

SCHEDULE 7

Regulation 81(2)

PROHIBITION NOTICES

1. A prohibition notice in respect of any relevant apparatus shall—

- (a) state that the Secretary of State considers that—
 - (i) where the notice is served on a manufacturer or supplier, the relevant apparatus does not comply with the protection requirements or the requirements of regulation 32 as the case may be; or
 - (ii) where the notice is served on a user, the relevant apparatus did not so comply at the time when it was supplied;
- (b) set out the reasons why the Secretary of State so considers;
- (c) specify the day on which the notice is to come into force; and
- (d) state that the manufacturer, supplier or user as the case may be may at any time make representations in writing to the Secretary of State for the purpose of establishing that that apparatus so complies or did so comply, as the case may require.

2.—(1) If representations in writing about a prohibition notice are made by the manufacturer, supplier or user to the Secretary of State, it shall be the duty of the Secretary of State to consider whether to revoke the notice and—

- (a) if she decides to revoke it, to do so;
- (b) in any other case, to appoint a person to consider those representations, any further representations made (whether in writing or orally) by the notified person about the notice and the statements of any witnesses examined under this Schedule.

(2) Where the Secretary of State has appointed a person to consider representations about a prohibition notice, she shall serve a notification on the notified person which—

- (a) states that the notified person may make oral representations to the appointed person for the purpose of establishing that the relevant apparatus to which the notice relates complies or did comply as the case may require with the protection requirements or regulation 32 as the case may be; and
- (b) specifies the place and time at which the oral representations may be made.

(3) The time specified in a notification served under sub-paragraph (2) above shall not be before the end of the period of twenty-one days beginning with the day on which the notification is served, unless the notified person otherwise agrees.

(4) A person on whom a notification has been served under sub-paragraph (2) above or his representative may, at the place and time specified in the notification—

- (a) make oral representations to the appointed person for the purpose of establishing that the apparatus in question complies or did so comply as the case may require; and
- (b) call and examine witnesses in connection with the representations.

3.—(1) Where representations in writing about a prohibition notice are made by the notified person to the Secretary of State at any time after a person has been appointed to consider representations about that notice, then, whether or not the appointed person has made a report to the Secretary of State, the following provisions of this paragraph shall apply instead of paragraph 2 above.

(2) The Secretary of State shall, before the end of the period of one month beginning with the day on which she receives the representations, serve a notification on the notified person which states—

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- (a) that the Secretary of State has decided to revoke the notice, has decided to vary it or, as the case may be, has decided neither to revoke nor to vary it; or
- (b) that, a person having been appointed to consider representations about the notice, the notified person may, at a place and time specified in the notification, make oral representations to the appointed person for the purpose of establishing that the apparatus to which the notice relates complies or did so comply as the case may require with the protection requirements or regulation 32 as the case may be.

(3) The time specified in a notification served for the purposes of sub-paragraph (2)(b) above shall not be before the end of the period of twenty-one days beginning with the day on which the notification is served, unless the notified person otherwise agrees or the time is the time already specified for the purposes of paragraph 2(2)(b) above.

(4) A person on whom a notification has been served for the purposes of sub-paragraph (2)(b) above or his representative may, at the place and time specified in the notification—

- (a) make oral representations to the appointed person for the purpose of establishing that the apparatus in question complies or did so comply as the case may require; and
- (b) call and examine witnesses in connection with the representations.

4.—(1) Where a person is appointed to consider representations about a prohibition notice, it shall be his duty to consider—

- (a) any written representations made by the notified person about the notice, other than those in respect of which a notification is served under paragraph 3(2)(a) above;
- (b) any oral representations made under paragraph 2(4) or 3(4) above; and
- (c) any statements made by witnesses in connection with the oral representations,

and, after considering any matters under this paragraph, to make a report (including recommendations) to the Secretary of State about the matters considered by her and the notice.

(2) It shall be the duty of the Secretary of State to consider any report made to her under sub-paragraph (1) above and, after considering the report, to inform the notified person of her decision with respect to the prohibition notice to which the report relates.

5.—(1) The Secretary of State may revoke or vary a prohibition notice by serving on the notified person a notification stating that the notice is revoked or, as the case may be, is varied as specified in the notification.

(2) The Secretary of State shall not vary a prohibition notice so as to make the effect of the notice more restrictive for the notified person.

(3) The service of a notification under sub-paragraph (1) above shall be sufficient to satisfy the requirement of paragraph 4(2) above that the notified person shall be informed of the Secretary of State's decision.

6.—(1) Where in a notification served on any person under this Schedule the Secretary of State has appointed a time for the making of oral representations or the examination of witnesses, she may, by giving that person such notification as the Secretary of State considers appropriate, change that time to a later time or appoint further times at which further representations may be made or the examination of witnesses may be continued; and paragraphs 2(4) and 3(4) above shall have effect accordingly.

(2) For the purposes of this Schedule the Secretary of State may appoint a person (instead of the appointed person) to consider any representations or statements, if the person originally appointed, or last appointed under this sub-paragraph, to consider those representations or statements has died or appears to the Secretary of State to be otherwise unable to act.

7. In this Schedule—

“the appointed person” in relation to a prohibition notice means the person for the time being appointed under this Schedule to consider representations about the notice;

“notification” means a notification in writing; and

“notified person”, in relation to a prohibition notice, means the manufacturer, supplier or user on whom the notice is or was served.