
STATUTORY INSTRUMENTS

2016 No. 1091

The Electromagnetic Compatibility Regulations 2016

PART 5

Enforcement and market surveillance

Enforcement action in respect of apparatus that is not in conformity and which present a risk

57.—(1) Where in the course of the evaluation referred to in regulation 56 (evaluation of apparatus presenting a risk) the enforcing authority finds that the apparatus is not in conformity with Part 2, it must, without delay, require the relevant economic operator to—

- (a) take the appropriate corrective action to bring the apparatus into conformity with those requirements within a prescribed period;
- (b) withdraw the apparatus within a prescribed period; or
- (c) recall the apparatus within a prescribed period.

(2) The enforcing authority must inform the notified body that carried out the relevant conformity assessment procedure in relation to the apparatus of—

- (a) the respect in which the apparatus is not in conformity with Part 2; and
- (b) the actions which the enforcing authority is requiring the relevant economic operator to take.

(3) Where the enforcing authority is not the Secretary of State and it considers that the lack of conformity referred to in paragraph (1) is not restricted to the United Kingdom, it must notify the Secretary of State of—

- (a) the results of the evaluation; and
- (b) the actions which the enforcing authority has required the economic operator to take.

(4) Where the Secretary of State receives notice from an enforcing authority under paragraph (3), or otherwise considers that the failure of apparatus to conform with the requirements of Part 2 referred to in paragraph (1) is not restricted to the United Kingdom, the Secretary of State must inform the European Commission and the other member States of—

- (a) the results of the evaluation; and
- (b) the actions which the enforcing authority has required the economic operator to take.

(5) Where the relevant economic operator does not take adequate corrective action within the prescribed period, the enforcing authority must take appropriate measures to—

- (a) prohibit or restrict the apparatus being made available on the market in the United Kingdom;
- (b) withdraw the apparatus from the United Kingdom market; or
- (c) recall the apparatus.

(6) Where the enforcing authority is not the Secretary of State and it takes measures under paragraph (5), it must notify the Secretary of State of those measures without delay.

(7) Where the Secretary of State receives a notice under paragraph (6), or takes measures under paragraph (5), the Secretary of State must notify the European Commission and the other member States of those measures without delay.

(8) The notices referred to in paragraphs (6) and (7) must include details about the apparatus and, in particular—

- (a) the data necessary to identify the apparatus that is not in conformity with Part 2;
- (b) the origin of the apparatus;
- (c) the nature of the lack of conformity alleged and the risk involved;
- (d) the nature and duration of the measures taken;
- (e) the arguments put forward by the relevant economic operator;
- (f) whether the failure of the apparatus to conform with the requirements of Part 2 is due to—
 - (i) the failure of the apparatus to meet the requirements of that Part relating to risk; or
 - (ii) shortcomings in the harmonised standards referred to in regulation 39 (presumption of conformity) which confer a presumption of conformity.

(9) In this regulation, “prescribed period” means a period which is—

- (a) prescribed by the enforcing authority; and
- (b) reasonable and commensurate with the nature of the risk presented by the apparatus.