
STATUTORY INSTRUMENTS

2016 No. 1153

The Measuring Instruments Regulations 2016

PART 8

OFFENCES

Unauthorised application of authorised marks

- 75.—(1) Subject to paragraph (2), a person is guilty of an offence, if that person—
- (a) affixes an authorised mark to a regulated measuring instrument otherwise than in accordance with these Regulations;
 - (b) alters or defaces an authorised mark affixed to a regulated measuring instrument;
 - (c) removes an authorised mark affixed to a regulated measuring instrument; or
 - (d) affixes any other form of marking to a regulated measuring instrument which is likely to deceive any person as to the meaning or form, or both, of an authorised mark.
- (2) Where the alteration, defacement or removal of an authorised mark is occasioned solely—
- (a) in the course of the adjustment or repair of a regulated measuring instrument by a person engaged in the business of repair of such instruments or by that person's duly authorised agent; or
 - (b) by an enforcement officer or approved verifier in the carrying out of any of their functions under these Regulations,

that person (or that person's authorised agent), enforcement officer or approved verifier is not guilty of an offence under paragraph (1)(b) or (1)(c).

(3) A person is guilty of an offence if that person places on the market or puts into use or uses for trade a regulated measuring instrument—

- (a) from which, to that person's knowledge, an authorised mark has been removed; or
- (b) which to that person's knowledge bears—
 - (i) an authorised mark affixed otherwise than in accordance with these Regulations;
 - (ii) an authorised mark that has been altered or defaced otherwise than in the circumstances referred to in paragraph (2); or
 - (iii) any mark which is likely to deceive any person as to the meaning or form, or both, of an authorised mark.

(4) A regulated measuring instrument in respect of which an offence under this regulation has been committed and any implement used in the commissioning of the offence is liable to be forfeited.

- (5) In this regulation “authorised mark” means—
- (a) the CE marking;
 - (b) the M marking;

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- (c) the identification number of the notified body which carried out the conformity assessment procedure in respect of the relevant regulated measuring instrument;
- (d) a disqualification mark; or
- (e) a re-qualification mark.

Offences by economic operators etc.

76.—(1) In this regulation “event of default” means—

- (a) the placing on the market or putting into use of a regulated measuring instrument which—
 - (i) does not meet the essential requirements applicable to it;
 - (ii) has not been the subject of an applicable conformity assessment procedure;
 - (iii) does not bear the markings or inscriptions required by these Regulations; or
 - (iv) is not accompanied by the documents and information required by these Regulations;
 or
- (b) any failure to—
 - (i) create or maintain any records required to be created or maintained under these Regulations; or
 - (ii) provide to a competent authority documents or information pursuant to a requirement imposed by or under these Regulations; or
- (c) any failure to comply with an obligation under regulation 74(1) or 74(2)

(2) Where an event of default mentioned in paragraph (1)(a) or 1(b) occurs as a result of the failure of an economic operator to comply with an obligation imposed on the economic operator by any provision of these Regulations, the economic operator is guilty of an offence.

(3) Where there is an event of default of a kind referred to in paragraph (1)(c), the person on whom the obligation is imposed under section 74(1) or 74(2) is guilty of an offence.

Penalties for offences

77. A person guilty of an offence under any provision of these Regulations is liable, on summary conviction—

- (a) in England and Wales to a fine; and
- (b) in Scotland or Northern Ireland to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

78.—(1) In proceedings against a person for an offence under these Regulations (other than regulation 75(3)), it is a defence for that person to show that that person took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where, in proceedings against a person for such an offence the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence, unless, not less than seven clear days before the hearing of the proceedings (or, in Scotland, the trial diet), that person has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph must give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time that person serves it.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of reliance on information supplied by another, unless that person shows it was reasonable in all the circumstances for that person to have relied on the information, having regard in particular to—

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

Liability of persons other than the principal offender

79.—(1) Where the commission by a person (“A”) of an offence under these Regulations is due to the act or default of another person (“B”) in the course of any business of A, B is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against A.

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

- (a) with the consent or connivance of an officer of the body corporate,
- (b) as a result of the negligence of an officer of the body corporate

the officer as well as the body corporate is guilty of the offence.

(3) In paragraph (2), a reference to an officer of a body corporate includes a reference to—

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b) a person purporting to act as a director, manager, secretary or other similar officer; and
- (c) if the affairs of the body corporate are managed by its members, a member

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland, and in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

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