
STATUTORY INSTRUMENTS

2008 No. 1597

The Supply of Machinery (Safety) Regulations 2008

PART 6

Enforcement

General duties and powers of enforcement authorities

20. Schedule 5, which makes provision about the general duties and powers of enforcement authorities, shall have effect.

Non-compliance with CE marking requirements

21.—(1) For the purposes of this regulation, a product is deficient as regards CE marking—

- (a) if it is not subject to the Directive, but the CE marking is affixed to it pursuant to the Directive; or
- (b) if it is machinery and—
 - (i) the CE marking is not affixed to it;
 - (ii) it is not accompanied by a copy of the EC declaration of conformity; or
 - (iii) the CE marking is affixed to it but it does not conform to the relevant provisions of these Regulations; or
 - (iv) a marking other than the CE marking, which is prohibited by regulation 15(2) or (3), is affixed to it.

(2) Where an enforcement authority has reasonable grounds for suspecting that a product is deficient as regards CE marking, but does not have reasonable grounds for suspecting that it is not safe, the enforcement authority may take action under the following provisions as they are applied by Schedule 5—

- (a) in the case of the Health and Safety Executive or the Office of Rail Regulation, section 20 of the 1974 Act;
- (b) in the case of the Health and Safety Executive for Northern Ireland, Article 22 of the 1978 Order; and
- (c) in the case of any other enforcement authority, section 29 of the 1987 Act,

but no other action may be taken pursuant to Schedule 5 and no proceedings may be brought pursuant to regulation 22 in respect of that product until the enforcement authority has served on the responsible person a notice in writing in accordance with paragraph (3) and the responsible person has failed to comply with its requirements.

(3) Where an enforcement authority has reasonable grounds for considering that a product is deficient as regards CE marking, it may serve a notice on the responsible person which—

- (a) identifies the product concerned;

- (b) states that the enforcement authority considers that it is deficient as regards CE marking and the reasons why the authority considers that this is the case;
- (c) requires the responsible person to take (or refrain from taking) specified action within a specified period to bring the deficiency to an end; and
- (d) warns the responsible person that if the deficiency continues beyond the period specified in the notice, further action may be taken under these Regulations.

(4) In any proceedings under regulation 22 in respect of a person's alleged failure to comply with a notice under paragraph (3), an enforcement authority must show that the product concerned was deficient as regards CE marking at the time when the notice was served.

Offences and penalties

22.—(1) A person who contravenes or fails to comply with—

- (a) a requirement of regulations 7, 8, 9, 10, 11, 12 or 15; or
- (b) a requirement under regulation 21(3)(c) of a notice served under regulation 21(3);

is guilty of an offence.

(2) Subject to paragraph (3), a person guilty of an offence under paragraph (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both; and
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(3) A person who is guilty of an offence as a result of having contravened or failed to comply with—

- (a) regulation 7(2)(b), (e) or (f);
- (b) regulation 8;
- (c) regulation 15; or
- (d) a requirement under regulation 21(3)(c) of a notice served under regulation 21(3);

shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

23.—(1) Subject to the following provisions of this regulation, in proceedings for an offence under these Regulations, a person who is shown to have taken all reasonable steps and exercised all due diligence to avoid committing the offence shall have a defence.

(2) Where, in any proceedings against a person for such an offence, the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) reliance on information given by another,

such a defence shall not, without leave of the court, be relied on unless, not later than seven clear days before the hearing of the proceedings (or, in Scotland, the trial diet), that person has served a notice in accordance with paragraph (3) on the person bringing the proceedings.

(3) A notice under this regulation shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time it is served.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of that person's reliance on information supplied by another, unless it is shown that it was reasonable in all the circumstances for that person to have relied on the information, having regard in particular to—

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

Liability of persons other than the principal offender

24.—(1) Where the commission by a person of an offence under these Regulations is due to anything which another person did or failed to do in the course of a business, that other person shall be guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person

(2) Where a body corporate commits an offence and it is proved that the offence was committed—

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

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

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

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