
STATUTORY INSTRUMENTS

2005 No. 281

The Electromagnetic Compatibility Regulations 2005

PART VII

ENFORCEMENT

Powers of the court

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.