
STATUTORY INSTRUMENTS

2000 No. 730

**The Radio Equipment and Telecommunications
Terminal Equipment Regulations 2000**

**PART IV
ENFORCEMENT**

Enforcement Notices

18.—(1) Subject to paragraph (2), Schedule 9 shall have effect for the purposes of providing for the enforcement of these Regulations and for matters incidental thereto.

(2) Except in the case of apparatus which, in the opinion of an enforcement authority, is liable to endanger the safety of persons and, where appropriate, of property, where an enforcement authority has reasonable grounds for suspecting that the CE marking has been affixed to apparatus in relation to which any provision of these Regulations has not been complied with, it may serve notice in writing on—

- (a) the manufacturer of the apparatus or his authorised representative established within the Community; or
- (b) in a case where neither the manufacturer of the apparatus nor his authorised representative established within the Community has placed the apparatus on the market, the person who places it on the market in the United Kingdom;

and subject to paragraph (3), no other action pursuant to Schedule 9 may be taken in respect of apparatus until such notice has been given and the person to whom it is given has failed to comply with its requirements.

(3) Notwithstanding the provisions of paragraph (2), for the purpose of ascertaining whether or not the CE marking has been correctly affixed, action may be taken pursuant to section 29 of the Consumer Protection Act 1987(1) as it is applied by Schedule 9.

(4) A notice which is given under paragraph (2) shall—

- (a) state that the enforcement authority suspects that the CE marking has not been correctly affixed to the apparatus;
- (b) specify the respect in which it is so suspected and give particulars thereof;
- (c) require the person to whom the notice is given—
 - (i) to secure that any apparatus to which the notice relates conforms as regards the provisions concerning the correct affixation of the CE marking within such period as may be specified in the notice; or
 - (ii) to provide evidence within that period, to the satisfaction of the enforcement authority, that the CE marking has been correctly affixed; and

- (d) warn that person that if the non-conformity continues after, or if satisfactory evidence has not been provided within, the period specified in the notice, further action may be taken under the Regulations in respect of that apparatus or apparatus of the same type placed on the market by that person.

Offences

19. Any person who—

- (a) contravenes or fails to comply with regulation 5(1) or 12; or
- (b) fails to supply or retain a copy of the appropriate documentation as required by regulation 9(3),

shall be guilty of an offence.

Penalties

20.—(1) A person guilty of an offence under regulation 19(a) shall be liable on summary conviction—

- (a) to imprisonment for a term not exceeding 3 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 19(b) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

21.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 19 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 in paragraph (1) 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) 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 in paragraph (1) 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

22.—(1) Where the commission by any person of an offence under regulation 19 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)) 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) 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.

Savings for action taken under other enactments

23. 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.