
STATUTORY INSTRUMENTS

1992 No. 2372

The Electromagnetic Compatibility Regulations 1992

PART I
PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Electromagnetic Compatibility Regulations 1992, and shall come into force on 28th October 1992.

Repeal and disapplication

2.—(1) Section 12A of the Wireless Telegraphy Act 1949(1) and section 78 of the Telecommunications Act 1984(2) are hereby repealed.

(2) The regulations made under section 10(3) of the said Act of 1949 listed in Schedule 1 hereto, to the extent that they impose electromagnetic compatibility requirements which must be complied with if relevant apparatus is to be supplied, used or taken into service, are hereby disapplied(4): provided that nothing in these Regulations shall disapply the said regulations to the extent that they impose requirements concerning radio frequency spectrum planning or the implementation of Community obligations.

(3) For the avoidance of doubt, it is hereby declared that nothing in paragraph (2) above affects—

- (a) the applicability of the regulations so listed to the use in service of relevant apparatus; or
- (b) the power to make regulations under the said section 10 applying to such use.

Interpretation

3.—(1) In these Regulations, “the EMC Directive ” means Council Directive 89/336/EEC on the approximation of the laws of the Member States relating to electromagnetic compatibility(5), as amended by—

- (a) Article 9.4 of the Telecommunications Terminal Equipment Directive(6); and
- (b) Council Directive 92/31/EEC(7).

(2) In these Regulations—

“the 1949 Act ” means the Wireless Telegraphy Act 1949;

(1) 1949 c. 54; section 12A was inserted by section 78 of the Telecommunications Act 1984 (c. 12). The power to make regulations under section 12A was never exercised, nor was the section extended to the Isle of Man or the Channel Islands.

(2) 1984 c. 12.

(3) Section 10 was amended by section 89 of 1984 c. 12.

(4) Certain of the regulations made under section 10 apply to the Isle of Man and the Channel Islands. These Regulations do not apply to those islands and thus nothing herein affects the application of those regulations thereto.

(5) OJNo.L139, 23.5.89, p.19.

(6) Article 9.4 deleted Article 10.4 of the EMC Directive.

(7) OJNo.L126, 12.5.92, p.11.

- “the 1984 Act ” means the Telecommunications Act 1984;
- “affixed ” in relation to the CE mark or any inscription liable to be confused therewith means affixed to one of the items mentioned in regulation 33(2) below or to any other item such that it is referable to any apparatus;
- “authorised representative ” means a person established within the Community appointed by the manufacturer (whether or not established in the Community) to act on his behalf in fulfilling his obligations under the EMC Directive;
- “BABT ” shall be construed in accordance with regulation 62(c) below;
- “business ” includes a profession and an undertaking, and a supply in the course of a business includes any supply by a business;
- “CAA ” shall be construed in accordance with regulation 62(b) below;
- “CE mark ” has the meaning given in regulation 33(7) below;
- “the Commission ” means the Commission of the European Communities;
- “the Community ” means the European Economic Community;
- “competent body ” shall be construed in accordance with regulation 45 below;
- “conformity assessment requirements ” shall be construed in accordance with regulation 31 below;
- “consumer ” includes an industrial or commercial consumer;
- “DRA ” shall be construed in accordance with regulation 62(a) below;
- “EC declaration of conformity ” has the meaning given in regulation 34(1) below;
- “EC type-examination certificate ” in relation to the EC type-examination route to compliance in respect of radiocommunication transmission apparatus means an EC type-examination certificate issued by—
- (a) a United Kingdom notified body pursuant to regulation 64 below; or
 - (b) a notified body of a member State other than the United Kingdom pursuant to Article 10.5 of the EMC Directive;
- “the EC type-examination route to compliance ” in relation to radiocommunication transmission apparatus shall be construed in accordance with regulation 31(b) below;
- “educational electronic equipment ” has the meaning given by regulation 8(2) below;
- “electrical apparatus ” shall be construed in accordance with regulation 7(2) below;
- “enforcement authority ” shall be construed in accordance with regulation 73 below;
- “end user ” means the consumer and, where the manufacturer makes apparatus for his own use, such manufacturer who first uses electrical apparatus for the purpose for which it is designed, but excludes a manufacturer who uses the apparatus by incorporating it into other apparatus;
- “immunity ” means immunity to electromagnetic disturbance;
- “kit ” means a collection of all or substantially all the necessary components, for supply as a single commercial unit, required for the construction of an item of electrical apparatus and intended for such use, whether or not accompanied by instructions;
- “manufacture ” means manufacture in the course of a business, and includes—
- (a) assembly;
 - (b) finishing;
 - (c) reconditioning;

(d) modification which substantially alters the electromagnetic compatibility characteristics of the apparatus;

but does not include repair or the assembly of relevant apparatus from a kit; and cognate expressions shall be construed accordingly;

“medical device ” has the meaning given by regulation 22 below;

“notified body ” shall be construed in accordance with regulation 61 below;

“presumption of conformity ” shall be construed in accordance with regulation 32 below;

“protection requirements ” has the meaning given by regulation 5 below;

“RA” shall be construed in accordance with regulation 62(d) below;

“radio amateur apparatus ” means wireless telegraphy apparatus designed or adapted for use in the amateur service, but excludes citizen’s band apparatus, and in this definition—

(a) “amateur service ” has the meaning given by Article 1, definition 53, of the 1990 edition of the Radio Regulations annexed to the International Telecommunication Convention 1982⁽⁸⁾ pursuant to Articles 43 and 83 of that Convention; and

(b) “citizen’s band apparatus ” means wireless telegraphy apparatus designed or adapted exclusively for the provision of voice radiocommunication in the frequency bands 26.960 MHz to 27.410 MHz and 27.60125 MHz to 27.99125 MHz;

“radiocommunication transmission apparatus ” has the meaning given by regulation 59(2) below;

“radio frequency spectrum ” means that part of the electromagnetic spectrum at frequencies not exceeding 3,000 GHz; and requirements of regulations made under section 10 of the 1949 Act shall be taken to concern radio frequency spectrum planning if they concern the frequency allocation for any apparatus (whether wireless telegraphy apparatus or other apparatus which operates by emitting electromagnetic radiation in the radio frequency spectrum) and the necessary characteristics of any signal or emission authorised by such regulations;

“relevant apparatus ” shall be construed in accordance with regulation 6 below;

“responsible person ” in relation to relevant apparatus means—

(a) the manufacturer thereof;

(b) the manufacturer’s authorised representative; or

(c) where the manufacturer is not established in the Community and he has not appointed an authorised representative, the person who supplies the relevant apparatus;

“the standards route to compliance ” in relation to relevant apparatus other than radiocommunication transmission apparatus shall be construed in accordance with regulation 31(a)(i) below;

“supply ” means the first making available of relevant apparatus for a consumer in the Community including, without limiting the generality of the foregoing, offering to supply, agreeing to supply, exposing for supply and possessing for supply such apparatus, and cognate expressions shall be construed accordingly; provided, however, that relevant apparatus shall not be regarded as having been supplied by reason only of its having been displayed at a trade fair or exhibition or advertised for supply when not available for supply;

“system ” means an item of equipment, or a combination of items of equipment, containing—

(a) electrical components;

(b) electronic components; or

⁽⁸⁾ The International Telecommunication Convention (Cmnd.9557) was adopted by the International Telecommunication Union at Nairobi on 6th November 1982, and was ratified by the United Kingdom on 15th November 1984.

(c) both (a) and (b).

and includes a kit but excludes any such equipment containing a medical device;

“technical certificate ” in relation to the technical construction file route to compliance in respect of relevant apparatus other than radiocommunication transmission apparatus means a technical certificate issued by —

(a) a United Kingdom competent body pursuant to regulation 51 below; or

(b) a competent body of a member State other than the United Kingdom pursuant to Article 10.2 of the EMC Directive;

“technical construction file ” shall be construed in accordance with regulation 43 below;

“the technical construction file route to compliance ” in relation to relevant apparatus other than radiocommunication transmission apparatus shall be construed in accordance with regulation 31(a)(ii) below;

“technical report ” in relation to the technical construction file route to compliance in respect of relevant apparatus other than radiocommunication transmission apparatus means a technical report issued by—

(a) a United Kingdom competent body pursuant to regulation 50 below; or

(b) a competent body of a member State other than the United Kingdom pursuant to Article 10.2 of the EMC Directive;

“telecommunications terminal equipment ” means terminal equipment within the meaning of Article 1.2, as qualified by Article 1.3, of the Telecommunications Terminal Equipment Directive in respect of which a common technical regulation is in force pursuant to Article 6.2 of that Directive;

“Telecommunications Terminal Equipment Directive ” means Council Directive 91/263/EEC on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity⁽⁹⁾;

“test apparatus ” has the meaning given by regulation 9(2) below;

“United Kingdom competent body ” shall be construed in accordance with regulation 46 below;

“United Kingdom notified body ” shall be construed in accordance with regulation 62 below; and

“wireless telegraphy ”, “wireless telegraphy apparatus ” and “station for wireless telegraphy ” have the meanings given respectively by section 19(1) of the 1949 Act.

(3) For the purposes of these Regulations—

(a) “electromagnetic compatibility ” (EMC) is the ability of relevant apparatus to function satisfactorily in its electromagnetic environment without introducing intolerable electromagnetic disturbance to anything in that environment;

(b) the EM characteristics of relevant apparatus comprise—

(i) the propensity of that apparatus to generate electromagnetic disturbance; and

(ii) the adequacy of the immunity of that apparatus to external electromagnetic disturbance; and

(c) a reference to an applicable EM characteristic of relevant apparatus is a reference to—

(i) in the case of apparatus to which regulations 23 to 27 below apply, any EM characteristic thereof which falls within the scope of these Regulations;

(ii) in the case of any other apparatus, any EM characteristic thereof.

⁽⁹⁾ OJNo.L128, 23.5.91, p.1.

(4) In these Regulations, “applicable EMC standard”, “harmonised standard”, “recognised national standard” and “transposed harmonised standard” shall be construed in accordance with regulation 38 below.

(5) For the purpose of these Regulations, an electromagnetic environment is the totality of electromagnetic phenomena existing at a given location, and accordingly—

(a) a reference to the immediate electromagnetic environment in relation to educational electronic equipment or test apparatus (“disturbance permissible apparatus”) is a reference to a sufficient space for that apparatus to—

(i) operate as intended, where the object of the study or test as the case may be is that it should generate electromagnetic disturbance;

(ii) be subjected to electromagnetic disturbance, where the object of the study or test as the case may be is that it should be the victim of electromagnetic disturbance,

without preventing other relevant apparatus (other than any apparatus involved in the study or test) from operating as intended; and in this definition, “sufficient space” means a space no greater in size than is reasonably necessary having regard to all the circumstances, to enable the disturbance permissible apparatus to be so operated or so subjected, and, without prejudice to the generality of the foregoing, having regard in particular to the steps which might reasonably be taken to insulate the site at which the disturbance permissible apparatus is being used against the escape of emissions therefrom;

(b) a reference to a sealed electromagnetic environment is a reference to an electromagnetic environment which prevents relevant apparatus therein from causing electromagnetic disturbance to relevant apparatus outside that electromagnetic environment and, without prejudice to the generality of the foregoing, includes an anechoic chamber, an electromagnetic anechoic room or a Faraday cage; and

(c) a reference to the usual electromagnetic environment of apparatus is a reference to—

(i) where the apparatus is manufactured or supplied for the purpose of being used at a specific location, the totality of electromagnetic phenomena which exist at that location under normal circumstances at the time when it is first used; or

(ii) where sub-paragraph (i) above does not apply, the totality of electromagnetic phenomena which might reasonably be expected to exist at the usual range of locations at which that relevant apparatus might reasonably be expected to be used, having regard to all the circumstances, and, without prejudice to the generality of the foregoing, in particular to—

(aa) the electromagnetic phenomena associated with that relevant apparatus and other relevant apparatus which might reasonably be expected to be in sufficient proximity to the first mentioned relevant apparatus to be affected thereby; and

(bb) any indication by the manufacturer or supplier of the applications for which the first-mentioned relevant apparatus is suitable.

(6) For the purpose of these Regulations, relevant apparatus other than a kit is taken into service when it is first used by the person who assembled it or the person who imported it and cognate expressions shall be construed accordingly; provided, however, that relevant apparatus shall not be regarded as having been taken into service by reason only of its having been operated by or on behalf of the manufacturer at a trade fair or exhibition or by a supplier for demonstration purposes.

Electromagnetic disturbance

4.—(1) In these Regulations, “electromagnetic disturbance” means, subject to paragraphs (2) to (6) below, any electromagnetic phenomenon which is liable to degrade the performance of relevant apparatus.

(2) Without prejudice to the generality of paragraph (1) above, the following phenomena shall be regarded as electromagnetic disturbance (being phenomena expressly stated to be such in Article 1.2 of the EMC Directive):—

- (a) electromagnetic noise;
- (b) unwanted signals; and
- (c) changes in the propagation medium.

(3) Without prejudice to the generality of paragraph (1) above and in addition to the phenomena regarded as electromagnetic disturbance pursuant to paragraph (2) above, the phenomena and effects listed in Schedule 2 hereto may be regarded as electromagnetic disturbance.

(4) A signal or emission which is a necessary function, or consequence of the operation, of relevant apparatus shall not be taken to be electromagnetic disturbance if, in relation to that apparatus, that signal or emission is permitted, and does not exceed the limits specified, by—

- (a) the applicable EMC standard;
- (b) a condition of the technical report or technical certificate;
- (c) where the apparatus is radiocommunication transmission apparatus—
 - (i) a condition of the EC type-examination certificate; or
 - (ii) a term, provision or limitation of—
 - (aa) a licence granted under section 1 of the 1949 Act; or
 - (bb) regulations made under that section; or

- (d) where the apparatus is—
 - (i) radiocommunication transmission apparatus; or
 - (ii) apparatus other than wireless telegraphy apparatus which operates by emitting electromagnetic radiation in the radio frequency spectrum,
 - any relevant provisions of regulations made under section 10 of the 1949 Act concerning radio frequency spectrum planning or the implementation of Community obligations.

(5) For the purposes of these Regulations, a nuclear electromagnetic pulse (NEMP) shall not be regarded as electromagnetic disturbance.

(6) Without prejudice to the generality of the foregoing provisions of this regulation, for the purposes of these Regulations, the performance of relevant apparatus shall be taken to be degraded if any of the following types of interference with its function occur—

- (a) permanent, temporary or intermittent—
 - (i) total loss of function;
 - (ii) significant impairment of function; or
- (b) where the apparatus is information storage or retrieval equipment, destruction or corruption of information stored thereby.

Protection requirements

5.—(1) In these Regulations, a reference to “protection requirements” in relation to relevant apparatus is a reference to the requirements set out in the following provisions of this regulation.

- (2) Subject to paragraphs (3) to (5) below, relevant apparatus shall be so constructed that—
- (a) the electromagnetic disturbance it generates does not exceed a level allowing other relevant apparatus to operate as intended; and
 - (b) it has a level of intrinsic immunity which is adequate to enable it to operate as intended, when it is—
 - (i) properly installed and maintained; and
 - (ii) used for the purpose for which it was intended.
- (3) Nothing in paragraph (2) above shall be taken to require relevant apparatus, not being apparatus specifically designed for use at a given location, to be constructed in such a manner as to—
- (a) prevent the generation of electromagnetic disturbance to; or
 - (b) provide for intrinsic immunity to electromagnetic disturbance generated by, other relevant apparatus which would not reasonably be expected to be present in its usual electromagnetic environment.
- (4) Without prejudice to the generality of paragraph (2)(a), the electromagnetic disturbance generated by relevant apparatus shall—
- (a) not exceed a level allowing radio and telecommunications equipment to operate as intended; and
 - (b) be such as not to hinder the use of apparatus of any of the descriptions listed in Schedule 3 hereto (being descriptions listed in the illustrative list of the principal protection requirements in Annex III of the EMC Directive) where that apparatus is constructed in such a way that it has an adequate level of immunity in its usual electromagnetic environment so as to allow its unhindered operation taking into account the levels of electromagnetic disturbance generated by relevant apparatus complying with applicable EMC standards.
- (5) Without prejudice to the generality of paragraph (2)(b)—
- (a) relevant apparatus shall be constructed in such a way that it has an adequate level of immunity in its usual electromagnetic environment so as to allow its unhindered operation taking into account the levels of electromagnetic disturbance generated by other relevant apparatus which might reasonably be expected to be present in that environment which complies with the protection requirements; and
 - (b) whether the level of intrinsic immunity of relevant apparatus is adequate is to be considered having regard to all the circumstances of the case, and, without prejudice to the generality of the foregoing, in particular to—
 - (i) the level of performance reasonably expected of that apparatus having regard to its function or intended function;
 - (ii) any specification for an acceptable level of degradation of performance provided to the end user by the manufacturer;
 - (iii) the consequences of degradation of performance,provided that nothing in this sub-paragraph shall authorise a level of intrinsic immunity which could permit the operation of the apparatus to be dangerous (either to persons or property) in any reasonably foreseeable circumstances.
- (6) The information required to enable use in accordance with the intended purpose of the relevant apparatus must be contained in the manufacturer's instructions accompanying the apparatus.

PART II APPLICATION

General application

Relevant apparatus

6.—(1) Subject to paragraph (2) below, this Part shall have effect for the purposes of providing for the application of these Regulations, and apparatus to which these Regulations apply shall be relevant apparatus.

(2) In addition to applying to relevant apparatus, the following provisions of these Regulations apply as follows—

- (a) Part I, and regulations 33(6), 34(4), 74 to 77, 79, 80, 81(c) and (d), 83 to 85, 88 to 90 and 92 to 96, apply to electrical apparatus other than relevant apparatus; and
- (b) Part I and regulations 7(2), 79, 80, 83, 89, 90, 92 and 96 apply to an excluded installation as a unit (without prejudice to the application of the provisions referred to in subparagraph (a) above to such installation or any part thereof on the ground that it is electrical apparatus).

General conditions of application

7.—(1) Subject to regulations 8 and 9 below, these Regulations apply to electrical apparatus which does not, pursuant to regulations 10 to 27 below, fall outside the scope of these Regulations.

(2) For the purposes of these Regulations, electrical apparatus—

- (a) consists of a product with an intrinsic function intended for the end user; and
- (b) is supplied or intended for supply or taken into service or intended to be taken into service as a single commercial unit,

which is—

- (i) an electrical appliance;
- (ii) an electronic appliance; or
- (iii) a system.

Modified application

Educational electronic equipment

8.—(1) In the application of these Regulations to educational electronic equipment, a reference to the protection requirements—

- (a) in so far as it relates to the electromagnetic disturbance generated by that equipment, shall be construed as a reference to the electromagnetic disturbance capable of preventing relevant apparatus situated outside the immediate electromagnetic environment of that equipment from operating as intended; and
- (b) in so far as it relates to the immunity of that equipment, shall not be taken to refer to any susceptibility to electromagnetic disturbance which is a necessary feature of that equipment to facilitate the study of the effects of electromagnetic phenomena.

(2) In these Regulations, “educational electronic equipment ” means apparatus designed or adapted for the purpose of its being studied for electromagnetic phenomena in any educational, training or research establishment.

Test apparatus

9.—(1) In the application of these Regulations to test apparatus, a reference to the protection requirements—

- (a) in so far as it relates to the electromagnetic disturbance generated by that apparatus shall be construed as a reference to that disturbance capable of preventing relevant apparatus situated outside the immediate electromagnetic environment of that apparatus from operating as intended; and
- (b) in so far as it relates to the immunity of that apparatus, shall not be taken to refer to any susceptibility to electromagnetic disturbance which is a necessary feature of that apparatus to facilitate the conducting of the test.

(2) In these Regulations, “test apparatus ” means relevant apparatus designed or adapted to generate or be susceptible to electromagnetic disturbance intentionally for the purpose of conducting any test or measurement in relation to—

- (a) any relevant apparatus; or
- (b) any other thing, matter or phenomenon.

Transitional exclusions

Apparatus supplied or taken into service before 28th October 1992

10. These Regulations do not apply to an item of electrical apparatus supplied or taken into service in the Community before 28th October 1992.

Transitional exclusion until 31st December 1995 of apparatus where the manufacturer opts to comply with such requirements as are in force in a member State on 30th June 1992

11. These Regulations do not apply to an item of electrical apparatus which complies with the following conditions —

- (a) the apparatus—
 - (i) is supplied or taken into service in the Community on or before 31st December 1995; and
 - (ii) (aa) in the case of apparatus which is required pursuant to any other Community obligation to bear the CE mark, neither bears nor is accompanied by any other indication, howsoever expressed, that it complies with the EMC Directive; or
 - (bb) in the case of apparatus which is not required pursuant to any other Community obligation to bear the CE mark, bears neither the CE mark nor any inscription likely to be confused therewith; and
- (b) (i)—in the case of apparatus which is required by any of the regulations listed in Schedule 1 hereto to meet requirements which must be complied with if the apparatus is to be supplied, used or taken into service, the apparatus so complies; or
- (ii) in the case of apparatus supplied in the United Kingdom to be used in another member State—

- (aa) the supplier believes (with reasonable cause) will be used in that member State; and
- (bb) in the case of apparatus which is required to comply with requirements concerning electromagnetic compatibility imposed on or before 30th June 1992 by that member State if it is to be supplied or used there, the apparatus so complies.

General exclusions

Apparatus for export to a third country

12.—(1) Subject to paragraph (2) below, these Regulations do not apply to any apparatus which the supplier believes (with reasonable cause) will not be used either in the United Kingdom or in another member State.

(2) Subject to regulation 33(6) below, paragraph (1) above shall not apply if the CE mark or any inscription liable to be confused therewith is affixed to the apparatus.

Excluded installations

13.—(1) These Regulations do not apply to excluded installations; provided however that the extent to which any apparatus or system comprised or to be comprised therein is relevant apparatus shall be determined in accordance with the provisions of this Part.

(2) In this regulation “excluded installation ” means two or more combined items of relevant apparatus or systems put together at a given place (whether or not in combination with any other item) to fulfil a specific objective but not designed by the manufacturer (or manufacturers, where the items are made by different manufacturers) for supply as a single functional unit.

Spare parts

14.—(1) Subject to paragraph (2), these Regulations do not apply to spare parts.

(2) Nothing in this regulation shall be taken to affect the application of these Regulations to apparatus into which a spare part has been incorporated.

(3) In this regulation, “spare part” means a component or combination of components intended for use in replacing parts of electrical apparatus.

Supply to the authorised representative

15. These Regulations do not apply to the supply of apparatus by the manufacturer thereof to his authorised representative.

Second-hand apparatus

16.—(1) Subject to paragraph (2) below, these Regulations do not apply to second-hand apparatus.

(2) Nothing in paragraph (1) above shall be taken to disapply these Regulations to—

- (a) the supply of second-hand apparatus which has, since it was last used, been subjected to further manufacture within the meaning of sub-paragraphs (c) or (d) of the definition of manufacture in regulation 3(2) above;
- (b) the supply or taking into service of such apparatus following such further manufacture; or

(c) the supply or taking into service in the Community of apparatus which has previously been supplied or used in a country or territory outside the Community.

(3) In this regulation, “second-hand apparatus” means apparatus which has previously been used by an end user.

Electromagnetically benign apparatus

17. These Regulations do not apply to apparatus the inherent qualities of which are such that neither is it liable to cause, nor is its performance liable to be degraded by, electromagnetic disturbance.

Specific exclusions

Apparatus for use in a sealed electromagnetic environment

18. These Regulations do not apply to—

(a) the supply of any apparatus—

(i) for which the usual electromagnetic environment is a sealed electromagnetic environment; and

(ii) which is accompanied by instructions which state that the apparatus is suitable for use only in a sealed electromagnetic environment; or

(b) the taking into service of any apparatus in such an environment.

Radio amateur apparatus

19.—(1) These Regulations do not apply to radio amateur apparatus which is not available commercially.

(2) In this regulation, “available commercially” means manufactured in the course of a business of manufacture of relevant apparatus.

Military equipment

20.—(1) These Regulations do not apply to military equipment.

(2) In this regulation, “military equipment” means apparatus which is designed for use as arms, munitions and war material within the meaning of Article 223.1(b) of the Treaty establishing the European Economic Community (notwithstanding that it may be capable of other applications), but does not include apparatus which is designed both for such use and for other applications.

Apparatus wholly covered by other Directives

Active implantable medical devices

21.—(1) These Regulations do not apply to active implantable medical devices.

(2) In this regulation and regulation 22 below, “active implantable medical device” has the meaning given by Article 1.2(c) of Council Directive [90/385/EEC](#) on the approximation of laws of the Member States relating to active implantable medical devices(10).

(10) OJNo.L189, 20.7.90, p.17.

Medical devices

22.—(1) These Regulations do not apply to medical devices.

(2) In this regulation and regulation 3, “medical device ” means any instrument, apparatus, appliance, material or other article, including software, whether used alone or in combination, intended by the manufacturer to be used for human beings solely or principally for the purpose of—

- (a) diagnosis, prevention, monitoring, treatment or alleviation of disease, injury or handicap;
- (b) investigation, replacement or modification of the anatomy or of a physiological process; or
- (c) control of conception,

and which does not achieve its principal intended action in or on the human body by pharmacological, immunological or metabolic means, but which may be assisted in its function by such means, but excluding—

- (i) an in vitro diagnostic device; and
- (ii) an active implantable medical device;

and in this definition, “in vitro diagnostic device ” means any device which is a reagent, reagent product, kit, instrument, equipment or system, whether used alone or in combination, intended by the manufacturer to be used solely or principally in vitro for the examination of substances derived from the human body with a view to providing information for the detection, diagnosis, control or treatment of a physiological state, of a state of health or disease, or of a congenital abnormality⁽¹¹⁾.

Apparatus partly covered by other Directives

Electrical Energy Meters

23.—(1) These Regulations do not apply to electrical energy meters as regards the immunity thereof.

(2) In this regulation, “electrical energy meter ” means any new direct connected induction meter, with single or multiple tariffs, designed to measure active energy single-phase or polyphase current at 50 H₃ frequency mentioned or referred to in Article 2 of Council Directive [76/891/EEC](#) on the approximation of the laws of the Member States relating to electrical energy meters⁽¹²⁾.

Spark-ignition engines of vehicles

24.—(1) These Regulations do not apply to the electric ignition systems of a propulsion engine of, or intended for incorporation in, a vehicle in so far as the electromagnetic disturbance generated thereby is liable to cause radio interference.

(2) In this regulation, “vehicle ” has the meaning given by Article 1 of Council Directive [72/245/EEC](#) on the approximation of laws of the Member States relating to the suppression of radio interference produced by spark-ignition engines fitted to motor vehicles⁽¹³⁾.

Spark ignition engines of tractors

25.—(1) These Regulations do not apply to the electric ignition systems of a propulsion engine of, or intended for incorporation in, an agricultural or forestry tractor in so far as the electromagnetic disturbance generated thereby is liable to cause radio interference,

⁽¹¹⁾ The definitions of “medical device ” and “in vitro diagnostic device ” are those provided for in the Proposal for a Council Directive concerning medical devices (OJNo.C237, 12.9.91, p.3).

⁽¹²⁾ OJNo. L336, 4.12.76, p.30.

⁽¹³⁾ OJNo.L152, 6.7.72, p.15. Council Directive [72/245/EEC](#) was amended by Annex III of Council Directive [89/491/EEC](#) (OJNo.L238, 15.8.89, p.43).

(2) In this regulation, “agricultural or forestry tractor ” has the meaning given by Article 1 of Council Directive [75/322/EEC](#) on the approximation of the laws of the Member States relating to the suppression of radio interference produced by spark-ignition engines fitted to wheeled agricultural or forestry tractors(14), as amended by Article 1 of Council Directive [82/890/EEC](#) amending the Directives on the approximation of the laws of the Member States relating to wheeled agricultural or forestry tractors(15).

Non-automatic weighing instruments

26.—(1) These Regulations do not apply to a non-automatic weighing instrument as regards the immunity thereof.

(2) In this regulation, “non-automatic weighing instrument ” has the meaning given by the second indent of Article 1.1 read in conjunction with Article 1.2(a) of Council Directive [90/384/EEC](#) on the harmonization of the laws of the Member States relating to non-automatic weighing instruments(16).

Telecommunications terminal equipment

27.—(1) Nothing in these Regulations shall impose electromagnetic compatibility requirements in so far as such requirements are specific to any description of telecommunications terminal equipment.

(2) For the purposes of this regulation, electromagnetic compatibility requirements shall be taken to be specific to a description of telecommunications terminal equipment if that equipment is required to satisfy those requirements pursuant to Article 4(c) of the TTE Directive.

PART III

GENERAL REQUIREMENTS

General duty for supply

28. No person shall supply relevant apparatus unless the requirements of regulation 30 below are complied with in relation thereto.

General duty for taking into service

29. No person shall take into service relevant apparatus unless that apparatus conforms with the protection requirements.

Requirements for supply

30. The requirements of this regulation are that—

- (a) the relevant apparatus conforms with the protection requirements;
- (b) the conformity assessment requirements have been complied with;
- (c) the CE mark has been properly affixed by the manufacturer or his authorised representative in relation to the relevant apparatus in accordance with regulation 33 below; and

(14) OJNo.L147, 9.6.75, p.28.

(15) OJNo.L378, 31.12.82, p.45.

(16) OJNo.L189, 20.7.90, p.1.

- (d) the manufacturer or his authorised representative has properly issued an EC declaration of conformity in respect of the relevant apparatus in accordance with the requirements of regulation 34 below.

Conformity assessment requirements—the three routes to compliance

31. The conformity assessment requirements are that—

- (a) in the case of relevant apparatus other than radiocommunication transmission apparatus, the requirements of—
- (i) Part IV (in these Regulations referred to as “the standards route to compliance ”); or
 - (ii) Part V (in these Regulations referred to as “the technical construction file route to compliance ”)
- of these Regulations are complied with; and
- (b) in the case of radiocommunication transmission apparatus, the requirements of Part VI (in these Regulations referred to as “the EC type-examination route to compliance ”) of these Regulations are complied with.

Presumption of conformity

32. Where in relation to any relevant apparatus—

- (a) such apparatus conforms to the applicable EMC standard, or all applicable EMC standards, which make provision for that apparatus; or
- (b) the conformity assessment requirements are complied with pursuant to the technical construction file route to compliance,

there shall be a presumption (“the presumption of conformity ”) that, until the contrary is proved, that relevant apparatus complies with the protection requirements.

The CE mark

33.—(1) For the purposes of these Regulations, the CE mark shall be regarded as properly affixed in relation to relevant apparatus if the requirements of paragraphs (2) to (4) below are complied with.

(2) The CE mark shall be affixed in relation to any relevant apparatus by being affixed to one of the following—

- (a) the apparatus; or
- (b) the apparatus'—
 - (i) packaging;
 - (ii) instructions for use; or
 - (iii) guarantee certificate.

(3) Where the apparatus in relation to which the mark is affixed is radiocommunication transmission apparatus, the CE mark shall be followed by the distinctive letters used by the notified body which issued the EC type-examination certificate in respect of the apparatus with which the first-mentioned apparatus conforms.

(4) Where the apparatus is the subject of Community Directives other than the EMC Directive providing for the affixing of a mark consisting of or including the symbol “CE ”, the CE mark may only be affixed in relation thereto for the purposes of these Regulations if the apparatus conforms with the relevant requirements of those other Directives.

(5) No person shall affix the CE mark, or any other inscription liable to be confused therewith, in relation to any relevant apparatus, unless—

- (a) the apparatus complies with the protection requirements; and
- (b) the conformity assessment procedures have been complied with.

(6) No person shall affix the CE mark, or any other inscription liable to be confused therewith, in relation to any electrical apparatus other than relevant apparatus: provided that nothing in this paragraph shall prohibit the affixing of the CE mark to any electrical apparatus pursuant to any Community right or obligation other than the EMC Directive.

(7) In these Regulations, “CE mark ” means a mark consisting of the symbol “CE ” set out in the form shown in Schedule 4 hereto.

EC declaration of conformity

34.—(1) For the purposes of these Regulations, an EC declaration of conformity is a declaration which indicates that apparatus conforms with the protection requirements of the EMC Directive (howsoever expressed).

(2) For the purposes of these Regulations, an EC declaration of conformity shall be regarded as properly issued in relation to relevant apparatus if the following requirements are complied with —

- (a) the apparatus conforms with the protection requirements;
- (b) the conformity assessment requirements are complied with;
- (c) in the case of a declaration issued in the United Kingdom—
 - (i) in the case of a declaration issued pursuant to the standards route to compliance, it complies with the requirements of regulation 40 below;
 - (ii) in the case of a declaration issued pursuant to the technical construction file route to compliance, it complies with the requirements of regulation 57 below;
 - (iii) in the case of a declaration issued pursuant to the EC type-examination route to compliance, it complies with the requirements of regulation 70 below;
- (d) in the case of a declaration issued other than in the United Kingdom, the declaration is issued by the manufacturer or his authorised representative and contains the following —
 - (i) a description of the apparatus to which it refers;
 - (ii) reference to the specifications or harmonised standards or both under which conformity is declared, and where appropriate, to the national measures or recognised national standards or both, as the case may be, implemented to ensure the conformity of the apparatus with the provisions of the EMC Directive;
 - (iii) identification of the signatory empowered to bind the manufacturer or his authorised representative; and
 - (iv) where appropriate, reference to the EC type-examination certificate issued by a notified body.

(3) No person shall (in the United Kingdom) issue an EC declaration of conformity in relation to relevant apparatus unless—

- (a) the apparatus to which it relates conforms with the protection requirements;
- (b) the conformity assessment requirements have been complied with; and
- (c) the requirements of paragraph (2)(c) above are complied with.

(4) No person shall (in the United Kingdom) issue an EC declaration of conformity in relation to any electrical apparatus other than relevant apparatus.

Retention of documentation

35.—(1) A responsible person shall hold an EC declaration of conformity in relation to relevant apparatus at the disposal of the Secretary of State for ten years beginning with the date on which the latest item of relevant apparatus to be supplied in the Community to which the declaration relates was so supplied.

(2) Where the EC declaration of conformity is made pursuant to Part V or VI of these Regulations, the responsible person shall hold the technical construction file, or EC type-examination certificate, as the case may be, at the disposal of the Secretary of State for ten years beginning with the date on which the latest item of relevant apparatus to be supplied in the Community to which the technical construction file or EC type-examination certificate relates was so supplied.

(3) Any documentation to be retained by the responsible person pursuant to the requirements of paragraphs (1) and (2) above may be kept by recording the matters in question in a manner other than material form provided, however, adequate precautions shall be taken for guarding against falsification.

(4) The power conferred on a responsible person in paragraph (3) above includes power to keep the documentation by recording those matters otherwise than in legible form, so long as the recording is capable of being reproduced in a legible form.

(5) If the responsible person records the documentation in question otherwise than in a legible form, any duty imposed on him by these Regulations to allow inspection of, or to furnish a copy of, the documentation or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the document or of the relevant part of it in legible form.

PART IV

THE STANDARDS ROUTE TO COMPLIANCE

Application of Part IV

36.—(1) Subject to paragraph (2) below, this Part shall have effect for the purposes of providing for the manner in which the conformity assessment requirements may be complied with where the manufacturer has chosen the standards route to compliance.

(2) This Part does not, save for regulation 37, apply to radiocommunication transmission apparatus.

The standards route to compliance

37. The conformity assessment requirements are complied with pursuant to the standards route to compliance if the manufacturer has applied an applicable EMC standard which makes, or all applicable EMC standards which make, complete provision in respect of the apparatus.

Applicable EMC standards

38.—(1) This regulation shall have effect for the purpose of making provision in respect of the standards which are to be recognised for the purposes of Article 7 of the EMC Directive.

(2) For the purposes of these Regulations except for regulation 47(4) below, a harmonized standard is a technical specification (European standard or harmonization document)—

- (a) adopted for the purposes of Article 7.1(a) of the EMC Directive by the European Committee for Electrotechnical Standardization (CENELEC) or the European Telecommunications Standards Institute (ETSI) upon a remit from the Commission in

- accordance with the provisions of Council Directive [83/189/EEC](#) laying down a procedure for the provision of information in the field of technical standards and regulations⁽¹⁷⁾;
- (b) the reference number of which has been published in the Official Journal of the European Communities pursuant to that sub-article.
- (3) For the purposes of these Regulations, a transposed harmonized standard is a national standard of a member State—
- (a) which transposes a harmonized standard; and
- (b) the reference number of which has been published—
- (i) by the relevant member State in adoption thereof pursuant to Article 7.1(a) of the EMC Directive;
- (ii) in the case of a transposed harmonized standard of the United Kingdom, pursuant to regulation 39(1) below in recognition of it as such.
- (4) For the purposes of these Regulations, a recognised national standard is a standard of a member State—
- (a) which applies to relevant apparatus for which no harmonized standard has been adopted;
- (b) which is recognised as a national standard for the purposes of Article 7.1(b) of the EMC Directive, the Commission having notified the member States pursuant to Articles 7.2 and 8.2 of that Directive that that standard enjoys the presumption of conformity with the protection requirements for the time being and published its reference number in the Official Journal pursuant to Article 7.2 of the Directive; and
- (c) in the case of a recognised national standard of—
- (i) a member State other than the United Kingdom, the reference number of which has been published by the relevant member State pursuant to the said Article 7.2;
- (ii) the United Kingdom, the reference number of which has been published (and not withdrawn) pursuant to regulation 39(2) below in recognition of it as such.
- (5) For the purposes of these Regulations, in relation to any description of relevant apparatus, an applicable EMC standard is either a transposed harmonized standard or a recognised national standard within the scope of which that description of relevant apparatus falls.

Publication of reference numbers of standards

39.—(1) The Secretary of State shall from time to time publish by notice in the London, Edinburgh and Belfast Gazettes pursuant to this paragraph, lists of the reference numbers of standards which are to be regarded as the transposed harmonized standards of the United Kingdom for the time being for the purposes of Article 7.1(a) of the EMC Directive.

(2) The Secretary of State shall from time to time publish by notice in the London, Edinburgh and Belfast Gazettes pursuant to this paragraph lists of the reference numbers of standards which are to be regarded as the recognised national standards of the United Kingdom for the time being for the purposes of Article 7.1(b) of the EMC Directive.

(3) The Secretary of State shall from time to time publish by notice in the London, Edinburgh and Belfast Gazettes lists of the reference numbers of standards which are for the time being transposed harmonized standards and recognised national standards of the member States other than the United Kingdom.

⁽¹⁷⁾ OJNo.L109, 26.4.83, p.8. Council Directive [83/189/EEC](#) was amended by Council Directive [88/182/EEC](#) (OJNo.L81, 26.3.88, p.75).

EC declaration of conformity pursuant to the standards route to compliance

40.—(1) This regulation shall have effect for prescribing the form of an EC declaration of conformity issued in the United Kingdom in respect of relevant apparatus in relation to which the conformity assessment requirements have been complied with pursuant to the standards route to compliance.

- (2) An EC declaration of conformity to which this regulation applies shall—
- (a) be in English;
 - (b) give the name and address—
 - (i) of the responsible person;
 - (ii) where that person is not the manufacturer, of the manufacturer;
 - (c) be signed by or on behalf of the manufacturer or his authorised representative and identify that signatory;
 - (d) bear the date of issue;
 - (e) give particulars of the relevant apparatus to which it relates sufficient to identify it;
 - (f) state the numbers and titles of the applicable EMC standards applied by the manufacturer; and
 - (g) certify that the apparatus to which it relates conforms with the protection requirements of Council Directive [89/336/EEC](#) on the approximation of the laws of the Member States relating to electromagnetic compatibility.

PART V

THE TECHNICAL CONSTRUCTION FILE ROUTE TO COMPLIANCE

General

Application of Part V

- 41.** This Part shall have effect for the purposes of providing for—
- (a) the circumstances and manner in which the conformity assessment requirements may be complied with pursuant to the technical construction file route to compliance; and
 - (b) the appointment of United Kingdom competent bodies to exercise functions in relation thereto, and matters incidental to such appointment and exercise.

Applicability of the technical construction file route to compliance

42.—(1) Subject to paragraph (2) below, the conformity assessment requirements may be complied with pursuant to the technical construction file route to compliance where—

- (a) there are applicable EMC standards which make complete provision in respect of the apparatus, but the manufacturer has chosen not to apply all or any of those standards either as regards the whole or part thereof;
- (b) there is no applicable EMC standard; or
- (c) there are applicable EMC standards and the manufacturer has applied all or any of them as regards the whole or part thereof, but they do not make complete provision in respect of the apparatus.

(2) The technical construction file route to compliance shall not apply in respect of radiocommunication transmission apparatus.

Technical construction files

43.—(1) For the purposes of these Regulations, a technical construction file is a file which—

- (a) describes the apparatus to which it relates;
- (b) contains information about the design, manufacture and operation thereof;
- (c) sets out the procedures used to ensure the conformity of the apparatus with the protection requirements in respect of the applicable EM characteristics of the apparatus in respect of which the manufacturer has not applied an applicable EMC standard; and
- (d) includes a technical report or technical certificate.

(2) For the avoidance of doubt, it is hereby declared that a technical construction file may be composed in relation to—

- (a) a single item of apparatus;
- (b) where a number of items are to be produced, a specimen representative of the production envisaged (a “representative”); or
- (c) a number of items of apparatus or representatives of each such item or representative being variants of the same basic design (each such item or representative being referred to as a “variant”).

(3) Without prejudice to the generality of paragraph (1) above, a technical construction file composed in the United Kingdom shall—

- (a) be in material form;
- (b) be in—
 - (i) English where application for the technical report or technical certificate is made to a United Kingdom competent body; or
 - (ii) any official Community language acceptable to the competent body where such application is made to a competent body of another member State;
- (c) give the name and address—
 - (i) of the responsible person;
 - (ii) where that person is not the manufacturer, of the manufacturer;
- (d) contain such information as is sufficient, in all the circumstances of the case, to enable the enforcement authority to—
 - (i) identify the apparatus to which it relates; and
 - (ii) ascertain whether the apparatus to which it relates conforms with the protection requirements;
- (e) state the numbers and titles of the applicable EMC standards, and any other standards, specifications or codes of practice, applied by the manufacturer; and
- (f) contain particulars of the electromagnetic environment for which the apparatus is suitable.

The technical construction file route to compliance

44. The conformity assessment requirements are complied with in relation to relevant apparatus pursuant to the technical construction file route to compliance if the manufacturer or his authorised representative has composed a technical construction file in respect of the apparatus.

Competent bodies

45. For the purposes of these Regulations, a competent body is a body responsible for issuing technical reports and technical certificates pursuant to Article 10.2 of the EMC Directive either for all descriptions of relevant apparatus (other than radiocommunication transmission apparatus) or for specific descriptions thereof, and which is for the time being—

- (a) a United Kingdom competent body pursuant to appointment under regulation 46 below; or
- (b) a competent body of a member State other than the United Kingdom.

United Kingdom competent bodies

Appointment

46.—(1) Subject to regulation 47 below, the Secretary of State may appoint a person as a United Kingdom competent body in accordance with the following provisions of this regulation.

(2) An appointment under this regulation shall be in writing and shall, subject to regulations 47(5) and 49(3) below, be subject to such conditions as the Secretary of State may impose for the time being, and such conditions may include conditions which are to apply on or following the termination or expiry of the appointment.

(3) Subject to regulation 47(2) below, an appointment under this regulation shall have effect in respect of such descriptions of relevant apparatus as the Secretary of State may for the time being authorise, and in this Part, “authorised” and cognate expressions shall be construed accordingly.

(4) In exercising the power conferred by paragraph (1) above, the Secretary of State may (in addition to the matters of which he is required to satisfy himself pursuant to regulation 47(2) below) have regard to any matter appearing to him to be relevant, and, without prejudice to the generality of the foregoing, he may have regard to any standards relating to the accreditation of laboratories or certification bodies appearing to him to be appropriate.

(5) Subject to regulation 48 below, an appointment under this regulation may be for—

- (a) the time being; or
- (b) such period as may be specified in the appointment.

(6) The Secretary of State shall from time to time publish lists of United Kingdom competent bodies indicating the descriptions of relevant apparatus in respect of which each body is authorised; and such lists may include information concerning any condition to which the appointment of any competent body is for the time being subject.

Eligibility and verification

47.—(1) Subject to paragraph (2) below, the following persons shall be eligible for appointment as United Kingdom competent bodies—

- (a) the Secretary of State; and
- (b) any person resident, incorporated, or carrying on a business in the United Kingdom.

(2) The criteria listed in Schedule 5 hereto (being the criteria for the assessment of the bodies to be notified listed in Annex II of the EMC Directive and the criteria which competent bodies are required by Article 1.5 of that Directive to meet) (“the minimum criteria”) must be satisfied in relation to any person if that person is to be appointed or remain a United Kingdom competent body, and accordingly the Secretary of State shall not—

- (a) make an appointment under regulation 46(1) above unless he is satisfied that the person concerned meets the minimum criteria; or

- (b) authorise under regulation 46(3) above the appointment to have effect in relation to any description of relevant apparatus unless he is satisfied that the body meets the minimum criteria in respect of that description of apparatus.
- (3) The Secretary of State shall from time to time verify that each United Kingdom competent body fulfils the minimum criteria listed in paragraphs 1 and 2 of Schedule 5 hereto.
- (4) A person who complies with the assessment criteria fixed by a standard which is a relevant harmonized standard within the meaning of Article 10.6 of the EMC Directive shall be presumed to satisfy the minimum criteria.
- (5) An appointment under regulation 46 above may be subject to the condition that only a defined part of the undertaking of the appointed person may exercise the functions of a competent body, and where an appointment is, or is to be, subject to such a condition—
 - (a) a reference in these Regulations to the minimum criteria shall be construed in relation to that person as a reference to the part of that person’s undertaking so defined; and
 - (b) the conditions of the appointment shall include provision for ensuring that the confidentiality of confidential information held by the part of the undertaking so defined in pursuance of its function as a United Kingdom competent body is protected from disclosure to other parts of the undertaking.
- (6) Upon the expiry of an appointment under regulation 46 above, the United Kingdom competent body shall be eligible for re-appointment.

Termination of appointment and transfer of functions

- 48.**—(1) The Secretary of State, by notice in writing (a “notice of termination ”)—
- (a) shall terminate the appointment of a United Kingdom competent body where—
 - (i) the body so requests; or
 - (ii) it appears to the Secretary of State that—
 - (aa) the body no longer satisfies the minimum criteria; or
 - (bb) it is necessary in the interests of manufacturers, suppliers or end users of relevant apparatus to terminate the body’s appointment; and
 - (b) may terminate such appointment if the body is in breach of a condition of appointment.
- (2) Where the Secretary of State exercises the power conferred by paragraph (1) above—
- (a) the notice of termination shall take effect on such date as shall be specified therein; and
 - (b) the Secretary of State shall inform the appropriate authorities of the other member States and the Commission.
- (3) Where the Secretary of State—
- (a) withdraws the authorisation of a United Kingdom competent body to exercise functions in relation to any description of apparatus pursuant to regulation 46(3) above; or
 - (b) terminates the appointment of such a body pursuant to paragraph (1) of this regulation,
- he may give such directions (either to the body the subject of the withdrawal or termination, as the case may be, or to another authorised United Kingdom competent body) for the purposes of making such arrangements for the determination of outstanding applications as he considers appropriate.
- (4) Without prejudice to the generality of the power conferred by paragraph (3) above, such directions may include the manner in which fees already received pursuant to regulation 49 below in respect of outstanding applications by the body the subject of the withdrawal or termination, as the case may be, are to be disposed of, having regard to the work already done on such applications by that body.

(5) The Secretary of State shall, where he takes an action referred to in paragraph (3)(a) or (b) above in relation to a United Kingdom competent body, give such directions as he considers appropriate to provide for the exercise by another United Kingdom competent body or himself of the powers conferred by regulations 54(3) and 55 below exercisable by the first mentioned United Kingdom competent body, and where such directions have been given, a reference in those provisions to the United Kingdom competent body which issued a technical certificate or technical report shall be construed as a reference to that other United Kingdom competent body or to the Secretary of State, as the case may be.

Power of competent body other than the Secretary of State to charge fees

49.—(1) Without prejudice to the power of the Secretary of State, where he is a United Kingdom competent body, to charge fees pursuant to regulations made under section 56 of the Finance Act 1973⁽¹⁸⁾ and subject to paragraphs (2) and (3) below, a United Kingdom competent body other than the Secretary of State may charge applicants for technical reports or technical certificates such fees in connection with or incidental to the consideration of applications therefor as the body may determine; and such fees may include an amount on account of profit which is reasonable in the circumstances having regard to—

(a) the character and extent of the work done or to be done by the body in the determination of such applications; and

(b) the commercial rate normally charged on account of profit for that work or similar work.

(2) The power in paragraph (1) above includes power to require the payment of fees or a reasonable estimate thereof with the application.

(3) Without prejudice to the generality of regulation 46(2) above, the conditions to which an appointment under regulation 46(1) may be subject may include a requirement to publish from time to time the scale of fees which the United Kingdom competent body charges pursuant to this regulation, or such information about the basis of calculation thereof as may be specified in the condition.

Applications for technical reports and technical certificates

50.—(1) Subject to regulation 51, a United Kingdom competent body shall determine applications made thereto for the issue of technical reports and technical certificates in respect of relevant apparatus of authorised descriptions.

(2) In determining such applications, the United Kingdom competent body—

(a) shall have regard to the actual or usual electromagnetic environment of the apparatus; and

(b) may have regard to any standards (whether applicable EMC standards or otherwise) or other technical criteria appearing to it to be relevant.

(3) Where in the opinion of the United Kingdom competent body the apparatus to which an application relates conforms with the protection requirements, it shall issue a technical report or technical certificate, as the case may be, which complies with the requirements of regulation 53 below.

(4) Subject to regulation 56, where in the opinion of the UK competent body the apparatus to which the application relates does not conform with the protection requirements, it shall refuse to issue a technical report or technical certificate, as the case may be, giving written reasons for the refusal.

(18) 1973 c. 51.

Limitations on duty to exercise functions

51.—(1) A United Kingdom competent body shall not accept any application for a technical report or technical certificate in respect of any apparatus unless the application—

- (a) is in writing;
- (b) is accompanied by a draft technical construction file, that is to say, a file containing such information as will, when the technical report or technical certificate as the case may be is added thereto, be sufficient to constitute the file as a technical construction file;
- (c) includes particulars of which applicable EMC standards the manufacturer has applied or proposes to apply in respect of the apparatus, and in respect of which applicable EM characteristics; and
- (d) contains a declaration by the applicant that no application to another competent body for a technical report or technical certificate in respect of that apparatus is outstanding.

(2) A United Kingdom competent body shall not be required to—

- (a) accept an application for a technical report or technical certificate where—
 - (i) the application, and the draft technical construction file, are not in English or another language acceptable to that body;
 - (ii) the applicant has not submitted with the application the amount of the fee which the competent body (not being the Secretary of State) requires to be submitted with the application pursuant to regulation 49(2) above; or
 - (iii) the body reasonably believes that, having regard to the number of applications for technical reports or technical certificates made to it which are outstanding, it will be unable to determine the application within three months of receiving the application;
- (b) determine an application for a technical report or technical certificate where the manufacturer has not—
 - (i) granted the body access to the apparatus to which the application relates or the production facilities for the apparatus (including where applicable the production envisaged in relation to a representative) to the extent that the body reasonably requests; and
 - (ii) made available to the body such information as it may reasonably require to determine the application; or
- (c) having determined the application, to inform the applicant of the result thereof or, in the case of a successful application, to issue the technical report or technical certificate, unless the applicant has paid any fees chargeable pursuant to regulation 49 above or in accordance with regulations made under section 56 of the Finance Act 1973, as the case may be.

Contractors etc

52.—(1) Subject to paragraphs (2) and (3) below, a United Kingdom competent body may, in exercising its functions—

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

(2) Nothing in paragraph (1) above authorises a United Kingdom competent body to rely on the opinion of another person with regard to whether any relevant apparatus conforms with the protection requirements.

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

Form of technical reports and technical certificates

53. A technical report or technical certificate issued by a United Kingdom competent body shall be in writing and shall—

- (a) be in English;
- (b) give the name and address—
 - (i) of the applicant;
 - (ii) where that person is not the manufacturer, of the manufacturer;
- (c) be signed on behalf of the body and identify the signatory;
- (d) bear—
 - (i) the date of issue; and
 - (ii) the number of the report or certificate;
- (e) give particulars of the relevant apparatus (where applicable, in relation to each variant) to which it relates sufficient to identify it, and shall state whether the apparatus to which it relates is a single item or a representative, or a number of variants thereof, as the case may be;
- (f) certify that the apparatus to which it relates conforms with the protection requirements of Council Directive [89/336/EEC](#) on the approximation of the laws of the Member States relating to electromagnetic compatibility.

Conditions of technical reports or technical certificates

54.—(1) Subject to regulation 56 below and paragraphs (2) and (3) of this regulation, a technical report or technical certificate issued by a United Kingdom competent body may be unconditional or subject to such conditions, which must be complied with if the report or certificate as the case may be is to apply, as the body considers appropriate.

- (2) Without prejudice to the generality of paragraph (1) above, such conditions may include—
 - (a) a limitation on the electromagnetic environment for which the apparatus may be stated to be suitable; or
 - (b) a limitation that the apparatus is only to be installed at a specific site.

(3) The conditions imposed pursuant to paragraph (1) above may be varied by the United Kingdom competent body which issued the technical report or technical certificate, and a variation under this paragraph may include the imposition of new conditions or the removal of conditions.

Withdrawal of technical reports or technical certificates

55.—(1) Subject to regulation 56 below and paragraph (2) of this regulation, the United Kingdom competent body which issued a technical report or technical certificate shall withdraw that report or certificate as the case may be if it appears that the apparatus to which it relates does not conform with the protection requirements.

(2) A withdrawal of a technical report or technical certificate shall be by notice in writing stating the reasons for the withdrawal.

Procedure where United Kingdom competent body is minded to make a decision unfavourable to the applicant

56. Before making an unfavourable decision in respect of an applicant, that is to say—
- (a) refusing to grant a technical report or technical certificate pursuant to regulation 50(4) above;
 - (b) the imposition of a condition of a technical report or technical certificate or the making of a restrictive variation of a condition thereof pursuant to regulation 54 above in circumstances where the applicant has not indicated in writing that the apparatus concerned is suitable for use subject to that condition;
 - (c) the withdrawal of a technical report or technical certificate pursuant to regulation 55 above,
- the United Kingdom competent body shall—
- (i) give notice in writing to the applicant, or holder of the technical report or technical certificate concerned, as the case may be (“the person concerned”), of the reasons why it proposes to make the unfavourable decision; and
 - (ii) give the person concerned the opportunity of making representations within a period of 28 days of the notice being given as to why that body should make a favourable decision, and consider any representations which are made by that person within that period.

EC declaration of conformity

EC declaration of conformity where conformity assessment requirements are complied with by reference to a technical construction file

57.—(1) This regulation shall have effect for prescribing the form of an EC declaration of conformity issued in the United Kingdom in respect of relevant apparatus in relation to which the conformity assessment requirements have been complied with pursuant to the technical construction file route to compliance.

- (2) An EC declaration of conformity to which this regulation applies shall—
- (a) be in English;
 - (b) give the name and address—
 - (i) of the responsible person;
 - (ii) where that person is not the manufacturer, of the manufacturer;
 - (c) be signed by or on behalf of the manufacturer or his authorised representative and identify that signatory;
 - (d) bear the date of issue;
 - (e) give particulars of the relevant apparatus to which it relates sufficient to identify it;
 - (f) identify the technical construction file relating thereto, and give the name and address of the competent body which issued the technical report or technical certificate, and the date and any number thereof;
 - (g) state the numbers and titles of the applicable EMC standards, if any, applied by the manufacturer;
 - (h) certify that the apparatus to which it relates conforms with the protection requirements of Council Directive [89/336/EEC](#) on the approximation of the laws of the Member States relating to electromagnetic compatibility.

Final provisions

Interpretation of Part V

58. In this Part—

“authorised ” and cognate expressions in relation to any description of apparatus shall be construed in accordance with regulation 46(3);

“minimum criteria ” shall be construed in accordance with regulation 47(2);

“representative ” shall be construed in accordance with regulation 43(2)(b); and

“variant ” shall be construed in accordance with regulation 43(2)(c).

PART VI

**THE EC TYPE-EXAMINATION ROUTE TO COMPLIANCE FOR
RADIOCOMMUNICATION TRANSMISSION APPARATUS**

General

Application of Part VI

59.—(1) This Part shall have effect for the purposes of providing for—

(a) the manner in which the conformity assessment requirements shall be complied with in relation to radiocommunication transmission apparatus pursuant to the EC type-examination route to compliance; and

(b) United Kingdom notified bodies to exercise functions in relation thereto, and matters incidental to such exercise.

(2) For the purposes of these Regulations, “radiocommunication transmission apparatus ” is wireless telegraphy apparatus for—

(a) transmitting; or

(b) both transmitting and receiving,

other than—

(i) radio amateur apparatus designed, and intended by the manufacturer, for use exclusively by radio amateurs;

(ii) apparatus neither designed nor intended by the manufacturer to be used for transmitting in conjunction with other wireless telegraphy apparatus; or

(iii) apparatus which is dependent for its operation on a magnetic as distinct from an electromagnetic field.

The EC type-examination route to compliance

60. The conformity assessment requirements are complied with in relation to radiocommunication transmission apparatus pursuant to the EC type-examination route to compliance if there is in force an EC type-examination certificate obtained by the responsible person from a notified body in respect of the applicable EM characteristics of the apparatus.

Notified bodies

61. For the purposes of these Regulations, a notified body is a body responsible for issuing EC type-examination certificates pursuant to Article 10.5 of the EMC Directive either for all descriptions of radiocommunication transmission apparatus or for specific descriptions thereof, and which is—

- (a) a United Kingdom notified body pursuant to regulation 62 below; or
- (b) for the time being a notified body of a member State other than the United Kingdom,

having been notified as a notified body by the member State concerned to the Commission and the other member States pursuant to Article 10.6 of the EMC Directive.

United Kingdom notified bodies

Bodies and scope of authority

62. The following shall be United Kingdom notified bodies in relation to the descriptions (“authorised descriptions”) of radiocommunication transmission apparatus referred to in relation thereto in Schedule 6 hereto:—

- (a) the Secretary of State acting through the Defence Research Agency of the Ministry of Defence (“the DRA”);
- (b) the Civil Aviation Authority (“the CAA”);
- (c) the British Approvals Board for Telecommunications (“BABT”); and
- (d) the Secretary of State acting through the Radiocommunications Agency of the Department of Trade and Industry (“the RA”).

Power of CAA and BABT to charge fees

63.—(1) Without prejudice to the power of the DRA or the RA to charge fees pursuant to regulations made under section 56 of the Finance Act 1973 and subject to paragraph (2) below, the CAA and BABT may charge applicants for EC type-examination certificates such fees as they may determine.

(2) The power in paragraph (1) above includes power to require the payment of fees or a reasonable estimate thereof with the application.

(3) The CAA and BABT shall publish from time to time the scale of fees charged by it, or such information about the basis of calculation thereof as the Secretary of State may direct.

Applications for EC type-examination certificates

64.—(1) It shall be the function of a United Kingdom notified body to determine applications made to it in writing for the issue of EC type-examination certificates from the manufacturer or his authorised representative in respect of authorised descriptions of radiocommunication transmission apparatus.

(2) Subject to regulation 65, a United Kingdom notified body shall, following receipt of an application in respect of an authorised description of apparatus—

- (a) examine the apparatus and the design thereof;
- (b) subject the apparatus or cause it to be subjected to such tests as the body considers appropriate to determine whether or not the apparatus conforms with the protection requirements in all the circumstances (having regard, without prejudice to the generality of the foregoing, to the actual or usual electromagnetic environment in which the apparatus is to be used), and, where there is a relevant transposed harmonized standard or a recognised

national standard and the body considers it appropriate to apply that standard, such tests as may be provided for thereby.

(3) Following examination and testing pursuant to paragraph (2) above, the United Kingdom notified body shall determine whether or not the apparatus to which the application relates conforms with the protection requirements.

(4) Where in the opinion of the United Kingdom notified body the apparatus to which an application relates conforms with the protection requirements, it shall issue an EC type-examination certificate in respect thereof.

(5) Subject to regulation 69 below, where in the opinion of the United Kingdom notified body the apparatus to which the application relates does not conform with the protection requirements, it shall refuse to issue the EC type-examination certificate, giving written reasons for the refusal.

(6) For the avoidance of doubt, it is hereby declared that an EC type-examination certificate may relate to—

- (a) a single item of apparatus;
- (b) where a number of items are to be produced, a specimen representative of the production envisaged (a “representative”); or
- (c) a number of items or representatives of each such item or representative being variants of the same basic design.

Limitations on duty to exercise functions

65.—(1) Nothing in these Regulations shall require a United Kingdom notified body to determine a relevant application—

- (a) which is not in English or another language acceptable to that body; or
- (b) where the applicant has not—
 - (i) granted the body access to the radiocommunication transmission apparatus to which the application relates or the production facilities for the apparatus (including where applicable, the production envisaged in relation to a representative) to the extent that the body reasonably requests; and
 - (ii) made available to the body such information as it may reasonably require to determine the application.

(2) Nothing in these Regulations shall require a United Kingdom notified body to—

- (a) determine a relevant application; or
- (b) having determined the application, to inform the applicant of the result thereof or, in the case of a successful application, to issue the EC type-examination certificate, unless—
 - (i) where the body is the CAA or BABT, the applicant has paid the fees charged thereby pursuant to regulation 63 above;
 - (ii) where the body is the DRA or the RA, the applicant has paid any fees chargeable in accordance with regulations made under section 56 of the Finance Act 1973.

Contractors etc.

66.—(1) Subject to paragraphs (2) and (3) below, a United Kingdom notified body may, in exercising its functions—

- (a) arrange for some other person to carry out any test, assessment or inspection on its behalf; or

(b) require the applicant to satisfy another person with respect to any matter at the applicant's expense.

(2) Nothing in paragraph (1) above authorises a United Kingdom notified body to rely on the opinion of another person with regard to whether any radiocommunication transmission apparatus conforms with the protection requirements.

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

Conditions of EC type-examination certificates

67.—(1) Subject to regulation 69 below and paragraphs (2) and (3) of this regulation, an EC type-examination certificate issued by a United Kingdom notified body may be unconditional or subject to such conditions, which must be complied with if the certificate is to apply, as the body considers appropriate.

(2) Without prejudice to the generality of paragraph (1) above, such conditions may include—

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

(3) The conditions imposed pursuant to paragraph (1) above may be varied by the United Kingdom notified body which issued the EC type-examination certificate, and a variation under this paragraph may include the imposition of new conditions or the withdrawal of conditions.

Withdrawal of EC type-examination certificates

68.—(1) Subject to regulation 69 below and paragraph (2) of this regulation, the United Kingdom notified body which issued an EC type-examination certificate shall withdraw that certificate if it appears that the apparatus to which it relates does not conform with the protection requirements.

(2) A withdrawal of an EC type-examination certificate shall be by notice in writing stating the reasons for the withdrawal.

Procedure where United Kingdom notified body is minded to make a decision unfavourable to the applicant

69. Before making an unfavourable decision in respect of an applicant, that is to say—

- (a) refusing to grant an EC type-examination certificate pursuant to regulation 64(5) above;
- (b) the imposition of a condition of an EC type-examination certificate or the making of a restrictive variation of a condition thereof pursuant to regulation 67 above in circumstances where the applicant has not indicated in writing that the apparatus concerned is suitable for use subject to that condition;
- (c) the withdrawal of an EC type-examination certificate pursuant to regulation 68 above, the United Kingdom notified body shall—
 - (i) give notice in writing to the applicant, or holder of the EC type-examination certificate concerned, as the case may be (“the person concerned”), of the reasons why it proposes to make the unfavourable decision; and
 - (ii) give the person concerned the opportunity of making representations within a period of 28 days of the notice being given as to why that body should make a favourable decision, and consider any representations which are made by that person within that period.

EC declaration of conformity

EC declaration of conformity for radiocommunication transmission apparatus

70.—(1) This regulation shall have effect for prescribing the form of an EC declaration of conformity issued in the United Kingdom in respect of radiocommunication transmission apparatus.

(2) An EC declaration of conformity to which this regulation applies shall—

- (a) be in English;
- (b) give the name and address—
 - (i) of the responsible person;
 - (ii) where that person is not the manufacturer, of the manufacturer;
- (c) be signed by or on behalf of the manufacturer or his authorised representative and identify that signatory;
- (d) bear the date of issue;
- (e) give particulars of the relevant apparatus to which it relates sufficient to identify it;
- (f) identify the EC type-examination certificate relating thereto, and give the name and address of the notified body which issued it, and the date and any number thereof;
- (g) certify that the apparatus to which it relates conforms with the protection requirements of Council Directive [89/336/EEC](#) on the approximation of the laws of the Member States relating to electromagnetic compatibility.

Final provisions

Savings

71. For the avoidance of doubt, it is hereby declared that nothing in this Part shall be construed as dispensing with any requirement—

- (a) of a licence granted under—
 - (i) section 1(**19**) of the 1949 Act to establish and use any station for wireless telegraphy or to instal and use any wireless telegraphy apparatus;
 - (ii) section 7 of the 1984 Act to run a telecommunication system within the meaning of that Act;
 - (iii) Part I of the 1990 Act to provide television programme services or additional services within the meaning of that Part;
 - (iv) Part II of the 1990 Act to provide local delivery services within the meaning of that Part; or
 - (v) Part III of the 1990 Act to provide independent radio services within the meaning of that Part;
- (b) that apparatus be approved under section 84 of the 1984 Act, or comply with the requirements of the Telecommunications Terminal Equipment Directive;
- (c) regulations made under section 1 of the 1949; or
- (d) an order made under—
 - (i) section 7 of the Wireless Telegraphy Act 1967(**20**);

(19) Section 1 was amended by paragraph 1 of Schedule 18 to the Broadcasting Act 1990 (c. 42).

(20) 1967 c. 72.

(ii) section 85 or 86 of the 1984 Act.

Interpretation of Part VI

72. In this Part—

“the 1990 Act ” means the Broadcasting Act 1990⁽²¹⁾;

“authorised description ” shall be construed in accordance with regulation 62 above;

“examine ” includes, where a UK notified body considers appropriate, the dis-assembly of apparatus; and

“telecommunication system ” shall be construed in accordance with section 4 of the 1984 Act.

PART VII

ENFORCEMENT

Enforcement authorities and powers

Enforcement authorities

73.—(1) Except in relation to the descriptions of apparatus mentioned in paragraph (3) below, it shall be the duty of the following authorities to enforce these Regulations—

(a) in Great Britain, weights and measures authorities; and

(b) in Northern Ireland, the Department of Economic Development.

(2) Except in relation to the descriptions of apparatus mentioned in paragraph (3) below, the Secretary of State may enforce these Regulations.

(3) These Regulations may be enforced—

(a) by the CAA, in relation to wireless telegraphy apparatus of a description listed in paragraph 2 of Schedule 6 hereto; and

(b) in relation to electricity meters other than those which are wireless telegraphy apparatus —

(i) in Great Britain, by the Director General of Electricity Supply; and

(ii) in Northern Ireland, by the Director General of Electricity Supply for Northern Ireland⁽²²⁾.

(4) Nothing in this regulation shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

(5) In these Regulations, “enforcement authority ” in relation to any relevant apparatus means any person who is, pursuant to the provisions of this regulation, authorised to act as an enforcement authority in relation to that relevant apparatus.

Test purchases

74.—(1) An enforcement authority shall have power, for the purpose of ascertaining whether any relevant apparatus complies with the requirements of regulation 30 above to make, or to authorise an officer of the authority to make, any purchase of electrical apparatus.

(2) Where—

⁽²¹⁾ 1990 c. 42.

⁽²²⁾ The Director General of Electricity Supply for Northern Ireland is appointed pursuant to article 5 of S.I.1992/231 (N.I.1).

- (a) any apparatus purchased under this regulation by or on behalf of any enforcement authority is submitted to a test; and
- (b) the test leads to—
 - (i) the bringing of proceedings for an offence under regulation 82, 83 or 85 below in relation to the apparatus or the forfeiture of apparatus of the same description under regulation 94 or 95 below; or
 - (ii) the serving of a suspension notice in respect of any apparatus; and
- (c) the authority is requested to do so and it is practicable for the authority to comply with the request,

the authority shall allow the person from whom the apparatus was purchased or any person who is a party to the proceedings or has an interest in any apparatus to which the notice relates to have the apparatus tested.

Powers of search etc.

75.—(1) Subject to regulation 76 below, a duly authorised officer of an enforcement authority may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by the following provisions of this regulation.

(2) The officer may, for the purpose of ascertaining whether there has been a contravention of any of the requirements of Part III of these Regulations—

- (a) inspect any electrical apparatus and enter any premises other than premises occupied only as a person's residence; or
- (b) examine any procedure (including any arrangements for carrying out a test) connected with the production of any electrical apparatus.

(3) If the officer has reasonable grounds for suspecting that there has been a contravention of any of the requirements of Part III of these Regulations, he may for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain any electrical apparatus.

(4) The officer may seize and detain—

- (a) any electrical apparatus, any document, record or information which the officer may require production of under regulation 81 below, or any other thing, which he has reasonable grounds for believing may be required—
 - (i) as evidence in proceedings for an offence under these Regulations;
 - (ii) by a competent authority of a member State other than the United Kingdom for the purposes of the exercise of its functions, or
- (b) any electrical apparatus which he has reasonable grounds for suspecting may be liable to be forfeited under regulation 94 or 95 below.

(5) The officer may, for the purpose of the exercise of his powers under paragraphs (3) or (4) above to seize any electrical apparatus, any document or record or any other thing—

- (a) require any person having authority to do so to open any container; and
- (b) himself open or break open any such container where a requirement made under paragraph (a) above in relation to the container has not been complied with.

Provisions supplemental to regulation 75

76.—(1) An officer seizing any electrical apparatus, records, documents, information or other thing under regulation 75 above shall inform the person from whom they are seized that such apparatus, records or other thing have been so seized.

(2) If a justice of the peace—

(a) is satisfied by any written information on oath that there are reasonable grounds for believing either—

(i) that any electrical apparatus, documents, records, information or other thing which any officer has power to inspect under regulation 75 above are on any premises (which may be premises occupied only as a person's residence) and that, if their inspection reveals that the apparatus is relevant apparatus or that the documents, records, information or any other thing relates to relevant apparatus, such inspection is likely to disclose evidence that there has been a contravention of any provision of Part III of these Regulations; or

(ii) that such a contravention has taken place, is taking place or is about to take place on any premises; and

(b) is also satisfied by any such information either—

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this paragraph has been given to the occupier; or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the justice may by warrant under his hand, which shall continue in force for one month, authorise any officer of an enforcement authority to enter the premises, if need be by force.

(3) An officer entering any premises by virtue of regulation 75 above or a warrant under paragraph (2) of this regulation may take with him such other persons and such equipment as may appear to him necessary.

(4) On leaving any premises which a person is authorised to enter by a warrant under paragraph (2) of this regulation, that person shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(5) Where any apparatus seized by an officer under regulation 75 above is submitted to a test, the officer shall inform the persons mentioned in paragraph (1) of this regulation of the result of the test and, if—

(a) proceedings are brought for an offence in respect of a contravention in relation to any relevant apparatus of any provision of these Regulations or for the forfeiture of any relevant apparatus under regulation 94 or 95 below, or a suspension notice is served in respect of any relevant apparatus; and

(b) the officer is requested to do so and it is practicable to comply with the request,

the officer shall allow any person who is a party to the proceedings or, as the case may be, has an interest in the relevant apparatus to which the notice relates to have the relevant apparatus tested.

(6) In the application of this regulation to Scotland, the reference in paragraph (2) above to a justice of the peace shall include a reference to a sheriff and the references to written information on oath shall be construed as references to evidence on oath.

(7) In the application of this regulation to Northern Ireland, the references in paragraph (2) above to any information on oath shall be construed as references to any complaint on oath.

Appeals against detention of apparatus

77.—(1) Any person having an interest in any apparatus, document, record, information or other thing which is for the time being detained under any provision of this Part by an enforcement authority or by an officer of such an authority may apply for an order requiring the apparatus to be released to him or to another person.

(2) An application under this regulation may be made—

- (a) to any magistrates' court in which proceedings have been brought in England and Wales and Northern Ireland—
 - (i) for an offence under regulation 82, 83 or 85 below; or
 - (ii) for the forfeiture of the apparatus under regulation 94 below;
- (b) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or
- (c) in Scotland, by summary application to the sheriff.

(3) On an application under this regulation to a magistrates' court or to the sheriff, an order requiring apparatus to be released shall be made only if the court or sheriff is satisfied—

- (a) that proceedings—
 - (i) for an offence under regulation 82, 83 or 85 below in respect of the apparatus; or
 - (ii) for the forfeiture of the apparatus under regulation 94 or 95 below,
 have not been brought or, having been brought, have been concluded without the apparatus being forfeited; and
- (b) where no such proceedings have been brought, that more than six months have elapsed since the apparatus was seized.

(4) Any person aggrieved by an order made under this regulation by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, to the county court;

and an order so made may contain such provision as appears to the court appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980⁽²³⁾ or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981⁽²⁴⁾ (statement of case)).

Prohibition notices

78.—(1) The Secretary of State may serve on —

- (a) the manufacturer or supplier of any relevant apparatus which the Secretary of State considers does not comply with the protection requirements or the requirements of regulation 30 above as the case may be; or
- (b) the user of relevant apparatus which the Secretary of State considers did not so comply at the time when it was supplied or taken into service as the case may be,

a notice (“a prohibition notice”) prohibiting that manufacturer, supplier or user as the case may be from manufacturing, supplying, taking into service or using that apparatus as the case may be, except with the consent of the Secretary of State.

⁽²³⁾ 1980 c. 43.

⁽²⁴⁾ S.I.1981/1675 (N.I.26).

(2) Schedule 7 hereto shall have effect with respect to prohibition notices.

(3) A consent given by the Secretary of State for the purposes of a prohibition notice may impose such conditions on the doing of anything for which the consent is required as the Secretary of State considers appropriate.

Suspension notices

79.—(1) Where an enforcement authority has reasonable grounds for suspecting that regulation 28, 29 or 34(4) above has been, is being or is likely to be contravened, the authority may serve a notice (“a suspension notice”)—

- (a) in relation to relevant apparatus or electrical apparatus other than relevant apparatus, prohibiting the manufacturer, supplier or user on whom it is served, for such period ending not more than six months after the date of the notice as is specified therein, from manufacturing, supplying, taking into service or using the apparatus; or
- (b) in relation to an excluded installation, where the enforcement authority is unable to establish upon reasonable inquiry which item of relevant apparatus or system incorporated therein the suspected contravention relates to, for such period ending not more than six months after the date of the notice as is specified therein, from taking into service or using the excluded installation,

without the consent of that authority.

(2) A suspension notice served by an enforcement authority in respect of any apparatus or excluded installation shall—

- (a) describe the apparatus or installation to which it relates in a manner sufficient to identify it;
- (b) set out the grounds on which the authority suspects that regulation 28, 29 or 34(4) above has been, is being or is likely to be contravened, as the case may be; and
- (c) state that, and the manner in which, the person on whom the notice is served may appeal against the notice under regulation 80 below.

(3) A consent given by an enforcement authority for the purposes of a suspension notice may impose such conditions on the doing of anything for which the consent is required as that authority considers appropriate.

(4) A suspension notice may require the person on whom it is served to keep the enforcement authority which served the notice informed of the whereabouts throughout the period during which the notice has effect of any of the apparatus, or the excluded installation, in which that person has an interest.

(5) Where a suspension notice has been served on any person in respect of any apparatus or excluded installation, no further such notice shall be served on that person in respect of the same apparatus unless—

- (a) proceedings against that person for an offence under regulation 82, 83 or 85 below; or
- (b) proceedings for the forfeiture of the apparatus under regulation 94 or 95 below,

are pending at the end of the period specified in the first-mentioned notice.

Appeals against suspension notices

80.—(1) Any person having an interest in any apparatus or excluded installation in respect of which a suspension notice is for the time being in force may apply for an order setting aside the notice.

(2) An application under this regulation may be made—

- (a) in England and Wales or Northern Ireland—

- (i) to any magistrates' court in which proceedings have been brought—
 - (aa) for an offence under regulation 82, 83 or 85 below; or
 - (bb) for the forfeiture of the apparatus under regulation 94 below; or
- (ii) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or
- (b) in Scotland, by summary application to the sheriff.

(3) On an application under this regulation to a magistrates' court in England and Wales or Northern Ireland the court shall make an order setting aside the suspension notice only if the court is satisfied that there has been no contravention in relation to the apparatus, or any item of relevant apparatus or system included in the excluded installation, of regulation 28, 29 or 34(4) above as the case may be.

(4) On an application under this regulation to the sheriff he shall make an order setting aside the suspension notice only if he is satisfied that at the date of making the order—

- (a) proceedings for an offence under regulation 82, 83 or 85 below; or
- (b) proceedings for the forfeiture of the apparatus under regulation 95 below,

have not been brought or, having been brought, have been concluded.

(5) Any person aggrieved by an order made under this regulation by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, to the county court;

and an order so made may contain such provision as appears to the court appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

Power to require production of documents and information etc.

81. An officer of an enforcement authority may, for the purposes of exercising his functions under this Part, require—

- (a) any person who is required by regulation 35 above to retain an EC declaration of conformity, technical construction file or EC type-examination certificate, during the period in which that person is required to retain that document, to produce such document;
- (b) any person who is in possession of an EC declaration of conformity, technical construction file or EC type-examination certificate, or of a copy of such document, at any time to produce it;
- (c) a responsible person, or a manufacturer, importer, supplier or user of electrical apparatus to produce such documents or records relating to such apparatus as are in his possession or under his control; or
- (d) a responsible person, or a manufacturer, importer, supplier or user of any electrical apparatus, to give him such information as he may reasonably require,

and such officer may inspect any thing which he may require to be produced under this regulation, and take a copy thereof or of any part thereof.

Offences

Supplying or taking into service apparatus in contravention of regulation 28 or 29

82. Any person who supplies or takes into service relevant apparatus in contravention of regulation 28 or 29 above shall be guilty of an offence.

Contravention of prohibition notice or suspension notice

83. Any person who contravenes a prohibition notice or a suspension notice shall be guilty of an offence.

False or misleading information

84. Any person who, in giving any information which he is required to give under regulation 81(c) or (d) above—

- (a) makes any statement which he knows is false or misleading in a material particular; or
- (b) recklessly makes any statement which is false or misleading in a material particular,

shall be guilty of an offence.

Misuse of the CE mark etc.

85.—(1) Any person who affixes the CE mark for the purposes of the EMC Directive, or an inscription liable to be confused therewith, in relation to—

- (a) any relevant apparatus in contravention of regulation 33(5) above; or
- (b) any electrical apparatus other than relevant apparatus in contravention of regulation 33(6) above,

shall be guilty of an offence.

(2) Any person who issues an EC declaration of conformity in relation to—

- (a) any relevant apparatus in contravention of regulation 34(3) above; or
- (b) any electrical apparatus in contravention of regulation 34(4) above,

shall be guilty of an offence.

Obstruction etc of officers of enforcement authorities etc.

86.—(1) Any person who—

- (a) intentionally obstructs any officer of an enforcement authority who is acting in pursuance of any provision of this Part;
- (b) intentionally fails or refuses to comply with any requirement made of him by any officer of an enforcement authority under any provision of this Part;
- (c) without reasonable cause fails or refuses to give any officer of an enforcement authority who is so acting any other assistance which the officer may reasonably require of him for the purposes of the exercise of the officer's functions under any provision of this Part; or
- (d) fails to comply with a court order under regulation 93 below,

shall be guilty of an offence.

(2) Any person who falsely pretends to be an officer of an enforcement authority shall be guilty of an offence.

Failure to retain documentation

87. Any person who contravenes regulation 35 above shall be guilty of an offence.

Defence of due diligence

88.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 82 or 85 above it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

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

- (a) to the act or default of another; or
- (b) to 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), he has served a notice under paragraph (3) below on the person bringing the proceedings.

(3) A notice under this paragraph shall 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 he serves it.

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

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

Liability of persons other than the principal offender

89.—(1) Where the commission by any person of an offence under any of regulations 82 to 87 above is due to the act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1) above) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(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.

Extension of time for bringing summary proceedings

90. Notwithstanding section 127 of the Magistrates' Courts Act 1980 and section 331 of the Criminal Procedure (Scotland) Act 1975(25), proceedings for an offence under regulations 82 to 87 above may be commenced at any time within three years from the date of the offence, or one year from the date on which there comes to the knowledge of the prosecutor evidence sufficient to justify a prosecution for that offence, whichever is the earlier; and for the purposes of this regulation—

- (a) a certificate of the prosecutor stating that such evidence came to his knowledge on a specified date shall be conclusive evidence of that fact; and
- (b) a document purporting to be such a certificate and to be signed by or on behalf of the prosecutor in question shall be presumed to be such a certificate unless the contrary is proved.

Inference of condition of apparatus at time of supply or taking into service

91. It is hereby declared that, in any proceedings in which it is in issue whether any relevant apparatus complied with the protection requirements or the requirements of regulation 30 above as the case may be at the time when it was supplied or taken into service as the case may be, a court may infer that such apparatus did not so comply at that time if—

- (a) it is proved that it does not so comply or did not so comply at a time subsequent to its having been supplied or taken into service; and
- (b) having regard to all the circumstances of the case, it appears to the court that the failure of the apparatus to comply at the time referred to in sub-paragraph (a) above is not attributable to any cause arising subsequent to its having been supplied or taken into service.

Powers of the court

Penalties

92.—(1) A person guilty of an offence under regulation 83, 84 or 86(2) above shall be liable on summary conviction—

- (a) to imprisonment for a term not exceeding three months; or
- (b) to a fine not exceeding level 5 on the standard scale,

or to both.

(2) A person guilty of an offence under regulation 82, 85, 86(1) or 87 above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Power of the court to require matter to be remedied

93.—(1) Where a person is convicted of an offence under regulation 82 or 85 above in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.

(2) The time fixed by an order under paragraph (1) above may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) above to remedy any matters, that person shall not be guilty of an offence under regulation 82 or 85 above as the case may be in respect of those

matters in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2) above.

Forfeiture: England and Wales and Northern Ireland

94.—(1) An enforcement authority in England and Wales or Northern Ireland may apply under this regulation for an order for the forfeiture of any—

- (a) relevant apparatus on the grounds that there has been a contravention in relation thereto of regulation 28 or 29 above; or
- (b) electrical apparatus other than relevant apparatus on the grounds that the CE mark is affixed in relation to it in contravention of regulation 33(6) above.

(2) An application under this regulation may be made—

- (a) where proceedings have been brought in a magistrates' court in respect of an offence in relation to some or all of the apparatus under regulation 82, 83 or 85, to that court;
- (b) where an application with respect to some or all of the apparatus has been made to a magistrates' court under regulation 77 or 80 above, to that court; and
- (c) where no application for the forfeiture of the apparatus has been made under subparagraph (a) or (b) above, by way of complaint to a magistrates' court.

(3) On an application under this regulation the court shall make an order for the forfeiture of the apparatus only if it is satisfied that there has been a contravention in relation thereto of regulation 28, 29 or 33(6) above as the case may be.

(4) For the avoidance of doubt it is hereby declared that a court may infer for the purposes of this regulation that there has been a contravention in relation to any apparatus of regulation 28, 29 or 33(6) above as the case may be if it is satisfied that that provision has been contravened in relation to apparatus which is representative of that apparatus (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) Any person aggrieved by an order made under this regulation by a magistrates' court, or by a decision of such court not to make such an order, may appeal against that order or decision —

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, to the county court,

and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of an order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

(6) Subject to paragraph (7) below, where any apparatus is forfeited under this regulation it shall be destroyed in accordance with such directions as the court may give.

(7) On making an order under this regulation a magistrates' court may, if it considers it appropriate to do so, direct that the apparatus to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person—

- (a) does not supply the apparatus to any person otherwise than—
 - (i) to a person who carries on a business of buying apparatus of the same description as the first mentioned apparatus and repairing or reconditioning it; or
 - (ii) as scrap (that is to say, for the value of materials included in the apparatus rather than for the value of the apparatus itself); and
- (b) complies with any order to pay costs or expenses (including any order under regulation 96 below) which has been made against that person in the proceedings for the order for forfeiture.

Forfeiture: Scotland

95.—(1) In Scotland an order for forfeiture of any—

- (a) relevant apparatus in relation to which there has been a contravention of regulation 28 or 29 above as the case may be; or
- (b) electrical apparatus other than relevant apparatus on the grounds that the EC mark is affixed in relation to it in contravention of regulation 33(6) above,

may be made by the sheriff—

- (i) on an application by the procurator-fiscal made in the manner specified in section 310 of the Criminal Procedure (Scotland) Act 1975(26); or
- (ii) where a person is convicted of any offence in respect of any such contravention, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under paragraph (1)(i) above shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the apparatus to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the apparatus should not be forfeited.

(3) Service under paragraph (2) above shall be carried out, and such service may be proved, in the manner specified for citation of a n accused in summary proceedings under the Criminal Procedure (Scotland) Act 1975.

(4) Any person upon whom a notice is served under paragraph (2) above and any other person claiming to be the owner of, or otherwise to have an interest in, the apparatus to which an application under this regulation relates shall be entitled to appear at the hearing of the application to show cause why the apparatus should not be forfeited.

(5) The sheriff shall not make an order following an application under paragraph (1)(i) above—

- (a) if any person on whom notice is served under paragraph (2) above does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under paragraph (2) above has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The sheriff shall make an order under this regulation only if he is satisfied that there has been a contravention in relation to the apparatus of regulation 28, 29 or 33(6) above as the case may be.

(7) For the avoidance of doubt it is hereby declared that the sheriff may infer for the purposes of this regulation that there has been a contravention in relation to any apparatus of regulation 28, 29 or 33(6) above if he is satisfied that that provision has been contravened in relation to apparatus which is representative of that apparatus (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(8) Where an order for the forfeiture of any apparatus is made following an application by the procurator-fiscal under paragraph (1)(i) above, any person who appeared, or was entitled to appear, to show cause why it should not be forfeited may, within twenty- one days of the making of the order, appeal to the High Court by Bill of Suspension on the ground of an alleged miscarriage of justice; and section 452(4)(a) to (e) of the Criminal Procedure (Scotland) Act 1975(27) shall apply to an appeal under this paragraph as it applies to a stated case under Part II of that Act.

(9) An order following an application under paragraph (1)(i) above shall not take effect—

- (a) until the end of the period of twenty-one days beginning with the day after the day on which the order is made; or

(26) Section 310 was amended by paragraph 53 of Schedule 7, and Schedule 8, to the Criminal Justice (Scotland) Act 1980 (c. 62); there are extensions of section 310 not relevant to these Regulations.

(27) A new section 452 was substituted by paragraph 11 of Schedule 3 to 1980 c. 62.

- (b) if an appeal is made under paragraph (8) above within that period, until the appeal is determined or abandoned.
- (10) An order under paragraph (1)(ii) shall not take effect—
 - (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1975; or
 - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (11) Subject to paragraph (12) below, apparatus forfeited under this regulation shall be destroyed in accordance with such directions as the sheriff may give.
- (12) If he thinks fit, the sheriff may direct the apparatus to be (instead of being destroyed) released to such person as he may specify, on condition that that person does not supply it to any person otherwise than—
 - (a) to a person who carries on a business of buying apparatus of the same description as the first-mentioned apparatus and repairing or reconditioning it; or
 - (b) as scrap (that is to say, for the value of materials included in the apparatus rather than for the value of the apparatus itself).

Recovery of expenses of enforcement

- 96.**—(1) This regulation applies where a court—
- (a) convicts a person of an offence under regulation 82, 83 or 85 above; or
 - (b) makes an order under regulation 94 or 95 above for the forfeiture of any apparatus.
- (2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted or, as the case may be, any person having an interest in the apparatus the subject of the order for forfeiture, to reimburse an enforcement authority for any expenditure which has been or may be incurred by that authority—
- (a) in investigating the offence, and, without prejudice to the generality of the foregoing, in having the apparatus tested;
 - (b) in connection with any seizure or detention of the apparatus by or on behalf of the authority; or
 - (c) in connection with any compliance by that authority with directions given by the court for the purposes of any order for the forfeiture of the apparatus.

PART VIII

MISCELLANEOUS AND SUPPLEMENTAL

Restrictions on disclosure of information

- 97.**—(1) Subject to the following provisions of this regulation, a person shall be guilty of an offence if he discloses any information—
- (a) which was obtained by him in consequence of the exercise by any person of any power conferred by Part VII of these Regulations; or
 - (b) which consists in a secret manufacturing process or a trade secret and was obtained by him in consequence of the inclusion of the information—
 - (i) in written or oral representations made for the purposes of Schedule 7 hereto; or
 - (ii) in a statement of a witness in connection with any such oral representations.

(2) Paragraph (1) above shall not apply to a disclosure of information if the information is publicised information or the disclosure is made—

- (a) for the purpose of facilitating the exercise of a relevant person’s functions under these Regulations;
- (b) for the purpose of facilitating the exercise of a relevant person’s enforcement or regulatory functions under any enactment (whether passed or made before or after the making of these Regulations);
- (c) for the purposes of compliance with a Community obligation; or
- (d) in connection with the investigation of any criminal offence or for the purposes of any civil or criminal proceedings.

(3) In paragraph (2)(b) above the reference to a person’s functions shall include a reference to the function of making, amending or revoking any regulations or order.

(4) A person guilty of an offence under this regulation shall be liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
- (b) on conviction on indictment, to—
 - (i) imprisonment for a term not exceeding two years; or
 - (ii) a fine,or to both.

(5) In this regulation—

“publicised information ” means any information which has been disclosed in any civil or criminal proceedings; and

“relevant person ” means—

- (a) a Minister of the Crown, Government department or Northern Ireland department;
- (b) an enforcement authority; or
- (c) any other person on whom enforcement or regulatory functions are conferred by or under any enactment.

Service of documents etc

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

- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address;
- (b) if the person is a body corporate, by serving it in accordance with sub-paragraph (a) above on the secretary or clerk of that body; or
- (c) if the person is a partnership, by serving it in accordance with that sub-paragraph on a partner or on a person having control or management of the partnership business.

(2) For the purposes of paragraph (1) above, and for the purposes of section 7 of the Interpretation Act 1978(28) (which relates to the service of documents by post) in its application to that paragraph, the proper address of any person on whom a document is to be served by virtue of these Regulations shall be his last known address except that—

- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate;

(b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership; and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

Duty of enforcement authority to inform the Secretary of State of action taken

99. An enforcement authority shall, where action has been taken by it to prohibit or restrict the supply or taking into service (whether under these Regulations or otherwise) of any relevant apparatus, forthwith inform the Secretary of State of the action taken, and the reasons for it, with a view to this information being passed by him to the Commission.

Savings for certain privileges

100.—(1) Nothing in these Regulations shall be taken as requiring any person to produce any documents or records if he would be entitled to refuse to produce those documents or records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, that they contain a confidential communication made by or to an advocate or solicitor in that capacity, or as authorising any person to take possession of any documents or records which are in the possession of a person who would be so entitled.

(2) Nothing in these Regulations shall be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person's spouse.

Savings for action taken under other enactments

101. Nothing in these Regulations shall be construed as preventing the taking of any action in respect of any relevant apparatus under the provisions of any other enactment.

E. Leigh
Parliamentary Under Secretary of State for
Technology,
Department of Trade and Industry

5th October 1992