

THE CONTROL OF ELECTROMAGNETIC FIELDS AT WORK REGULATIONS 2016 ('the 2016 Regulations')

TRANSPOSITION TABLE FOR DIRECTIVE 2013/35/EU

Article	Obligation	Implementing provision (references are to the 2016 Regulations unless otherwise indicated)	Copy out? (Yes/No)	Additional information
1(1) – (4)	None- subject matter and scope provisions	N/A		
2	Definitions	Regulation 2	No	Definitions have been reworded to be capable of having proper legal effect.
3(1)	Physical quantities regarding exposure to electromagnetic fields are indicated in Annex I. Health effects ELVs, sensory effects ELVs and ALs are set out in Annexes II and III.	Regulation 2 and the Schedule	Yes	Definitions of ALs and ELVs in regulation 2 refer to those ALs and ELVs in the Schedules.
3(2)	Member States shall require that employers ensure that the exposure of workers to electromagnetic fields is limited to the health effects ELVs and sensory effects ELVs set out in Annex II, for non-thermal effects, and in Annex III, for thermal effects.	Regulation 4(1)	Yes	
	Compliance with health effects ELVs and sensory effects ELVs must be established by the use of relevant exposure assessment procedures referred to in Article 4.	Regulation 5(1)	Yes	

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	Where the exposure of workers to electromagnetic fields exceeds the ELVs, the employer shall take immediate action.	Regulation 7(3)	Yes	
3(3)	For the purpose of this Directive, where it is demonstrated that the relevant ALs set out in Annex II and III are not exceeded, the employer shall be deemed to be in compliance with the health effects ELVs and sensory effects ELVs.	Regulation 5(2), and the Schedule	No	If the ALs are not exceeded then exposure cannot exceed the ELVs, making 'deeming' as a term potentially confusing. 5(2) allows employers to demonstrate compliance with the ELVs by reference to the ALs, and the Schedule provides detail on how this works.
	Where the exposure exceeds the ALs, the employer shall act in accordance with Article 5(2), unless the assessment carried out in accordance with Article 4(1), (2) and (3) demonstrates that the relevant ELVs are not exceeded and that safety risks can be excluded.	Regulation 6 and 7	No	The Directive wording has been rephrased and restructured to make the regulations more chronological and easier to follow. Regulation 6 disapples the requirement on employers to undertake an action plan (to reduce employees' exposure to electromagnetic fields, under regulation 7), if the exposure assessment demonstrates that the exposure limits are already met.
3(3) (a) to 3(4) (b)	Notwithstanding 3(3), exposure may exceed specific ALs and ELVs when certain conditions are met.	Regulation 4(2)	No	Regulation 4(2) establishes the principle that the sensory effect ELVs (the only ELVs that Article 3 allows to be exceeded) can be exceeded subject to conditions. Those conditions are in the Schedule, underneath the relevant ELVs. Taken together with employers' being permitted to

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				<p>measure against the ALs in regulation 5(2), regulation 6 achieves the result of 3(3)(a).</p> <p>The references in the Directive to particular ALs/ELVs being exceeded when 'justified by the practice or process' has not been transposed. Employers are already required to eliminate or reduce risk so far as is reasonably practicable (regulation 9) - this ensures exposure is only ever at a level that can be justified by the nature of work (i.e. practice and process).</p>
4 (1)	<p>The employer shall assess all risks for workers arising from electromagnetic fields at the workplace and, if necessary, measure or calculate the levels of electromagnetic fields to which workers are exposed. These assessments can be made public in accordance with national laws.</p>	<p>Regulations 5 and 8</p>	<p>No</p>	<p>In the Regulations, the risk assessment and exposure assessment have been separated out to make the requirements simpler for dutyholders, and to avoid overcompliance by suggesting low-risk situations still need a risk assessment.</p> <p>Existing legislation on access to documents is sufficient for the purposes of the Directive – Data Protection Act 1998, Freedom of Information Act 2000.</p>
4(2)	<p>The employer shall identify and assess electromagnetic fields at the workplace. Employers can take into account available data and guidance when assessing</p>	<p>Regulation 5</p>	<p>Yes</p>	<p>Some wording is omitted where it would cause duplication.</p>

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	exposure.			
4(3)	If compliance with the ELVs cannot be reliably determined on the basis of available data and guidance, the assessment of the exposure shall be carried out on the basis of measurements or calculations.	Regulation 5(2)	Yes	Second paragraph in Article is omitted as it is covered by the requirement that the assessment be 'suitable and sufficient'.
4(4)	The assessment, measurement and calculations etc. shall be planned and carried out by competent services or persons at suitable intervals.	Competence - Regulations 5(1) and 7(1) and 8(1) Suitable intervals – Regulations 5(4), 7(3) and 8(4).	No	Regulations 5(1), 7(1) and 8(1) require all assessments/action plans to be 'suitable and sufficient'. Regulation 7 of the Management of Health and Safety at Work Regulations 1999 (the '1999 Regulations') already requires the appointment of a competent person to assist with health and safety matters.
	The data obtained from the assessments shall be preserved in a suitable traceable form so as to permit consultation at a later stage.	Not directly transposed	No	Existing legislation on access to documents is sufficient for purposes of the Directive – Data Protection Act 1998, Freedom of Information Act 2000, and disclosure requirements during civil/criminal proceedings.
4(5)	When carrying out the risk assessment pursuant to Article 6(3) of Directive 89/391/EEC, the employer shall give particular attention to specific factors.	Regulation 8(2)	Yes	

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4(6)	In workplaces open to the public it is not necessary for the exposure assessment to be carried out if provisions on the limitation of exposure of the general public are in place in respect of the workforce.	Not directly transposed	No	To transpose this would involve an ambulatory reference and give legal effect to a Council Recommendation (1999/519/EC).. This point will be made in guidance.
4(7)	The employer shall be in possession of an assessment of the risks and identify which measures must be taken to address those risks. This may include the reasons why a further detailed assessment is not necessary.	Regulation 12, 6	Yes	Regulation 6 removes the need to undertake a risk assessment in low-risk situations.
5 (1)	The risk assessment shall be updated on a regular basis, particularly if there have been significant changes which could render it out of date, or if the results of the health surveillance referred to in Article 8 show this to be necessary.	8(4)	No	Standard wording is used for updating assessments in line with pre-existing health and safety legislation.
5 (1)	The employer shall take the necessary actions to ensure that risks arising from electromagnetic fields at the workplace are eliminated or reduced to a minimum.	Regulation 9	Yes	

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5(2)	The employer shall devise and implement an action plan to prevent exposure exceeding the ELVs unless exposure is beneath the ALs and safety risks can be excluded.	Not directly transposed.	No	This is a duplicated requirement from Article 3(3). Please see explanation of transposition of Article 3(3) above.
5(3)	On the basis of the risk assessment referred to in Article 4, the employer shall devise and implement an action plan that shall include technical and/or organisational measures to prevent any risks to workers at particular risk, and any risks due to indirect effects, referred to in Article 4.	Not directly transposed.	No	Regulation 6 – where there are employees at particular risk or the indirect effect ALs are exceeded, a risk assessment is necessary under regulation 8. Regulation 9(1) - employers are required to address the risks identified in that assessment.
5(4)	The employer shall adapt the measures referred to in this Article to the requirements of workers at particular risk and, where applicable, to individual risks assessments.	Not directly transposed.	No	If adapting measures are needed to ensure safety, they are required by regulation 9. The Equality Act 2010 prevents different treatment of certain employees at the workplace and requires reasonable adjustments to be made– s39(5). See also regulations 16-18 of the 1999 Regulations concerning pregnant employees.

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5(5)	Workplaces where workers are likely to be exposed to electromagnetic fields in excess of the ALs shall be indicated by appropriate signs in accordance with the Safety Signs and Signals Directive 92/58/EEC). The areas in question shall be identified and access to them limited, as appropriate.	Not directly transposed	No	Directive 92/58/EEC requires signs and signals where necessary for safety purposes. The Health and Safety (Safety Signs and Signals) Regulations 1996 transpose these requirements. Complying with regulation 9 of these Regulations may also include the use of signage or restricting access to high exposure areas.
5(6)	Where Article 3(3)(a) applies, specific protection measures shall be taken, such as the training of workers in accordance with Article 6 and the use of technical means and personal protection.	Schedule, Note 2 to Table ELV3	No	The reference to using ' <i>suitable technical and personal protection measures</i> ' includes equipment. See also the Personal Protective Equipment Regulations 1992.
5(7)	Where Article 3(4)(a) applies, specific protection measures, such as controlling movements, shall be taken.	Schedule, the note to Table ELV1	No	The specific reference to controlling movements is replaced with more precise wording.
5(8)	If, despite the measures taken by the employer, the ELVs are exceeded, the employer shall take immediate action to reduce exposure below these ELVs.	Regulations 7(3)	Yes	

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	The employer shall identify and record the reasons why ELVs have been exceeded, and amend the protection and prevention measures accordingly.	Regulations 5(4) and 12, and RIDDOR	No	The exposure assessment must be updated as appropriate if exposure exceeds the ELVs (regulation 5(4)), and a record must be kept of the most recent exposure assessment. If the incident involving higher exposure to ELVs causes serious injury, it may also be reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (SI 2013/1471).
5(9)	Where paragraphs 3 and 4 of Article 3 apply and where the worker reports transient symptoms, the employer shall, if necessary, update the risk assessment and the prevention measures.	Regulation 9 and the Schedule notes to Tables ELV3 and ELV5	No	Reference is only made to updating the risk assessment, rather than 'risk assessment and prevention measures', as if the assessment is updated, regulation 9 already requires the employer to address the risks in the most recent risk assessment.
6	Without prejudice to Articles 10 and 12 of Directive 89/391/EEC, the employer shall ensure that workers who are likely to be exposed to risks from electromagnetic fields at work and/or their representatives receive any necessary information and training relating to the outcome of the risk assessment.	Regulation 10	Yes	Reference to safety representatives is not transposed as this is dealt with in existing employee consultation requirements (The Safety Representatives and Safety Committees Regulation (SI 1977/500) and Health and Safety (Consultation with Employees) Regulations 1996 (SI 1996/1513).

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7	Consultation and participation of workers and/or their representatives shall take place in accordance with Article 11 of Directive 89/391/EEC.	Not directly transposed.	No	This is dealt with in pre-existing employee consultation requirements (The Safety Representatives and Safety Committees Regulation (SI 1977/500) and Health and Safety (Consultation with Employees) Regulations 1996 (SI 1996/1513).
8(1)	With the objective of the prevention and the early diagnosis of any adverse health effects due to exposure to electromagnetic fields, appropriate health surveillance shall be carried out in accordance with Article 14 of Directive 89/391/EEC. Health records and their availability shall be provided for in accordance with national law and/or practice.	Not directly transposed.	No	More detail is provided in Article 8(2) - this is a more generic and introductory reference. Article 14 of Directive 89/391/EEC is transposed in regulation 6 of the 1999 Regulations.
8(2)	If any undesired or unexpected health effect is reported by a worker, or in any event where exposure above the ELVs is detected, the employer shall ensure that appropriate medical examinations or individual health surveillance is provided.	Regulation 11(1)	No	Usual data protection/subject access rules under the Data Protection Act 1998 apply. The scope of the Directive does not include long-term effects (Article 1(4)), which health surveillance is primarily designed to detect. To better reflect the intended scope of the Directive, the regulations require health surveillance/medical examinations in appropriate situations when a health effect ELV is exceeded and a

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9	Member States shall provide for adequate penalties applicable in the event of infringements of national legislation adopted pursuant to this Directive. These penalties must be effective, proportionate and dissuasive.	Section 33 (1)(c) HSWA	No	health effect is reported. Section 9 of the Health and Safety at Work etc. Act 1974 ("HSWA") prohibits employers from charging employees for things done pursuant to the Act or regulations made under it. These Regulations are made under HSWA.
10(1) (a)	Exposure may exceed the ELVs if the exposure is related to the installation, testing, use, development, maintenance of or research related to magnetic resonance imaging (MRI) equipment for patients in the health sector, provided that specified safety conditions are met.	Regulation 4(3)(b)	No	The conditions for exceeding the limits have been reworded to provide legal certainty and tie obligations more closely to accepted wording in health and safety legislation. Condition (i) does not need to be directly transposed: all employers are required to assess exposure, and an exemption will not be needed if exposure does not exceed an ELV.
10(1)(b)	Member States may allow for an equivalent or more specific protection system to be implemented for personnel	Regulation 4(3)(a)	No	Wording has been agreed with the Ministry of Defence, to tie into terms within existing legislation.

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	working in operational military installations or involved in military activities, including in joint international military exercises, provided that adverse health effects and safety risks are prevented;			
10(1)(c)	Member States may allow, in duly justified circumstances and only for as long as they remain duly justified, for the ELVs to be temporarily exceeded in specific sectors or for specific activities outside the scope of points (a) and (b). For the purposes of this point, 'duly justified circumstances' shall mean circumstances in which the following conditions are met.	Regulation 13	No	As for 10(1)(a) regarding the conditions. Exemptions must be temporary (expressed as having to be 'limited in time') and the Health and Safety Executive can amend or revoke an exemption at any time.
11-19		Article 11-19 are not applicable for transposition as they are administrative provisions relevant to the EU institutions, except for the Article 16 requirement to effect transposition by 1 July 2016 (the date on which these Regulations come into force, see regulation 1).		
Annex 1 – physical quantities regarding exposure to electromagnetic fields		Part 1 of the Schedule. Terms have been amended to correspond to the table headings in the Schedule.		
Annex 2 and 3 – exposure limit values		Parts 2 and 3 of the Schedule. The tables are all transposed, but in a more logical order and with more consistent headings		

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	and action levels	The notes to the tables are transposed where necessary to enable dutyholders to comply with the limits.		