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STATUTORY INSTRUMENTS

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**2006 No. 3418**

**The Electromagnetic Compatibility Regulations 2006**

**PART IV**

**UNITED KINGDOM NOTIFIED BODIES**

**Designation of United Kingdom notified bodies**

**24.**—(1) Subject to the following provisions of this regulation, the Secretary of State may, on the application of a person resident, incorporated or carrying on business in the United Kingdom, designate that person to be a United Kingdom notified body under these Regulations.

(2) The Secretary of State shall not make a designation under paragraph (1) unless he is satisfied that the applicant satisfies the minimum criteria set out in Schedule 5 (“the minimum criteria”).

(3) A person who meets the assessment criteria fixed by a standard which is a relevant harmonised standard within the meaning of Article 12.2 of the EMC Directive shall be presumed to meet the minimum criteria covered by such harmonised standard.

(4) A designation under paragraph (1)—

- (a) shall be in writing;
- (b) may be made subject to such conditions as may be specified in the designation, which may include conditions which —
  - (i) are to apply upon or following termination of the designation; and
  - (ii) limit the description of apparatus for which the person is designated;
- (c) shall specify the tasks (which may be framed by reference to any circumstances) and categories of apparatus which the person has been designated to assess;
- (d) subject to regulation 25, may last for such period as may be specified in the designation; and
- (e) may include a requirement to publish from time to time the scale of fees which the person charges pursuant to regulation 26 or such information about the basis of calculation of such fees as may be specified.

(5) In exercising the power conferred on him by paragraph (1) the Secretary of State may (in addition to the matters of which he is required to satisfy himself pursuant to paragraph (2)) have regard to any matter appearing to him to be relevant.

(6) The Secretary of State shall, from time to time, publish a list of notified bodies.

(7) The Secretary of State shall, from time to time, carry out an inspection of each notified body with a view to verifying that it—

- (a) meets the minimum criteria;
- (b) complies with any condition to which its designation is subject; and
- (c) complies with these Regulations.

### **Variation and termination**

- 25.**—(1) The Secretary of State may vary a designation made under regulation 24 if—
- (a) the notified body so requests; or
  - (b) it appears to him necessary or expedient to do so.
- (2) The Secretary of State may terminate a designation made under regulation 24—
- (a) on the expiry of 90 days notice in writing at the request of the notified body; or
  - (b) if it appears to the Secretary of State that a condition of the designation is not complied with; or
  - (c) if in his opinion the notified body ceases to satisfy the minimum criteria.
- (3) Where the Secretary of State is minded to—
- (a) vary a designation pursuant to paragraph (1)(b); or
  - (b) terminate a designation pursuant to paragraph (2)(b) or (c);

he shall—

- (i) give such directions (either to the notified body the subject of the termination or to another notified body) for the purposes of making arrangements for the determination of outstanding applications as he considers appropriate; and
- (ii) notwithstanding sub-paragraph (i), authorise another notified body to take over the functions of the notified body the subject of the termination in respect of such cases as he may specify.

### **Fees**

**26.**—(1) A notified body may charge such fees in connection with, or incidental to, carrying out the specified tasks as it may determine.

- (2) The fees referred to in paragraph (1) shall not exceed 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 notified body on behalf of the applicant; and
    - (ii) the commercial rate normally charged on account of profit for that work or similar work.

(3) The power in paragraph (1) includes the power to require the payment of fees or a reasonable estimate of such fees in advance of carrying out the work requested by the applicant.

(4) Where any fees payable to a notified body pursuant to paragraphs (1) and (2) remain unpaid 28 days after either the work has been completed or payment of the fees has been requested in writing, whichever is the later, that notified body may by 14 days notice in writing provide that, unless the fees are paid before the expiry of the notice, the statement in relation to the conformity assessment procedure may be suspended until payment of the fees has been received.

### **Functions of notified body**

**27.**—(1) A notified body shall carry out the functions set out in this regulation.

(2) Subject to regulation 28, a notified body shall assess an application made by a manufacturer for the issue of a statement.

(3) In determining such an application, the notified body—

- (a) shall have regard to the actual or usual electromagnetic environment of the apparatus when properly installed, maintained and used for its intended purpose; and
- (b) may have regard to any standards or technical criteria appearing to it to be relevant.

(4) Where in the opinion of the notified body the apparatus to which an application relates is compliant with the essential requirements for which a statement has been requested, it shall issue a statement in accordance with regulation 30.

(5) Where in the opinion of the notified body the apparatus to which an application relates is not compliant with the essential requirements for which a statement has been requested, it shall issue a notice to the applicant in accordance with regulation 33.

### **Limitations on duties to exercise functions**

**28.**—(1) A notified body shall not accept an application for a statement in respect of any apparatus unless the application—

- (i) is in writing, in English or another language acceptable to that notified body; and
- (ii) is accompanied by technical documentation, in writing, in English or another language acceptable to that body.

(2) A notified body shall not be required to determine an application for a statement where the manufacturer has not made available to the body such information as it may reasonably require to determine the application.

(3) A notified body shall not be required to carry out its tasks referred to in regulation 24(4)(c) if—

- (a) the person making the application has not submitted with the application the amount of the fee which the body requires to be submitted pursuant to regulation 26; or
- (b) the body reasonably believes that, having regard to the number of applications made to it which are outstanding, it will be unable to commence the required work within three months of receiving the application.

### **Contractors**

**29.**—(1) A notified body may, in exercising its functions—

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

(2) But nothing in paragraph (1) authorises a notified body to rely on the opinion of another person with regard to whether an apparatus is compliant with any of the essential requirements.

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

### **Form of statement of compliance**

**30.** A statement issued by a notified body shall be in writing and shall—

- (a) be in English;
- (b) give the name and address—
  - (i) of the applicant;
  - (ii) where the applicant is not the manufacturer, of the manufacturer;
- (c) be signed by or on behalf of the notified body and give the identification number of the notified body;

- (d) bear the date of issue;
- (e) give particulars of the apparatus (where applicable, in relation to each variant) to which it relates sufficient to identify it; and
- (f) confirm that the apparatus and the technical documentation to which it relates complies with the relevant requirements it has assessed.

#### **Conditions of statement of compliance**

**31.**—(1) A statement issued by a notified body may be unconditional or may be subject to such conditions as the notified body considers appropriate.

(2) Such conditions may include—

- (a) a limitation on the electromagnetic environment for which the apparatus may be stated to be suitable; or
- (b) a requirement that the apparatus is only to be installed at a specific site.

(3) The conditions imposed pursuant to paragraph (1) may be varied in accordance with regulation 33 by the notified body which issued the statement and such variation may include the imposition of new conditions or the removal of conditions.

#### **Withdrawal of statement of compliance**

**32.** The notified body which issued a statement shall withdraw that statement in accordance with regulation 33 if it appears that the apparatus to which it relates is not compliant with the relevant requirements.

#### **Procedure where a notified body is minded to refuse to give, or to vary or to withdraw a statement of compliance**

**33.**—(1) Where a notified body is minded to—

- (a) refuse to issue a statement of compliance;
- (b) vary a statement (other than at the request of the person to whom it was given); or
- (c) withdraw a statement of compliance,

it shall give to the applicant, or the person to whom the statement was given, a notice in writing—

- (i) giving reasons for the refusal, variation or withdrawal;
- (ii) specifying the date on which the refusal, variation or withdrawal is to take effect; and
- (iii) giving that applicant or person to whom the statement was given the opportunity to make representations within 21 days from the date of such notice and stating that the notified body shall consider any representations made to it within that period by that applicant or person.

(2) Where a notified body, having considered representations made to it under paragraph (1) remains of the opinion that—

- (a) an application for a statement should be refused; or
- (b) a statement should be varied or withdrawn,

it shall inform the applicant, or the person to whom the statement was given, of that decision in writing.