
STATUTORY INSTRUMENTS

2005 No. 281

The Electromagnetic Compatibility Regulations 2005

PART VII

ENFORCEMENT

Enforcement authorities and powers

Enforcement authorities

75.—(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 :

- (i) OFCOM insofar as action taken to enforce a regulation relates to the protection and management of the radio spectrum; and
- (ii) local weights and measures authorities within their area; and

(b) in Northern Ireland:

- (i) OFCOM insofar as action taken to enforce a regulation relates to the protection and management of the radio spectrum; and
- (ii) the Department of Enterprise, Trade and Investment.

(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 1 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 Gas and Electricity Markets Authority; and
 - (ii) in Northern Ireland, by the Northern Ireland Authority for Energy Regulation.

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

Test purchases

76.—(1) An enforcement authority shall have power, for the purpose of ascertaining whether any relevant apparatus complies with the requirements of regulation 32 above to make, or to authorise an officer of the authority to make, any purchase of electrical apparatus.

(2) Where—

- (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 85, 86 or 88 below in relation to the apparatus or the forfeiture of apparatus of the same description under regulation 97 or 98 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.

77.—(1) Subject to regulation 78 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 84 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 purpose 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 97 or 98 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 77

78.—(1) An officer seizing any electrical apparatus, records, documents, information or other thing under regulation 77 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 77 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 77 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 77 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 97 or 98 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

79.—(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 85, 86 or 88 below; or
 - (ii) for the forfeiture of the apparatus under regulation 97 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 85, 86 or 88 below in respect of the apparatus; or
 - (ii) for the forfeiture of the apparatus under regulation 97 or 98 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 **(1)** or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981**(2)** (statement of case)).

Compliance notices

80.—(1) Subject to paragraph (4) below, in the relevant circumstances, no notice may be served pursuant to regulation 81 or 82 below, and no proceedings may be commenced pursuant to regulation 85, 88, 97 or 98 below, unless the requirements of this regulation are satisfied.

(2) The relevant circumstances are that it is established that the CE mark or CE marking has been affixed unduly to electrical apparatus.

(3) The requirements of this regulation are that—

- (a) there has been served upon the manufacturer or his authorised representative a notice in writing obliging the person on whom the notice is served to make the electrical apparatus conform as regards the provisions concerning the CE mark or CE marking and its due affixation and to end the infringement under conditions imposed in, or in relation to, the said notice; and
- (b) the non-conformity continues after the period specified in, or in relation to, the said notice during which the infringement must be ended has expired.

(4) Without prejudice to paragraph 3(a) and (b), a notice served pursuant to paragraph (1) above shall include, but not by way of limitation,

(1) 1980 c. 43.

(2) S.I. 1981/1675 (N.I.26).

- (a) a description of the electrical apparatus in respect of which the notice is served on the manufacturer or his authorised representative in a manner sufficient to identify it;
 - (b) a statement that the CE mark or CE marking affixed to either the electrical apparatus or the apparatus' packaging, instructions for use or guarantee certificate is unduly affixed, or that the CE mark or CE marking is affixed to some other item accompanying the apparatus;
 - (c) a statement of the grounds upon which it is established that the CE mark or CE marking has been or is being unduly affixed in relation to the electrical apparatus; and
 - (d) an indication as to which of the following procedures cannot be commenced unless the requirements of this regulation are satisfied:—
 - (i) a notice pursuant to regulation 81 or 82 below; or
 - (ii) proceedings pursuant to regulation 85, 88, 97 or 98 below,and may include such other information as may be considered expedient to enable the person to whom the notice is addressed to decide what action should be taken to end the particular infringement.
- (5) This regulation does not apply where it is found that apparatus bearing the CE mark or CE marking does not comply with the protection requirements.

Prohibition notices

- 81.**—(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 32 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 from manufacturing, supplying, taking into service or using that apparatus as the case may be, except with the consent of the Secretary of State.
- (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

- 82.**—(1) Where an enforcement authority has reasonable grounds for suspecting that regulation 30, 31 or 36(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 30, 31 or 36(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 83 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 85, 86 or 88 below; or
- (b) proceedings for the forfeiture of the apparatus under regulation 97 or 98 below,

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

Appeals against suspension notices

83.—(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 85, 86 or 88 below; or
 - (bb) for the forfeiture of the apparatus under regulation 97 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 30, 31 or 36(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 85, 86 or 88 below; or
- (b) proceedings for the forfeiture of the apparatus under regulation 98 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.

84. 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 37 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.