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STATUTORY INSTRUMENTS

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**2008 No. 1597**

**The Supply of Machinery (Safety) Regulations 2008**

**PART 6**

**Enforcement**

**Non-compliance with CE marking requirements**

- 21.**—(1) For the purposes of this regulation, a product is deficient as regards CE marking—
- (a) if it is not subject to the Directive, but the CE marking is affixed to it pursuant to the Directive; or
  - (b) if it is machinery and—
    - (i) the CE marking is not affixed to it;
    - (ii) it is not accompanied by a copy of the EC declaration of conformity; or
    - (iii) the CE marking is affixed to it but it does not conform to the relevant provisions of these Regulations; or
    - (iv) a marking other than the CE marking, which is prohibited by regulation 15(2) or (3), is affixed to it.

(2) Where an enforcement authority has reasonable grounds for suspecting that a product is deficient as regards CE marking, but does not have reasonable grounds for suspecting that it is not safe, the enforcement authority may take action under the following provisions as they are applied by Schedule 5—

- (a) in the case of the Health and Safety Executive or the Office of Rail Regulation, section 20 of the 1974 Act;
- (b) in the case of the Health and Safety Executive for Northern Ireland, Article 22 of the 1978 Order; and
- (c) in the case of any other enforcement authority, section 29 of the 1987 Act,

but no other action may be taken pursuant to Schedule 5 and no proceedings may be brought pursuant to regulation 22 in respect of that product until the enforcement authority has served on the responsible person a notice in writing in accordance with paragraph (3) and the responsible person has failed to comply with its requirements.

(3) Where an enforcement authority has reasonable grounds for considering that a product is deficient as regards CE marking, it may serve a notice on the responsible person which—

- (a) identifies the product concerned;
- (b) states that the enforcement authority considers that it is deficient as regards CE marking and the reasons why the authority considers that this is the case;
- (c) requires the responsible person to take (or refrain from taking) specified action within a specified period to bring the deficiency to an end; and

(d) warns the responsible person that if the deficiency continues beyond the period specified in the notice, further action may be taken under these Regulations.

(4) In any proceedings under regulation 22 in respect of a person's alleged failure to comply with a notice under paragraph (3), an enforcement authority must show that the product concerned was deficient as regards CE marking at the time when the notice was served.