indicate conformity only with the directives applied by the manufacturer. In this case, particulars of the directives applied, as published in the Official Journal of the European Union, must be given in the documents, notices or instructions required by the directives and accompanying such apparatus.

(6) No person shall affix to apparatus, its data plate, packaging or the instructions for use any marking which is likely to deceive third parties as to the meaning and form of the CE marking.

(7) Any other marking may be affixed to the apparatus, its packaging or the instructions for use provided that the visibility and legibility of the CE marking are not reduced as a result.

(8) In these Regulations “CE marking” means the CE conformity marking, being a mark—

- (a) consisting of the initials “CE”;
- (b) taking the form set out in paragraph 1 of Schedule 2; and
- (c) which when used in relation to the EMC Directive indicates conformity with all the requirements of that Directive.

### **EC declaration of conformity**

22.—(1) An EC declaration of conformity is a declaration which indicates that apparatus is compliant with the essential requirements.

(2) An EC declaration of conformity shall be regarded as properly issued in relation to apparatus if the following requirements are complied with—

- (a) the apparatus is compliant with the essential requirements;
- (b) the declaration is issued by the manufacturer or his authorised representative and contains the following—
  - (i) a reference to the EMC Directive;
  - (ii) an identification of the apparatus to which it refers;
  - (iii) the name and address of the manufacturer and where applicable, the name and address of his authorised representative;
  - (iv) a dated reference to the specifications under which conformity is declared to ensure the conformity of the apparatus with the provisions of the EMC Directive;
  - (v) the date of that declaration; and
  - (vi) the identity and signature of the person empowered to bind the manufacturer or his authorised representative.

### **Retention of documentation**

23.—(1) The responsible person shall retain in relation to apparatus—

- (a) an EC declaration of conformity;
- (b) any statement of a notified body; and
- (c) the technical documentation

for ten years after the date on which such apparatus was last manufactured.

(2) The responsible person shall make the documentation referred to in paragraph (1) available to the enforcement authority on request.

(3) Any documentation to be retained by the responsible person pursuant to the requirements of paragraph (1) may be kept by recording the matters in question in any form, provided that adequate precautions shall be taken for guarding against falsification.

(4) The power conferred on a responsible person in paragraph (3) includes the 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.

(5) If the responsible person records the documentation 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 of the relevant part of it in legible form.

**PART IV**  
**UNITED KINGDOM NOTIFIED BODIES**

**Designation of United Kingdom notified bodies**

**24.**—(1) Subject to the following provisions of this regulation, the Secretary of State may, on the application of a person resident, incorporated or carrying on business in the United Kingdom, designate that person to be a United Kingdom notified body under these Regulations.

(2) The Secretary of State shall not make a designation under paragraph (1) unless he is satisfied that the applicant satisfies the minimum criteria set out in Schedule 5 (“the minimum criteria”).

(3) A person who meets the assessment criteria fixed by a standard which is a relevant harmonised standard within the meaning of Article 12.2 of the EMC Directive shall be presumed to meet the minimum criteria covered by such harmonised standard.

(4) A designation under paragraph (1)—

- (a) shall be in writing;
- (b) may be made subject to such conditions as may be specified in the designation, which may include conditions which —
  - (i) are to apply upon or following termination of the designation; and
  - (ii) limit the description of apparatus for which the person is designated;
- (c) shall specify the tasks (which may be framed by reference to any circumstances) and categories of apparatus which the person has been designated to assess;
- (d) subject to regulation 25, may last for such period as may be specified in the designation; and
- (e) may include a requirement to publish from time to time the scale of fees which the person charges pursuant to regulation 26 or such information about the basis of calculation of such fees as may be specified.

(5) In exercising the power conferred on him by paragraph (1) the Secretary of State may (in addition to the matters of which he is required to satisfy himself pursuant to paragraph (2)) have regard to any matter appearing to him to be relevant.

(6) The Secretary of State shall, from time to time, publish a list of notified bodies.

(7) The Secretary of State shall, from time to time, carry out an inspection of each notified body with a view to verifying that it—

- (a) meets the minimum criteria;
- (b) complies with any condition to which its designation is subject; and
- (c) complies with these Regulations.

**Variation and termination**

**25.**—(1) The Secretary of State may vary a designation made under regulation 24 if—

- (a) the notified body so requests; or
- (b) it appears to him necessary or expedient to do so.

(2) The Secretary of State may terminate a designation made under regulation 24—

- (a) on the expiry of 90 days notice in writing at the request of the notified body; or
- (b) if it appears to the Secretary of State that a condition of the designation is not complied with; or
- (c) if in his opinion the notified body ceases to satisfy the minimum criteria.

(3) Where the Secretary of State is minded to—

- (a) vary a designation pursuant to paragraph (1)(b); or

- (b) terminate a designation pursuant to paragraph (2)(b) or (c);  
he shall—
- (i) give such directions (either to the notified body the subject of the termination or to another notified body) for the purposes of making arrangements for the determination of outstanding applications as he considers appropriate; and
  - (ii) notwithstanding sub-paragraph (i), authorise another notified body to take over the functions of the notified body the subject of the termination in respect of such cases as he may specify.

### **Fees**

**26.—**(1) A notified body may charge such fees in connection with, or incidental to, carrying out the specified tasks as it may determine.

(2) The fees referred to in paragraph (1) shall not exceed 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 notified body on behalf of the applicant; and
  - (ii) the commercial rate normally charged on account of profit for that work or similar work.

(3) The power in paragraph (1) includes the power to require the payment of fees or a reasonable estimate of such fees in advance of carrying out the work requested by the applicant.

(4) Where any fees payable to a notified body pursuant to paragraphs (1) and (2) 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 notified body may by 14 days notice in writing provide that, unless the fees are paid before the expiry of the notice, the statement in relation to the conformity assessment procedure may be suspended until payment of the fees has been received.

### **Functions of notified body**

**27.—**(1) A notified body shall carry out the functions set out in this regulation.

(2) Subject to regulation 28, a notified body shall assess an application made by a manufacturer for the issue of a statement.

(3) In determining such an application, the notified body—

- (a) shall have regard to the actual or usual electromagnetic environment of the apparatus when properly installed, maintained and used for its intended purpose; and
- (b) may have regard to any standards or technical criteria appearing to it to be relevant.

(4) Where in the opinion of the notified body the apparatus to which an application relates is compliant with the essential requirements for which a statement has been requested, it shall issue a statement in accordance with regulation 30.

(5) Where in the opinion of the notified body the apparatus to which an application relates is not compliant with the essential requirements for which a statement has been requested, it shall issue a notice to the applicant in accordance with regulation 33.

### **Limitations on duties to exercise functions**

**28.—**(1) A notified body shall not accept an application for a statement in respect of any apparatus unless the application—

- (i) is in writing, in English or another language acceptable to that notified body; and

- (ii) is accompanied by technical documentation, in writing, in English or another language acceptable to that body.

(2) A notified body shall not be required to determine an application for a statement where the manufacturer has not made available to the body such information as it may reasonably require to determine the application.

(3) A notified body shall not be required to carry out its tasks referred to in regulation 24(4)(c) if—

- (a) the person making the application has not submitted with the application the amount of the fee which the body requires to be submitted pursuant to regulation 26; or
- (b) the body reasonably believes that, having regard to the number of applications made to it which are outstanding, it will be unable to commence the required work within three months of receiving the application.

### **Contractors**

**29.**—(1) A notified body may, in exercising its functions—

- (a) arrange for some other person to carry out any assessment on its behalf; or
- (b) require the applicant to satisfy another person with respect to any matter at the applicant's expense.

(2) But nothing in paragraph (1) authorises a notified body to rely on the opinion of another person with regard to whether an apparatus is compliant with any of the essential requirements.

(3) Nothing in these Regulations shall preclude a person referred to in paragraph (1) (a) or (b) from charging any fee in respect of any work undertaken by him in pursuance of those paragraphs.

### **Form of statement of compliance**

**30.** A statement issued by a notified body shall be in writing and shall—

- (a) be in English;
- (b) give the name and address—
  - (i) of the applicant;
  - (ii) where the applicant is not the manufacturer, of the manufacturer;
- (c) be signed by or on behalf of the notified body and give the identification number of the notified body;
- (d) bear the date of issue;
- (e) give particulars of the apparatus (where applicable, in relation to each variant) to which it relates sufficient to identify it; and
- (f) confirm that the apparatus and the technical documentation to which it relates complies with the relevant requirements it has assessed.

### **Conditions of statement of compliance**

**31.**—(1) A statement issued by a notified body may be unconditional or may be subject to such conditions as the notified body considers appropriate.

(2) Such conditions may include—

- (a) a limitation on the electromagnetic environment for which the apparatus may be stated to be suitable; or
- (b) a requirement that the apparatus is only to be installed at a specific site.

(3) The conditions imposed pursuant to paragraph (1) may be varied in accordance with regulation 33 by the notified body which issued the statement and such variation may include the imposition of new conditions or the removal of conditions.

### **Withdrawal of statement of compliance**

32. The notified body which issued a statement shall withdraw that statement in accordance with regulation 33 if it appears that the apparatus to which it relates is not compliant with the relevant requirements.

### **Procedure where a notified body is minded to refuse to give, or to vary or to withdraw a statement of compliance**

33.—(1) Where a notified body is minded to—

- (a) refuse to issue a statement of compliance;
- (b) vary a statement (other than at the request of the person to whom it was given); or
- (c) withdraw a statement of compliance,

it shall give to the applicant, or the person to whom the statement was given, a notice in writing—

- (i) giving reasons for the refusal, variation or withdrawal;
- (ii) specifying the date on which the refusal, variation or withdrawal is to take effect; and
- (iii) giving that applicant or person to whom the statement was given the opportunity to make representations within 21 days from the date of such notice and stating that the notified body shall consider any representations made to it within that period by that applicant or person.

(2) Where a notified body, having considered representations made to it under paragraph (1) remains of the opinion that—

- (a) an application for a statement should be refused; or
- (b) a statement should be varied or withdrawn,

it shall inform the applicant, or the person to whom the statement was given, of that decision in writing.

## **PART V**

### **GENERAL REQUIREMENTS – FIXED INSTALLATIONS**

#### **Exemption for certain apparatus from placing on the market requirements**

34.—(1) Regulation 15, 16 and 23 shall not apply to certain apparatus where either the following requirements or the corresponding requirements of the EMC Directive as implemented under the law of another state in the Community are met—

- (i) the manufacturer or his authorised representative provides information identifying the fixed installation and its electromagnetic compatibility characteristics by way of accompanying documentation;
- (ii) the accompanying documentation indicates any specific precautions that must be taken for the incorporation of the apparatus into the fixed installation in order not to compromise the conformity of that installation;
- (iii) the apparatus is identified in the accompanying documentation in terms of type, batch, serial number or any information allowing for identification of the apparatus; and
- (iv) the apparatus is accompanied by the name and address of the manufacturer and if he is not established in the Community, the name and address of the responsible person.

(2) In this regulation and in regulation 35 “certain apparatus” means apparatus which is—

- (a) intended for incorporation into a given fixed installation; and
- (b) is otherwise not commercially available.



### **General duty relating to the putting into service of fixed installations**

35.—(1) No person shall put into service a fixed installation unless the following requirements are met when it is properly installed, maintained and used for its intended purpose—

- (a) the essential requirements are complied with; and
- (b) the name and address of the responsible person shall be available on request by the enforcement authority.

(2) Where the fixed installation incorporates certain apparatus the following requirements shall apply in addition—

- (a) the apparatus shall be incorporated into the fixed installation for which it was intended;
- (b) such incorporation shall respect the intended use of the apparatus; and
- (c) the incorporation shall comply with good engineering practice.

### **Evidence of compliance with the essential requirements**

36. For as long as the fixed installation is in operation the responsible person shall have available for the enforcement authority documentation demonstrating the compliance of the fixed installation with the essential requirements.

## **PART VI**

### **ENFORCEMENT**

#### *Enforcement authorities and powers*

#### **Enforcement authorities**

37.—(1) Except in relation to the descriptions of apparatus referred to in paragraph (3), it shall be the duty of the following authorities to enforce these Regulations—

- (a) in Great Britain:
  - (i) OFCOM insofar as action taken to enforce a regulation relates to the protection and management of the radio spectrum; and
  - (ii) local weights and measures authorities within their area; and
- (b) in Northern Ireland:
  - (i) OFCOM insofar as action taken to enforce a regulation relates to the protection and management of the radio spectrum; and
  - (ii) the Department of Enterprise, Trade and Investment.

(2) Except in relation to the descriptions of apparatus mentioned in paragraph (3), the Secretary of State may enforce these Regulations.

(3) These Regulations may be enforced in relation to electricity meters other than those which are wireless telegraphy apparatus—

- (i) in Great Britain, by the Gas and Electricity Markets Authority;
- (ii) in Northern Ireland, by the Northern Ireland Authority for Energy Regulation; and
- (iii) by any person designated to act on behalf of the Gas and Electricity Markets Authority or the Northern Ireland Authority for Energy Regulation.

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

## **Test purchases**

**38.**—(1) An enforcement authority may, for the purpose of ascertaining whether any apparatus complies with the requirements of regulation 15 make, or authorise an officer of the authority to make, any purchase of apparatus.

(2) Where—

- (a) any apparatus purchased under this regulation by or on behalf of any enforcement authority is submitted to a test; and
- (b) the test leads to—
  - (i) the bringing of proceedings for an offence under regulation 46, 47 or 49 in relation to the apparatus or the forfeiture of apparatus of the same description under regulation 58 or 59; or
  - (ii) the serving of a suspension notice in respect of any apparatus; 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 apparatus was purchased or any person who is a party to the proceedings or has an interest in any apparatus to which the notice relates to have the apparatus tested.

## **Powers of search**

**39.**—(1) A duly authorised officer of an 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 these Regulations—

- (a) inspect any apparatus or fixed installation 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 apparatus.

(3) If the officer has reasonable grounds for suspecting that there has been a contravention of any of the requirements of these Regulations, he may initiate an assessment and for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain any apparatus or equipment or decommission or switch off any fixed installation or part of a fixed installation.

(4) The officer may seize and detain—

- (a) any apparatus, any document, record or information which the officer may require production of under regulation 45, or any other thing, which he has reasonable grounds for believing may be required—
  - (i) as evidence in proceedings for an offence under these Regulations;
  - (ii) by a competent authority of a member of the Community other than the United Kingdom for the purpose of the exercise of its functions; or
- (b) any apparatus which he has reasonable grounds for suspecting may be liable to be forfeited under regulation 58 or 59.

(5) The officer may, for the purpose of the exercise of his powers under paragraphs (3) or (4) above to seize any apparatus, any document or record or any other 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 paragraph (a) above in relation to the container has not been complied with.

### **Provisions supplemental to regulation 39**

**40.**—(1) An officer seizing any apparatus, records, documents, information or other thing under regulation 39 shall inform the person from whom they are seized that such apparatus, 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 apparatus, documents, records, information or other thing which any officer has power to inspect under regulation 39 are on any premises (which may be premises occupied only as a person's residence) and that, if their inspection reveals that the documents, records, information or any other thing relates to apparatus, such inspection is likely to disclose evidence that there has been a contravention of any provision 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 an enforcement authority to enter the premises, if need be by force.

(3) An officer entering any premises by virtue of regulation 39 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 apparatus seized by an officer under regulation 39 is submitted to a test, the officer shall inform the persons 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 apparatus of any provision of these Regulations or for the forfeiture of apparatus under regulation 58 or 59, or a suspension notice is served in respect of apparatus; 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 a party to the proceedings or, as the case may be, has an interest in the apparatus to which the notice relates, to have the apparatus tested.

(6) In the application of this regulation to Scotland, the reference in paragraph (2) 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) to any information on oath shall be construed as references to any complaint on oath.

### **Appeals against detention of apparatus**

**41.**—(1) Any person having an interest in any apparatus, document, record, information or other thing which is for the time being detained under any provision of this Part by an enforcement authority or by an officer of such an authority, may apply for an order requiring the apparatus or other thing 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 46, 47 or 49; or
    - (ii) for the forfeiture of the apparatus under regulation 58;
  - (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 apparatus or other thing to be released shall be made only if the court or sheriff is satisfied—

- (a) that proceedings—
  - (i) for an offence under regulation 46, 47 or 49 in respect of the apparatus or other thing; or
  - (ii) for the forfeiture of the apparatus or other thing under regulation 59, have not been brought or, having been brought, have been concluded without the apparatus or other thing being forfeited; and
- (b) where no such proceedings have been brought, that more than six months have elapsed since the apparatus or other thing 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 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 (a) or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981(b) (statement of case)).

### **Compliance notices**

**42.**—(1) In the relevant circumstances, a notice may be served pursuant to regulation 43, and proceedings may be commenced pursuant to regulation 46, 47, 58 or 59, if the requirements of this regulation are satisfied.

(2) The relevant circumstances are that it is established that the CE marking has been affixed unduly to apparatus.

(3) The requirements of this regulation are that—

- (a) A notice in writing has been served upon the responsible person obliging him to make the apparatus conform as regards the provisions concerning the CE marking and its due affixation and to end the infringement under conditions imposed in, or in relation to, the said notice; and
- (b) the non-conformity continues after the period specified in, or in relation to, the said notice during which the infringement must be ended has expired.

(4) A notice served pursuant to paragraph (3)(a) shall include—

- (a) a description of the apparatus in respect of which the notice is served in a manner sufficient to identify it;

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(a) 1980 c.43.

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

- (b) a statement that the CE marking affixed to either the apparatus or the apparatus' packaging, instructions for use or guarantee certificate is unduly affixed, or that the CE marking is unduly affixed to some other item accompanying the apparatus;
- (c) a statement of the grounds upon which it is established that the CE marking has been or is being unduly affixed in relation to the apparatus; and
- (d) an indication as to which of the following procedures may be commenced if the requirements of this regulation are satisfied—
  - (i) a notice pursuant to regulation 43; or
  - (ii) proceedings pursuant to regulation 46, 47, 58 or 59,

and may include such other information as may be considered expedient to enable the person to whom the notice is addressed to decide what action should be taken to end the particular infringement.

(5) This regulation does not apply where it is found that apparatus bearing the CE mark or CE marking does not comply with the essential requirements.

### **Suspension notices**

**43.—**(1) Subject to paragraph (6), where an enforcement authority has reasonable grounds for suspecting that regulation 15, 16, 34 or 35 has been, is being or is likely to be contravened, the authority may serve a notice (“a suspension notice”) in relation to apparatus or fixed installation or part of a fixed installation on the user or responsible person, prohibiting such person, for a period ending not more than six months after the date of the notice as is specified therein, from manufacturing, placing on the market, taking into service or using the apparatus or fixed installation without the consent of that authority.

- (2) A suspension notice served by an enforcement authority in respect of any apparatus shall—
  - (a) describe the apparatus or fixed installation or part of the fixed installation to which it relates in a manner sufficient to identify it;
  - (b) set out the grounds on which the authority suspects that regulation 15, 16, 34 or 35 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 44.

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

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

- (a) proceedings against that person for an offence under regulation 46, 47 or 49 ; or
- (b) proceedings for the forfeiture of the apparatus under regulation 58 or 59,

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

(6) An enforcement authority shall, where action has been taken by it under this regulation, immediately inform the Secretary of State of the action taken, and the reasons for it.

### **Appeals against suspension notices**

**44.—**(1) Any person having an interest in any apparatus, fixed installation or part of a fixed installation 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 46, 47 or 49; or
      - (bb) for the forfeiture of the apparatus under regulation 58; 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 apparatus or fixed installation, or part of the fixed installation, or any item of apparatus or system included in the fixed installation, of regulation 15, 16, 34 or 35 respectively.

(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 46, 47 or 49; or
- (b) proceedings for the forfeiture of the apparatus under regulation 59,

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**

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

- (a) any person who is required by regulation 23 to retain an EC declaration of conformity, or technical documentation or evidence of compliance with the essential requirements during the period in which that person is required to retain that document, to produce such documentation;
- (b) any person who is required by regulation 36 to retain documentation demonstrating the compliance with the essential requirements during the period in which that person is required to retain such documentation, to produce it;
- (c) any person who is in possession of an EC declaration of conformity or technical documentation, or evidence of compliance with the essential requirements or of a copy of such document, at any time to produce it;
- (d) a responsible person to produce such documents or records relating to such apparatus or fixed installation as are in his possession or under his control; or
- (e) a responsible person 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 of such document or of any part of such document.

## *Offences*

### **Placing on the market or putting into service of equipment in contravention of regulation 15, 16, 34 or 35**

46. Any person who places on the market or puts into service equipment in contravention of regulation 15, 16, 34 or 35 shall be guilty of an offence.

### **Contravention of suspension notice**

47. Any person who contravenes a suspension notice shall be guilty of an offence.

### **False or misleading information**

48. A person shall be guilty of an offence if, in giving any information which he is required to give under regulation 45(d) or (e), he—

- (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.

### **Misuse of the CE marking**

49.—(1) Any person who, in relation to apparatus, affixes the CE marking or any other marking in contravention of regulation 21(2), (5), (6) or (7), shall be guilty of an offence.

(2) Any person who issues an EC declaration of conformity in relation to apparatus in contravention of regulation 22 shall be guilty of an offence.

### **Obstruction of officers of enforcement authorities**

50.—(1) Any person who—

- (a) intentionally obstructs any officer of an enforcement authority who is acting in pursuance of any provision of this Part;
- (b) intentionally fails or refuses to comply with any requirement made of him by any officer of an enforcement authority under any provision of this Part;
- (c) without reasonable cause fails or refuses to give any officer of an enforcement authority who is so acting any other assistance which the officer may reasonably require of him for the purposes of the exercise of the officer's functions under any provision of this Part; or
- (d) fails to comply with a court order under regulation 57,

shall be guilty of an offence.

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

### **Failure to retain documentation**

51. Any person who contravenes regulation 23 or 36 shall be guilty of an offence.

### **Defence of due diligence**

52.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 46 or 49 of these Regulations it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

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

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

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

**53.**—(1) Where the commission by any person of an offence under any of regulation 46 to 51 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 whether or not proceedings are taken against the first person.

(2) Where a body corporate is guilty of an offence under these Regulations and it is proved that the offence was committed—

- (a) with the consent or connivance of an officer of the body corporate; or
- (b) as a result of the negligence of an officer of the body corporate,

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

(3) In paragraph (2), a reference to an officer of a body corporate includes a reference to

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

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

### **Extension of time for bringing summary proceedings**

**54.** Notwithstanding section 127 of the Magistrates’ Courts Act 1980 and section 136 of the Criminal Procedure (Scotland) Act 1995(a), proceedings for an offence under regulations 46 to 51 may be commenced at any time within three years from the date of the offence, or one year from the date on which there comes to the knowledge of the prosecutor evidence sufficient to justify a prosecution for that offence, whichever is the earlier; and for the purposes of this regulation—

- (a) a certificate of the prosecutor stating that such evidence came to his knowledge on a specified date shall be conclusive evidence of that fact; and
- (b) a document purporting to be such a certificate and to be signed by or on behalf of the prosecutor in question shall be presumed to be such a certificate unless the contrary is proved.

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(a) 1995 c.46.



### **Inference of condition of equipment at time of placing on the market or putting into service**

**55.** In any proceedings in which it is in issue whether any equipment complied with the essential requirements or the requirements of regulation 15, 16, 34 or 35 at the time when it was placed on the market or put into service 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 placed on the market or put into service; 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 or put into service.

### *Powers of the court*

#### **Penalties**

**56.—**(1) A person guilty of an offence under regulation 47, 48, or 50(2) shall be liable on summary conviction—

- (i) to imprisonment for a term not exceeding three months; or
  - (ii) to a fine not exceeding level 5 on the standard scale,
- or to both.

(2) A person guilty of an offence under regulation 46, 49, 50(1) or 51 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**

**57.—**(1) Where a person is convicted of an offence under regulation 46 or 49 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) 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) to remedy any matters, that person shall not be guilty of an offence under regulation 46 or 49 respectively 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).

#### **Forfeiture: England and Wales and Northern Ireland**

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

- (a) on the grounds that there has been a contravention in relation to such apparatus of regulation 15 or 16; or
- (b) on the grounds that the CE marking, or any other marking liable to be confused with it, is affixed in relation to it in contravention of regulation 21(6).

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

- (a) where proceedings have been brought in a magistrates' court in respect of an offence in relation to some or all of the apparatus under regulation 46, 47 or 49, to that court;
- (b) where an application with respect to some or all of the apparatus has been made to a magistrates' court under regulation 41 or 44, to that court; and
- (c) where no application for the forfeiture of the apparatus has been made 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 apparatus only if it is satisfied that there has been a contravention in relation to such apparatus of regulation 15, 16 or 21(6).

(4) A court may infer for the purposes of this regulation that there has been a contravention in relation to any apparatus of regulation 15, 16 or 21(6) if it is satisfied that that provision has been contravened in relation to apparatus which is representative of that apparatus (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), where any apparatus 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 apparatus 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 apparatus of the same description as the first mentioned apparatus and repairing or reconditioning it; or
  - (ii) as scrap (that is to say, for the value of materials included in the apparatus rather than for the value of the apparatus itself); and
- (b) complies with any order to pay costs or expenses (including any order under regulation 60) which has been made against that person in the proceedings for the order for forfeiture.

### **Forfeiture: Scotland**

**59.—**(1) In Scotland an order for forfeiture of any—

- (a) apparatus in relation to which there has been a contravention of regulation 15 or 16; or
- (b) apparatus, on the grounds that the CE marking, or marking liable to be confused with it, is affixed in relation to it in contravention of regulation 21(6),

may be made by the sheriff—

- (i) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995; or
- (ii) where a person is convicted of any offence in respect of any such contravention, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under paragraph (1)(i) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the apparatus to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the apparatus should not be forfeited.

(3) Service under paragraph (2) 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 1995.

(4) Any person upon whom a notice is served under paragraph (2) and any other person claiming to be the owner of, or otherwise to have an interest in, the apparatus to which an application under this regulation relates shall be entitled to appear at the hearing of the application to show cause why the apparatus should not be forfeited.

(5) The sheriff shall not make an order following an application under paragraph (1)(i)—

- (a) if any person on whom notice is served under paragraph (2) does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under paragraph (2) 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 apparatus of regulation 15, 16 or 21(6).

(7) The sheriff may infer for the purposes of this regulation that there has been a contravention in relation to any apparatus of regulation 15, 16 or 21(6) if he is satisfied that that provision has been contravened in relation to apparatus which is representative of that apparatus (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 apparatus is made following an application by the procurator-fiscal under paragraph (1)(i), 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 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under this paragraph as it applies to a stated case under Part X of that Act.

(9) An order following an application under paragraph (1)(i) 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)(ii) 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 1995; or
- (b) if an appeal is made within that period, until the appeal is determined or abandoned.

(11) Subject to paragraph (12), apparatus 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 apparatus to be (instead of being destroyed) 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 apparatus of the same description as the first-mentioned apparatus and repairing or reconditioning it; or
- (b) as scrap (that is to say, for the value of materials included in the apparatus rather than for the value of the apparatus itself).

### **Recovery of expenses of enforcement**

**60.**—(1) This regulation applies where a court—

- (a) convicts a person of an offence under regulation 46, 47 or 49; or
- (b) makes an order under regulation 58 or 59 for the forfeiture of any apparatus.

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

## PART VII

### MISCELLANEOUS AND SUPPLEMENTAL

#### **Service of documents**

**61.**—(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) on the secretary or clerk of that body; or
- (c) if the person is a partnership, by serving it in accordance with sub-paragraph (a) on a partner or on a person having control or management of the partnership business; or
- (d) if the person is an unincorporated body, by serving it in accordance with sub-paragraph (a) on a person having control or management of that body.

(2) For the purposes of paragraph (1), and for the purposes of section 7 of the Interpretation Act 1978<sup>(a)</sup> (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 partnership or a partner or a person having the control or management of a partnership business, it shall be the principal place of business in the United Kingdom of the partnership;
- (b) in the case of service on a body registered in the United Kingdom or its secretary or clerk, it shall be the address of the registered office or principal place of business in the United Kingdom of the body; and
- (c) in the case of service on a body that is not registered in the United Kingdom, it shall be the address of the principal place of business in the United Kingdom of the body.

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

**62.** An enforcement authority shall, where action has been taken by it to prohibit or restrict the supply or taking into service (whether under these Regulations or otherwise) of any apparatus, immediately inform the Secretary of State of the action taken, and the reasons for it.

#### **Savings for certain privileges**

**63.**—(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 or civil partner.

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(a) 1978 c.30.

(3) Sub-section (1) of section 14 of the Civil Evidence Act 1968<sup>(a)</sup> (which relates to the privilege against self-incrimination) shall apply to the right conferred by paragraph (2) as it applies to the right described in sub-section (1) of that section; but this paragraph does not extend to Scotland.

(4) In Northern Ireland sub-section (1) of section 10 of the Civil Evidence Act (Northern Ireland) 1971 shall apply to the right conferred by paragraph (2) as it applies to the right described in that sub-section.

#### **Savings for action taken under other enactments**

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

#### *Consequential amendments*

#### **Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004**

**65.**—(1) The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004<sup>(b)</sup> is amended as follows.

(2) In Schedule 1, for the words “The Electromagnetic Compatibility Regulations 2005” substitute “The Electromagnetic Compatibility Regulations 2006”.

18th December 2006

*Malcolm Wicks*  
Minister for Science and Innovation  
Department of Trade and Industry

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(a) 1968 c.64.  
(b) S.I. 2004/693.

## SCHEDULE 1

Regulation 2(2)

### Regulations under Section 10 of the Wireless Telegraphy Act 1949

1. The Wireless Telegraphy (Control of Interference from Ignition Apparatus) Regulations 1952(a).
2. The Wireless Telegraphy (Control of Interference from Electro Medical Apparatus) Regulations 1963(b).
3. The Wireless Telegraphy (Control of Interference from Radio-Frequency Heating Apparatus) Regulations 1971(c).
4. The Wireless Telegraphy (Control of Interference from Household Appliances, Portable Tools, etc) Regulations 1978(d).
5. The Wireless Telegraphy (Control of Interference from Fluorescent Lighting Apparatus) Regulations 1978(e); and
6. The Wireless Telegraphy (Control of Interference from Citizens' Band Radio Apparatus) Regulations 1982(f).

## SCHEDULE 2

Regulation 3(1) and 21(8)(b)

### The CE Marking

1. The CE marking shall consist in the initials CE taking the following form—



The grid providing the background in the above graduated drawing is not part of the CE marking.

2. The CE marking must have a height of at least 5 mm.
3. If the CE marking is reduced or enlarged the proportions given in the graduated drawing above shall be respected.

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(a) S.I. 1952/2023 as amended by SI 1957/347 and SI 1993/1217.  
(b) S.I. 1963/1895.  
(c) S.I. 1971/1675.  
(d) S.I. 1978/1267 as amended by SI 1985/808 and SI 1989/562.  
(e) S.I. 1978/1268 as amended by SI 1985/807 and SI 1989/561.  
(f) S.I. 1982/635 as amended by SI 1988/1216.

## SCHEDULE 3

Regulation 3(1), 19(5)

### Technical documentation

The technical documentation must enable the conformity of the apparatus with the essential requirements to be assessed. It must cover the design and manufacture of the apparatus in particular—

- (i) a general description of the apparatus;
- (ii) evidence of compliance with the relevant harmonised standards, if any, applied in full or in part;
- (iii) where the manufacturer has not applied relevant harmonised standards, or has applied them only in part, a description and explanation of the steps taken to meet the essential requirements, including a description of the electromagnetic compatibility assessment set out in regulation 19(1), results of design calculations made, examinations carried out, test reports, etc; and
- (iv) a statement from the notified body, when the procedure in regulation 20 has been followed.

## SCHEDULE 4

Regulation 12

### Other directives covering equipment

1. Council Directive 90/385/EEC(a) on the approximation of laws of the member States relating to active implantable medical devices.

2. Directive 98/79/EC(b) concerning in vitro medical devices.

3. Directive 93/42/EEC(c) concerning medical devices.

4. Council Directive 72/245/EEC relating to the radio interference (electromagnetic compatibility) of vehicles(d), as adapted to technical progress and amended by Commission Directive 95/54/EC(e) and Directive 2004/104/EC(f).

5. Council Directive 75/322/EEC on the suppression of radio interference produced by agricultural or forestry tractors (electromagnetic compatibility)(g), as amended by Commission Directive 2000/2/EC of 14 January 2000(h).

6. Directive 97/24/EC on certain components and characteristics of two and three-wheel motor vehicles(i).

7. Directive 96/98/EC(j) on marine equipment.

8. Council Directive 90/384/EEC on the harmonisation of the laws of the member States relating to non-automatic weighing instruments(k).

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(a) OJ No. L189, 20.7.90, p.17.

(b) OJ No. L331, 7.12.98, p.1.

(c) OJ No. L169, 12.7.93, p.1.

(d) OJ No. L152, 6.7.72, p.15.

(e) OJ No. L266, 8.11.95, p.1.

(f) OJ No. L337, 13.11.04, p.13.

(g) OJ No. L147, 9.6.75, p.28.

(h) OJ No. L21, 26.1.2000, p.23.

(i) OJ No. L226, 18.8.97, p.1.

(j) OJ No. L46, 17.2.97, p.25.

(k) OJ No. L189, 20.7.90, p.1 amended by Directive 93/68/EEC of 22.11.93 (OJ No. L220, 30.8.93, p.1).

**Minimum Criteria for the Assessment of United Kingdom Notified Bodies**

- 1.** Availability of personnel and of the necessary means and equipment;
- 2.** Technical competence and professional integrity of personnel;
- 3.** Independence in preparing the reports and performing the verification function provided for in the EMC Directive;
- 4.** Independence of staff and technical personnel in relation to all interested parties, groups or persons directly or indirectly concerned with the equipment in question;
- 5.** Maintenance of professional secrecy by personnel; and
- 6.** Possession of civil liability insurance unless such liability is covered by the Government of the United Kingdom.



## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Directive 2004/108/EC of the European Parliament and of the Council on the approximation of the laws of member States relating to electromagnetic compatibility and repealing Directive 89/336/EEC (“the EMC Directive”) (OJ No. L390, 31.12.04, p.24). They revoke and replace the Electromagnetic Compatibility Regulations 2005 (SI 2005/281) (“the 2005 Regulations”) which implemented the EMC Directive.

Part I provides that the Regulations, with the exception of regulations 1, 3, 24 and 25 and Schedule 5, come into force on 20th July 2007. Those regulations come into force on 20th January 2007. Regulation 2 revokes the 2005 Regulations and provides for the disapplication of regulations made under Section 10 of the Wireless Telegraphy Act 1949 listed in Schedule 1 to the extent that these Regulations impose electromagnetic compatibility requirements (excluding radio frequency planning requirements) which must be complied with if apparatus to which the Regulations apply is to be supplied or taken into service and used for the purpose for which it was intended.

Regulations 4 and 5 impose essential requirements concerning the electromagnetic compatibility of equipment (apparatus and fixed installations) which must be complied with if such equipment is to be placed on the market or put into service, or both.

Part II provides for the application of the Regulations. The Regulations do not apply to a fixed installation put into service before 20th July 2007 unless it is modified after that date in a way that may affect its electromagnetic compatibility (regulation 6). Regulations 8 – 14 and Schedule 4 set out the exclusions to the application of the Regulations. Regulation 17 provides that the essential requirements do not apply to the placing on the market of apparatus and the putting into service of apparatus placed on the market before 20th July 2009 where a declaration of conformity has been issued in respect of such apparatus on or before 19th July 2007 in accordance with the provisions of Articles 10.1 or 10.2 of Directive 89/336/EEC as implemented in the UK.

Part III sets out the general requirements relating to apparatus. Regulation 15 provides that apparatus may not be placed on the market unless the requirements set out in that regulation have been complied with.

Regulation 16 provides that apparatus may not be put into service unless the essential requirements are complied with when it is properly installed, maintained and used for its intended purpose.

Regulation 18 provides that compliance can be demonstrated by the internal production control procedure set out in regulation 19 or in addition through the appointment of a notified body pursuant to regulation 20. Regulation 21 sets out provisions relating to the CE marking including the requirements for properly affixing the CE marking. Regulation 22 sets out the provisions relating to the issue of an EC declaration of conformity. Regulation 23 provides for the retention of certain documents by the responsible person.

Part IV sets out the provisions relating to the appointment and functions of United Kingdom notified bodies.

Part V sets out the general requirements relating to the putting into service of fixed installations. These are specified in regulation 35. Regulation 34 provides for an exemption from compliance with the requirements set out in regulation 15, 16 and 23 for apparatus intended for incorporation into a fixed installation and otherwise not commercially available, subject to compliance with the provisions of that regulation. Regulation 36 relates to provision of evidence of compliance with the Regulations.

Part VI sets out provisions relating to enforcement of the Regulations. These include the appointment of enforcement authorities (regulation 37) and their powers to make test purchases, search, seize and detain and require production of documents and information (regulations 38 to

45). Regulation 41 makes provision for appeals against detention of apparatus etc and regulation 44 makes provision in respect of appeals against suspension notices.

Regulations 46 to 51 set out the offences under the Regulations. Regulation 52 provides for a defence of due diligence and regulation 54 provides for third party liability in certain circumstances. Regulation 54 extends the time limit in the Magistrates Courts Act 1980 and the Criminal Procedure (Scotland) Act 1995 for the commencement of summary proceedings.

Regulations 56 to 60 set out the powers of the court including power to require a matter to be remedied, power of forfeiture and recovery of costs of enforcement.

Part VII makes provision in respect of miscellaneous matters relating to service of documents (regulation 61), duty to inform the Secretary of State of certain actions (regulation 62) and savings for certain privileges and actions taken under other enactments (regulations 63 and 64). Regulation 65 amends The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004 to replace the reference to the 2005 Regulations with the reference to these Regulations in Schedule 1 of that Order.

A Regulatory Impact Assessment (RIA) in respect of these Regulations is available and a copy can be obtained from SDRD 151 Buckingham Palace Road, London SW1 – 9SS or from the website at <http://www.dti.gov.uk/innovation/strd/ecdirect/page12469.html>. As these Regulations transpose the EMC Directive, a transposition note (TN) setting out how the Government has transposed the EMC Directive into United Kingdom law has been prepared. Copies of the RIA and TN are available from SDRD as above. Copies of these documents have been placed in the libraries of both Houses of Parliament.

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