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## STATUTORY INSTRUMENTS

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# 2017 No. 1206

## The Radio Equipment Regulations 2017

### PART 5

#### Market surveillance and enforcement

##### **Designation of market surveillance authorities**

**55.**—(1) The market surveillance authority is—

- (a) within its area in Great Britain, the weights and measures authority, and
- (b) within its area in Northern Ireland, the district council.

(2) The market surveillance authority must make adequate arrangements for market surveillance under these Regulations and RAMS (in its application to radio equipment).

(3) When a market surveillance authority carries out market surveillance under these Regulations, Part 2 of Schedule 10 (notices which may be served by enforcing authorities) has effect.

##### **Designation of enforcing authorities**

**56.**—(1) It is the duty of the following authorities to enforce these Regulations and RAMS (in its application to radio equipment)—

- (a) in Great Britain—
  - (i) OFCOM, insofar as action taken to enforce these Regulations relates to the protection and management of the radio spectrum,
  - (ii) within their area, the weights and measures authorities.
- (b) in Northern Ireland—
  - (i) OFCOM, insofar as action taken to enforce these Regulations relates to the protection and management of the radio spectrum,
  - (ii) within their area, the district councils.

(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 radio equipment).

(3) In Scotland, only the Lord Advocate may commence proceedings for an offence.

##### **Enforcement powers**

**57.**—(1) For the purposes of enforcing these Regulations, Schedule 10 (enforcement and investigatory powers) applies.

(2) Where the enforcing authority has reasonable grounds to suspect that the CE marking has been affixed to radio equipment which does not satisfy the essential requirements, it may serve a compliance notice on—

- (a) the manufacturer, if the manufacturer is established in the United Kingdom,

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*Status: Point in time view as at 26/12/2017.*

*Changes to legislation: There are currently no known outstanding effects for the The Radio Equipment Regulations 2017, PART 5. (See end of Document for details)*

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- (b) the manufacturer's authorised representative in the United Kingdom, or
  - (c) the importer.
- (3) Where a compliance notice is served in accordance with paragraph (2), no other notice as referred to in Part 2 of Schedule 10 can be issued and no proceedings pursuant to regulation 63 (enforcement action in respect of formal non-compliance) can be brought, until the person on whom that notice has been served has failed to comply with its requirements.
- (4) A compliance notice must—
- (a) state that the enforcing authority suspects that the CE marking has been affixed pursuant to regulation 44 (CE marking) in circumstances where that radio equipment does not comply with the requirements of these Regulations,
  - (b) state the reasons for that suspicion,
  - (c) identify the requirements with which it is suspected that the radio equipment does not comply,
  - (d) specify a date by which any necessary action to remedy non-compliance must have been taken,
  - (e) require the person on whom the notice is served to—
    - (i) take the necessary action to ensure that the radio equipment to which the notice relates conforms with the requirements of these Regulations and RAMS concerning the CE marking and to end the infringement by the date specified in the notice, or
    - (ii) to provide evidence, by the date specified in the notice, that demonstrates to the satisfaction of the enforcement authority that all provisions of these Regulations which apply to the radio equipment have been complied with, and
  - (f) warn the person on whom the notice is served that if the radio equipment does not comply with the requirements of these Regulations by the date specified in the notice, further enforcement action may be taken under these Regulations in respect of the radio equipment referred to in the notice or any radio equipment of the same type placed on the market by that person.
- (5) A compliance notice may include directions as to the measures to be taken by the person upon whom it is served in order to ensure that the radio equipment complies with the requirements of these Regulations which apply to it, by the date specified in the notice.
- (6) In this regulation, “enforcement officer” means—
- (a) an officer of an enforcing authority who is authorised in writing by that authority to act as an enforcement officer for the purposes of this Part,
  - (b) a person appointed by the Secretary of State who is authorised in writing by the Secretary of State to act as an enforcement officer for the purposes of this Part.

### **Exercise of enforcement powers**

**58.** When enforcing these Regulations, the enforcing authority must exercise its powers in a manner which is consistent with—

- (a) regulation 59 (evaluation of radio equipment presenting a risk),
- (b) regulation 60 (enforcement action in respect of radio equipment which is not in conformity and which presents a risk),
- (c) regulation 61 (EU safeguard procedure),
- (d) regulation 62 (enforcement action in respect of radio equipment which is in conformity, but presents a risk),

- (e) regulation 63 (enforcement action in respect of formal non-compliance),
- (f) regulation 64 (restrictive measures).

### **Evaluation of radio equipment presenting a risk**

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

(2) Where an enforcing authority other than the market surveillance authority has sufficient reason to believe that radio equipment presents a risk, that authority may carry out an evaluation in relation to the radio equipment covering the relevant requirements of Part 2 applying in respect of that radio equipment.

### **Enforcement action in respect of radio equipment which is not in conformity and which presents a risk**

**60.**—(1) Where, in the course of the evaluation referred to in regulation 59, an enforcing authority finds that the radio equipment is not in conformity with Part 2, it must without delay require a relevant economic operator to—

- (a) take appropriate corrective actions to bring the radio equipment into conformity with those requirements,
- (b) withdraw the radio equipment, or
- (c) recall the radio equipment,

within such reasonable period as the authority prescribes, which is commensurate with the nature of the risk presented by the radio equipment.

(2) The enforcing authority must inform the notified body which carried out the conformity assessment procedure in respect of the radio equipment of—

- (a) the respect in which the radio equipment is not in conformity with Part 2, and
- (b) the actions which the enforcing authority has required the 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 it has required the economic operator to take.

(4) Where the Secretary of State receives notification under paragraph (3), or otherwise considers that the lack of conformity 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) any 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 radio equipment being made available on the market in the United Kingdom,
- (b) withdraw the radio equipment from the United Kingdom market, or
- (c) recall the radio equipment.

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(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 notification 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 notifications under paragraphs (6) and (7) must include details about the radio equipment and, in particular—

- (a) the data necessary for the identification of the radio equipment which is not in conformity with Part 2,
- (b) the origin of the radio equipment,
- (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, and
- (f) whether the lack of conformity is due to either of the following—
  - (i) failure of the radio equipment to meet the essential requirements, or
  - (ii) shortcomings in the harmonised standards referred to in regulation 40 (presumption of conformity) conferring a presumption of conformity.

### **EU safeguard procedure**

**61.**—(1) Where another Member State has initiated the procedure under Article 40 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 measure taken by the enforcing authority in respect of the radio equipment, and
- (b) any additional information which the enforcing authority has at its disposal relating to the lack of conformity of the radio equipment.

(2) Where another Member State has initiated the procedure under Article 40 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 radio equipment,
- (b) any additional information which an enforcing authority has at its disposal relating to the lack of conformity of the radio equipment, and
- (c) any objections that the Secretary of State may have to any measure taken by the Member State initiating the procedure.

(3) Where a measure taken by another Member State in respect of radio equipment is deemed justified under Article 40(7) of the Directive (as amended from time to time) (no objections raised by Member States or the European Commission in respect of a provisional measure taken by an enforcing authority), the market surveillance authority must ensure that appropriate measures, such as withdrawal or recall, are taken in respect of the radio equipment without delay.

(4) Where a measure taken by another Member State in respect of radio equipment is considered justified by the European Commission under Article 41(1) of the Directive (as amended from time to time) (consideration by the European Commission of objections raised by a Member State about, or compatibility with EU law of, measures taken by an economic operator, or a provisional measure taken by an enforcing authority), the market surveillance authority must take the necessary measures to ensure that the radio equipment is withdrawn or recalled from the United Kingdom market.

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

(6) Where the Secretary of State receives notification 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 under regulation 60 (enforcement action in respect of radio equipment which is not in conformity and which presents a risk) is considered unjustified by the European Commission under Article 41(1) of the Directive (as amended from time to time), the enforcing authority must withdraw that measure.

#### **Enforcement action in respect of radio equipment which is in conformity, but presents a risk**

**62.**—(1) Where, having carried out an evaluation under regulation 59 (evaluation of radio equipment presenting a risk), an enforcing authority finds that although the radio equipment is in conformity with Part 2, it presents a risk, the enforcing authority must require a relevant economic operator to take appropriate measures to—

- (a) ensure that the radio equipment, when placed on the market, no longer presents a risk,
- (b) withdraw the radio equipment within a prescribed period, or
- (c) recall the radio equipment within a prescribed period.

(2) Where an enforcing authority is not the Secretary of State and it takes measures under paragraph (1), it must notify the Secretary of State immediately.

(3) Where the Secretary of State receives notification under paragraph (2) or takes measures under paragraph (1), the Secretary of State must notify the European Commission and the other Member States immediately.

(4) The notifications referred to in paragraphs (2) and (3) must include details about the radio equipment and, in particular—

- (a) the data necessary for the identification of the radio equipment concerned,
- (b) the origin and the supply chain of the radio equipment,
- (c) the nature of the risk involved, and
- (d) the nature and duration of the measures taken by the enforcing authority.

(5) 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 radio equipment.

#### **Enforcement action in respect of formal non-compliance**

**63.**—(1) Where an enforcing authority makes one of the following findings relating to radio equipment, it must require a relevant economic operator to put an end to the non-compliance within such reasonable period as the authority specifies—

- (a) the CE marking—
  - (i) has not been affixed, or
  - (ii) has been affixed otherwise than in accordance with regulations 39 (prohibition on improper use of CE marking) and 44 (CE marking),
- (b) where the conformity assessment procedure set out in Schedule 4 (full quality assurance) is applied, the identification number of the notified body—

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- (i) has not been affixed, or
  - (ii) has been affixed otherwise than in accordance with regulation 44 (CE marking),
  - (c) the EU declaration of conformity—
    - (i) has not been drawn up, or
    - (ii) has been drawn up otherwise than in accordance with regulations 10 (EU declaration of conformity and CE marking) and 42 (EU declaration of conformity),
  - (d) the technical documentation is either not available or not complete,
  - (e) the following information that is required to be included is absent, false or incomplete—
    - (i) the information specified in regulation 12(1) or (2) (identification of the radio equipment and manufacturer), or
    - (ii) the information specified in regulation 23(1) (information identifying importer),
  - (f) the information specified in regulation 13(1), (2) or (3) (instructions and information to be included with the radio equipment) is absent,
  - (g) the requirements set out in regulation 38 (identification of economic operators) on the identification of economic operators have not been met.
- (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 beyond the specified period, the enforcing authority must take appropriate measures to—
- (a) restrict or prohibit corresponding radio equipment being made available on the market,
  - (b) ensure that the radio equipment is withdrawn, or
  - (c) ensure that the radio equipment is recalled.
- (4) This regulation does not apply where radio equipment presents a risk.

### **Restrictive measures**

- 64.** When enforcing these Regulations, an enforcing authority must comply with the requirements of Article 21 of RAMS (as amended from time to time) in relation to any measure to—
- (a) prohibit or restrict radio equipment being made available on the market,
  - (b) withdraw radio equipment, or
  - (c) recall radio equipment.

### **Offences**

**65.—**(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 and 18, 20 to 28, 29(4), 30 to 34, 35(4).

(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**

**66.—**(1) Subject to paragraph (2), a person guilty of an offence under regulation 65 is liable on summary conviction—

- (a) in England and Wales, to a fine or imprisonment for a term not exceeding 3 months or to both,

- (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding 3 months or to both.
- (2) A person guilty of an offence under regulations 11, 16, 28 and 35 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

67.—(1) Subject to paragraphs (2) and (4), in proceedings for an offence under regulation 65 (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.
  - (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 principal offender

68.—(1) Where the commission of an offence by one person (“A”) under regulation 65 (offences) is due to anything which another person (“B”) did or failed to do in the course of 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).

### **Time limit for prosecution of offences**

**69.**—(1) Subject to paragraph (4), in England and Wales an information relating to an offence under regulation 65 (offences) 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 65 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,
  - (b) section 136(3) of the Criminal Procedure (Scotland) Act 1995 <sup>M1</sup> (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 65 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 in paragraphs (1), (2) or (3) came to light, is conclusive evidence.

### **Marginal Citations**

**M1** 1995 c.46.

### **Service of documents**

**70.**—(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

- 71.—(1) This regulation applies where a person commits an offence under regulation 65 (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

- 72.—(1) An enforcing authority may itself take 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 the economic operator, 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 <sup>M2</sup>,
  - (b) in Northern Ireland in proceedings under article 62 of the Magistrates' Court (Northern Ireland) Order 1981 <sup>M3</sup>.

#### Marginal Citations

**M2** 1980 c. 43. Section 58 was amended by paragraph 40 of Schedule 10 to the [Crime and Courts Act 2013 \(c. 22\)](#).

**M3** S.R. (NI) 1981 No 1675.

### Appeals against notices

- 73.—(1) An 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,
  - (b) by a person having an interest in the radio equipment in respect of which the notice has been served, unless the notice is a recall notice.

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(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 of RAMS (in its application to radio equipment) have been complied with in respect of the radio equipment to which the notice relates, or
- (b) that the enforcing authority failed to comply with regulation 58 (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—

- (a) the “appropriate court” is to be determined in accordance with regulation 74 (appropriate court for appeals against notices),
- (b) “notice” means any notice served in accordance with Schedule 10.

#### **Appropriate court for appeals against notices**

**74.**—(1) In England and Wales or Northern Ireland, the appropriate court for the purposes of regulation 73 (appeals against notices) is—

- (a) the court in which proceedings have been brought in relation to the radio equipment for an offence under regulation 65 (offences),
- (b) in any other case, a magistrates' court.

(2) In Scotland, the appropriate court for the purposes of regulation 73 is the sheriff of a sheriffdom in which the person making the appeal resides or has a registered or 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 73, 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.

#### **Compensation**

**75.**—(1) Where an enforcing authority serves a relevant notice in respect of radio equipment, the enforcing authority is liable to pay compensation to a person having an interest in the radio equipment 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—

- (a) the radio equipment in respect of which the relevant notice was served neither—
  - (i) presents a risk, nor
  - (ii) contravenes any requirements 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.

**Status:**

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**Changes to legislation:**

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