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STATUTORY INSTRUMENTS

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**2008 No. 37**

**The Restriction of the Use of Certain Hazardous Substances  
in Electrical and Electronic Equipment Regulations 2008**

**PART 3**

**Enforcement**

**Enforcement authority**

- 9.**—(1) It shall be the duty of the Secretary of State to enforce these Regulations.
- (2) The Secretary of State may appoint any person to act on behalf of the Secretary of State for the purposes of paragraph (1).
- (3) The Secretary of State shall not commence proceedings for an offence in Scotland.

**Test purchases**

**10.**—(1) The Secretary of State may purchase electrical and electronic equipment for the purpose of ascertaining whether the requirements of regulation 7 have been met in respect of it.

- (2) If—
- (a) equipment purchased under this regulation is submitted to a test;
  - (b) the test leads to the bringing of proceedings for an offence under regulation 15(1)(a) or the serving of an enforcement notice; and
  - (c) a person—
    - (i) from whom the equipment was purchased;
    - (ii) who is a party to the proceedings; or
    - (iii) who has an interest in equipment which is identified as infringing goods in an enforcement notice,

requests the Secretary of State to allow that person to have the equipment tested, the Secretary of State shall, if it is practicable for such a test to be carried out, allow that person to have the equipment tested.

**Power to require production of documents and information by notice**

**11.**—(1) If the Secretary of State reasonably believes that a person possesses information or documents (other than technical documentation or other information retained by a producer as referred to in regulation 8) which may provide evidence as to whether or not the requirements of Part 2 have been contravened in a particular case or class of cases or by a particular person, the Secretary of State may give that person notice in writing, requiring that person to provide the Secretary of State with that information, those documents, or copies of them.

(2) A notice given under paragraph (1) shall state the period of time within which the person to whom it is given must comply with it: this shall be a period which is reasonable in all the circumstances, and shall not in any event be less than 14 days.

### **Further powers to obtain evidence**

**12.**—(1) The powers specified in paragraphs (3) and (4) may be exercised where the Secretary of State reasonably believes that their exercise will enable the Secretary of State to obtain evidence as to whether or not the requirements of Part 2 have been contravened in a particular case or class of cases or by a particular person.

(2) Before exercising any of the powers specified in paragraph (3) or (4), enforcement officers shall, if so requested, produce a copy of their authorisations to act as enforcement officers.

(3) Enforcement officers may—

- (a) enter at any reasonable time any premises other than premises occupied only as a person's residence;
- (b) examine and investigate—
  - (i) any process of assembly or manufacture; or
  - (ii) any other aspect of the supply,
    - of electrical and electronic equipment, or the component parts of such equipment, taking place on, or organised from, such premises;
- (c) take such measurements and photographs and make such recordings as are necessary for the purpose of any examination or investigation under sub-paragraph (b)(i); and
- (d) require any person on such premises to afford them such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable them to exercise any of the powers conferred on them by sub-paragraphs (b) and (c) with due regard to the health and safety of themselves and others.

(4) When enforcement officers have exercised the power of entry under paragraph (3)(a), or when, with a view to ascertaining whether or not the requirements of Part 2 have been contravened in a particular case or class of cases or by a particular person, they have agreed to meet, at a specified time and place, a person in whose possession they reasonably believe there is evidence of the kind referred to in paragraph (1), they may—

- (a) take samples of any articles or substances found on or in the vicinity of the premises they have entered or which are in that person's possession;
- (b) require any person on the premises or at the meeting to produce, or, where the information is recorded in computerised form, furnish extracts in legible form from, any records to which that person has access—
  - (i) which are required to be kept under regulation 8;
  - (ii) which it is necessary for the enforcement officers to see for the purposes of an examination or investigation under paragraph (3)(b); or
  - (iii) which take the form of existing documents which the Secretary of State could require to be produced under regulation 11,
 and inspect and take copies of, or of any entry in, the records; and
- (c) take possession of articles or substances of the kind referred to in sub-paragraph (a) or records of the kind referred to in sub-paragraph (b), and detain them for so long as is necessary to—
  - (i) examine them, or cause them to be examined;

- (ii) ensure that they are not tampered with before examination of them is completed; and
- (iii) ensure that they are available for use in evidence in any proceedings for an offence under regulation 16(1) or (3).

(5) Where enforcement officers exercise a power conferred by paragraph (4)(a) or (b), instead of immediately—

- (a) taking the samples, articles or substances; or
- (b) requiring the production of the records,

they may require them (or, in the case of records, copies of them) to be produced at such time and place and by such means as they may reasonably specify.

### **Powers of entry: supplementary**

**13.**—(1) When enforcement officers enter premises by virtue of regulation 12(3)(a), they may take with them such other persons and such equipment or materials as they reasonably consider it necessary or expedient to have with them—

- (a) for the purpose of establishing whether there has been a contravention of the requirements of Part 2; and
- (b) to assist them in exercising any of their powers under regulation 12(3)(b) and (c).

(2) Enforcement officers who enter any premises by virtue of paragraph (3)(a) may direct that those premises, or any part of them, or anything in them, shall be left undisturbed for so long, and to such extent, as is reasonably necessary for the purpose of the exercise of any of their powers under regulation 12(3)(b) and (c).

(3) Where enforcement officers leave any premises that they have entered by virtue of regulation 12(3)(a) and such premises are unoccupied or their occupier is temporarily absent, they shall leave them as effectively secured against a trespasser as they found them.

(4) If enforcement officers or other persons who enter any premises by virtue of this regulation disclose to any person any information obtained by them in the premises with regard to any secret manufacturing process or trade secret, they shall, unless the disclosure was made in the performance of their duty, be guilty of an offence.

(5) It shall not be an offence under paragraph (4) for a person to disclose information in circumstances where—

- (a) the person from whom the information was received has consented to the disclosure; or
- (b) the information is disclosed more than 50 years after it was received.

### **Compliance notice**

**14.**—(1) Where there are reasonable grounds for suspecting that any of the requirements of Part 2 have not been complied with, the Secretary of State may serve a notice on the producer.

(2) A notice served under paragraph (1) (a “compliance notice”) shall—

- (a) state that the Secretary of State suspects a requirement of Part 2 (a “relevant requirement”) has been contravened;
- (b) state why the Secretary of State suspects that the relevant requirement has been contravened and specify the goods in respect of which it has been contravened;
- (c) require the producer to whom notice is given—
  - (i) to comply with the relevant requirement; or

- (ii) to provide evidence to the Secretary of State demonstrating that the relevant requirement has been complied with;
- (d) specify the period of time within which the producer must comply with the notice; and
- (e) warn the producer that, unless the requirements of the notice are complied with within the period which it specifies—
  - (i) where a contravention of regulation 7 is suspected, the Secretary of State may take further action under regulation 15; and
  - (ii) the producer may be prosecuted.

### **Enforcement notice**

**15.**—(1) Where the Secretary of State serves a compliance notice on a producer on the grounds of a suspected contravention of regulation 7 and—

- (a) the producer fails to comply with a requirement in the compliance notice to comply with regulation 7; or
- (b) notwithstanding any evidence which the producer has provided in response to a requirement in the compliance notice to provide evidence demonstrating compliance with regulation 7, the Secretary of State has reasonable grounds for suspecting that the contravention has occurred and is continuing,

the Secretary of State may serve a further notice on the producer.

- (2) A notice served under paragraph (1) (an “enforcement notice”) shall—
  - (a) specify the goods in respect of which the Secretary of State considers that regulation 7 has been contravened (the “infringing goods”);
  - (b) state, in relation to the infringing goods—
    - (i) why the Secretary of State considers that the producer has contravened regulation 7; and
    - (ii) any respect in which the Secretary of State considers that the producer has failed to comply with a compliance notice;
  - (c) specify the date, not less than 21 days from the date of the notice, by which the producer is required to comply with the notice; and
  - (d) state the judicial remedies available to the producer and the time limits to which those remedies are subject.
- (3) An enforcement notice may—
  - (a) require the infringing goods to be withdrawn from the market; or
  - (b) prohibit or restrict the putting on the market of the infringing goods.

### **Offences**

**16.**—(1) A person who contravenes or fails to comply with any of the requirements of—

- (a) regulation 7,
- (b) regulation 8, or
- (c) an enforcement notice,

shall be guilty of an offence.

(2) A person who intentionally obstructs an enforcement officer who is acting pursuant to any provision of this Part shall be guilty of an offence.

(3) A person who is subject to a requirement imposed under regulation 11 or paragraphs (3) to (5) of regulation 12 to provide information, documents or records (or copies of information, documents or records) shall be guilty of an offence—

(a) if that person fails, without reasonable excuse, to comply with that requirement; or

(b) if—

(i) any information, document or record which that person provides in response to that requirement is false or misleading in a material respect; or

(ii) any statement which that person makes in response to that requirement is false or misleading in a material respect,

and that person either knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.

### **Penalties**

17.—(1) A person who is guilty of an offence under regulation 16(1)(a) or (c) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(2) A person who is guilty of an offence under regulation 16(1)(b), (2) or (3) 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**

18.—(1) Where a person is convicted of an offence under regulation 16(1) in respect of any matters which appear to the court to be matters which it is in that person's power to remedy, the court may, in addition to or instead of imposing any punishment, order that person, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying those matters.

(2) The time fixed by an order under paragraph (1) 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) to remedy any matters, that person shall not be guilty of an offence under regulation 16(1) 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).

### **Recovery of expenses of enforcement**

19.—(1) This regulation applies where a court convicts a person of an offence under regulation 16(1)(a) or (c).

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted to reimburse the Secretary of State for any expenditure which the Secretary of State has incurred in investigating the offence, including in having the electrical and electronic equipment in respect of which the offence was committed tested.

### **Commencement of proceedings**

20. In England and Wales a magistrates' court may try an information, and in Northern Ireland a magistrates' court may try a complaint, in relation to an offence under these Regulations if the information is laid or if the complaint is made within twelve months from the time when the offence is committed. In Scotland summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.

**Defence of due diligence**

**21.**—(1) Subject to the following provisions of this regulation, in proceedings for an offence under these Regulations, a person who is shown to have taken all reasonable steps and exercised all due diligence to avoid committing the offence shall have a defence.

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

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

such a defence shall not, without leave of the court, be relied on unless, not later than seven clear days before the hearing of the proceedings (or, in Scotland, the trial diet), that person has served a notice in accordance with paragraph (3) on the person bringing the proceedings.

(3) A notice under this regulation 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 it is served.

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

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

**Liability of persons other than the principal offender**

**22.**—(1) Where the commission by a person of an offence under these Regulations is due to anything which another person did or failed to do in the course of a business, that other person shall be guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person.

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

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

the officer, as well as the body corporate, shall be guilty of the offence.

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

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

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

**Service of documents**

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

- (a) by delivering it to that person or by leaving it at that person's proper address or by sending it by post to that person at that address; or

- (b) if a person is a body corporate, by serving it in accordance with sub-paragraph (a) on the company secretary, clerk or other similar officer of that body corporate; or
- (c) if the person is a partnership, by serving it in accordance with sub-paragraph (a) on a partner or on a person having control or management of the partnership business.

(2) For the purposes of paragraph (1), and for the purposes of section 7 of the Interpretation Act 1978<sup>(1)</sup> (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 in accordance with these Regulations shall be that person's 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.

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(1) 1978 c.30.