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STATUTORY INSTRUMENTS

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**1993 No. 2360**

**The Clinical Thermometers (EEC Requirements) Regulations 1993**

**PART III**

**SUPPLEMENTARY PROVISIONS**

**Limitation of number of clinical thermometers which may be submitted for EEC initial verification**

**10.** Where an EEC limited pattern approval is subject to a condition limiting the number of clinical thermometers which may be submitted for initial verification by reference to the pattern in question, any person who makes an application, or causes or permits the making of an application, which if granted would contravene the condition, shall be guilty of an offence unless it is shown that he did not know, and had no reason to believe, that it would or might contravene the condition.

**Use for trade of clinical thermometers where EEC pattern approval has been revoked or has not been extended**

**11. –**

(1) Where pattern approval for any clinical thermometer ceases to apply by reason of it having been revoked or not extended, or any person who, knowing that the pattern approval has ceased to apply, uses for trade or has in his possession for such use or causes or permits any other person to use a clinical thermometer of the pattern in question bearing any EEC sign or mark related to the pattern approval, or disposes of any such clinical thermometer to any other person in a state in which it could be so used without informing that other person of the revocation or non-extension, shall be guilty of an offence and the thermometer shall be liable to be forfeited.

(2) For the purposes of this regulation, an EEC sign or mark shall be regarded as related to a pattern approval if it is a sign framed by reference to that pattern approval or a mark of EEC initial verification which was affixed by reference to conformity to the pattern which was the subject of that pattern approval.

(3) A certificate by the Secretary of State stating that an EEC pattern approval granted by a member State other than the United Kingdom has been revoked and thereby ceased to have effect on a date specified shall be conclusive as to the matters certified in any proceedings for an offence under this regulation

(4) For the purposes of paragraph (1) and of regulation 12(2) a clinical thermometer shall not be regarded as bearing an EEC sign or mark if any such sign or mark on the thermometer has been obliterated in accordance with regulation 13.

**Temporary prohibition of sale or use**

**12. –**

(1) Where the Secretary of State is satisfied that clinical thermometers, constructed according to a pattern in respect of which an EEC pattern approval granted by any member State is in force, reveal in service a defect of a general nature which makes them unsuitable for their intended use, he may issue a prohibition notice under this regulation with respect to clinical thermometers of that pattern.

(2) For so long as a prohibition notice issued under this regulation is in force with respect to clinical thermometers of any pattern, any person who, knowing that such a notice has been issued with respect to such clinical thermometers, uses, or has in his possession for use, or knowingly causes or permits any other person to use, a clinical thermometers of the pattern in question bearing any EEC sign or mark related to that pattern approval, or disposes of any such clinical thermometers to any other person in a state in which it could be used without informing that other person of the prohibition notice, shall be guilty of an offence.

(3) A prohibition notice under this regulation shall give particulars of the pattern to which it relates.

(4) The Secretary of State may withdraw a prohibition notice at any time.

(5) If the Secretary of State issues a prohibition notice under this regulation he shall give a statement in writing of his grounds for doing so to any person appearing to him to be concerned.

(6) The Secretary of State shall cause to be published—

- (a) any prohibition notice issued under this regulation; and
- (b) any notice of withdrawal of any such prohibition notice.

#### **Obliteration of EEC signs and marks**

**13.**—(1) An inspector may obliterate any EEC sign or mark if he is satisfied that the clinical thermometer bearing the sign or mark—

- (a) falls outside the maximum permissible errors as provided by paragraph 8 of Annex I to the Directive; or
- (b) does not comply in some other respect with the requirements of the Directive.

(2) Without prejudice to paragraph (1), an inspector may, at the request of any person appearing to him to be the owner of a clinical thermometer, obliterate any EEC sign or mark on it which is related to an EEC pattern approval (whether granted under these Regulations or by any member State other than the United Kingdom) which the inspector is satisfied has ceased to have effect.

#### **Unauthorised application of EEC signs and marks**

**14.**—(1) Any person who, with intent to deceive—

- (a) not being a manufacturer authorised or required to do so under any provision of these Regulations or the duly authorised agent of any such manufacturer, marks a clinical thermometer with any EEC sign; or
- (b) forges, counterfeits or, except in accordance with regulation 13, in any way alters or defaces any EEC sign or mark on a clinical thermometer; or
- (c) makes any alteration to a clinical thermometer after any EEC sign or mark has been applied to it in accordance with these Regulations, so that it no longer complies with the requirements of the Directive,

shall be guilty of an offence

(2) Any person who uses for trade, sells or exposes or offers for sale any clinical thermometer which to his knowledge—

- (a) bears any EEC sign or mark which is a forgery or counterfeit, or which has been transferred from another clinical thermometer or other instrument, or which has been altered or defaced otherwise than under regulation 13; or
- (b) does not comply with the requirements of the Directive by reason of any alteration made to it after any EEC sign or mark was applied to it in accordance with these Regulations,

shall be guilty of an offence

(3) Any clinical thermometer in respect of which an offence under this regulation was committed, and any implement used in the commission of that offence in the possession of the person by whom the offence was committed shall be liable to be forfeited.

### **Powers of inspection**

15.—(1) Subject to the production if so requested of his authority, an inspector may at all reasonable times—

- (a) inspect and test any clinical thermometer; and
- (b) enter any premises at which he has reasonable cause to believe there to be a clinical thermometer, not being premises used only as a private dwelling house.

(2) Subject to the production if so requested of his authority, an inspector may at any time seize and detain any clinical thermometer which he has reasonable cause to believe is liable to be forfeited under these Regulations.

### **Obstruction of inspectors**

16.—(1) Any person who—

- (a) intentionally obstructs an inspector acting in the execution of any provision of these Regulations; or
- (b) without reasonable cause fails to give any inspector so acting any assistance or information which the inspector may reasonably require of him for the purposes of the performance by the inspector of his functions under these Regulations,

shall be guilty of an offence.

(2) If any person, in giving an inspector any such information as is mentioned in paragraph (1), gives any information which he knows to be false in a material particular, he shall be guilty of an offence.

### **Offences by corporations**

17.—(1) Where an offence under any provision of these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of that body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under these Regulations is committed in Scotland by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributed to any neglect on the part of, a partner, he as well as the partnership shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

### **Institution of proceedings**

- 18.** Proceedings for any offence under these Regulations shall not be instituted—
- (a) in England and Wales, except by or on behalf of the Secretary of State or the chief officer of police for a police area; or
  - (b) in Northern Ireland, except by the Department of Economic Development or the Director of Public Prosecutions for Northern Ireland.

### **Penalties for offences**

**19.—(1)** Any person guilty of an offence under regulation 10, 11 or 12 shall be liable on summary conviction—

- (a) in Great Britain to a fine not exceeding level 5 on the standard scale, and
- (b) in Northern Ireland to a fine not exceeding £2000.

(2) Any person guilty of an offence under regulation 14 shall be liable on summary conviction—

- (a) in Great Britain to a fine not exceeding level 5 on the standard scale, and
- (b) in Northern Ireland to a fine not exceeding £2000; and

on indictment to a fine or to a term of imprisonment no exceeding 2 years or both.

(3) Any person guilty of an offence under regulation 16 shall be liable on summary conviction—

- (a) in Great Britain to a fine not exceeding level 3 on the standard scale, and
- (b) in Northern Ireland to a fine not exceeding £400.