
STATUTORY INSTRUMENTS

2005 No. 281

The Electromagnetic Compatibility Regulations 2005

PART VII

ENFORCEMENT

Powers of the court

Penalties

95.—(1) A person guilty of an offence under regulation 86, 87 or 89(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 85, 88, 89(1) or 90 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

96.—(1) Where a person is convicted of an offence under regulation 85 or 88 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 85 or 88 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

97.—(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 30 or 31 above; or
- (b) electrical apparatus other than relevant apparatus, on the grounds that the CE marking, or an inscription liable to be confused therewith, is affixed in relation to it in contravention of regulation 35(7) 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 85, 86 or 88, 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 79 or 83 above, to that court; and
 - (c) where no application for the forfeiture of the apparatus has been made under sub-paragraph (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 30, 31 or 35(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 30, 31 or 35(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 99 below) which has been made against that person in the proceedings for the order for forfeiture.

Forfeiture: Scotland

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

- (a) relevant apparatus in relation to which there has been a contravention of regulation 30 or 31 above as the case may be; or
- (b) electrical apparatus other than relevant apparatus, on the grounds that the CE marking, or an inscription liable to be confused therewith, is affixed in relation to it in contravention of regulation 35(7) above,

may be made by the sheriff—

- (i) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995; 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 an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.

(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 30, 31 or 35(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 30, 31 or 35(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 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under this paragraph as it applies to a stated case under Part X 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
- (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 1995; 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

99.—(1) This regulation applies where a court—

- (a) convicts a person of an offence under regulation 85, 86 or 88 above; or
- (b) makes an order under regulation 97 or 98 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.