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STATUTORY INSTRUMENTS

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**2005 No. 281**

**ELECTROMAGNETIC COMPATIBILITY**

**The Electromagnetic Compatibility Regulations 2005**

*Made* - - - - *2nd February 2005*  
*Laid before Parliament* *11th February 2005*  
*Coming into force* - - *7th March 2005*

The Secretary of State, being a Minister designated (1) for the purposes of section 2(2) of the European Communities Act 1972 (2) in relation to measures relating to apparatus which is liable to cause electromagnetic disturbance and to apparatus the performance of which is liable to be affected by such disturbance, in exercise of the powers conferred upon her by that section, hereby makes the following Regulations:

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1. These Regulations may be cited as the Electromagnetic Compatibility Regulations 2005, and shall come into force on 7th March 2005.

**Repeal and disapplication**

- 2.—(1) The following Regulations are hereby revoked—
- (a) the Electromagnetic Compatibility Regulations 1992 (3);
  - (b) the Electromagnetic Compatibility (Amendment) Regulations 1994 (4); and
  - (c) the Electromagnetic Compatibility (Amendment) Regulations 1995 (5).

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(1) S.I. 1989/2393.  
(2) 1972 c. 68.  
(3) S.I. 1992/2372.  
(4) S.I. 1994/3080.  
(5) S.I. 1995/3180.

(2) The regulations made under section 10 of the Wireless Telegraphy Act 1949 (6) listed in Schedule 1, to the extent that they impose electromagnetic compatibility requirements which must be complied with if relevant apparatus is—

- (a) to be supplied or taken into service and
- (b) used for the purpose for which it was intended,

shall cease to have effect, but nothing in these Regulations shall affect the said regulations to the extent that they impose requirements for radio frequency spectrum planning or for the prevention of undue interference to wireless telegraphy from relevant apparatus in use.

### Interpretation

3.—(1) In these Regulations,

“the 1949 Act” means the Wireless Telegraphy Act 1949;

“the 1984 Act” means the Telecommunications Act 1984(7);

“the EMC Directive” means Council Directive 89/336/EEC on the approximation of the laws of the member States relating to electromagnetic compatibility (8) as amended by

- (a) Council Directive 92/31/EEC(9); and
- (b) Articles 5, 14.1 and 14.2 of Council Directive 93/68/EEC(10) (the CE Marking Directive);

“affixed” in relation to the CE marking, or any inscription which is liable to be confused therewith, or which is likely to deceive third parties as to the meaning and form thereof, means affixed to one of the items mentioned in regulation 35 (2) below or to any other item such that it is referable to any apparatus;

“authorised representative” means a person established within the Community appointed by the manufacturer (whether or not established in the Community) to act on his behalf in fulfilling his obligations under the EMC Directive as implemented by these Regulations;

“business” includes a profession and an undertaking, and a supply in the course of a business includes any supply by a business;

“CE marking” and “CE conformity marking” shall be construed in accordance with regulation 35 below;

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

“the Community” means the European Community;

“competent body” shall be construed in accordance with regulation 47 below;

“conformity assessment requirements” shall be construed in accordance with regulation 33 below;

“EC declaration of conformity” has the meaning given in regulation 36(1) below;

“EC type-examination certificate” in relation to the EC type-examination route to compliance in respect of radiocommunication transmission apparatus means an EC type-examination certificate issued by—

- (a) a United Kingdom notified body pursuant to regulation 66 below; or

(6) 1949 c. 54.

(7) 1984 c. 12.

(8) OJNo. L139, 23.5.89, p.19.

(9) OJ No. L126, 12.5.92, p11.

(10) OJ No. L220, 30.8.93, p.1.

(b) a notified body of an EEA state other than the United Kingdom pursuant to Article 10.5 of the EMC Directive;

“the EC type-examination route to compliance” in relation to radiocommunication transmission apparatus shall be construed in accordance with regulation 33(b) below;

“education and training equipment” means any relevant apparatus (including a kit)—

(a) supplied or possessed for supply to education or training establishments or manufactured in such an establishment for the purposes of experimentation, learning or practical training; and

(b) the usual electromagnetic environment of which is a classroom, laboratory, study area or similar such place;

“electrical apparatus” shall be construed in accordance with regulation 7(2) below;

“enforcement authority” in relation to any relevant apparatus means any person who is, pursuant to the provisions of regulation 75 below, authorised to act as an enforcement authority in relation to that relevant apparatus;

“end user” means

(a) a manufacturer who first uses electrical apparatus which he has manufactured for the purpose for which it is designed, but excludes a manufacturer who uses the apparatus by incorporating it into other apparatus; and

(b) any other person who uses the electrical apparatus;

“excluded installation” has the meaning giving by regulation 12(2);

“immunity” means immunity to electromagnetic disturbance;

“kit” means a collection of all or substantially all the necessary components, for supply as a single commercial unit, required for the construction of an item of electrical apparatus and intended for such use, whether or not accompanied by instructions. For the purposes of the definition of “system” in this paragraph and of the application of regulation 7 below, a kit shall be considered to be a system with an intrinsic function intended for the end user notwithstanding that, when it is supplied, it is not yet assembled;

“manufacture” means manufacture in the course of a business, and includes—

(a) assembly;

(b) finishing;

(c) reconditioning;

(d) modification which substantially alters the electromagnetic compatibility characteristics of the apparatus;

but does not include repair or the assembly of relevant apparatus from a kit;

“medical device” has the meaning given by regulation 22(3) below;

“notified body” shall be construed in accordance with regulation 63 below;

“OFCOM” means the Office of Communications established under the Office of Communications Act 2002(11);

“presumption of conformity” shall be construed in accordance with regulation 34 below;

“protection requirements” has the meaning given by regulation 5 below;

“radio amateur apparatus” means wireless telegraphy apparatus designed or adapted for use in the amateur service, but excludes citizens' band apparatus, and in this definition—

- (a) “amateur service” has the meaning given by Article 1, definition 1.56 of the 2001 edition of the Radio Regulations annexed to the International Telecommunication Constitution 1992 (12) pursuant to Articles 4 and 54 of that Constitution; and
- (b) ‘citizen’s band apparatus’ means wireless telegraphy apparatus designed or adapted exclusively for the provision of voice radiocommunication in the frequency bands 26.960 MHz to 27.410 MHz and 27.60125 MHz to 27.99125 MHz;

“radiocommunication transmission apparatus” has the meaning given by regulation 61(2) below;

“radio frequency spectrum” means that part of the electromagnetic spectrum at frequencies not exceeding 3,000 GHz; and requirements of regulations made under section 10 of the 1949 Act shall be taken to concern radio frequency spectrum planning if they concern the frequency allocation for any apparatus (whether wireless telegraphy apparatus or other apparatus which operates by emitting electromagnetic radiation in the radio frequency spectrum) and the necessary characteristics of any signal or emission authorised by such regulations;

“relevant apparatus” shall be construed in accordance with regulation 6 below;

“responsible person” in relation to relevant apparatus means—

- (a) the manufacturer;
- (b) the manufacturer’s authorised representative; or
- (c) where the manufacturer is not established in the Community and he has not appointed an authorised representative, the person who supplies the relevant apparatus;

“the standards route to compliance” in relation to relevant apparatus other than radiocommunication transmission apparatus shall be construed in accordance with regulation 33(a) (i) below;

“supply” means the first making available of relevant apparatus in the Community including, offering to supply, agreeing to supply, exposing for supply and possessing for supply such apparatus; but relevant apparatus shall not be regarded as having been supplied by reason only of its having been displayed at a trade fair or exhibition or advertised for supply when not available for supply;

“system” means an item of equipment, or a combination of items of equipment, containing—

- (a) electrical components;
- (b) electronic components; or
- (c) both (a) and (b),

and includes a kit but excludes any such equipment containing a medical device;

“technical certificate” in relation to the technical construction file route to compliance in respect of relevant apparatus other than radiocommunication transmission apparatus means a technical certificate issued by—

- (a) a United Kingdom competent body in accordance with regulation 52 below; or
- (b) a competent body of an EEA State other than the United Kingdom pursuant to Article 10.2 of the EMC Directive;

“technical construction file” shall be construed in accordance with regulation 45 below;

“the technical construction file route to compliance” in relation to relevant apparatus other than radiocommunication transmission apparatus shall be construed in accordance with regulation 33(a)(ii) below;

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(12) The International Telecommunication Constitution was adopted by the International Telecommunications Union at Nairobi on 6<sup>th</sup> November 1982 and was ratified by the United Kingdom on 15<sup>th</sup> November 1984.

“technical report” in relation to the technical construction file route to compliance in respect of relevant apparatus other than radiocommunication transmission apparatus means a technical report issued by—

- (a) a United Kingdom competent body in accordance with regulation 52 below; or
- (b) a competent body of an EEA State other than the United Kingdom pursuant to Article 10.2 of the EMC Directive;

“test apparatus” means relevant apparatus designed or adapted to generate or be susceptible to electromagnetic disturbance for the specific purpose of conducting any test or measurement in relation to—

- (a) any relevant apparatus; or
- (b) any other thing, matter or phenomenon;

“United Kingdom competent body” shall be construed in accordance with regulation 48 below;

“United Kingdom notified body” shall be construed in accordance with regulation 64 below; and

“wireless telegraphy”, “wireless telegraphy apparatus” and “station for wireless telegraphy” have the meanings given respectively by section 19(1) of the 1949 Act.

(2) For the purpose of these Regulations—

- (a) “electromagnetic compatibility” (“EMC”) is the ability of relevant apparatus to function satisfactorily in its electromagnetic environment without introducing intolerable electromagnetic disturbance to anything in that environment;
- (b) the electromagnetic (“EM”) characteristics of relevant apparatus comprise—
  - (i) the propensity of that apparatus to generate electromagnetic disturbance; and
  - (ii) the adequacy of the immunity of that apparatus to external electromagnetic disturbance;
- (c) a reference to an applicable EM characteristic of relevant apparatus is a reference to—
  - (i) in the case of apparatus to which regulations 27 to 29 below apply, any EM characteristic thereof which falls within the scope of these Regulations; and
  - (ii) in the case of any other apparatus, any EM characteristic thereof;
- (d) “applicable EMC standard”, “harmonised standard”, “recognised national standard” and “transposed harmonised standard” shall be construed in accordance with regulation 40 below;
- (e) an electromagnetic environment is the totality of electromagnetic phenomena existing at a given location, and
  - (i) a reference to the immediate electromagnetic environment in relation to education and training equipment or test apparatus (“disturbance permissible apparatus”) is a reference to a sufficient space for that apparatus to—
    - (aa) operate as intended, where the object of the study or test as the case may be is that it should generate electromagnetic disturbance;
    - (bb) be subjected to electromagnetic disturbance, where the object of the study or test as the case may be is that it should be the victim of electromagnetic disturbance,

without preventing other relevant apparatus (other than any apparatus involved in the study or test) from operating as intended; and in this definition, “sufficient space” means a space no greater in size than is reasonably necessary having regard to all the circumstances, to enable the disturbance permissible apparatus to be so operated

or so subjected, and having regard in particular to the steps which might reasonably be taken to insulate the site at which the disturbance permissible apparatus is being used against the escape of emissions therefrom;

- (ii) a reference to a sealed electromagnetic environment is a reference to an electromagnetic environment which prevents relevant apparatus therein from causing electromagnetic disturbance to relevant apparatus outside that electromagnetic environment and includes an anechoic chamber, an electromagnetic anechoic room or a Faraday cage; and
- (iii) a reference to the usual electromagnetic environment of apparatus is a reference to—
  - (aa) where the apparatus is manufactured or supplied for the purpose of being used at a specific location, the totality of electromagnetic phenomena which exist at that location under normal circumstances at the time when it is first used; or
  - (bb) where sub-paragraph (aa) above does not apply, the totality of electromagnetic phenomena which might reasonably be expected to exist at the usual range of locations at which that relevant apparatus might reasonably be expected to be used, having regard to all the circumstances, and in particular to—
- (iv) the electromagnetic phenomena associated with that relevant apparatus and other relevant apparatus which might reasonably be expected to be in sufficient proximity to the first mentioned relevant apparatus to be affected thereby; and
- (v) any indication by the manufacturer or supplier of the applications for which the first-mentioned relevant apparatus is suitable; and
- (f) relevant apparatus other than a kit is taken into service when it is first used by the person who assembled it or the person who imported it from a country or territory other than a member State; but relevant apparatus shall not be regarded as having been taken into service by reason only of its having been operated by or on behalf of the manufacturer at a trade fair or exhibition or by a supplier for demonstration purposes.

(3) In these Regulations, with respect to matters arising on and after 1st January 1994, a reference to the Community includes a reference to the EEA States, and for the purposes of this paragraph an EEA state means a member State, Norway, Iceland or Liechtenstein (13).

### **Electromagnetic disturbance**

4. In these Regulations, “electromagnetic disturbance” means, subject to paragraphs (2) to (6) below, any electromagnetic phenomenon which is liable to degrade the performance of relevant apparatus.

(1) Without prejudice to the generality of paragraph (1) above, the following phenomena shall be regarded as electromagnetic disturbance (being phenomena expressly stated to be such in Article 1.2 of the EMC Directive):—

- (a) electromagnetic noise;
- (b) unwanted signals; and
- (c) changes in the propagation medium.

(2) Without prejudice to the generality of paragraph (1) above and in addition to the phenomena regarded as electromagnetic disturbance pursuant to paragraph (2) above, the phenomena and effects listed in Schedule 2 hereto may be regarded as electromagnetic disturbance.

(13) The application of the EMC Directive was extended in 1994 to the European Economic Area by Decision 94/1/ECSC, EC (OJ No. L1, 3.1.94, p.291).

(3) A signal or emission which is a necessary function, or consequence of the operation, of relevant apparatus shall not be taken to be electromagnetic disturbance if, in relation to that apparatus, that signal or emission is permitted, and does not exceed the limits specified, by—

- (a) the applicable EMC standard;
- (b) a condition of the technical report or technical certificate;
- (c) where the apparatus is radiocommunication transmission apparatus—
  - (i) a condition of the EC type-examination certificate; or
  - (ii) a term, provision or limitation of—
    - (aa) a licence granted under section 1 of the 1949 Act; or
    - (bb) regulations made under that section; or
- (d) where the apparatus is—
  - (i) radiocommunication transmission apparatus; or
  - (ii) apparatus other than wireless telegraphy apparatus which operates by emitting electromagnetic radiation in the radio frequency spectrum,  
any relevant provisions of regulations made under section 10 of the 1949 Act concerning radio frequency spectrum planning.

(4) A nuclear electromagnetic pulse (“NEMP”) shall not be regarded as electromagnetic disturbance.

(5) Without prejudice to the generality of the foregoing provisions of this regulation, the performance of relevant apparatus shall be taken to be degraded if any of the following types of interference with its function occur—

- (a) permanent, temporary or intermittent—
  - (i) total loss of function;
  - (ii) significant impairment of function; or
- (b) where the apparatus is information storage or retrieval equipment, destruction or corruption of information stored thereby.

### **Protection requirements**

5.—(1) A reference to “protection requirements” in relation to relevant apparatus is a reference to the requirements set out in the following provisions of this regulation.

(2) Subject to paragraphs (3) to (5) below, relevant apparatus shall be so constructed that—

- (a) the electromagnetic disturbance it generates does not exceed a level allowing other relevant apparatus to operate as intended; and
- (b) it has a level of intrinsic immunity which is adequate to enable it to operate as intended, when it is—
  - (i) properly installed and maintained; and
  - (ii) used for the purpose for which it was intended.

(3) Nothing in paragraph (2) above shall be taken to require relevant apparatus, not being apparatus specifically designed for use at a given location, to be constructed in such a manner as to—

- (a) prevent the generation of electromagnetic disturbance to, or
- (b) provide for intrinsic immunity to electromagnetic disturbance generated by,

other relevant apparatus which would not reasonably be expected to be present in its usual electromagnetic environment.

- (4) Without prejudice to the generality of paragraph (2)(a), the electromagnetic disturbance generated by relevant apparatus shall—
- (a) not exceed a level allowing radio and telecommunications equipment to operate as intended; and
  - (b) be such as not to hinder the use of apparatus of any of the descriptions listed in Schedule 3 hereto (being descriptions listed in the illustrative list of the principal protection requirements in Annex III of the EMC Directive) where that apparatus is constructed in such a way that it has an adequate level of immunity in its usual electromagnetic environment so as to allow its unhindered operation taking into account the levels of electromagnetic disturbance generated by relevant apparatus complying with applicable EMC standards.
- (5) Without prejudice to the generality of paragraph (2)(b)—
- (a) relevant apparatus shall be constructed in such a way that it has an adequate level of immunity in its usual electromagnetic environment so as to allow its unhindered operation taking into account the levels of electromagnetic disturbance generated by other relevant apparatus which might reasonably be expected to be present in that environment and which complies with the protection requirements; and
  - (b) whether the level of intrinsic immunity of relevant apparatus is adequate is to be considered having regard to all the circumstances of the case, and in particular to—
    - (i) the level of performance reasonably expected of that apparatus having regard to its function or intended function;
    - (ii) any specification for an acceptable level of degradation of performance provided to the end user by the manufacturer;
    - (iii) the consequences of degradation of performance,
 but nothing in this sub-paragraph shall authorise a level of intrinsic immunity which could permit the operation of the apparatus to be dangerous (either to persons or property) in any reasonably foreseeable circumstances.
- (6) The information required to enable use in accordance with the intended purpose of the relevant apparatus must be contained in the manufacturer's instructions accompanying the apparatus.

## PART II

### APPLICATION

#### *General Application*

#### **Relevant apparatus**

6.—(1) Subject to paragraph (2) below, this Part shall have effect for the purposes of providing for the application of these Regulations, and apparatus to which these Regulations apply shall be relevant apparatus.

(2) In addition to applying to relevant apparatus, the following provisions of these Regulations apply as follows:—

- (a) Part I, and regulations 35(6), 36(4), 76 to 79, 82, 83, 84(c) and (d), 86 to 88, 91 to 93 and 95 to 99, apply to electrical apparatus other than relevant apparatus; and
- (b) Part I and regulations 7(2), 82, 83, 86, 92, 93, 95, and 99 apply to an excluded installation as a unit (without prejudice to the application of the provisions referred to in sub-



paragraph (a) above to such installation or any part thereof on the ground that it is electrical apparatus).

### **General conditions of application**

7.—(1) Subject to regulations 8 and 9 below, these Regulations apply to electrical apparatus unless, pursuant to regulations 10 to 29 below, it falls outside the scope of these Regulations.

- (2) For the purposes of these Regulations, electrical apparatus consists of a product —
- (a) with an intrinsic function intended for the end user; and
  - (b) supplied or intended for supply or taken into service or intended to be taken into service as a single commercial unit,  
which is—
    - (i) an electrical appliance;
    - (ii) an electronic appliance; or
    - (iii) a system.

### *Modified application*

### **Education and training equipment**

8.—(1) This regulation applies to education and training equipment which would not, except for the provisions of this regulation, conform with the protection requirements under normal conditions of use in its usual electromagnetic environment.

(2) Education and training equipment to which this regulation applies shall be deemed to conform with the protection requirements if it satisfies the following conditions—

- (a) in relation to supply, the apparatus is accompanied by a declaration in English stating that the use of the apparatus outside the classroom, laboratory, study area or similar such place invalidates conformity with the protection requirements of the EMC Directive and could lead to prosecution; and
- (b) the equipment when operated does not cause electromagnetic disturbance to apparatus situated outside its immediate electromagnetic environment.

### **Test apparatus**

9. In the application of these Regulations to test apparatus, a reference to the protection requirements—

- (a) insofar as it relates to the electromagnetic disturbance generated by that apparatus shall be construed as a reference to that disturbance capable of preventing relevant apparatus situated outside the immediate electromagnetic environment of that apparatus from operating as intended; and
- (b) insofar as it relates to the immunity of that apparatus, shall not be taken to refer to any susceptibility to electromagnetic disturbance which is a necessary feature of that apparatus to facilitate the conducting of the test.

### *Exclusions*

#### **Apparatus supplied or taken into service before 28th October 1992**

10. These Regulations do not apply to an item of electrical apparatus supplied or taken into service in the Community before 28th October 1992.

#### **Apparatus for export to a third country outside the Community**

11.—(1) Subject to paragraph (2) below, these Regulations do not apply to any apparatus which the supplier believes (with reasonable cause) will not be used either in the United Kingdom or elsewhere in the Community.

(2) Paragraph (1) above shall not apply if the CE mark or any inscription liable to be confused therewith is affixed to the apparatus.

#### **Excluded installations**

12.—(1) These Regulations do not apply to excluded installations; but the extent to which any apparatus or system comprised or to be comprised therein is relevant apparatus shall be determined in accordance with the provisions of this Part.

(2) In this regulation “excluded installation” means two or more combined items of relevant apparatus or systems put together at a given place (whether or not in combination with any other item) to fulfil a specific objective but not designed by the manufacturer (or manufacturers, where the items are made by different manufacturers) for supply as a single functional unit.

#### **Spare parts**

13.—(1) Subject to paragraph (2), these Regulations do not apply to spare parts.

(2) Nothing in this regulation shall be taken to affect the application of these Regulations to apparatus into which a spare part has been incorporated.

(3) In this regulation, “spare part” means a component or combination of components intended for use in replacing parts of electrical apparatus.

#### **Supply to the authorised representative**

14. These Regulations do not apply to the supply of apparatus by the manufacturer thereof to his authorised representative.

#### **Second-hand apparatus**

15.—(1) Subject to paragraph (2) below, these Regulations do not apply to second-hand apparatus.

(2) Nothing in paragraph (1) above shall be taken to disapply these Regulations to—

- (a) the supply of second-hand apparatus which has, since it was last used, been subjected to further manufacture within the meaning of sub-paragraphs (c) or (d) of the definition of manufacture in regulation 3(1) above;
- (b) the supply or taking into service of such apparatus following such further manufacture; or
- (c) the supply or taking into service in the Community of apparatus which has previously been supplied or used in a country or territory outside the Community.

(3) In this regulation, “second-hand apparatus” means apparatus which has previously been used by an end user.

### **Electromagnetically benign apparatus**

16. These Regulations do not apply to apparatus the inherent qualities of which are such that neither is it liable to cause, nor is its performance liable to be degraded by, electromagnetic disturbance.

### **Apparatus for use in a sealed electromagnetic environment**

17. These Regulations do not apply to—

- (a) the supply of any apparatus—
  - (i) for which the usual electromagnetic environment is a sealed electromagnetic environment; and
  - (ii) which is accompanied by instructions which state that the apparatus is suitable for use only in a sealed electromagnetic environment; or
- (b) the taking into service of any apparatus in such an environment.

### **Radio amateur apparatus**

18.—(1) These Regulations do not apply to radio amateur apparatus which is not available commercially.

(2) In this regulation, “available commercially” means manufactured in the course of a business of manufacture of relevant apparatus.

### **Military equipment**

19.—(1) These Regulations do not apply to military equipment.

(2) In this regulation, “military equipment” means apparatus which is designed for use as arms, munitions or war material within the meaning of Article 223.1(b) of the Treaty establishing the European Community (notwithstanding that it may be capable of other applications), but does not include apparatus which is designed both for such use and for other applications.

### *Apparatus covered by other Directives*

### **Active implantable medical devices**

20.—(1) These Regulations do not apply to active implantable medical devices.

(2) In this regulation “active implantable medical device” has the meaning given by Article 1.2(c) of Council Directive [90/385/EEC](#)(14) on the approximation of laws of the member States relating to active implantable medical devices.

### **In vitro medical devices**

21.—(1) These Regulations do not apply to in vitro medical devices and their accessories.

(2) In this regulation “in vitro medical device” has the meaning given by Article 1.2(b) of Directive [98/79/EC](#)(15) concerning in vitro medical devices and “accessory” has the meaning given in Article 1. 2(c) of that Directive.

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(14) OJ No. L189, 20.7.90, p.17.

(15) OJ No. L331, 7.12.98, p.1.

**Medical devices**

**22.**—(1) These Regulations do not apply to medical devices.

(2) Insofar as the Wireless Telegraphy (Control of Interference from Electro Medical Apparatus) Regulations 1963 **(16)** impose electromagnetic compatibility requirements which must be complied with if a relevant medical device is to be supplied, used or taken into service, those Regulations shall cease to apply except where the manufacturer elects to comply with the Wireless Telegraphy (Control of Interference from Electro Medical Apparatus) Regulations 1963 if applicable.

(3) In this regulation “medical device” has the meaning given by Article 1.2(a) of Directive [93/42/EEC](#) **(17)** concerning medical devices.

**Vehicles, components and separate technical units**

**23.**—(1) These Regulations do not apply to vehicles, components or separate technical units.

(2) In this regulation, in accordance with Council Directive [72/245/EEC](#) relating to the radio interference (electromagnetic compatibility) of vehicles **(18)** as adapted to technical progress and amended by Commission Directive [95/54/EC](#) **(19)**, “vehicle”, “component” and “separate technical unit” have the meanings respectively given to them by Article 2 of Council Directive [70/156/EEC](#) on the approximation of the laws of the member States relating to the type-approval of motor vehicles and their trailers **(20)**, as amended by Council Directive [92/53/EEC](#) **(21)**.

**Agricultural or forestry tractors**

**24.**—(1) These Regulations do not apply to agricultural or forestry tractors insofar as the electromagnetic disturbance generated by them is liable to cause radio interference.

(2) In this regulation, “agricultural or forestry tractor” has the meaning given to “vehicle” in Article 1 of Council Directive [75/322/EEC](#) on the suppression of radio interference produced by agricultural or forestry tractors (electromagnetic compatibility) **(22)** as amended by Commission Directive [2000/2/EC](#) of 14 January 2000 **(23)**.

**Two and three-wheel motor vehicles**

**25.**—(1) These Regulations do not apply to two and three-wheel motor vehicles.

(2) In this regulation, in accordance with Directive [97/24/EC](#) on certain components and characteristics of two and three-wheel motor vehicles **(24)**, “two and three-wheel motor vehicles” has the meaning given to two or three-wheel motor vehicles referred to in Article 1 of Directive [2002/24/EC](#) **(25)** relating to the type approval of two and three-wheel vehicles.

**Marine Equipment**

**26.**—(1) These Regulations do not apply to marine equipment.

**(16)** S.I. 1963/1895.

**(17)** OJ No. L169, 12.7.93, p.1.

**(18)** OJ No. L152, 6.7.72, p.15.

**(19)** OJ No. L266, 8.11.95, p.1.

**(20)** OJ No L42, 23.2.70, p.1

**(21)** OJ No. L225, 10.8.92, p.1. Council Directive [92/53/EEC](#) replaced Article 2 of Council Directive [70/156/EEC](#). Council Directive [72/245/EEC](#) (as amended by Commission Directive [95/54/EC](#)) is a separate Directive for the purposes of the definitions of component and separate technical unit.

**(22)** OJ No. L147, 9.6.75, p.28.

**(23)** OJ No. L21, 26.1.2000, p.23.

**(24)** OJ No. L226, 18.8.97, p.1..

**(25)** OJ No. 124, 9.5.2002, p.1. This Directive replaced Directive [92/61/EC](#) (OJ No. L225, 10.8.92, p.72).

(2) In this regulation, “marine equipment” has the meaning given to “equipment”, as defined in Article 2 (b) of Directive [96/98/EC\(26\)](#) on marine equipment, for use on board as provided for in Article 3 of that Directive.

### **Electrical Energy Meters**

**27.**—(1) These Regulations do not apply to electrical energy meters as regards the immunity thereof.

(2) In this regulation, “electrical energy meter” means any new directly connected induction meter, with single or multiple tariffs, designed to measure active energy single-phase or polyphase current at 53 Hz frequency mentioned or referred to in Article 2 of Council Directive [76/891/EEC](#) on the approximation of the laws of the member States relating to electrical energy meters (**27**).

### **Non-automatic weighing instruments**

**28.**—(1) These Regulations do not apply to non-automatic weighing instruments as regards the immunity thereof.

(2) In this regulation, “non-automatic weighing instrument” has the meaning given by the second indent of Article 1.1 read in conjunction with Article 1.2(a) of Council Directive [90/384/EEC](#) on the harmonisation of the laws of the member States relating to non-automatic weighing instruments (**28**).

### **Radio equipment and telecommunications terminal equipment**

**29.** These Regulations do not apply to telecommunications terminal equipment and radio equipment as defined in regulation 2(1) of the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000(**29**).

## **PART III**

### **GENERAL REQUIREMENTS**

#### **General duty for supply**

**30.** No person shall supply relevant apparatus unless the requirements of regulation 32 below are complied with in relation to such apparatus.

#### **General duty for taking into service**

**31.** No person shall take into service relevant apparatus unless that apparatus conforms with the protection requirements.

#### **Requirements for supply**

**32.** The requirements of this regulation are that—

- (a) the relevant apparatus conforms with the protection requirements;
- (b) the conformity assessment requirements have been complied with;

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(26) OJ No. L46, 17.2.97, p.25.

(27) OJ No. L336, 4.12.76, p.30.

(28) OJ No. L189, 20.7.90, p.1 amended by Directive [93/68/EEC](#) of 22.11.93 (OJ No. L220, 30.8.93, p.1).

(29) [S.I. 2000/730](#).

- (c) the CE marking has been properly affixed by the manufacturer or his authorised representative in relation to the relevant apparatus in accordance with regulation 35 below; and
- (d) the manufacturer or his authorised representative has properly issued an EC declaration of conformity in respect of the relevant apparatus in accordance with the requirements of regulation 36 below.

### **Conformity assessment requirements—the three routes to compliance**

**33.** The conformity assessment requirements are that—

- (a) in the case of relevant apparatus other than radiocommunication transmission apparatus, the requirements of—
  - (i) Part IV (in these Regulations referred to as “the standards route to compliance”); or
  - (ii) Part V (in these Regulations referred to as “the technical construction file route to compliance”)
 of these Regulations are complied with; and
- (b) in the case of radiocommunication transmission apparatus, the requirements of Part VI (in these Regulations referred to as “the EC type-examination route to compliance”) of these Regulations are complied with.

### **Presumption of conformity**

**34.** Where in relation to any relevant apparatus—

- (a) such apparatus conforms to the applicable EMC standard, or all applicable EMC standards, which make provision for that apparatus; or
- (b) the conformity assessment requirements are complied with pursuant to the technical construction file route to compliance,

there shall be a presumption (“the presumption of conformity”) that, until the contrary is proved, that relevant apparatus complies with the protection requirements.

### **The CE marking**

**35.—(1)** For the purposes of these Regulations, the CE marking shall be regarded as properly affixed in relation to relevant apparatus if the requirements of this regulation are complied with.

(2) The CE marking shall be affixed in relation to any relevant apparatus by being affixed to one of the following—

- (a) the apparatus; or
- (b) the apparatus'—
  - (i) packaging;
  - (ii) instructions for use; or
  - (iii) guarantee certificate.

(3) Subject to paragraph (4) below, where the apparatus is the subject of other Community Directives covering other aspects and which also provide for the CE conformity marking, the latter shall indicate that the apparatus is also presumed to conform to those other Directives.

(4) Where one or more of the other Directives referred to in paragraph (3) above allow the manufacturer, during a transitional period, to choose which arrangements to apply, the CE marking shall indicate conformity only to the Directives applied by the manufacturer. In this case, particulars

of the Directives applied, as published in the Official Journal of the European Communities, must be given in the documents, notices or instructions required by the Directives and accompanying such apparatus.

(5) No person shall affix to relevant apparatus, its packaging, the instructions for use or the guarantee certificate any marking which is likely to deceive third parties as to the meaning and form of the CE marking. Any other marking may be affixed to the apparatus, its packaging, the instructions for use or the guarantee certificate provided that the visibility and legibility of the CE marking are not thereby reduced.

(6) No person shall affix the CE marking, or any other inscription liable to be confused with it, in relation to any relevant apparatus, unless—

- (a) the apparatus complies with the protection requirements; and
- (b) the conformity assessment requirements have been complied with.

(7) Except as provided in paragraph (3) above, no person shall affix the CE marking, or any other inscription liable to be confused with it, to any electrical apparatus other than relevant apparatus.

(8) The CE marking shall comply with the form requirements set out in Schedule 4 to these Regulations.

(9) In these Regulations, “CE marking” means the CE conformity marking, being a mark—

- (a) consisting of the initials “CE”;
- (b) taking the form set out in paragraph 1 of Schedule 4 hereto; and
- (c) which, when used in relation to the EMC Directive, indicates conformity to all the provisions of that Directive, including the conformity assessment requirements.

### **EC declaration of conformity**

**36.**—(1) For the purposes of these Regulations, an EC declaration of conformity is a declaration which indicates that apparatus conforms with the protection requirements of the EMC Directive (howsoever expressed).

(2) For the purposes of these Regulations, an EC declaration of conformity shall be regarded as properly issued in relation to relevant apparatus if the following requirements are complied with—

- (a) the apparatus conforms with the protection requirements;
- (b) the conformity assessment requirements are complied with;
- (c) in the case of a declaration issued in the United Kingdom—
  - (i) in the case of a declaration issued pursuant to the standards route to compliance, it complies with the requirements of regulation 42 below;
  - (ii) in the case of a declaration issued pursuant to the technical construction file route to compliance, it complies with the requirements of regulation 59 below;
  - (iii) in the case of a declaration issued pursuant to the EC type-examination route to compliance, it complies with the requirements of regulation 72 below;
- (d) in the case of a declaration issued other than in the United Kingdom, the declaration is issued by the manufacturer or his authorised representative and contains the following—
  - (i) a description of the apparatus to which it refers;
  - (ii) reference to the specifications or harmonised standards or both under which conformity is declared, and where appropriate, to the national measures or recognised national standards or both, as the case may be, implemented to ensure the conformity of the apparatus with the provisions of the EMC Directive;

(iii) identification of the signatory empowered to bind the manufacturer or his authorised representative; and

(iv) where appropriate, reference to the EC type-examination certificate issued by a notified body.

(3) No person shall (in the United Kingdom) issue an EC declaration of conformity in relation to relevant apparatus unless—

(a) the apparatus to which it relates conforms with the protection requirements;

(b) the conformity assessment requirements have been complied with; and

(c) the requirements of paragraph (2)(c) above are complied with.

(4) No person shall (in the United Kingdom) issue an EC declaration of conformity in relation to any electrical apparatus other than relevant apparatus.

### **Retention of documentation**

**37.**—(1) A responsible person shall hold an EC declaration of conformity in relation to relevant apparatus at the disposal of the Secretary of State for ten years beginning with the date on which the latest item of relevant apparatus to be supplied in the Community to which the declaration relates was so supplied.

(2) Where the EC declaration of conformity is made pursuant to Part V or VI of these Regulations, the responsible person shall hold the technical construction file, or EC type-examination certificate, as the case may be, at the disposal of the Secretary of State for ten years beginning with the date on which the latest item of relevant apparatus to be supplied in the Community to which the technical construction file or EC type-examination certificate relates was so supplied.

(3) Any documentation to be retained by the responsible person pursuant to the requirements of paragraphs (1) and (2) above may be kept by recording the matters in question in any form, provided that adequate precautions shall be taken for guarding against falsification.

(4) The power conferred on a responsible person in paragraph (3) above includes power to keep the documentation by recording those matters otherwise than in legible form, so long as the recording is capable of being reproduced in a legible form.

(5) If the responsible person records the documentation in question otherwise than in a legible form, any duty imposed on him by these Regulations to allow inspection of, or to furnish a copy of, the documentation or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the document or of the relevant part of it in legible form.

## **PART IV**

### **THE STANDARDS ROUTE TO COMPLIANCE**

#### **Application of Part IV**

**38.**—(1) Subject to paragraph (2) below, this Part shall have effect for the purposes of providing for the manner in which the conformity assessment requirements may be complied with where the manufacturer has chosen the standards route to compliance.

(2) This Part does not, save for regulation 40, apply to radiocommunication transmission apparatus.



### **The standards route to compliance**

**39.** The conformity assessment requirements are complied with pursuant to the standards route to compliance if the manufacturer has applied an applicable EMC standard which makes, or all applicable EMC standards which make, complete provision in respect of the apparatus.

### **Applicable EMC standards**

**40.**—(1) This regulation shall have effect for the purpose of making provision in respect of the standards which are to be recognised for the purposes of Article 7 of the EMC Directive.

(2) Except for regulation 49(4) below, a harmonised standard is a technical specification (European standard or harmonisation document)—

- (a) adopted for the purposes of Article 7.1(a) of the EMC Directive by the European Committee for Electrotechnical Standardisation (CENELEC) or the European Telecommunications Standards Institute (ETSI) upon a remit from the Commission in accordance with the provisions of Council Directive [83/189/EEC](#) laying down a procedure for the provision of information in the field of technical standards and regulations<sup>(30)</sup> or Directive [98/34/EC](#)<sup>(31)</sup> as amended by Directive [98/48/EC](#)<sup>(32)</sup>;
- (b) the reference number of which has been published in the Official Journal of the European Communities pursuant to that sub-article.

(3) A transposed harmonised standard is a national standard of a Member State—

- (a) which transposes a harmonised standard; and
- (b) the reference number of which has been published—
  - (i) by the relevant member State pursuant to Article 7.1(a) of the EMC Directive; or
  - (ii) in the case of a transposed harmonised standard of the United Kingdom, pursuant to regulation 41(1) below.

(4) A recognised national standard is a standard of a member State—

- (a) which applies to relevant apparatus for which no harmonised standard has been adopted;
- (b) which is recognised as a national standard for the purposes of Article 7.1(b) of the EMC Directive, the Commission having notified the member States pursuant to Articles 7.2 and 8.2 of that Directive that that standard enjoys the presumption of conformity with the protection requirements for the time being and published its reference number in the Official Journal pursuant to Article 7.2 of the Directive; and
- (c) in the case of a recognised national standard of—
  - (i) a member State other than the United Kingdom, the reference number of which has been published by the relevant member State pursuant to the said Article 7.2;
  - (ii) the United Kingdom, the reference number of which has been published (and not withdrawn) pursuant to regulation 41(2) below.

(5) In relation to any description of relevant apparatus, an applicable EMC standard is either a transposed harmonised standard or a recognised national standard within the scope of which that description of relevant apparatus falls.

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<sup>(30)</sup> OJ No. L109, 26.4.83, p.8.

<sup>(31)</sup> Directive [98/34/EC](#) (OJ No L204, 21.7.1998, p.37) replaced Directive [83/189/EEC](#).

<sup>(32)</sup> OJ No. L217, 5.8.98, p.18.

### **Publication of reference numbers of standards**

**41.**—(1) The Secretary of State shall from time to time publish pursuant to this paragraph, lists of the reference numbers of standards which are to be regarded as the transposed harmonised standards of the United Kingdom for the time being for the purposes of Article 7.1(a) of the EMC Directive.

(2) The Secretary of State shall from time to time publish pursuant to this paragraph lists of the reference numbers of standards which are to be regarded as the recognised national standards of the United Kingdom for the time being for the purposes of Article 7.1(b) of the EMC Directive.

(3) The Secretary of State shall from time to time publish lists of the reference numbers of standards which are for the time being transposed harmonised standards and recognised national standards of the member States other than the United Kingdom.

### **EC declaration of conformity pursuant to the standards route to compliance**

**42.**—(1) This regulation shall have effect for prescribing the form of an EC declaration of conformity issued in the United Kingdom in respect of relevant apparatus in relation to which the conformity assessment requirements have been complied with pursuant to the standards route to compliance.

(2) An EC declaration of conformity to which this regulation applies shall—

- (a) be in English;
- (b) give the name and address—
  - (i) of the responsible person;
  - (ii) where that person is not the manufacturer, of the manufacturer;
- (c) be signed by or on behalf of the manufacturer or his authorised representative and identify that signatory;
- (d) bear the date of issue;
- (e) give particulars of the relevant apparatus to which it relates sufficient to identify it;
- (f) state the numbers and titles of the applicable EMC standards applied by the manufacturer; and
- (g) certify that the apparatus to which it relates conforms with the protection requirements of the EMC Directive.

## **PART V**

### **THE TECHNICAL CONSTRUCTION FILE ROUTE TO COMPLIANCE**

#### *General*

#### **Application of Part V**

**43.** This Part shall have effect for the purposes of providing for—

- (a) the circumstances and manner in which the conformity assessment requirements may be complied with pursuant to the technical construction file route to compliance; and
- (b) the appointment of United Kingdom competent bodies to exercise functions in relation thereto, and matters incidental to such appointment and exercise.

### **Applicability of the technical construction file route to compliance**

44.—(1) Subject to paragraph (2) below, the conformity assessment requirements may be complied with pursuant to the technical construction file route to compliance where—

- (a) there are applicable EMC standards which make complete provision in respect of the apparatus, but the manufacturer has chosen not to apply all or any of those standards either as regards the whole or part thereof;
- (b) there is no applicable EMC standard; or
- (c) there are applicable EMC standards and the manufacturer has applied all or any of them as regards the whole or part thereof, but they do not make complete provision in respect of the apparatus.

(2) The technical construction file route to compliance shall not apply in respect of radiocommunication transmission apparatus.

### **Technical construction files**

45.—(1) A technical construction file is a file which—

- (a) describes the apparatus to which it relates;
- (b) contains information about the design, manufacture and operation thereof;
- (c) sets out the procedures used to ensure the conformity of the apparatus with the protection requirements in respect of the applicable EM characteristics of the apparatus in respect of which the manufacturer has not applied an applicable EMC standard; and
- (d) includes a technical report or technical certificate.

(2) A technical construction file may be composed in relation to—

- (a) a single item of apparatus;
- (b) where a number of items are to be produced, a specimen representative of the production envisaged (a “representative”); or
- (c) a number of items of apparatus or representatives of each such item or representative being variants of the same basic design (each such item or representative being referred to as a “variant”).

(3) Without prejudice to the generality of paragraph (1) above, a technical construction file composed in the United Kingdom shall—

- (a) be in material form;
- (b) be in—
  - (i) English where application for the technical report or technical certificate is made to a United Kingdom competent body; or
  - (ii) any official Community language acceptable to the competent body where such application is made to a competent body of another member State;
- (c) give the name and address—
  - (i) of the responsible person;
  - (ii) where that person is not the manufacturer, of the manufacturer;
- (d) contain such information as is sufficient, in all the circumstances of the case, to enable the enforcement authority to—
  - (i) identify the apparatus to which it relates; and
  - (ii) ascertain whether the apparatus to which it relates conforms with the protection requirements;

- (e) state the numbers and titles of the applicable EMC standards, and any other standards, specifications or codes of practice, applied by the manufacturer; and
- (f) contain particulars of the electromagnetic environment for which the apparatus is suitable.

### **The technical construction file route to compliance**

**46.** The conformity assessment requirements are complied with in relation to relevant apparatus pursuant to the technical construction file route to compliance if the manufacturer or his authorised representative has composed a technical construction file in respect of the apparatus.

### **Competent bodies**

**47.** For the purposes of these Regulations, a competent body is a body responsible for issuing technical reports and technical certificates pursuant to Article 10.2 of the EMC Directive either for all descriptions of relevant apparatus (other than radiocommunication transmission apparatus) or for specific descriptions thereof, and which is for the time being—

- (a) a United Kingdom competent body pursuant to appointment under regulation 48 below;
- (b) a competent body of a member State other than the United Kingdom; or
- (c) recognised for the purpose of carrying out those functions by inclusion in a mutual recognition agreement relating to the EMC Directive or a similar agreement (including a Protocol to the Europe Agreement, or other Agreement, on Conformity Assessment and Acceptance of Industrial Products) which has been concluded between the Community and a State other than an EEA State.

#### *United Kingdom competent bodies*

### **Appointment**

**48.—**(1) Subject to regulation 49 below, the Secretary of State may appoint a person as a United Kingdom competent body in accordance with the following provisions of this regulation.

(2) An appointment under this regulation shall be in writing and shall, subject to regulations 50(5) and 51(3) below, be subject to such conditions as the Secretary of State may impose for the time being, and such conditions may include conditions which are to apply on or following the termination or expiry of the appointment.

(3) Subject to regulation 49(2) below, an appointment under this regulation shall have effect in respect of such descriptions of relevant apparatus as the Secretary of State may for the time being authorise, and in this Part, “authorised” shall be construed accordingly.

(4) In exercising the power conferred by paragraph (1) above, the Secretary of State may (in addition to the matters of which she is required to satisfy herself pursuant to regulation 49(2) below) have regard to any matter appearing to her to be relevant, and, without prejudice to the generality of the foregoing, she may have regard to any standards relating to the accreditation of laboratories or certification bodies appearing to her to be appropriate.

(5) Subject to regulation 50 below, an appointment under this regulation may be for—

- (a) the time being; or
- (b) such period as may be specified in the appointment.

(6) The Secretary of State shall from time to time publish lists of United Kingdom competent bodies indicating the descriptions of relevant apparatus in respect of which each body is authorised; and such lists may include information concerning any condition to which the appointment of any competent body is for the time being subject.

### **Eligibility and verification**

**49.**—(1) Subject to paragraph (2) below, the following persons shall be eligible for appointment as United Kingdom competent bodies—

- (a) the Secretary of State; and
- (b) any person resident, incorporated, or carrying on a business in the United Kingdom.

(2) The criteria listed in Schedule 5 hereto (being the criteria for the assessment of the bodies to be notified listed in Annex II of the EMC Directive and the criteria which competent bodies are required by Article 1.5 of that Directive to meet) (“the minimum criteria”) must be satisfied in relation to any person if that person is to be appointed or remain a United Kingdom competent body, and accordingly the Secretary of State shall not—

- (a) make an appointment under regulation 48(1) above unless she is satisfied that the person concerned meets the minimum criteria; or
- (b) authorise under regulation 48(3) above the appointment to have effect in relation to any description of relevant apparatus unless she is satisfied that the body meets the minimum criteria in respect of that description of apparatus.

(3) The Secretary of State shall from time to time verify that each United Kingdom competent body meets the minimum criteria listed in paragraphs 1 and 2 of Schedule 5 hereto.

(4) A person who complies with the assessment criteria fixed by a standard which is a relevant harmonised standard within the meaning of Article 10.6 of the EMC Directive shall be presumed to meet the minimum criteria.

(5) An appointment under regulation 48 above may be subject to the condition that only a defined part of the undertaking of the appointed person may exercise the functions of a competent body, and where an appointment is, or is to be, subject to such a condition—

- (a) a reference in these Regulations to a person’s meeting the minimum criteria shall be construed in relation to that person as a reference to the part of that person’s undertaking so defined meeting those criteria; and
- (b) the conditions of the appointment shall include provision for ensuring that the confidentiality of confidential information held by the part of the undertaking so defined in pursuance of its function as a United Kingdom competent body is protected from disclosure to other parts of the undertaking.

(6) Upon the expiry of an appointment under regulation 48 above, the United Kingdom competent body shall be eligible for re-appointment.

### **Termination of appointment and transfer of functions**

**50.**—(1) The Secretary of State, by notice in writing (a “notice of termination”)—

- (a) shall terminate the appointment of a United Kingdom competent body where—
  - (i) the body so requests; or
  - (ii) it appears to the Secretary of State that—
    - (aa) the body no longer satisfies the minimum criteria; or
    - (bb) it is necessary in the interests of manufacturers, suppliers or end users of relevant apparatus to terminate the body’s appointment; and
- (b) may terminate such appointment if the body is in breach of a condition of appointment.

(2) Where the Secretary of State exercises the power conferred by paragraph (1) above—

- (a) the notice of termination shall take effect on such date as shall be specified therein; and

- (b) the Secretary of State shall inform the appropriate authorities of the other member States and the Commission.
- (3) Where the Secretary of State—
- (a) withdraws the authorisation of a United Kingdom competent body to exercise functions in relation to any description of apparatus pursuant to regulation 48(3) above; or
- (b) terminates the appointment of such a body pursuant to paragraph (1) of this regulation, she may give such directions (either to the body the subject of the withdrawal or termination, as the case may be, or to another authorised United Kingdom competent body) for the purposes of making such arrangements for the determination of outstanding applications as she considers appropriate.
- (4) Without prejudice to the generality of the power conferred by paragraph (3) above, such directions may include the manner in which fees already received pursuant to regulation 51 below in respect of outstanding applications by the body the subject of the withdrawal or termination, as the case may be, are to be disposed of, having regard to the work already done on such applications by that body.
- (5) The Secretary of State shall, where she takes an action referred to in paragraph (3)(a) or (b) above in relation to a United Kingdom competent body, give such directions as she considers appropriate to provide for the exercise by another United Kingdom competent body or herself of the powers conferred by regulations 56(3) and 57 below exercisable by the first mentioned United Kingdom competent body, and where such directions have been given, a reference in those provisions to the United Kingdom competent body which issued a technical certificate or technical report shall be construed as a reference to that other United Kingdom competent body or to the Secretary of State, as the case may be.

#### **Power of competent body other than the Secretary of State to charge fees**

**51.**—(1) Without prejudice to the power of the Secretary of State, where she is a United Kingdom competent body, to charge fees pursuant to regulations made under section 56 of the Finance Act 1973 (**33**) and subject to paragraphs (2) and (3) below, a United Kingdom competent body other than the Secretary of State may charge applicants for technical reports or technical certificates such fees in connection with or incidental to the consideration of applications therefor as the body may determine; and such fees may include an amount on account of profit which is reasonable in the circumstances having regard to—

- (a) the character and extent of the work done or to be done by the body in the determination of such applications; and
- (b) the commercial rate normally charged on account of profit for that work or similar work.
- (2) The power in paragraph (1) above includes power to require the payment of fees or a reasonable estimate thereof with the application.

(3) Without prejudice to the generality of regulation 48(2) above, the conditions to which an appointment under regulation 48(1) may be subject may include a requirement to publish from time to time the scale of fees which the United Kingdom competent body charges pursuant to this regulation, or such information about the basis of calculation thereof as may be specified in the condition.

#### **Applications for technical reports and technical certificates**

**52.**—(1) Subject to regulation 53 below, a United Kingdom competent body shall determine applications made thereto for the issue of technical reports and technical certificates in respect of relevant apparatus of authorised descriptions.

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(33) 1973 c. 51.

- (2) In determining such applications, the United Kingdom competent body—
  - (a) shall have regard to the actual or usual electromagnetic environment of the apparatus; and
  - (b) may have regard to any standards (whether applicable EMC standards or otherwise) or other technical criteria appearing to it to be relevant.

(3) Where in the opinion of the United Kingdom competent body the apparatus to which an application relates conforms with the protection requirements, it shall issue a technical report or technical certificate, as the case may be, which complies with the requirements of regulation 55 below.

(4) Subject to regulation 58 below, where in the opinion of the United Kingdom competent body the apparatus to which the application relates does not conform with the protection requirements, it shall refuse to issue a technical report or technical certificate, as the case may be, giving written reasons for the refusal.

### **Limitations on duty to exercise functions**

**53.**—(1) A United Kingdom competent body shall not accept any application for a technical report or technical certificate in respect of any apparatus unless the application—

- (a) is in writing;
- (b) is accompanied by a draft technical construction file, that is to say, a file containing such information as will, when the technical report or technical certificate as the case may be is added thereto, be sufficient to constitute the file as a technical construction file;
- (c) includes particulars of which applicable EMC standards the manufacturer has applied or proposes to apply in respect of the apparatus, and in respect of which applicable EM characteristics; and
- (d) contains a declaration by the applicant that no application to another competent body for a technical report or technical certificate in respect of that apparatus is outstanding.

(2) A United Kingdom competent body shall not be required to—

- (a) accept an application for a technical report or technical certificate where—
  - (i) the application, and the draft technical construction file, are not in English or another language acceptable to that body;
  - (ii) the applicant has not submitted with the application the amount of the fee which the competent body (not being the Secretary of State) requires to be submitted with the application pursuant to regulation 51(2) above; or
  - (iii) the body reasonably believes that, having regard to the number of applications for technical reports or technical certificates made to it which are outstanding, it will be unable to determine the application within three months of receiving the application;
- (b) determine an application for a technical report or technical certificate where the manufacturer has not—
  - (i) granted the body access to the apparatus to which the application relates or the production facilities for the apparatus (including where applicable the production envisaged in relation to a representative) to the extent that the body reasonably requests; and
  - (ii) made available to the body such information as it may reasonably require to determine the application; or
- (c) having determined the application, inform the applicant of the result thereof or, in the case of a successful application, issue the technical report or technical certificate, unless the

applicant has paid any fees chargeable pursuant to regulation 51 above or in accordance with regulations made under section 56 of the Finance Act 1973, as the case may be.

#### **Contractors etc.**

**54.**—(1) Subject to paragraphs (2) and (3) below, a United Kingdom competent body may, in exercising its functions—

- (a) arrange for some other person to carry out any test, assessment or inspection on its behalf; or
- (b) require the applicant to satisfy another person with respect to any matter at the applicant's expense.

(2) Nothing in paragraph (1) above authorises a United Kingdom competent body to rely on the opinion of another person with regard to whether any relevant apparatus conforms with the protection requirements.

(3) Nothing in these Regulations shall preclude a person referred to in paragraph (1)(a) or (b) above from charging any fee in respect of any work undertaken by him in pursuance of those subparagraphs.

#### **Form of technical reports and technical certificates**

**55.** A technical report or technical certificate issued by a United Kingdom competent body shall be in writing and shall—

- (a) be in English;
- (b) give the name and address—
  - (i) of the applicant;
  - (ii) where that person is not the manufacturer, of the manufacturer;
- (c) be signed on behalf of the body and identify the signatory;
- (d) bear—
  - (i) the date of issue; and
  - (ii) the number of the report or certificate;
- (e) give particulars of the relevant apparatus (where applicable, in relation to each variant) to which it relates sufficient to identify it, and shall state whether the apparatus to which it relates is a single item or a representative, or a number of variants thereof, as the case may be;
- (f) certify that the apparatus to which it relates conforms with the protection requirements of the EMC Directive.

#### **Conditions of technical reports or technical certificates**

**56.**—(1) Subject to regulation 58 below and paragraphs (2) and (3) of this regulation, a technical report or technical certificate issued by a United Kingdom competent body may be unconditional or subject to such conditions, which must be complied with if the report or certificate as the case may be is to apply, as the body considers appropriate.

- (2) Without prejudice to the generality of paragraph (1) above, such conditions may include—
- (a) a limitation on the electromagnetic environment for which the apparatus may be stated to be suitable; or
  - (b) a limitation that the apparatus is only to be installed at a specific site.



(3) The conditions imposed pursuant to paragraph (1) above may be varied by the United Kingdom competent body which issued the technical report or technical certificate, and a variation under this paragraph may include the imposition of new conditions or the removal of conditions.

#### **Withdrawal of technical reports or technical certificates**

**57.**—(1) Subject to regulation 58 below and paragraph (2) of this regulation, the United Kingdom competent body which issued a technical report or technical certificate shall withdraw that report or certificate as the case may be if it appears that the apparatus to which it relates does not conform with the protection requirements.

(2) A withdrawal of a technical report or technical certificate shall be by notice in writing stating the reasons for the withdrawal.

#### **Procedure where United Kingdom competent body is minded to make an unfavourable decision**

**58.** Before making an unfavourable decision in respect of an applicant, that is to say—

- (a) refusing to grant a technical report or technical certificate pursuant to regulation 52(4) above;
- (b) the imposition of a condition of a technical report or technical certificate or the making of a restrictive variation of a condition thereof pursuant to regulation 56 above in circumstances where the applicant has not indicated in writing that the apparatus concerned is suitable for use subject to that condition;
- (c) the withdrawal of a technical report or technical certificate pursuant to regulation 57 above, the United Kingdom competent body shall—
  - (i) give notice in writing to the applicant, or holder of the technical report or technical certificate concerned, as the case may be (“the person concerned”), of the reasons why it proposes to make the unfavourable decision; and
  - (ii) give the person concerned the opportunity of making representations within a period of 28 days of the notice being given as to why that body should make a favourable decision, and consider any representations which are made by that person within that period.

#### *EC declaration of conformity*

#### **EC declaration of conformity where conformity assessment requirements are complied with by reference to a technical construction file**

**59.**—(1) This regulation shall have effect for prescribing the form of an EC declaration of conformity issued in the United Kingdom in respect of relevant apparatus in relation to which the conformity assessment requirements have been complied with pursuant to the technical construction file route to compliance.

- (2) An EC declaration of conformity to which this regulation applies shall—
- (a) be in English;
  - (b) give the name and address—
    - (i) of the responsible person;
    - (ii) where that person is not the manufacturer, of the manufacturer;

- (c) be signed by or on behalf of the manufacturer or his authorised representative and identify that signatory;
- (d) bear the date of issue;
- (e) give particulars of the relevant apparatus to which it relates sufficient to identify it;
- (f) identify the technical construction file relating thereto, and give the name and address of the competent body which issued the technical report or technical certificate, and the date and any number thereof;
- (g) state the numbers and titles of the applicable EMC standards, if any, applied by the manufacturer; and
- (h) certify that the apparatus to which it relates conforms with the protection requirements of the EMC Directive.

### *Final provisions*

#### **Interpretation of Part V**

##### **60.—(1) In this Part—**

“authorised” in relation to any description of apparatus shall be construed in accordance with regulation 48(3);

“minimum criteria” shall be construed in accordance with regulation 49(2);

“representative” shall be construed in accordance with regulation 45(2)(b); and

“variant” shall be construed in accordance with regulation 45(2)(c).

## PART VI

### THE EC TYPE-EXAMINATION ROUTE TO COMPLIANCE FOR RADIOCOMMUNICATION TRANSMISSION APPARATUS

#### *General*

#### **Application of Part VI**

##### **61.—(1) This Part shall have effect for the purposes of providing for—**

(a) the manner in which the conformity assessment requirements shall be complied with in relation to radiocommunication transmission apparatus pursuant to the EC type-examination route to compliance; and

(b) United Kingdom notified bodies to exercise functions in relation thereto, and matters incidental to such exercise.

(2) For the purposes of these Regulations, “radiocommunication transmission apparatus” is wireless telegraphy apparatus for—

(a) transmitting; or

(b) both transmitting and receiving, other than—

(i) radio amateur apparatus designed, and intended by the manufacturer, for use exclusively by radio amateurs;

(ii) apparatus neither designed nor intended by the manufacturer to be used for transmitting in conjunction with other wireless telegraphy apparatus; or

- (iii) apparatus which is dependent for its operation on a magnetic as distinct from an electromagnetic field.

### **The EC type-examination route to compliance**

**62.** The conformity assessment requirements are complied with in relation to radiocommunication transmission apparatus pursuant to the EC type-examination route to compliance if there is in force an EC type-examination certificate obtained by the responsible person from a notified body in respect of the applicable EM characteristics of the apparatus.

### **Notified bodies**

**63.** For the purposes of these Regulations, a notified body is a body responsible for issuing EC type-examination certificates pursuant to Article 10.5 of the EMC Directive either for all descriptions of radiocommunication transmission apparatus or for specific descriptions thereof, and which is—

- (a) a United Kingdom notified body pursuant to regulation 64 below;
- (b) for the time being a notified body of a member State other than the United Kingdom having been notified as a notified body by the member State concerned to the Commission and the other member States pursuant to Article 10.6 of the EMC Directive; or
- (c) recognised for the purpose of carrying out those functions by inclusion in a mutual recognition agreement relating to the EMC Directive or a similar agreement (including a Protocol to the Europe Agreement, or other Agreement, on Conformity Assessment and Acceptance of Industrial Products) which has been concluded between the Community and a State other than an EEA State.

#### *United Kingdom notified bodies*

### **Bodies and scope of authority**

**64.** The following shall be United Kingdom notified bodies in relation to the descriptions (“authorised descriptions”) of radiocommunication transmission apparatus referred to in relation thereto in Schedule 6—

- (a) the Civil Aviation Authority (“the CAA”);
- (b) OFCOM.

### **Power of CAA and OFCOM to charge fees**

**65.—(1)** Subject to paragraph (2) below, the CAA and OFCOM may charge applicants for EC type-examination certificates such fees as they may determine provided that such fees shall not exceed the sum of the following –

- (a) the costs incurred or to be incurred by the notified body in performing the relevant function; and
- (b) an amount on account of profit which is reasonable in the circumstances having regard to—
  - (i) the character and extent of the work done or to be done by the body on behalf of the applicant; and
  - (ii) the commercial rate normally charged on account of profit for that work or similar work.

(2) The power in paragraph (1) above includes power to require the payment of fees or a reasonable estimate thereof with the application.

(3) The CAA and OFCOM shall each publish from time to time the scale of fees charged by it, or such information about the basis of calculation thereof as the Secretary of State may direct.

### **Applications for EC type-examination certificates**

**66.**—(1) It shall be the function of a United Kingdom notified body to determine applications made to it in writing for the issue of EC type-examination certificates from the manufacturer or his authorised representative in respect of authorised descriptions of radiocommunication transmission apparatus.

(2) Subject to regulation 67, a United Kingdom notified body shall, following receipt of an application in respect of an authorised description of apparatus—

- (a) examine the apparatus and the design thereof;
- (b) subject the apparatus or cause it to be subjected to such tests as the body considers appropriate to determine whether or not the apparatus conforms with the protection requirements in all the circumstances (having regard, without prejudice to the generality of the foregoing, to the actual or usual electromagnetic environment in which the apparatus is to be used), and, where there is a relevant transposed harmonised standard or a recognised national standard and the body considers it appropriate to apply that standard, such tests as may be provided for thereby.

(3) Following examination and testing pursuant to paragraph (2) above, the United Kingdom notified body shall determine whether or not the apparatus to which the application relates conforms with the protection requirements.

(4) Where in the opinion of the United Kingdom notified body the apparatus to which an application relates conforms with the protection requirements, it shall issue an EC type-examination certificate in respect thereof.

(5) Subject to regulation 71 below, where in the opinion of the United Kingdom notified body the apparatus to which the application relates does not conform with the protection requirements, it shall refuse to issue the EC type-examination certificate, giving written reasons for the refusal.

(6) An EC type-examination certificate may relate to—

- (a) a single item of apparatus;
- (b) where a number of items are to be produced, a specimen representative of the production envisaged (a “representative”); or
- (c) a number of items or representatives of each such item or representative being variants of the same basic design.

### **Limitations on duty to exercise functions**

**67.**—(1) Nothing in these Regulations shall require a United Kingdom notified body to determine a relevant application—

- (a) which is not in English or another language acceptable to that body; or
- (b) where the applicant has not—
  - (i) granted the body access to the radiocommunication transmission apparatus to which the application relates or the production facilities for the apparatus (including where applicable, the production envisaged in relation to a representative) to the extent that the body reasonably requests; and

(ii) made available to the body such information as it may reasonably require to determine the application.

(2) Nothing in these Regulations shall require a United Kingdom notified body to—

(a) determine a relevant application; or

(b) having determined the application, inform the applicant of the result thereof or, in the case of a successful application, issue the EC type-examination certificate,

unless the applicant has paid the fees charged pursuant to regulation 65 above.

#### **Contractors etc.**

**68.**—(1) Subject to paragraphs (2) and (3) below, a United Kingdom notified body may, in exercising its functions—

(a) arrange for some other person to carry out any test, assessment or inspection on its behalf; or

(b) require the applicant to satisfy another person with respect to any matter at the applicant's expense.

(2) Nothing in paragraph (1) above authorises a United Kingdom notified body to rely on the opinion of another person with regard to whether any radiocommunication transmission apparatus conforms with the protection requirements.

(3) Nothing in these Regulations shall preclude a person referred to in sub-paragraph (1)(a) or (b) above from charging any fee in respect of any work undertaken by him in pursuance of those sub-paragraphs.

#### **Conditions of EC type-examination certificates**

**69.**—(1) Subject to regulation 71 below and paragraphs (2) and (3) of this regulation, an EC type-examination certificate issued by a United Kingdom notified body may be unconditional or subject to such conditions, which must be complied with if the certificate is to apply, as the body considers appropriate.

(2) Without prejudice to the generality of paragraph (1) above, such conditions may include—

(a) a limitation on the electromagnetic environment for which the apparatus may be stated to be suitable; or

(b) a limitation that the apparatus is only to be installed at a specific site.

(3) The conditions imposed pursuant to paragraph (1) above may be varied by the United Kingdom notified body which issued the EC type-examination certificate, and a variation under this paragraph may include the imposition of new conditions or the withdrawal of conditions.

#### **Withdrawal of EC type-examination certificates**

**70.**—(1) Subject to regulation 71 below and paragraph (2) of this regulation, the United Kingdom notified body which issued an EC type-examination certificate shall withdraw that certificate if it appears that the apparatus to which it relates does not conform with the protection requirements.

(2) A withdrawal of an EC type-examination certificate shall be by notice in writing stating the reasons for the withdrawal.

#### **Procedure where United Kingdom notified body is minded to make a decision unfavourable to the applicant**

**71.** Before making an unfavourable decision in respect of an applicant, that is to say—

- (a) refusing to grant an EC type-examination certificate pursuant to regulation 66(5) above;
  - (b) the imposition of a condition of an EC type-examination certificate or the making of a restrictive variation of a condition thereof pursuant to regulation 69 above in circumstances where the applicant has not indicated in writing that the apparatus concerned is suitable for use subject to that condition;
  - (c) the withdrawal of an EC type-examination certificate pursuant to regulation 70 above,
- the United Kingdom notified body shall—
- (i) give notice in writing to the applicant, or holder of the EC type-examination certificate concerned, as the case may be (“the person concerned”), of the reasons why it proposes to make the unfavourable decision; and
  - (ii) give the person concerned the opportunity of making representations within a period of 28 days of the notice being given as to why that body should make a favourable decision, and consider any representations which are made by that person within that period.

#### *EC declaration of conformity*

#### **EC declaration of conformity for radiocommunication transmission apparatus**

**72.**—(1) This regulation shall have effect for prescribing the form of an EC declaration of conformity issued in the United Kingdom in respect of radiocommunication transmission apparatus.

- (2) An EC declaration of conformity to which this regulation applies shall—
- (a) be in English;
  - (b) give the name and address—
    - (i) of the responsible person;
    - (ii) where that person is not the manufacturer, of the manufacturer;
  - (c) be signed by or on behalf of the manufacturer or his authorised representative and identify that signatory;
  - (d) bear the date of issue;
  - (e) give particulars of the relevant apparatus to which it relates sufficient to identify it;
  - (f) identify the EC type-examination certificate relating thereto, and give the name and address of the notified body which issued it, and the date and any number thereof; and
  - (g) certify that the apparatus to which it relates conforms with the protection requirements of the EMC Directive.

#### *Final provisions*

#### **Savings**

**73.**—(1) For the avoidance of doubt, it is hereby declared that nothing in this Part shall be construed as dispensing with any requirement—

- (a) of a licence granted under—
  - (i) section 1 of the 1949 Act to establish and use any station for wireless telegraphy or to install and use any wireless telegraphy apparatus;

- (ii) Part I of the Broadcasting Act 1990 **(34)**;
- (iii) Part III of the Broadcasting Act 1990 to provide independent radio services within the meaning of that Part; or
- (iv) the Broadcasting Act 1996**(35)**;
- (b) that apparatus be approved under section 84 of the 1984 Act;
- (c) of regulations made under section 1 of the 1949 Act;
- (d) of an order made under—
  - (i) section 7 of the Wireless Telegraphy Act 1967**(36)**; or
  - (ii) section 85 or 86 of the 1984 Act; or
- (e) of a continuation notice under paragraph 9 of Schedule 18 to the Communications Act 2003**(37)** given to a person who was a holder of a licence granted under section 7 of the 1984 Act.

(2) Nothing in this Part shall affect the validity of an EC-type examination certificate lawfully issued by a notified body pursuant to regulation 60 of the Electromagnetic Compatibility Regulations 1992.

### **Interpretation of Part VI**

**74.** In this Part—

“authorised description” shall be construed in accordance with regulation 64 above;

“examine” includes, where a UK notified body considers appropriate, the disassembly of apparatus.

## **PART VII**

### **ENFORCEMENT**

#### *Enforcement authorities and powers*

### **Enforcement authorities**

**75.**—(1) Except in relation to the descriptions of apparatus mentioned in paragraph (3) below, it shall be the duty of the following authorities to enforce these Regulations—

- (a) in Great Britain :
  - (i) OFCOM insofar as action taken to enforce a regulation relates to the protection and management of the radio spectrum; and
  - (ii) local weights and measures authorities within their area; and
- (b) in Northern Ireland:
  - (i) OFCOM insofar as action taken to enforce a regulation relates to the protection and management of the radio spectrum; and
  - (ii) the Department of Enterprise, Trade and Investment.

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**(34)** 1990 c. 42.

**(35)** 1996 c. 55.

**(36)** 1967 c. 72.

**(37)** 2003 c. 21.

(2) Except in relation to the descriptions of apparatus mentioned in paragraph (3) below, the Secretary of State may enforce these Regulations.

(3) These Regulations may be enforced—

(a) by the CAA, in relation to wireless telegraphy apparatus of a description listed in paragraph 1 of Schedule 6 hereto; and

(b) in relation to electricity meters other than those which are wireless telegraphy apparatus—

(i) in Great Britain, by the Gas and Electricity Markets Authority; and

(ii) in Northern Ireland, by the Northern Ireland Authority for Energy Regulation.

(4) Nothing in this regulation shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

### **Test purchases**

**76.**—(1) An enforcement authority shall have power, for the purpose of ascertaining whether any relevant apparatus complies with the requirements of regulation 32 above to make, or to authorise an officer of the authority to make, any purchase of electrical apparatus.

(2) Where—

(a) any apparatus purchased under this regulation by or on behalf of any enforcement authority is submitted to a test; and

(b) the test leads to—

(i) the bringing of proceedings for an offence under regulation 85, 86 or 88 below in relation to the apparatus or the forfeiture of apparatus of the same description under regulation 97 or 98 below; or

(ii) the serving of a suspension notice in respect of any apparatus; and

(c) the authority is requested to do so and it is practicable for the authority to comply with the request,

the authority shall allow the person from whom the apparatus was purchased or any person who is a party to the proceedings or has an interest in any apparatus to which the notice relates to have the apparatus tested.

### **Powers of search etc.**

**77.**—(1) Subject to regulation 78 below, a duly authorised officer of an enforcement authority may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by the following provisions of this regulation.

(2) The officer may, for the purpose of ascertaining whether there has been a contravention of any of the requirements of Part III of these Regulations—

(a) inspect any electrical apparatus and enter any premises other than premises occupied only as a person's residence; or

(b) examine any procedure (including any arrangements for carrying out a test) connected with the production of any electrical apparatus.

(3) If the officer has reasonable grounds for suspecting that there has been a contravention of any of the requirements of Part III of these Regulations, he may for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain any electrical apparatus.

(4) The officer may seize and detain—



- (a) any electrical apparatus, any document, record or information which the officer may require production of under regulation 84 below, or any other thing, which he has reasonable grounds for believing may be required—
    - (i) as evidence in proceedings for an offence under these Regulations;
    - (ii) by a competent authority of a member State other than the United Kingdom for the purpose of the exercise of its functions; or
  - (b) any electrical apparatus which he has reasonable grounds for suspecting may be liable to be forfeited under regulation 97 or 98 below.
- (5) The officer may, for the purpose of the exercise of his powers under paragraphs (3) or (4) above to seize any electrical apparatus, any document or record or any other thing—
- (a) require any person having authority to do so to open any container; and
  - (b) himself open or break open any such container where a requirement made under paragraph (a) above in relation to the container has not been complied with.

#### **Provisions supplemental to regulation 77**

**78.**—(1) An officer seizing any electrical apparatus, records, documents, information or other thing under regulation 77 above shall inform the person from whom they are seized that such apparatus, records or other thing have been so seized.

(2) If a justice of the peace—

(a) is satisfied by any written information on oath that there are reasonable grounds for believing either—

- (i) that any electrical apparatus, documents, records, information or other thing which any officer has power to inspect under regulation 77 above are on any premises (which may be premises occupied only as a person's residence) and that, if their inspection reveals that the apparatus is relevant apparatus or that the documents, records, information or any other thing relates to relevant apparatus, such inspection is likely to disclose evidence that there has been a contravention of any provision of Part III of these Regulations; or
- (ii) that such a contravention has taken place, is taking place or is about to take place on any premises; and

(b) is also satisfied by any such information either—

- (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this paragraph has been given to the occupier; or
- (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the justice may by warrant under his hand, which shall continue in force for one month, authorise any officer of an enforcement authority to enter the premises, if need be by force.

(3) An officer entering any premises by virtue of regulation 77 above or a warrant under paragraph (2) of this regulation may take with him such other persons and such equipment as may appear to him necessary.

(4) On leaving any premises which a person is authorised to enter by a warrant under paragraph (2) of this regulation, that person shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(5) Where any apparatus seized by an officer under regulation 77 above is submitted to a test, the officer shall inform the persons mentioned in paragraph (1) of this regulation of the result of the test and, if—

- (a) proceedings are brought for an offence in respect of a contravention in relation to any relevant apparatus of any provision of these Regulations or for the forfeiture of any relevant apparatus under regulation 97 or 98 below, or a suspension notice is served in respect of any relevant apparatus; and
- (b) the officer is requested to do so and it is practicable to comply with the request,

the officer shall allow any person who is a party to the proceedings or, as the case may be, has an interest in the relevant apparatus to which the notice relates to have the relevant apparatus tested.

(6) In the application of this regulation to Scotland, the reference in paragraph (2) above to a justice of the peace shall include a reference to a sheriff and the references to written information on oath shall be construed as references to evidence on oath.

(7) In the application of this regulation to Northern Ireland, the references in paragraph (2) above to any information on oath shall be construed as references to any complaint on oath.

### **Appeals against detention of apparatus**

**79.**—(1) Any person having an interest in any apparatus, document, record, information or other thing which is for the time being detained under any provision of this Part by an enforcement authority or by an officer of such an authority may apply for an order requiring the apparatus to be released to him or to another person.

(2) An application under this regulation may be made—

- (a) to any magistrates' court in which proceedings have been brought in England and Wales and Northern Ireland—
  - (i) for an offence under regulation 85, 86 or 88 below; or
  - (ii) for the forfeiture of the apparatus under regulation 97 below;
- (b) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or
- (c) in Scotland, by summary application to the sheriff.

(3) On an application under this regulation to a magistrates' court or to the sheriff, an order requiring apparatus to be released shall be made only if the court or sheriff is satisfied—

- (a) that proceedings—
  - (i) for an offence under regulation 85, 86 or 88 below in respect of the apparatus; or
  - (ii) for the forfeiture of the apparatus under regulation 97 or 98 below,
 have not been brought or, having been brought, have been concluded without the apparatus being forfeited; and
- (b) where no such proceedings have been brought, that more than six months have elapsed since the apparatus was seized.

(4) Any person aggrieved by an order made under this regulation by a magistrates' court in England and Wales or Northern Ireland, 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,

and an order so made may contain such provision as appears to the court appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including

any application under section 111 of the Magistrates' Courts Act 1980 **(38)** or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981**(39)** (statement of case)).

### **Compliance notices**

**80.**—(1) Subject to paragraph (4) below, in the relevant circumstances, no notice may be served pursuant to regulation 81 or 82 below, and no proceedings may be commenced pursuant to regulation 85, 88, 97 or 98 below, unless the requirements of this regulation are satisfied.

(2) The relevant circumstances are that it is established that the CE mark or CE marking has been affixed unduly to electrical apparatus.

(3) The requirements of this regulation are that—

- (a) there has been served upon the manufacturer or his authorised representative a notice in writing obliging the person on whom the notice is served to make the electrical apparatus conform as regards the provisions concerning the CE mark or CE marking and its due affixation and to end the infringement under conditions imposed in, or in relation to, the said notice; and
- (b) the non-conformity continues after the period specified in, or in relation to, the said notice during which the infringement must be ended has expired.

(4) Without prejudice to paragraph 3(a) and (b), a notice served pursuant to paragraph (1) above shall include, but not by way of limitation,

- (a) a description of the electrical apparatus in respect of which the notice is served on the manufacturer or his authorised representative in a manner sufficient to identify it;
- (b) a statement that the CE mark or CE marking affixed to either the electrical apparatus or the apparatus' packaging, instructions for use or guarantee certificate is unduly affixed, or that the CE mark or CE marking is affixed to some other item accompanying the apparatus;
- (c) a statement of the grounds upon which it is established that the CE mark or CE marking has been or is being unduly affixed in relation to the electrical apparatus; and
- (d) an indication as to which of the following procedures cannot be commenced unless the requirements of this regulation are satisfied:—
  - (i) a notice pursuant to regulation 81 or 82 below; or
  - (ii) proceedings pursuant to regulation 85, 88, 97 or 98 below,

and may include such other information as may be considered expedient to enable the person to whom the notice is addressed to decide what action should be taken to end the particular infringement.

(5) This regulation does not apply where it is found that apparatus bearing the CE mark or CE marking does not comply with the protection requirements.

### **Prohibition notices**

**81.**—(1) The Secretary of State may serve on—

- (a) the manufacturer or supplier of any relevant apparatus which the Secretary of State considers does not comply with the protection requirements or the requirements of regulation 32 above as the case may be; or
- (b) the user of relevant apparatus which the Secretary of State considers did not so comply at the time when it was supplied or taken into service as the case may be,

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**(38)** 1980 c. 43.

**(39)** S.I. 1981/1675 (N.I.26).

a notice (“a prohibition notice”) prohibiting that manufacturer, supplier or user from manufacturing, supplying, taking into service or using that apparatus as the case may be, except with the consent of the Secretary of State.

(2) Schedule 7 hereto shall have effect with respect to prohibition notices.

(3) A consent given by the Secretary of State for the purposes of a prohibition notice may impose such conditions on the doing of anything for which the consent is required as the Secretary of State considers appropriate.

### **Suspension notices**

**82.**—(1) Where an enforcement authority has reasonable grounds for suspecting that regulation 30, 31 or 36(4) above has been, is being or is likely to be contravened, the authority may serve a notice (“a suspension notice”)—

- (a) in relation to relevant apparatus or electrical apparatus other than relevant apparatus, prohibiting the manufacturer, supplier or user on whom it is served, for such period ending not more than six months after the date of the notice as is specified therein, from manufacturing, supplying, taking into service or using the apparatus; or
- (b) in relation to an excluded installation, where the enforcement authority is unable to establish upon reasonable inquiry which item of relevant apparatus or system incorporated therein the suspected contravention relates to, for such period ending not more than six months after the date of the notice as is specified therein, from taking into service or using the excluded installation,

without the consent of that authority.

(2) A suspension notice served by an enforcement authority in respect of any apparatus or excluded installation shall—

- (a) describe the apparatus or installation to which it relates in a manner sufficient to identify it;
- (b) set out the grounds on which the authority suspects that regulation 30, 31 or 36(4) above has been, is being or is likely to be contravened, as the case may be; and
- (c) state that, and the manner in which, the person on whom the notice is served may appeal against the notice under regulation 83 below.

(3) A consent given by an enforcement authority for the purposes of a suspension notice may impose such conditions on the doing of anything for which the consent is required as that authority considers appropriate.

(4) A suspension notice may require the person on whom it is served to keep the enforcement authority which served the notice informed of the whereabouts throughout the period during which the notice has effect of any of the apparatus, or the excluded installation, in which that person has an interest.

(5) Where a suspension notice has been served on any person in respect of any apparatus or excluded installation, no further such notice shall be served on that person in respect of the same apparatus unless—

- (a) proceedings against that person for an offence under regulation 85, 86 or 88 below; or
- (b) proceedings for the forfeiture of the apparatus under regulation 97 or 98 below,

are pending at the end of the period specified in the first-mentioned notice.

### **Appeals against suspension notices**

**83.**—(1) Any person having an interest in any apparatus or excluded installation in respect of which a suspension notice is for the time being in force may apply for an order setting aside the notice.

(2) An application under this regulation may be made—

(a) in England and Wales or Northern Ireland—

(i) to any magistrates' court in which proceedings have been brought—

(aa) for an offence under regulation 85, 86 or 88 below; or

(bb) for the forfeiture of the apparatus under regulation 97 below; or

(ii) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or

(b) in Scotland, by summary application to the sheriff.

(3) On an application under this regulation to a magistrates' court in England and Wales or Northern Ireland the court shall make an order setting aside the suspension notice only if the court is satisfied that there has been no contravention in relation to the apparatus, or any item of relevant apparatus or system included in the excluded installation, of regulation 30, 31 or 36(4) above as the case may be.

(4) On an application under this regulation to the sheriff he shall make an order setting aside the suspension notice only if he is satisfied that at the date of making the order—

(a) proceedings for an offence under regulation 85, 86 or 88 below; or

(b) proceedings for the forfeiture of the apparatus under regulation 98 below,

have not been brought or, having been brought, have been concluded.

(5) Any person aggrieved by an order made under this regulation by a magistrates' court in England and Wales or Northern Ireland, 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,

and an order so made may contain such provision as appears to the court appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

### **Power to require production of documents and information etc.**

**84.** An officer of an enforcement authority may, for the purposes of exercising his functions under this Part, require—

(a) any person who is required by regulation 37 above to retain an EC declaration of conformity, technical construction file or EC type-examination certificate, during the period in which that person is required to retain that document, to produce such document;

(b) any person who is in possession of an EC declaration of conformity, technical construction file or EC type-examination certificate, or of a copy of such document, at any time to produce it;

(c) a responsible person, or a manufacturer, importer, supplier or user of electrical apparatus to produce such documents or records relating to such apparatus as are in his possession or under his control; or

(d) a responsible person, or a manufacturer, importer, supplier or user of any electrical apparatus, to give him such information as he may reasonably require,  
and such officer may inspect any thing which he may require to be produced under this regulation, and take a copy thereof or of any part thereof.

### *Offences*

#### **Supplying or taking into service apparatus in contravention of regulation 30 or 31**

**85.** Any person who supplies or takes into service relevant apparatus in contravention of regulation 30 or 31 above shall be guilty of an offence.

#### **Contravention of prohibition notice or suspension notice**

**86.** Any person who contravenes a prohibition notice or a suspension notice shall be guilty of an offence.

#### **False or misleading information**

**87.** Any person who, in giving any information which he is required to give under regulation 84(c) or (d) above—

- (a) makes any statement which he knows is false or misleading in a material particular; or
- (b) recklessly makes any statement which is false or misleading in a material particular,

shall be guilty of an offence.

#### **Misuse of the CE marking etc.**

**88.—(1)** Any person who, in relation to any relevant apparatus, or any electrical apparatus other than relevant apparatus, affixes the CE marking or any other inscription or marking in contravention of regulation 35(5), (6) or (7) above, shall be guilty of an offence.

(2) Any person who issues an EC declaration of conformity in relation to—

- (a) any relevant apparatus in contravention of regulation 36(3) above; or
- (b) any electrical apparatus in contravention of regulation 36(4) above,

shall be guilty of an offence.

#### **Obstruction etc. of officers of enforcement authorities etc.**

**89.—(1)** Any person who—

- (a) intentionally obstructs any officer of an enforcement authority who is acting in pursuance of any provision of this Part;
- (b) intentionally fails or refuses to comply with any requirement made of him by any officer of an enforcement authority under any provision of this Part;
- (c) without reasonable cause fails or refuses to give any officer of an enforcement authority who is so acting any other assistance which the officer may reasonably require of him for the purposes of the exercise of the officer's functions under any provision of this Part; or
- (d) fails to comply with a court order under regulation 96 below,

shall be guilty of an offence.

(2) Any person who falsely pretends to be an officer of an enforcement authority shall be guilty of an offence.

#### **Failure to retain documentation**

**90.** Any person who contravenes regulation 37 above shall be guilty of an offence.

#### **Defence of due diligence**

**91.**—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 85 or 88 above it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided by paragraph (1) above involves an allegation that the commission of the offence was due—

- (a) to the act or default of another; or
- (b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings (or, in Scotland the trial diet), he has served a notice under paragraph (3) below on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) above by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

#### **Liability of persons other than the principal offender**

**92.**—(1) Where the commission by any person of an offence under any of regulations 85 to 90 above is due to the act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1) above) in respect of any act or default which is shown 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 the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) above 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.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

**Extension of time for bringing summary proceedings**

**93.** Notwithstanding section 127 of the Magistrates' Courts Act 1980 and section 136 of the Criminal Procedure (Scotland) Act 1995(40), proceedings for an offence under regulations 85 to 90 above may be commenced at any time within three years from the date of the offence, or one year from the date on which there comes to the knowledge of the prosecutor evidence sufficient to justify a prosecution for that offence, whichever is the earlier; and for the purposes of this regulation—

- (a) a certificate of the prosecutor stating that such evidence came to his knowledge on a specified date shall be conclusive evidence of that fact; and
- (b) a document purporting to be such a certificate and to be signed by or on behalf of the prosecutor in question shall be presumed to be such a certificate unless the contrary is proved.

**Inference of condition of apparatus at time of supply or taking into service**

**94.** In any proceedings in which it is in issue whether any relevant apparatus complied with the protection requirements or the requirements of regulation 32 above as the case may be at the time when it was supplied or taken into service as the case may be, a court may infer that such apparatus did not so comply at that time if—

- (a) it is proved that it does not so comply or did not so comply at a time subsequent to its having been supplied or taken into service; and
- (b) having regard to all the circumstances of the case, it appears to the court that the failure of the apparatus to comply at the time referred to in sub-paragraph (a) above is not attributable to any cause arising subsequent to its having been supplied or taken into service.

*Powers of the court***Penalties**

**95.—(1)** A person guilty of an offence under regulation 86, 87 or 89(2) above shall be liable on summary conviction—

- (a) to imprisonment for a term not exceeding three months; or
- (b) to a fine not exceeding level 5 on the standard scale,

or to both.

(2) A person guilty of an offence under regulation 85, 88, 89(1) or 90 above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Power of the court to require matter to be remedied**

**96.—(1)** Where a person is convicted of an offence under regulation 85 or 88 above in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.

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

(3) Where a person is ordered under paragraph (1) above to remedy any matters, that person shall not be guilty of an offence under regulation 85 or 88 above as the case may be in respect of those

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(40) 1995 c. 46.



matters in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2) above.

### **Forfeiture: England and Wales and Northern Ireland**

**97.**—(1) An enforcement authority in England and Wales or Northern Ireland may apply under this regulation for an order for the forfeiture of any—

- (a) relevant apparatus on the grounds that there has been a contravention in relation thereto of regulation 30 or 31 above; or
- (b) electrical apparatus other than relevant apparatus, on the grounds that the CE marking, or an inscription liable to be confused therewith, is affixed in relation to it in contravention of regulation 35(7) above.

(2) An application under this regulation may be made—

- (a) where proceedings have been brought in a magistrates' court in respect of an offence in relation to some or all of the apparatus under regulation 85, 86 or 88, to that court;
- (b) where an application with respect to some or all of the apparatus has been made to a magistrates' court under regulation 79 or 83 above, to that court; and
- (c) where no application for the forfeiture of the apparatus has been made under subparagraph (a) or (b) above, by way of complaint to a magistrates' court.

(3) On an application under this regulation the court shall make an order for the forfeiture of the apparatus only if it is satisfied that there has been a contravention in relation thereto of regulation 30, 31 or 35(6) above as the case may be.

(4) For the avoidance of doubt it is hereby declared that a court may infer for the purposes of this regulation that there has been a contravention in relation to any apparatus of regulation 30, 31 or 35(6) above as the case may be if it is satisfied that that provision has been contravened in relation to apparatus which is representative of that apparatus (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) Any person aggrieved by an order made under this regulation by a magistrates' court, or by a decision of such 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,

and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of an order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

(6) Subject to paragraph (7) below, where any apparatus is forfeited under this regulation it shall be destroyed in accordance with such directions as the court may give.

(7) On making an order under this regulation a magistrates' court may, if it considers it appropriate to do so, direct that the apparatus to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person—

- (a) does not supply the apparatus to any person otherwise than—
  - (i) to a person who carries on a business of buying apparatus of the same description as the first mentioned apparatus and repairing or reconditioning it; or
  - (ii) as scrap (that is to say, for the value of materials included in the apparatus rather than for the value of the apparatus itself); and

- (b) complies with any order to pay costs or expenses (including any order under regulation 99 below) which has been made against that person in the proceedings for the order for forfeiture.

### **Forfeiture: Scotland**

**98.**—(1) In Scotland an order for forfeiture of any—

- (a) relevant apparatus in relation to which there has been a contravention of regulation 30 or 31 above as the case may be; or
- (b) electrical apparatus other than relevant apparatus, on the grounds that the CE marking, or an inscription liable to be confused therewith, is affixed in relation to it in contravention of regulation 35(7) above,

may be made by the sheriff—

- (i) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995; or
- (ii) where a person is convicted of any offence in respect of any such contravention, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under paragraph (1)(i) above shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the apparatus to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the apparatus should not be forfeited.

(3) Service under paragraph (2) above shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.

(4) Any person upon whom a notice is served under paragraph (2) above and any other person claiming to be the owner of, or otherwise to have an interest in, the apparatus to which an application under this regulation relates shall be entitled to appear at the hearing of the application to show cause why the apparatus should not be forfeited.

(5) The sheriff shall not make an order following an application under paragraph (1)(i) above—

- (a) if any person on whom notice is served under paragraph (2) above does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under paragraph (2) above has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The sheriff shall make an order under this regulation only if he is satisfied that there has been a contravention in relation to the apparatus of regulation 30, 31 or 35(6) above as the case may be.

(7) For the avoidance of doubt it is hereby declared that the sheriff may infer for the purposes of this regulation that there has been a contravention in relation to any apparatus of regulation 30, 31 or 35(6) above if he is satisfied that that provision has been contravened in relation to apparatus which is representative of that apparatus (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(8) Where an order for the forfeiture of any apparatus is made following an application by the procurator-fiscal under paragraph (1)(i) above, any person who appeared, or was entitled to appear, to show cause why it should not be forfeited may, within twenty-one days of the making of the order, appeal to the High Court by Bill of Suspension on the ground of an alleged miscarriage of justice; and section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under this paragraph as it applies to a stated case under Part X of that Act.

(9) An order following an application under paragraph (1)(i) above shall not take effect—

- (a) until the end of the period of twenty-one days beginning with the day after the day on which the order is made; or
  - (b) if an appeal is made under paragraph (8) above within that period, until the appeal is determined or abandoned.
- (10) An order under paragraph (1)(ii) shall not take effect—
- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995; or
  - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (11) Subject to paragraph (12) below, apparatus forfeited under this regulation shall be destroyed in accordance with such directions as the sheriff may give.
- (12) If he thinks fit, the sheriff may direct the apparatus to be (instead of being destroyed) released to such person as he may specify, on condition that that person does not supply it to any person otherwise than—
- (a) to a person who carries on a business of buying apparatus of the same description as the first-mentioned apparatus and repairing or reconditioning it; or
  - (b) as scrap (that is to say, for the value of materials included in the apparatus rather than for the value of the apparatus itself).

### **Recovery of expenses of enforcement**

- 99.**—(1) This regulation applies where a court—
- (a) convicts a person of an offence under regulation 85, 86 or 88 above; or
  - (b) makes an order under regulation 97 or 98 above for the forfeiture of any apparatus.
- (2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted or, as the case may be, any person having an interest in the apparatus the subject of the order for forfeiture, to reimburse an enforcement authority for any expenditure which has been or may be incurred by that authority—
- (a) in investigating the offence, and, without prejudice to the generality of the foregoing, in having the apparatus tested;
  - (b) in connection with any seizure or detention of the apparatus by or on behalf of the authority; or
  - (c) in connection with any compliance by that authority with directions given by the court for the purposes of any order for the forfeiture of the apparatus.

## **PART VIII**

### **MISCELLANEOUS AND SUPPLEMENTAL**

#### **Service of documents etc.**

- 100.**—(1) Any document required or authorised by these Regulations to be served on a person may be so served—
- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address;
  - (b) if the person is a body corporate, by serving it in accordance with sub-paragraph (a) above on the secretary or clerk of that body; or

(c) if the person is a partnership, by serving it in accordance with that sub-paragraph on a partner or on a person having control or management of the partnership business.

(2) For the purposes of paragraph (1) above, and for the purposes of section 7 of the Interpretation Act 1978<sup>(41)</sup> (which relates to the service of documents by post) in its application to that paragraph, the proper address of any person on whom a document is to be served by virtue of these Regulations shall be his last known address except that—

(a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate;

(b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership,

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

#### **Duty of enforcement authority to inform the Secretary of State of action taken**

**101.** An enforcement authority shall, where action has been taken by it to prohibit or restrict the supply or taking into service (whether under these Regulations or otherwise) of any relevant apparatus, forthwith inform the Secretary of State of the action taken, and the reasons for it, with a view to this information being passed by her to the Commission.

#### **Savings for certain privileges**

**102.**—(1) Nothing in these Regulations shall be taken as requiring any person to produce any documents or records if he would be entitled to refuse to produce those documents or records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, that they contain a confidential communication made by or to an advocate or solicitor in that capacity, or as authorising any person to take possession of any documents or records which are in the possession of a person who would be so entitled.

(2) Nothing in these Regulations shall be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person's spouse.

#### **Savings for action taken under other enactments**

**103.** Nothing in these Regulations shall be construed as preventing the taking of any action in respect of any relevant apparatus under the provisions of any other enactment.

#### *Consequential amendments*

#### **The Radio Equipment and Telecommunications Terminal Equipment Regulations 2000**

**104.** In regulation 1(3) of the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000, the words “the Electromagnetic Compatibility Regulations 1992, except for regulations 2(2) and (3), 5 and 31,” shall be deleted.

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(41) 1978 c. 30.

**Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004**

**105.** In Schedule 1 to the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004 (**42**) for the reference to the Electromagnetic Compatibility Regulations 1992 there shall be substituted the words “The Electromagnetic Compatibility Regulations 2005”.

*Lord Sainsbury of Turville*  
Parliamentary Under Secretary of State For  
Science and Innovation  
Department of Trade and Industry

2nd February 2005

SCHEDULE 1

Regulation 2(2)

REGULATIONS UNDER SECTION 10 OF THE WIRELESS TELEGRAPHY ACT 1949

1. The Wireless Telegraphy (Control of Interference from Ignition Apparatus) Regulations 1952(43);
2. The Wireless Telegraphy (Control of Interference from Electro Medical Apparatus) Regulations 1966(44);
3. The Wireless Telegraphy (Control of Interference from Radio Frequency Heating Apparatus) Regulations 1971(45);
4. The Wireless Telegraphy (Control of Interference from Household Appliances, Portable Tools, etc) Regulations 1978(46);
5. The Wireless Telegraphy (Control of Interference from Fluorescent Lighting Apparatus) Regulations 1978(47); and
6. The Wireless Telegraphy (Control of Interference from Citizens' Band Radio Apparatus) Regulations 1982(48).

SCHEDULE 2

Regulation 4(3)

PHENOMENA AND EFFECTS WHICH MAY BE  
REGARDED AS ELECTROMAGNETIC DISTURBANCE

1. Conducted low-frequency phenomena
  - harmonics, interharmonics;
  - signalling voltages;
  - voltage fluctuations;
  - voltage dips and interruptions;
  - voltage unbalance;
  - power-frequency variations;
  - induced low-frequency voltages;
  - DC in AC networks; and
  - DC ground circuits;
2. Radiated low-frequency phenomena—
  - magnetic fields; and
  - electric fields;
3. Conducted high-frequency phenomena—
  - induced continuous wave (CW) voltages or currents;
  - unidirectional transients; and

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(43) S.I. 1952/2023.

(44) S.I. 1963/1895.

(45) S.I. 1971/1675.

(46) S.I. 1978/1267.

(47) S.I. 1978/1268.

(48) S.I. 1982/635.

- oscillatory transients;
- 4. Radiated high frequency phenomena—
  - magnetic fields;
  - electric fields;
  - electromagnetic fields;
  - continuous waves; and
  - transients; and
- 5. Electrostatic discharge phenomena (ESD).

### SCHEDULE 3

Regulation 5(4)(b)

#### DESCRIPTIONS OF APPARATUS THE OPERATION OF WHICH MUST NOT BE HINDERED BY RELEVANT APPARATUS

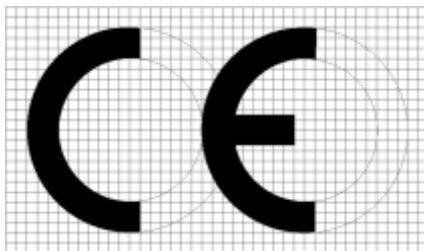
1. domestic radio and television receivers;
2. industrial manufacturing equipment;
3. mobile radio equipment;
4. mobile radio and commercial radiotelephone equipment;
5. medical and scientific apparatus;
6. information technology equipment;
7. domestic appliances and household electronic equipment;
8. aeronautical and marine radio apparatus;
9. subject to regulation 8, educational electronic equipment;
10. telecommunications networks and apparatus;
11. radio and television broadcast transmitters; and
12. lights and fluorescent lamps.

### SCHEDULE 4

Regulation 35

#### THE CE MARKING

1. In the CE marking, the initials CE shall take the following form—



The grid providing the background in the above graduated drawing is not part of the CE marking.

*Status: This is the original version (as it was originally made).*

2. If the CE marking is reduced or enlarged the proportions given in the above graduated drawing must be respected.

3. The various components of the CE marking must have substantially the same vertical dimension, which may not be less than 5 millimetres.

#### SCHEDULE 5

Regulation 49

##### MINIMUM CRITERIA FOR THE ASSESSMENT OF UNITED KINGDOM COMPETENT BODIES

1. availability of personnel and of the necessary means and equipment;
2. technical competence and professional integrity of personnel;
3. independence, in carrying out the tests, preparing the reports, issuing the certificates and performing the verification function provided for in the EMC Directive, of staff and technical personnel in relation to all circles, groups or persons directly or indirectly concerned with the product in question;
4. maintenance of professional secrecy by personnel; and
5. possession of civil liability insurance unless such liability is covered by the government of the United Kingdom.

#### SCHEDULE 6

Regulations 64, 75(3)(a)

##### DESCRIPTIONS OF APPARATUS FOR WHICH UNITED KINGDOM NOTIFIED BODIES ARE AUTHORISED

1. The CAA is authorised (as a United Kingdom notified body for radiocommunication transmission apparatus and as an enforcement authority for wireless telegraphy apparatus) in relation to aeronautical apparatus of the following descriptions—

- aeronautical mobile—
    - associated ground communications;
    - EPIRB/ELT (Emergency Position Indicating Radio Beacon/Emergency Locating Transmitter);
    - ground and airborne equipment for primary and secondary radar for—
      - the CAA;
      - the Ministry of Defence; and
      - private airfield operators;
  - general communications—
    - ground/air;
    - ground/ground; and
    - air/air; and
  - aeronautical earth station equipment;
- radio navigation—
- radio altimeters;



- ILS (Instrument Landing System); and
- aeronautical radiobeacons;
- satellite aeronautical mobile radio—
  - EPIRB/ELT; and
  - voice, medium speed data and low speed data in each case via INMARSAT (satellite operated by the International Maritime Satellite Organisation);
- aeronautical radionavigation—
  - ILS/MLS (Microwave Landing System);
  - ATC (Air Traffic Control) marker beacons for aircraft;
  - radionavigation satellite equipment on board aircraft;
  - hyperbolic navigation aids;
  - NDB;
  - VOR (VHF Omnidirectional Range);
  - TACAN/DME (Tactical Air Navigation/Distance Measuring Equipment); and
  - satellite navigation systems—
    - ADS (Automatic Dependent Surveillance); and
    - CIS (Co-operative Independent Surveillance); and
- radiolocation and radiodetermination—
  - radar—
    - primary;
    - OTHR (Over the Horizon Radar);
    - secondary;
    - ground; and
    - airborne; and

any other apparatus not subject to Directive [1999/5/EC](#) on Radio Equipment and Telecommunications Terminal Equipment by virtue of Annex 1, paragraphs 5 and 6 of that Directive.

2. OFCOM is authorised (as a United Kingdom notified body) in relation to every description of radiocommunication transmission apparatus not provided for in paragraph 1 above.

## 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;

*Status: This is the original version (as it was originally made).*

- (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—

- (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.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and replace The Electromagnetic Compatibility Regulations 1992 ([SI 1992/2372](#)) (“the 1992 Regulations”) which implement Council Directive [89/336/EEC](#) on the approximation of laws of the member States relating to electromagnetic compatibility as amended by Council Directives [92/31/EEC](#) and [93/68/EEC](#) (“the EMC Directive”).

These Regulations impose requirements concerning the electromagnetic compatibility (EMC) of most types of electrical and electronic apparatus which must be complied with if such apparatus is to be supplied or taken into service. The Regulations do not apply to any item of apparatus supplied or taken into service in the EEC before 28<sup>th</sup> October 1992 (regulation 10). These Regulations provide for a new enforcement authority, OFCOM, to act in place of the Radiocommunications Agency, consolidate the amendments to [SI 1992/3272](#) and incorporate disapplications of the EMC Directive by product specific Directives pursuant to Article 2.2 of the EMC Directive.

These Regulations replace the regulations made under section 10 of the Wireless Telegraphy Act 1949 (“the 1949 Act”) listed in Schedule 1 to the extent that these Regulations impose electromagnetic compatibility requirements (excluding radio frequency planning requirements) which must be complied with if apparatus to which these regulations apply is to be supplied or taken into service and used for the purpose for which it was intended.

The meaning of electromagnetic disturbance is set out in regulation 4 and Schedule 2. Protection requirements for both immunity and emissions are set out in regulation 5.

Part II provides for the application of the Regulations, and apparatus to which they apply is referred to as relevant apparatus (regulation 6). They apply to all electrical and electronic appliances, and equipment and installations containing electrical or electronic components or both (regulation 7), other than apparatus excepted by regulations 10 to 29. These Regulations apply with certain modifications to educational electronic equipment (regulation 8) and test apparatus (regulation 9). The specific nature and intended function of an item of electrical apparatus will determine whether that apparatus comes within the scope or is outside the scope, of these Regulations.

Regulations 20 to 29 provide the complete or partial exclusions for certain types of apparatus specifically covered by other Directives.

Part III sets out the general requirements of the Regulations. Regulation 30 provides that relevant apparatus may not be supplied unless the requirements of regulation 32 are complied with, which are –

- (a) the relevant apparatus complies with the protection requirements;
- (b) the conformity assessment requirements have been complied with (regulation 33);
- (c) the CE mark (the form of which is shown in Schedule 4) has been properly affixed by the manufacturer or his authorised representative (regulation 35); and
- (d) the manufacturer or his authorised representative has issued an EC declaration of conformity (regulation 36).

Regulation 31 provides that relevant apparatus may not be taken into service unless it conforms with the protection requirements. (The protection requirements are found in regulation 5).

Regulation 37 requires that the responsible person must retain the EC declaration of conformity and, where applicable, the technical construction file or EC type-examination certificate, for ten years

following the date on which the latest item of apparatus to which those documents apply is supplied. The responsible person may be required to produce such documentation (regulation 37 and 84).

The conformity assessment requirements are satisfied by one of three routes:

- (a) the standards route to compliance, set out in Part IV, which is satisfied where the manufacturer has applied standards in respect of the electromagnetic characteristics of the apparatus (regulation 39). Where the manufacturer or his authorised representative is in the United Kingdom he issues the EC declaration of conformity in accordance with regulation 42;
- (b) the technical construction file route to compliance set out in Part V. This is used where the manufacturer has not applied standards in respect of some or all of the EMC characteristics of the apparatus, either due to choice or because there is no appropriate standard. The manufacturer or his authorised representative must compose a technical construction file covering the electromagnetic characteristics in respect of which standards have not been applied and stating the standards which have been applied, which must contain a technical report or technical certificate issued by a competent body appointed by one of the member States. Regulations 48 to 58 and Schedule 5 make provision in respect of the appointment and functions of United Kingdom competent bodies, and related matters. Where this route is used and the manufacturer or his authorised representative is in the United Kingdom, the EC declaration of conformity is issued in accordance with regulation 59; and
- (c) the EC type-examination route to compliance for radiocommunication transmission apparatus, set out in Part VI. The manufacturer or his authorised representative must obtain an EC type-examination certificate from a notified body (regulation 63). Regulations 64 to 72 make provision in respect of the bodies which are United Kingdom notified bodies (these are the Civil Aviation Authority and OFCOM – the descriptions of apparatus in respect of which each body is authorised to act, are set out in Schedule 6). Where this route is used and the manufacturer or his authorised representative is in the United Kingdom, he issues the EC declarations of conformity in accordance with regulation 72. Certain apparatus is specifically excepted from the requirement to obtain an EC type-examination certificate.

Standards will prescribe the technical specifications that relevant apparatus is required to meet in respect of its EMC characteristics (regulation 39).

The standards and technical construction file routes to compliance are applicable (regulations 38 and 43) for all descriptions of relevant apparatus (including radio receivers) except radiocommunication transmission apparatus (that is, transmitters and transceivers), for which the EC type examination route is the only route (regulation 61).

The Regulations make provision for the charging of fees (which may include a reasonable profit) by the United Kingdom competent bodies (other than government departments) (regulation 51) and the Civil Aviation Authority and OFCOM in their capacities as United Kingdom notified bodies (regulation 65). Where a United Kingdom competent body is a government department, provision is made for its fees in separate regulations made under section 56 of the Finance Act 1973 (c. 51).

Regulation 73 provides a saving for the requirements of regulations, orders, licences and continuation notices under the 1949 Act, the [Telecommunications 1984 Act \(c.12\)](#), the [Broadcasting Act 1990 \(c. 42\)](#), the [Broadcasting Act 1996 \(c. 55\)](#), the [Wireless Telegraphy Act 1967 \(c. 72\)](#) and the [Communications Act 2003 \(c. 21\)](#). It also provides that EC type-examination certificates issued by notified bodies pursuant to regulation 60 of the 1992 Regulations continue to be valid. This is in reference to certificates issued by the Defence Research Agency of the Ministry of Defence, the British Approvals Board for Telecommunications and the Radiocommunications Agency in relation to equipment which, as at 8<sup>th</sup> April 2000, came within the scope of the [Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 \(S.I. 2000/730\)](#) (“the RTTE Regulations.”). These bodies ceased to operate as notified bodies under the 1992 Regulations.

*Status: This is the original version (as it was originally made).*

Part VII makes provision for the enforcement of the Regulations. Regulation 75 provides for enforcement authorities. Generally the weights and measures authorities (the Department for Enterprise, Trade and Investment in Northern Ireland) have the duty to enforce the Regulations. Under the 1992 Regulations certain functions relating to enforcement were carried out by the Secretary of State at the Radiocommunications Agency. Those functions are now to be carried out by OFCOM (regulation 75(1)(a)(i)). The Secretary of State may also enforce them (regulation 75(2), save in respect of certain specialised descriptions of apparatus. The Civil Aviation Authority is the enforcement authority for aeronautical apparatus, and the Northern Ireland Authority for Energy Regulation, in Northern Ireland, is authorised in respect of electricity meters other than those which operate by radiocommunications (regulation 75).

Regulations 76 to 84 make provision in respect of the powers of enforcement authorities, these include powers to make test purchases, to search, to seize and detain apparatus. Regulation 79 makes provision for appeals against detention of apparatus. Schedule 7 makes provision in respect of appeals against prohibition notices served under regulation 81 and regulation 83 makes provision in respect of appeals against suspension notices.

Enforcement authorities, in exercising their functions under these Regulations, may exercise those functions in relation to electrical apparatus which is in the possession of a user for the purpose of ascertaining whether any relevant apparatus does not conform to the requirements of these Regulations.

Regulations 85 to 90 provide that certain actions are to be offences –

- (a) Supplying or taking into service apparatus in contravention of regulation 30 or 31 (regulation 85);
- (b) Contravening a prohibition or suspension notice (regulation 86);
- (c) giving false or misleading information (regulation 87);
- (d) Misusing the CE mark or improperly issuing an EC declaration of conformity (regulation 88);
- (e) obstructing officers of enforcement authorities, failing to assist such officers when required to do so or to comply with a requirement made by such officers under Part VII, and failure to comply with a court order under regulation 96 (requiring a matter to be remedied) (regulation 89(1));
- (f) falsely pretending to be an officer of an enforcement authority (regulation 89(2)); and
- (g) failure to retain the EC declaration of conformity, EC type-examination certificate or technical construction file in accordance with regulation 37 (regulation 90).

The court may order relevant apparatus which does not comply with these Regulations, and other electrical apparatus in certain circumstances, to be forfeited (regulations 97 and 98). Forfeiture may be ordered on the application of an enforcement authority, or on conviction of an offence under the Regulations.

Part VIII makes provision in respect of certain miscellaneous and supplemental matters including consequential amendments to the RTTE Regulations to reflect the scope of application in accordance with Regulation 29. The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004 is also amended to replace the reference to the 1992 Regulations with the reference to these Regulations in Schedule 1 of that Order.

A full regulatory impact assessment has not been produced for this instrument as it has no new impact on the costs of business. As this instrument consolidates previous Regulations, no transposition note has been prepared.