
STATUTORY INSTRUMENTS

2016 No. 1091

The Electromagnetic Compatibility Regulations 2016

PART 1

Citation and commencement

1. These Regulations may be cited as the Electromagnetic Compatibility Regulations 2016 and come into force on 8th December 2016.

Interpretation

2.—(1) In these Regulations—

the “1987 Act” means the Consumer Protection Act 1987⁽¹⁾;

the “2006 Regulations” means the Electromagnetic Compatibility Regulations 2006⁽²⁾;

“accreditation” means accreditation as defined in paragraph 10 of Article 2 of RAMS (as amended from time to time);

“accreditation certificate” means a certificate, issued by the United Kingdom Accreditation Service (a company limited by guarantee incorporated in England and Wales under number 03076190) or a national accreditation body in another member State, attesting that a conformity assessment body meets the notified body requirements;

“apparatus” means any finished appliance or combination thereof made available on the market 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 or be affected by electromagnetic disturbance;
- (b) a mobile installation 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 EU appointed in accordance with regulation 38 (appointment of an authorised representative);

“CE marking” means a marking which takes the form set out in Annex II of RAMS (as amended from time to time);

“competent national authority” means an authority having responsibility for enforcing the law of a member State which implements the Directive;

“conformity assessment” means the process demonstrating whether the essential requirements relating to apparatus have been fulfilled;

“conformity assessment body” means a body that performs conformity assessment activities;

(1) 1987 c.43.

(2) S.I. 2006/3418.

“the Directive” means [Directive 2014/30/EU](#) of the European Parliament and of the Council of 26 February 2014 on the harmonisation of laws of the Member States relating to electromagnetic compatibility (recast)(3);

“distributor” means any person in the supply chain, other than the manufacturer, authorised representative or importer, who makes apparatus available on the market;

“district council” means a district council within the meaning of the Local Government Act (Northern Ireland) 1972(4);

“economic operator” means a manufacturer, authorised representative, importer or distributor;

“electromagnetic compatibility” means the ability of equipment to function satisfactorily in its electromagnetic environment without introducing intolerable electromagnetic disturbances to other equipment in that environment;

“electromagnetic disturbance” means any electromagnetic phenomenon which may degrade the performance of equipment; an electromagnetic disturbance may be electromagnetic noise, an unwanted signal or a change in the propagation medium itself;

“electromagnetic environment” means all electromagnetic phenomena observable in a given location;

“enforcing authority” is to be interpreted in accordance with regulation 52 (designation of enforcing authorities);

“equipment” means any apparatus or fixed installation;

“essential requirements” means the requirements set out in Schedule 1;

“EU declaration of conformity” means a declaration of conformity required to be drawn up in accordance with regulation 10(1)(a) (EU declaration of conformity and CE marking);

“EU harmonisation legislation” means any EU legislation harmonising the conditions for the marketing of apparatus;

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

“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 predefined location;

“harmonised standard” has the meaning given by Article 2(1)(c) of Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation(5) (as amended from time to time);

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

“importer” means any person established within the EU who places apparatus from a third country on the EU market;

“make available on the market” means any supply of apparatus for distribution or use on the EU market in the course of a commercial activity, whether in return for payment or free of charge, and related expressions must be construed accordingly;

“manufacturer” means a person who—

- (a) manufactures apparatus or has apparatus designed or manufactured; and
- (b) markets that apparatus under that person’s name or trademark;

(3) OJ L 96, 29.3.2014, p. 79.

(4) 1972 c.9.

(5) OJ L 316, 14.11.2012, p. 12.

“market surveillance authority” has the meaning given in regulation 53 (designation of market surveillance authorities);

“mobile installation” means a combination of apparatus and, where applicable, other devices, which are intended to be moved and operated in a range of locations;

“national accreditation body” has the meaning set out in point 11 of Article 2 of RAMS (as amended from time to time);

“notified body” means a body described in regulation 43 (notified bodies);

“notified body requirements” means the requirements set out in Schedule 5 (requirements for notified bodies);

“OFCOM” means the Office of Communications established under the Office of Communications Act 2002(6);

“Official Journal” means the Official Journal of the European Union;

“place on the market” means the first making available of apparatus on the EU market, and related expressions must be construed accordingly;

“put into service” means the first use of equipment in the EU by its end-user for the purposes for which it was intended, and related expressions must be construed accordingly;

“RAMS” means Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93(7);

“recall” means any measure aimed at achieving the return of apparatus that has already been made available to the end-user, and related expressions must be construed accordingly;

“relevant conformity assessment procedure” means a conformity assessment procedure referred to in regulation 40 (conformity assessment procedures);

“relevant economic operator” means, in relation to apparatus, an economic operator with obligations in respect of that apparatus under Part 2;

“technical specification” means a document that prescribes technical requirements to be fulfilled by the equipment;

“weights and measures authority” means a local weights and measures authority within the meaning set out in section 69 of the Weights and Measures Act 1985(8);

“withdrawal” means any measure aimed at preventing apparatus in the supply chain from being made available on the market, and related expressions must be construed accordingly.

(2) In these Regulations, a reference to apparatus or equipment being “in conformity with Part 2” means that—

- (a) the apparatus or equipment is in conformity with the essential requirements; and
- (b) each relevant economic operator has complied with the obligations imposed on them under Part 2 which must be satisfied at or before the time at which they make the apparatus or equipment available on the market.

(3) In these Regulations, “risk” means a risk to aspects of public interest protection referred to in the Directive.

(6) 2002 c.11.

(7) OJ L 218, 13.8.2008, p. 30.

(8) 1985 c.72; section 69 was amended by Schedule 1 to the Statute Law (Repeals) Act 1989 (c.43); paragraph 75 of Schedule 16 to the Local Government (Wales) Act 1994 (c.19); and paragraph 144 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39).

- (a) (4) (a) Subject to sub-paragraph (b), in these Regulations, a reference to a member State must be read as a reference to an EEA State and a reference to the EU must be read as a reference to the European Economic Area.
- (b) Sub-paragraph (a) will not apply until the entry into force of any amendment made to Annex II (technical regulations, standards, testing and certification) to the EEA Agreement by a Decision of the EEA Joint Committee, inserting a reference to the Directive into that Annex.

Application

3.—(1) Subject to paragraphs (2) to (4) and regulations 4 to 6, these Regulations apply to all equipment.

(2) These Regulations do not apply to—

- (a) equipment to which [Directive 1999/5/EC](#) of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity⁽⁹⁾ applies;
- (b) aeronautical apparatus, parts and appliances as referred to in Regulation [\(EC\) 216/2008](#) of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency and repealing Council [Directive 91/670/EEC](#), Regulation [\(EC\) No 1592/2002](#) and [Directive 2004/36/EC](#)⁽¹⁰⁾;
- (c) radio equipment used by radio amateurs within the meaning of the Radio Regulations adopted in the framework of the Constitution of the International Telecommunication Union and the Convention of the International Telecommunication Union⁽¹¹⁾;
- (d) equipment the inherent nature and physical characteristics of which is such that—
 - (i) 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
 - (ii) it operates without an unacceptable degradation in the presence of the electromagnetic disturbance normally consequent upon its intended use;
- (e) custom built evaluation kits destined for professionals to be used solely at research and development facilities for such purposes.

(3) These Regulations do not apply to kits of components to be assembled by radio amateurs and equipment made available on the market and modified by and for the use of radio amateurs.

(4) These Regulations do not apply to equipment covered by [Directive 2014/32/EU](#) of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of measuring instruments (recast)⁽¹²⁾ as regards the immunity of such equipment.

(5) Each provision of these Regulations applies to equipment in so far as there are no specific provisions in rules of EU law governing the conformity of the equipment with the essential requirements, other than the Directive. Where equipment is subject to essential requirements imposed by rules of EU law other than the Directive, these Regulations only apply insofar as the equipment is not covered by the other provisions of EU law.

⁽⁹⁾ OJ L 91, 7.4.1999, p. 10, as last amended by Regulation [\(EC\) 596/2009](#) (OJ L 188, 18.7.2009, p.14).

⁽¹⁰⁾ OJ L 79, 19.3.2008, p. 1, as last amended by Regulation (EU) 2016/4 (OJ L 3, 6.1.2016, p.1).

⁽¹¹⁾ Constitution and Convention of the International Telecommunications Union adopted by the Additional Plenipotentiary Conference (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994).

⁽¹²⁾ OJ L 96, 29.3.2014, p.149.

Application of safety legislation

4. Nothing in these Regulations affects the application of EU or national legislation regulating the safety of equipment.

Exhibition at trade fairs

5. Nothing in these Regulations prevents the display or demonstration at a trade fair, exhibition or similar event of equipment which does not comply with these Regulations provided that a visible sign clearly indicates that the equipment—

- (a) is not in conformity with Part 2; and
- (b) will not be made available on the market or put into service until it has been brought into conformity with Part 2.

Making available or putting into service

6. Nothing in these Regulations prevents the making available on the market, or the putting into service in the United Kingdom, of equipment which is in conformity with Part 2 when the equipment is properly installed, maintained and used for its intended purpose.

PART 2

Obligations of economic operators

Essential requirements

7. A person must not make equipment available on the market or put equipment into service unless it complies with the essential requirements.

Manufacturers

Duty to ensure apparatus complies with the essential requirements

8. Before placing apparatus on the market, a manufacturer must ensure that it has been designed and manufactured in accordance with the essential requirements.

Technical documentation and conformity assessment

9. Before placing apparatus on the market, a manufacturer must—
- (a) carry out a relevant conformity assessment procedure in respect of the apparatus or have such a procedure carried out; and
 - (b) draw up—
 - (i) the technical documentation referred to in Schedule 2 (module A: internal production control) or Schedule 3 (module B: EU-type examination and module C: conformity to type based on internal production control); and
 - (ii) any other technical documentation required as part of the relevant conformity assessment procedure to demonstrate the means used by the manufacturer to ensure that the apparatus complies with the essential requirements.

EU declaration of conformity and CE marking

10.—(1) Where the conformity of apparatus with the essential requirements has been demonstrated by a relevant conformity assessment procedure, the manufacturer must, before placing the apparatus on the market—

- (a) draw up an EU declaration of conformity in accordance with regulation 41 (EU declaration of conformity); and
- (b) affix the CE marking in accordance with regulation 42 (CE marking).

(2) The manufacturer must keep the EU declaration of conformity up-to-date.

(3) Where apparatus is subject to more than one EU instrument requiring a declaration of conformity to be drawn up, the manufacturer must draw up a single declaration of conformity, which—

- (a) identifies the EU instruments; and
- (b) includes references to the publication of those EU instruments in the Official Journal.

Retention of technical documentation and EU declaration of conformity

11. A manufacturer must keep the technical documentation and the EU declaration of conformity (as referred to in regulation 41) drawn up in respect of the apparatus for a period of 10 years beginning on the day on which the apparatus is placed on the market.

Compliance procedures for series production

12.—(1) A manufacturer of apparatus which is manufactured by series production must ensure that, before placing apparatus on the market, procedures are in place to ensure that any apparatus will be in conformity with Part 2.

(2) In doing so, the manufacturer must take adequate account of—

- (a) any change in the design or characteristics; and
- (b) any change in a harmonised standard or in another technical specification by reference to which the EU declaration of conformity was drawn up.

Information identifying manufacturer

13.—(1) Before placing apparatus onto the market, a manufacturer (“M”) must ensure that the following appear on the apparatus—

- (a) a type, batch or serial number or an element which identifies M as the manufacturer of the apparatus;
- (b) the name, registered trade name or registered trade mark of the manufacturer; and
- (c) a postal address at which the manufacturer can be contacted.

(2) The manufacturer must include the relevant information specified in paragraph (1) on the packaging of the apparatus or in a document accompanying the apparatus where—

- (a) due to the size or nature of the apparatus, it is not possible for the information in paragraph (1)(a) to appear on the apparatus; or
- (b) it is not possible for the information in paragraphs (1)(b) or (1)(c) to appear on the apparatus.

(3) The postal address in paragraph (1)(c) must indicate a single point at which the manufacturer can be contacted.

(4) The information specified in paragraphs (1)(b) and (1)(c) must be in a language which can be easily understood by end-users and the competent national authority in the member State in which it is to be made available to such end-users.

Instructions and information

14.—(1) When placing apparatus on the market, a manufacturer must ensure that the apparatus is accompanied by instructions and the information referred to in regulation 36 (information concerning the use of apparatus) which—

- (a) is in a language that can be easily understood by consumers and other end-users in the member State in which the apparatus is to be made available; and
- (b) is clear and understandable.

(2) When the apparatus is being made available to consumers and other end-users in the United Kingdom, the language referred to in paragraph (1)(a) is English.

Manufacturer's duty to take action in respect of apparatus placed on the market which is considered not to be in conformity

15.—(1) A manufacturer who considers, or has reason to believe, that apparatus which the manufacturer has placed on the market is not in conformity with Part 2 must immediately take the corrective measures necessary to—

- (a) bring the apparatus into conformity;
- (b) withdraw the apparatus; or
- (c) recall the apparatus.

(2) Where the apparatus presents a risk, the manufacturer must immediately inform the market surveillance authority, and the competent national authorities of any other member State in which the manufacturer has made the apparatus available on the market, giving details of, in particular—

- (a) the respect in which the apparatus is considered not to be in conformity with Part 2; and
- (b) any corrective measures taken.

Provision of information and co-operation

16.—(1) A manufacturer must, when requested by an enforcing authority and within such period as the authority may specify, provide the authority with all of the information and documentation necessary to demonstrate the conformity of the apparatus with Part 2.

(2) A request made under paragraph (1) must be accompanied by the reasons for making the request.

(3) The information and documentation referred to in paragraph (1)—

- (a) may be provided in paper or electronic form; and
- (b) must be in a language that can be easily understood by the enforcing authority.

(4) The manufacturer must, at the request of the enforcing authority, co-operate with the authority on any action taken to—

- (a) evaluate the apparatus in accordance with regulation 56 (evaluation of apparatus presenting a risk);
- (b) eliminate the risks posed by apparatus that the manufacturer has placed on the market.

Importers

Prohibition on placing apparatus on the market which is not in conformity

17. An importer must not place apparatus on the market unless it is in conformity with the essential requirements.

Requirements that must be satisfied before an importer places apparatus on the market

18.—(1) Before placing apparatus on the market an importer must ensure that—

- (a) a relevant conformity assessment has been carried out by the manufacturer;
- (b) the manufacturer has drawn up the technical documentation;
- (c) the apparatus—
 - (i) bears the CE marking; and
 - (ii) is accompanied by the required documents; and
- (d) the manufacturer has complied with the requirements of regulation 13 (information identifying manufacturer).

(2) In paragraph (1)(c)(ii) “required documents” means any documents that are required to be provided pursuant to regulation 13(2).

Duty not to place non-conforming apparatus on the market

19.—(1) Where an importer considers or has reason to believe that apparatus is not in conformity with the essential requirements, the importer must not place the apparatus on the market.

(2) Where apparatus presents a risk, the importer must inform the manufacturer and the market surveillance authority of that risk.

Information identifying importer

20.—(1) An importer must, before placing apparatus on the market, ensure that the following appear on the apparatus or, where that is not possible, on the packaging of the apparatus or in a document accompanying the apparatus—

- (a) the name, registered trade name or registered trade mark of the importer; and
- (b) a postal address at which the importer can be contacted.

(2) The information specified in paragraph (1) must be in a language which can be easily understood by end-users and the competent national authority in the member State in which it is to be made available.

Instructions and information

21.—(1) When placing apparatus on the market, an importer must ensure that the apparatus is accompanied by instructions and the information referred to in regulation 36 (information concerning the use of apparatus) which is in a language which can be easily understood by consumers and other end-users in the member State in which the apparatus is to be made available.

(2) When the apparatus is being made available to consumers and other end-users in the United Kingdom, the language referred to in paragraph (1) is English.

Storage and transport

22. Where an importer has responsibility for apparatus, the importer must ensure that the conditions under which the apparatus is stored or transported do not jeopardise its conformity with the essential requirements.

Importer's duty to take action in respect of apparatus placed on the market which is considered not to be in conformity

23.—(1) An importer who considers or has reason to believe that apparatus that the importer has placed on the market is not in conformity with Part 2 must immediately take the corrective measures necessary to—

- (a) bring the apparatus into conformity;
- (b) withdraw the apparatus; or
- (c) recall the apparatus.

(2) Where the apparatus presents a risk, the importer must immediately inform the market surveillance authority and the competent authorities of any member State in which the importer has made the apparatus available on the market of the risk, giving details of—

- (a) the respect in which the apparatus is considered not to be in conformity with Part 2; and
- (b) any corrective measures taken.

Retention of technical documentation and EU declaration of conformity

24. An importer must keep the technical documentation and the EU declaration of conformity (as referred to in regulation 41) drawn up in respect of the apparatus for a period of 10 years beginning on the day on which the apparatus is placed on the market.

Provision of information and co-operation

25.—(1) An importer must, when requested by an enforcing authority and within such period as the authority may specify, provide the authority with all of the information and documentation necessary to demonstrate the conformity of the apparatus with Part 2.

(2) A request made under paragraph (1) must be accompanied by the reasons for making the request.

(3) The information and documentation referred to in paragraph (1) —

- (a) may be provided in paper or electronic form; and
- (b) must be in a language that can be easily understood by the enforcing authority.

(4) An importer must, at the request of the enforcing authority, co-operate with the authority on any action taken to—

- (a) evaluate the apparatus in accordance with regulation 56 (evaluation of apparatus presenting a risk); and
- (b) eliminate the risks posed by apparatus that importer has placed on the market.

Distributors

Duty to act with due care

26. When making apparatus available on the market, a distributor must act with due care to ensure that it is in conformity with Part 2.

Making available on the market

27.—(1) Before making apparatus available on the market, a distributor must verify that—

- (a) the apparatus—
 - (i) bears the CE marking;
 - (ii) is accompanied by the required documents;
 - (iii) is accompanied by instructions and the information referred to in regulation 36 (information concerning the use of apparatus) which is in a language which can be easily understood by consumers and other end-users in the member State in which the apparatus is to be made available on the market;
- (b) the manufacturer has complied with the requirements of regulation 13 (information identifying manufacturer); and
- (c) the importer has complied with the requirements of regulation 20 (information identifying importer).

(2) In paragraph (1)(a)(ii) “required documents” means any documents that are required to be provided pursuant to regulation 13(2).

Duty not to make non-conforming apparatus available on the market

28.—(1) Where a distributor considers or has reason to believe that apparatus is not in conformity with the essential requirements, the distributor must not make the apparatus available on the market.

(2) Where apparatus presents a risk, the distributor must inform the manufacturer and the market surveillance authority of that risk.

Storage and transport

29. Where a distributor has responsibility for apparatus, the distributor must ensure that the conditions under which the apparatus is stored or transported do not jeopardise its conformity with the essential requirements.

Duty to take action in respect of apparatus placed on the market or made available on the market which is considered not to be in conformity

30.—(1) A distributor who considers or has reason to believe that apparatus that the distributor has made available on the market is not in conformity with Part 2 must immediately take the corrective measures necessary to—

- (a) bring the apparatus into conformity;
- (b) to withdraw the apparatus; or
- (c) recall the apparatus.

(2) Where the apparatus presents a risk, the distributor must immediately inform the market surveillance authority and the competent authorities of any other member State in which the distributor has made the apparatus available on the market of the risk, giving details of—

- (a) the respect in which the apparatus is not considered to be in conformity with Part 2; and
- (b) any corrective measures taken.

Provision of information and co-operation

31.—(1) A distributor must, when requested by an enforcing authority and within such period as the authority may specify, provide the authority with all of the information and documentation necessary to demonstrate the conformity of the apparatus with Part 2.

(2) A request referred to in paragraph (1) must be accompanied by the reasons for making the request.

(3) The information and documentation referred to in paragraph (1) —

- (a) may be provided in paper or electronic form; and
- (b) must be in a language that can be easily understood by the enforcing authority.

(4) A distributor must, at the request of the enforcing authority, co-operate with the authority on any action taken to—

- (a) evaluate the apparatus in accordance with regulation 56 (evaluation of apparatus presenting a risk); and
- (b) eliminate the risks posed by apparatus that they have made available on the market.

All economic operators

Cases in which the obligations of manufacturers apply to importers and distributors

32. An economic operator (“A”) who would, but for this regulation, be considered an importer or distributor, is to be considered a manufacturer for the purposes of these Regulations and is subject to the obligations of a manufacturer under Part 2, where A—

- (a) places apparatus on the market under A’s own name or trademark; or
- (b) modifies apparatus already placed on the market in such a way that it may affect whether the apparatus is in conformity with Part 2.

Identification of economic operators

33.—(1) An economic operator (“E”), who receives a request in relation to apparatus from the market surveillance authority before the end of the relevant period, must, within such period as the authority may specify, identify to the authority—

- (a) any other economic operator who has supplied E with apparatus; and
- (b) any other economic operator to whom E has supplied apparatus.

(2) The relevant period is—

- (a) in the case of paragraph (1)(a), the period of 10 years beginning on the day on which E was supplied with the apparatus;
- (b) in the case of paragraph (1)(b), the period of 10 years beginning on the day on which E supplied the apparatus.

Translation of EU declaration of conformity

34.—(1) Before placing apparatus on the market or making apparatus available on the market, an economic operator must ensure that the EU declaration of conformity is prepared in, or translated into, the language required by the member State in which it is to be placed on the market or made available on the market.

(2) Where the apparatus is to be placed on the market or made available on the market in the United Kingdom, the language referred to in paragraph (1) is English.

Prohibition on improper use of CE marking

35.—(1) An economic operator must not affix the CE marking to apparatus unless—

- (a) that economic operator is the manufacturer of the apparatus; and
- (b) the conformity of apparatus with the essential requirements has been demonstrated by a relevant conformity procedure.

(2) An economic operator must not affix a marking (other than CE marking) to equipment which purports to attest to the conformity of the equipment with the essential requirements.

(3) An economic operator must not affix to equipment a marking, sign or inscription which is likely to mislead any other person as to the meaning or form of the CE marking.

(4) An economic operator must not affix to equipment any other marking if the visibility, legibility and meaning of the CE marking would be impaired as a result.

Information concerning the use of apparatus

36.—(1) A person who places apparatus on the market must provide with the apparatus—

- (a) information on any specific precautions which must be taken during assembly, installation, maintenance or use to ensure that the apparatus will be in conformity with the requirements of paragraph 1 of Schedule 1 when it is put into service;
- (b) information on the restrictions on the use of the apparatus in residential areas where the conformity of the apparatus with paragraph 1 of Schedule 1 cannot be ensured; and
- (c) information required to enable the apparatus to be used in accordance with its intended purpose.

(2) Where appropriate, the information referred to in paragraph (1)(b) must also be included on the packaging of the apparatus.

Fixed installations

37.—(1) Subject to paragraph (2), apparatus that has been made available on the market and which can be incorporated into a fixed installation is subject to all of the relevant provisions for apparatus in these Regulations.

(2) Where apparatus is intended for incorporation into a particular fixed installation and is not otherwise made available on the market, the requirements of Part 2 and Part 3 do not apply.

(3) A person who places apparatus of the type referred to in paragraph (2) on the market must provide information with the apparatus which—

- (a) identifies the fixed installation in which it is to be incorporated and the electromagnetic compatibility characteristics of that fixed installation;
- (b) sets out the precautions to be taken when the apparatus is incorporated into the fixed installation to ensure the conformity of the installation with Part 2;
- (c) includes the information referred to in—
 - (i) regulation 13 (information identifying manufacturer); and
 - (ii) if relevant, regulation 20 (information identifying importer).

(4) The good engineering practices referred to in paragraph 2 of Schedule 1 must be documented and the documentation held by the person who installed the fixed installation during the period of operation of the fixed installation.

(5) The person referred to in paragraph (4) must ensure that the documentation can be made available to the relevant national authorities upon request during the period of operation of that fixed installation.

(6) Where the enforcing authority has received complaints about disturbances being generated by the fixed installation or has reason to believe that a fixed installation may not be in conformity with these Regulations, the enforcing authority may request evidence of conformity of the fixed installation and may initiate an evaluation of the fixed installation.

(7) Where the enforcing authority considers that the evaluation referred to in paragraph (6) has established that the fixed installation is not in conformity with these Regulations, the enforcing authority must ensure that appropriate measures are taken to ensure that the fixed installation is brought into conformity with the essential requirements in Schedule 1.

(8) The person referred to in paragraph (4) is responsible for ensuring that the installation is in conformity with the relevant essential requirements.

Authorised representatives

Appointment of an authorised representative

38.—(1) A manufacturer may, by written mandate, appoint a person as their authorised representative to perform specified tasks on the manufacturer's behalf.

(2) The mandate must allow the authorised representative to do at least the following in relation to apparatus covered by the mandate—

- (a) perform the manufacturer's obligations under regulation 11 (retention of technical documentation and EU declaration of conformity);
- (b) perform the manufacturer's obligations under regulation 16 (provision of information and co-operation).

(3) The mandate must not include the obligations contained in—

- (a) regulation 8 (duty to ensure apparatus complies with the essential requirements); or
- (b) regulation 9 (technical documentation and conformity assessment).

(4) A manufacturer who has appointed an authorised representative to perform, on the manufacturer's behalf, a task under these Regulations remains responsible for the proper performance of that task.

(5) An authorised representative must comply with all the duties imposed on the manufacturer in relation to each obligation under these Regulations that the representative is appointed by the mandate to perform and accordingly—

- (a) as far as those duties are concerned, a reference in these Regulations to the manufacturer (except in this regulation) is to be taken as including a reference to the authorised representative; and
- (b) if the authorised representative contravenes or fails to comply with any of those duties, the authorised representative may be proceeded against as though the authorised representative were the manufacturer.

PART 3

Conformity of apparatus and equipment

Presumption of conformity

39.—(1) Equipment which is in conformity with a harmonised standard (or part of such a standard) the reference to which has been published in the Official Journal is to be presumed to be in conformity with the essential requirements covered by that standard (or that part of that standard).

- (2) The presumption in paragraph (1) is rebuttable.

Conformity assessment procedures

40.—(1) Subject to paragraph (2), the manufacturer must demonstrate the conformity of the apparatus with the essential requirements by means of either—

- (a) the procedure set out in Schedule 2 (Module A: internal production control); or
- (b) the procedures set out in Schedule 3 (Module B: EU type examination followed by Module C: conformity to type based on internal production control).

(2) The manufacturer may choose to demonstrate the conformity of apparatus with some of the essential requirements by following the procedure referred to in paragraph (1)(b) provided that the procedure referred to in paragraph (1)(a) is followed for the remaining essential requirements.

EU declaration of conformity

41. The EU declaration of conformity for apparatus must—

- (a) state that the fulfilment of the essential requirements has been demonstrated in respect of the apparatus;
- (b) contain the elements of the relevant conformity assessment procedure or procedures followed in respect of the apparatus; and
- (c) have the model structure set out in Schedule 4.

CE marking

42.—(1) The CE marking must be affixed visibly, legibly and indelibly to the apparatus or to its data plate.

(2) Where it is not possible or warranted, on account of the nature of the apparatus, to affix the CE marking in accordance with paragraph (1), the CE marking must be affixed to—

- (a) the packaging; and
- (b) the accompanying documents.

PART 4

Notification of conformity assessment bodies

Notified bodies

43.—(1) For the purposes of this Part, a notified body is a conformity assessment body—

- (a) which has been notified by the Secretary of State to the European Commission and to the other member States—
 - (i) under regulation 44 (notification); or
 - (ii) before the date these Regulations come into force, in accordance with Article 20 of the Directive; and
- (b) in respect of which no objections were raised by the European Commission or other member States—
 - (i) within 2 weeks of the date of notification, where the notification is accompanied by an accreditation certificate; or

- (ii) within 2 months of the date of notification, where the notification is not accompanied by an accreditation certificate.
- (2) Paragraph (1) has effect subject to regulation 49 (changes to notifications).

Notification

44.—(1) The Secretary of State may notify to the European Commission and the other member States only those conformity assessment bodies that qualify for notification.

(2) A conformity assessment body qualifies for notification if the first and second conditions below are met.

(3) The first condition is that the conformity assessment body has applied to the Secretary of State to become a notified body and the application is accompanied by—

- (a) a description of—
 - (i) the conformity assessment activities that the conformity assessment body intends to carry out;
 - (ii) the conformity assessment module or modules in respect of which the conformity assessment body claims to be competent; and
 - (iii) the apparatus for which the conformity assessment body claims to be competent; and either
- (b) an accreditation certificate; or
- (c) the documentary evidence necessary for the Secretary of State to verify, recognise and regularly monitor the conformity assessment body's compliance with the notified body requirements.

(4) The second condition is that the Secretary of State is satisfied that the conformity assessment body meets the notified body requirements.

(5) For the purposes of paragraph (4), the Secretary of State may accept an accreditation certificate, provided in accordance with paragraph (3)(b), as sufficient evidence that the conformity assessment body meets the notified body requirements.

(6) When deciding whether to notify a conformity assessment body that qualifies for notification to the European Commission and the other member States, the Secretary of State may—

- (a) have regard to any other matter which appears to the Secretary of State to be relevant; and
- (b) set conditions that the conformity assessment body must meet.

(7) The Secretary of State must inform the European Commission of the United Kingdom's procedures for the assessment and notifications of conformity assessment bodies, and any changes to those procedures.

Contents of notification

45. A notification under regulation 44 (notification) must include—

- (a) the details of—
 - (i) the conformity assessment activities in respect of which the conformity assessment body has made its application for notification;
 - (ii) the conformity assessment module or modules in respect of which the conformity assessment body has made its application for notification;
 - (iii) the apparatus in respect of which the conformity assessment body has made its application for notification; and either

- (b) an accreditation certificate; or
- (c) documentary evidence which attests to—
 - (i) the conformity assessment body's competence; and
 - (ii) the arrangements in place to ensure that the conformity assessment body will be monitored regularly and will continue to satisfy the notified body requirements.

Presumption of conformity of notified bodies

46.—(1) Where a conformity assessment body demonstrates its conformity with the criteria laid down in a harmonised standard (or part of such a standard), the reference of which has been published in the Official Journal, the Secretary of State is to presume that the conformity assessment body meets the notified body requirements covered by that standard (or part of that standard).

- (2) The presumption in paragraph (1) is rebuttable.

Monitoring of notified bodies

47.—(1) The Secretary of State must monitor each notified body with a view to verifying that the notified body—

- (a) continues to meet the notified body requirements;
- (b) meets any conditions set in accordance with regulation 44(6)(b); and
- (c) carries out its functions in accordance with these Regulations.

(2) The Secretary of State must inform the European Commission of the United Kingdom's procedures for the monitoring of notified bodies, and any changes to those procedures.

United Kingdom Accreditation Service

48. The Secretary of State may authorise the United Kingdom Accreditation Service (a company limited by guarantee incorporated in England and Wales under number 03076190) to carry out the following activities on behalf of the Secretary of State—

- (a) assessing whether a conformity assessment body meets the notified body requirements; and
- (b) monitoring notified bodies as required by regulation 47 (monitoring of notified bodies).

Changes to notifications

49.—(1) Where the Secretary of State determines that a notified body no longer meets a notified body requirement, or that it is failing to fulfil its obligations under these Regulations other than a condition set in accordance with regulation 44(6)(b), the Secretary of State must restrict, suspend or withdraw the body's status as a notified body under regulation 43.

(2) With the consent of a notified body, or where the Secretary of State determines that a notified body no longer meets a condition set in accordance with regulation 44(6)(b), the Secretary of State may restrict, suspend or withdraw the body's status as a notified body under regulation 43.

(3) In deciding what action is required under paragraph (1) or (2), the Secretary of State must have regard to the seriousness of the non-compliance.

(4) Before taking action under paragraph (1) or (2), the Secretary of State must—

- (a) give notice in writing to the notified body that the Secretary of State intends to take such action and the reasons for it; and

- (b) give the notified body an opportunity to make representations to the Secretary of State regarding the proposed action within a reasonable period from the date of the notice and consider any such representations.

(5) Where the Secretary of State takes action under paragraph (1) or (2), the Secretary of State must immediately inform the Commission and the other member States.

(6) Where the Secretary of State has taken action in respect of a notified body under paragraph (1) or (2), or where a notified body has ceased its activity, the notified body must, at the request of the Secretary of State—

- (a) transfer its files relating to the activities it has undertaken as a notified body to another notified body or to the Secretary of State; or
- (b) keep its files relating to the activities it has undertaken as a notified body available for the Secretary of State and market surveillance authorities for a period of 10 years from the date on which the relevant document was created.

Operational obligations of notified bodies

50. When a notified body carries out a relevant conformity assessment procedure, Schedule 6 has effect (operational obligations of notified bodies).

Subsidiaries and contractors

51.—(1) A notified body may subcontract specific conformity assessment activities, or use a subsidiary to carry out such activities provided—

- (a) the body is satisfied that the subcontractor or subsidiary meets the notified body requirements;
- (b) the body has informed the Secretary of State that it is satisfied that the subcontractor or subsidiary meets those requirements; and
- (c) the economic operator for whom the activities are to be carried out has consented to the activities being carried out by that person.

(2) The notified body which subcontracts specific conformity assessment activities or uses a subsidiary to carry out such activities remains responsible for the proper performance of those activities (irrespective of where the subcontractor or subsidiary is established).

(3) Where a notified body subcontracts, or uses a subsidiary to carry out, a specific conformity assessment activity, the notified body must, for a period of at least 10 years beginning on the day on which the activity is first carried out, keep available for inspection by the Secretary of State all the relevant documentation concerning—

- (a) the assessment of the qualifications of the subcontractor or the subsidiary; and
- (b) the conformity assessment activities carried out by the subcontractor or subsidiary.

PART 5

Enforcement and market surveillance

Designation of enforcing authorities

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

- (a) in Great Britain—

- (i) OFCOM insofar as action taken to enforce these Regulations relates to the protection and management of the radio spectrum; and
- (ii) within its area, the weights and measures authority.
- (b) in Northern Ireland—
 - (i) OFCOM insofar as action taken to enforce these Regulations relates to the protection and management of the radio spectrum; and
 - (ii) the Department of Enterprise, Trade and Investment.
- (2) The Secretary of State, or a person appointed by the Secretary of State to act on behalf of the Secretary of State, may enforce these Regulations and RAMS (in its application to apparatus).
- (3) In Northern Ireland, these Regulations may be enforced in relation to electricity meters, other than those which are wireless telegraphy apparatus, by the Northern Ireland Authority for Energy Regulation or a person appointed by the Northern Ireland Authority for Energy Regulation.
- (4) Where the enforcing authority is not also the market surveillance authority, the enforcing authority must notify the market surveillance authority of its proposed action.
- (5) In Scotland, only the Lord Advocate may commence proceedings for an offence.

Designation of market surveillance authorities

- 53.**—(1) The market surveillance authority is—
- (a) in Great Britain, within its area, the weights and measures authority; and
 - (b) in Northern Ireland, within its area, the district council.
- (2) The market surveillance authority must make adequate arrangements for market surveillance under these Regulations and RAMS (in its application to apparatus).
- (3) When a market surveillance authority carries out market surveillance under these Regulations, Part 1 of Schedule 7 has effect.

Enforcement powers

- 54.**—(1) Part 1 of Schedule 7 (enforcement and investigatory powers conferred upon enforcing authorities and market surveillance authorities) is to have effect where the enforcing authority is—
- (a) a weights and measures authority;
 - (b) OFCOM;
 - (c) the Secretary of State; or
 - (d) the Department of Enterprise, Trade and Investment.
- (2) In addition to the powers available to an enforcing authority under paragraph (1) the authority may use the powers set out in Part 2 of Schedule 7 (compliance, withdrawal and recall notices).

Exercise of enforcement powers

- 55.** When enforcing these Regulations, the enforcing authority must exercise its powers in a manner which is consistent with—
- (a) regulation 56 (evaluation of apparatus presenting a risk);
 - (b) regulation 57 (enforcement action in respect of apparatus that is not in conformity and which present a risk);
 - (c) regulation 58 (EU safeguard procedure);
 - (d) regulation 59 (enforcement action in respect of formal non-compliance);

- (e) regulation 60 (restrictive measures).

Evaluation of apparatus presenting a risk

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EU safeguard procedure

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

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

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

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

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

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

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

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

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

Enforcement action in respect of formal non-compliance

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

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

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

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

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

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

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

Restrictive measures

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

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

Offences

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

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

Penalties

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

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

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

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

Defence of due diligence

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

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

- (a) served a notice in accordance with paragraph (3); or
 - (b) obtained the leave of the court.
- (3) The notice must—
- (a) give any information in P’s possession which identifies or assists in identifying the person who—
 - (i) committed the act or default; or
 - (ii) supplied the information on which P relied; and
 - (b) be served on the person bringing the proceedings not less than 7 clear days before—
 - (i) in England, Wales and Northern Ireland, the hearing of the proceedings;
 - (ii) in Scotland, the trial diet.

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

- (a) to the steps that P took, and those which might reasonably have been taken, for the purpose of verifying the information; and

(b) to whether P had any reason to disbelieve the information.

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

(a) to the act or default of another person; or

(b) to reliance on information supplied by another person.

Liability of persons other than the principal offender

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

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

(a) with the consent or connivance of the relevant person; or

(b) as a result of the negligence of the relevant person.

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

(a) a director, manager, secretary or other similar officer of the body corporate;

(b) in relation to a body corporate managed by its members, a member of that body corporate performing managerial functions;

(c) in relation to a Scottish partnership, a partner; or

(d) a person purporting to act as a person described in sub-paragraphs (a), (b) or (c).

Service of documents

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

(a) delivering it to that person in person;

(b) leaving it at that person’s proper address; or

(c) sending it by post or electronic means to that person’s proper address.

(2) In the case of a body corporate, a document may be served on a director of that body.

(3) In the case of a partnership, a document may be served on a partner or a person having control or management of the partnership business.

(4) For the purposes of this regulation, “proper address” means—

(a) in the case of a body corporate or its director—

(i) the registered or principal office of that body; or

(ii) the email address of the secretary or clerk of that body;

(b) in the case of a partnership, a partner or person having control or management of the partnership business—

(i) the principal office of the partnership; or

(ii) the email address of a partner or person having that control or management;

(c) in any other case, a person’s last known address, which includes an email address.

(5) If a person to be served with a document has specified an address in the United Kingdom (other than that person’s proper address) at which that person or someone on that person’s behalf will accept service, that address must also be treated as that person’s proper address.

(6) In this regulation, “partnership” includes a Scottish partnership.

Recovery of expenses of enforcement

66.—(1) This regulation applies where a person commits an offence under regulation 61 (offences).

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person to reimburse the enforcing authority for any expenditure which the enforcing authority has incurred in investigating the offence.

Action by enforcing authority

67.—(1) An enforcing authority may itself take any action which an economic operator could have been required to take by a notice served under these Regulations where the conditions for serving such a notice are met and either—

- (a) the enforcing authority has been unable to identify any economic operator on whom to serve such a notice; or
- (b) the economic operator on whom such a notice has been served has failed to comply with it.

(2) If the enforcing authority has taken action as a result of the condition in paragraph (1)(b) being met, the authority may recover from that person, as a civil debt, any costs or expenses reasonably incurred by the enforcing authority in taking the action.

(3) A civil debt recoverable under paragraph (2) may be recovered summarily—

- (a) in England and Wales by way of a complaint pursuant to section 58 of the Magistrates’ Courts Act 1980⁽¹³⁾;
- (b) in Northern Ireland in proceedings under article 62 of the Magistrates’ Courts (Northern Ireland) Order 1981⁽¹⁴⁾.

Appeals against notices

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

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

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

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

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

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

(5) In this regulation—

⁽¹³⁾ 1980 c.43; section 58 was amended by the Crime and Courts Act 2013 (c.22), Schedule 10 paragraph 40.

⁽¹⁴⁾ S.I. 1981/1675 (NI 26).

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

Appropriate court for appeals against notices

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

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

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

(3) A person aggrieved by an order made by a magistrates’ court in England and Wales or Northern Ireland pursuant to an application under regulation 68, or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the crown court;
- (b) in Northern Ireland, to the county court.

Time limit for prosecution of offences

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

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

- (a) summary proceedings for an offence under regulation 61 (offences) may be commenced before the end of 12 months after the date on which evidence sufficient in the Lord Advocate’s opinion to justify the proceedings came to the Lord Advocate’s knowledge; and
- (b) section 136(3) of the Criminal Procedure (Scotland) Act 1995⁽¹⁵⁾ (time limit for certain offences) applies for the purpose of this paragraph as it applies for the purpose of that section.

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

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

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

Compensation

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

(2) The conditions are that—

(15) 1995 c.46.

- (a) the apparatus in respect of which the relevant notice was served neither—
 - (i) presents a risk; nor
 - (ii) contravenes any requirement of these Regulations; and
- (b) the exercise of the power to serve the relevant notice was not attributable to neglect or default by a relevant economic operator.
- (3) In this regulation, “relevant notice” means a suspension, withdrawal or recall notice served in accordance with these Regulations.

Power of the court to require a matter to be remedied

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

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

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

PART 6

MISCELLANEOUS

Review

- 73.**—(1) The Secretary of State must from time to time—
- (a) carry out a review of these Regulations;
 - (b) set out the conclusions of the review in a report; and
 - (c) publish the report.
- (2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive is implemented in other member States.
- (3) The report must, in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved by a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of 5 years beginning on the date these Regulations come into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding 5 years.

Transitional provision

74. Nothing in these Regulations prevents the making available on the market or the putting into service of equipment which—

- (a) is in conformity with the requirements of [Directive 2004/108/EC](#) on the approximation of laws, regulations and administrative provisions of the Member States relating to electromagnetic compatibility⁽¹⁶⁾; and
- (b) is placed on the market or put into service before the commencement date.

Revocations and savings

75.—(1) Subject to paragraph (2), the 2006 Regulations are revoked.

(2) The 2006 Regulations continue to apply, as if they had not been revoked, to equipment placed on the market or put into service before the commencement date.

(3) Accordingly, despite the repeals in regulation [76\(4\)](#), the entries in paragraphs 10, 19(7)(a), 25(7) and 30(1) of Schedule 5 to the Consumer Rights Act 2015⁽¹⁷⁾ relating to the 2006 Regulations are to continue to have effect in relation to equipment placed on the market or put into service before the commencement date.

(4) The Electromagnetic Compatibility (Amendment) Regulations 2006⁽¹⁸⁾ are revoked.

(5) Nothing in these Regulations is to be construed as preventing the taking of any action in respect of any equipment under the provisions of any other enactment.

Consequential amendments

76.—(1) In Schedule 1 to the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information)(Specification) Order 2004⁽¹⁹⁾ for “the Electromagnetic Compatibility Regulations 2006”, substitute “the Electromagnetic Compatibility Regulations 2016”.

(2) The Legislative and Regulatory Reform (Regulatory Functions) Order 2007⁽²⁰⁾ is amended as follows—

- (a) in Part 3 of the Schedule, under the heading “Consumer and business protection”, for “Electromagnetic Compatibility Regulations 2006”, substitute “Electromagnetic Compatibility Regulations 2016”;
- (b) in Part 8 of the Schedule, for “Electromagnetic Compatibility Regulations 2006”, substitute “Electromagnetic Compatibility Regulations 2016”.

(3) In Part 4 of Schedule 1 to the Co-ordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009⁽²¹⁾ for “the Electromagnetic Compatibility Regulations 2006”, substitute “the Electromagnetic Compatibility Regulations 2016”.

(4) Subject to paragraph (3) of regulation [75](#), Schedule 5 to the Consumer Rights Act 2015 is amended as follows—

- (a) in paragraph 10—
 - (i) omit the entry “regulation 37(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations 2006 ([S.I. 2006/3418](#))”; and
 - (ii) at the appropriate place insert—

(16) OJ L 390, 31.12.2004, p. 24.

(17) [2015 c.15](#).

(18) [S.I. 2006/1449](#).

(19) [S.I. 2004/693](#).

(20) [S.I. 2007/3544](#).

(21) [S.I. 2009/699](#).

- “regulation 52(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations 2016 (S.I. 2016/1091);”;
- (b) in paragraph 19(7)(a), for “the Electromagnetic Compatibility Regulations 2006 (S.I. 2006/3418)”, substitute “the Electromagnetic Compatibility Regulations 2016 (S.I. 2016/1091)”;
- (c) in paragraph 25(7), for “regulation 37(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations (S.I. 2006/3418)”, substitute “regulation 52(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations (S.I. 2016/1091)”;
- (d) in paragraph 30(1), for “regulation 37(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations (S.I. 2006/3418)”, substitute “regulation 52(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations (S.I. 2016/1091)”.

15th November 2016

Margot James
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for Small Business, Consumers and Corporate
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