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## STATUTORY INSTRUMENTS

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# 2012 No. 3032

## The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012

### PART 3

#### Enforcement

##### Market surveillance authority

**35.**—(1) It is the duty of the Secretary of State to enforce these Regulations and the Secretary of State is the market surveillance authority for the purposes of these Regulations and RAMS in its application to EEE.

(2) The market surveillance authority may authorise in writing any person who appears suitable to act on its behalf to carry out any of its functions and to exercise any of the powers and duties conferred on it by these Regulations or RAMS.

(3) The market surveillance authority must not commence proceedings for an offence in Scotland.

##### Market surveillance powers

**36.** Where the market surveillance authority considers that there may be a breach of these Regulations it may—

- (a) exercise the powers set out in Schedule 2 (test purchases, powers of entry etc and warrants); and
- (b) take the actions set out in Schedule 3 (compliance, enforcement and recall notices).

##### Offences

**37.**—(1) It is an offence for a manufacturer to contravene or fail to comply with any of the requirements of—

- (a) regulation 10 (prohibitions on placing EEE on the market);
- (b) regulation 15 (duty to keep technical documentation and EU declaration of conformity);
- (c) regulation 19 (register of EEE);
- (d) regulation 20 (non-compliant EEE); or
- (e) regulation 21 (co-operation with the authorities).

(2) It is an offence for an importer to contravene or fail to comply with any of the requirements of—

- (a) regulation 23 (prohibition on placing EEE on the market);
- (b) regulation 25 (monitoring of EEE);
- (c) regulation 26 (non-compliant EEE); or
- (d) regulation 27 (retention of documents and co-operation with authorities).

**Status:** Point in time view as at 02/01/2013.

**Changes to legislation:** There are currently no known outstanding effects for the The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012, PART 3. (See end of Document for details)

(3) It is an offence for a distributor to contravene or fail to comply with any of the requirements of—

- (a) regulation 29 (duty to act with due care and prohibition on making EEE available on the market);
- (b) regulation 30 (non-compliant EEE); or
- (c) regulation 31 (co-operation with authorities).

(4) It is an offence for an economic operator to contravene or fail to comply with regulation 33(2) (identification of economic operators to the market surveillance authority).

(5) It is an offence for any person to contravene or fail to comply with any of the requirements of regulation 34 (protection of CE marking).

(6) In any proceedings for an offence under paragraph (1)(a) in respect of a failure to affix the CE marking in accordance with regulation 16 (EEE to bear CE marking), where the accused seeks to rely on regulation 16(3), it is for the accused to show that it was not possible, or (as the case may be) not warranted, for the CE marking to be affixed in accordance with regulation 16(2).

### **Obstruction, etc.**

**38.** It is an offence for any person—

- (a) intentionally to obstruct an authorised person acting in pursuance of their powers and duties under these Regulations or Article 19 (which provides for market surveillance measures) of RAMS; or
- (b) knowingly or recklessly to—
  - (i) make a statement; or
  - (ii) provide any information, document or record,

which is false or misleading in a material respect, in purported compliance with any requirement imposed under these Regulations or Article 19 of RAMS.

### **Penalties**

**39.—(1)** A person who is guilty of an offence under—

- (a) regulation 37(1)(a);
- (b) regulation 37(2)(a); or
- (c) regulation 37(3)(a),

is liable on summary conviction, to a fine not exceeding the statutory maximum and on conviction on indictment, to a fine.

(2) A person who is guilty of—

- (a) any other offence under regulation 37; or
- (b) an offence under regulation 38,

is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Remediation orders**

**40.—(1)** This regulation applies where a person commits an offence under these Regulations in respect of a matter which appears to the court to be a matter which it is in the person's power to remedy.

(2) The court may specify in an order (“a remediation order”)—

- (a) the steps that the person must take to remedy any of the matters for which that person has been convicted; and
  - (b) the period within which those steps must be taken.
- (3) A period specified in a remediation order may be extended if an application is made to the court within that period.
- (4) If a person is ordered to remedy a matter, that person is not liable under regulation 37 (offences) in respect of that matter during the period or the extended period.
- (5) A remediation order may be made in addition to, or instead of, any other penalty.

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

- 41.**—(1) This regulation applies where a person commits an offence under regulation 37(1) (a), (2)(a) or (3)(a) or paragraph 9 of Schedule 3.
- (2) The court may (in addition to any other order it may make as to costs or expenses) order the person to reimburse the market surveillance authority for any expenditure which the authority has reasonably incurred in investigating the offence, including in purchasing or in testing or examining any EEE, or any part of it, in respect of which the offence was committed.

### **Time limit for prosecution of offences**

- 42.**—(1) In England and Wales an information relating to an offence that is triable by a magistrates' court may be so tried if it is laid within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.
- (2) In Scotland
- (a) summary proceedings for an offence may be commenced before the end of twelve months from the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to the Lord Advocate's knowledge, and
  - (b) section 136(3) of the Criminal Procedure (Scotland) Act 1995 (time limit for certain offences)(1) applies for the purpose of this paragraph as it applies for the purpose of that section.
- (3) In Northern Ireland summary proceedings for an offence may be instituted within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the knowledge of the prosecutor.
- (4) No proceedings are to be brought more than three years after the commission of the offence.
- (5) For the purposes of this regulation a certificate of the prosecutor (or in Scotland, the Lord Advocate) as to the date on which such evidence as is referred to above came to their knowledge is conclusive evidence.

### **Defence of due diligence**

- 43.**—(1) In proceedings for an offence under these Regulations, it is a defence for a person to show that they took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (2) A person is not, without the leave of the court, entitled to rely on the defence if it involves an allegation that the commission of the offence was due—
- (a) to the act or default of another; or

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(1) 1995 c. 46.

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(b) to reliance on information supplied by another;

unless, not less than seven clear days before the hearing of the proceedings (in England, Wales and Northern Ireland), or the trial diet (in Scotland), the person has served a notice on the person bringing the proceedings.

(3) The notice must give the information in the possession of the person (“A”) serving the notice which identifies or assists in identifying the person (“B”) who—

- (a) committed the act or default; or
- (b) supplied the information which was relied on.

(4) A may not rely on the defence by reason of reliance on information supplied by B, unless A shows that it was reasonable in all the circumstances to have relied on the information, having regard in particular—

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

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

**44.**—(1) Where the commission by a person of an offence under these Regulations is due to anything which another person did or failed to do in the course of a business, that other person is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person.

(2) Where a body corporate commits an offence and it is proved that the offence was committed—

- (a) with the consent or connivance of a relevant person; or
- (b) as a result of the negligence of a relevant person,

that person, as well as the body corporate, is guilty of the offence.

(3) A “relevant person” means—

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b) in relation to a body corporate managed by its members, a member of that body performing managerial functions;
- (c) in relation to a Scottish partnership, a partner;
- (d) a person purporting to act as a person described in (a), (b) or (c).

#### **Service of documents**

**45.**—(1) Any document required or authorised by these Regulations to be served on a person may be served by—

- (a) delivering it to that person in person;
- (b) leaving it at that person’s proper address; or
- (c) sending it by post or electronic means to that person’s proper address.

(2) In the case of a body corporate, a document may be served on a director of that body.

(3) In the case of a partnership, a document may be served on a partner or a person having control or management of the partnership business.

(4) For the purposes of this regulation, “proper address” means—

- (a) in the case of a body corporate or its director—
  - (i) the registered or principal office of that body; or

- (ii) the email address of the secretary or clerk of that body;
  - (b) in the case of a partnership, a partner or person having control or management of the partnership business—
    - (i) the principal office of the partnership; or
    - (ii) the email address of a partner or a person having that control or management;
  - (c) in any other case, a person's last known address, which includes an email address.
- (5) If a person to be served with a document has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept service, that address must also be treated as that person's proper address.
- (6) In this regulation "partnership" includes a Scottish partnership.

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