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STATUTORY INSTRUMENTS

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**2017 No. 1206**

**The Radio Equipment Regulations 2017**

**PART 1**

Preliminary

**Citation and commencement**

1. These Regulations may be cited as the Radio Equipment Regulations 2017 and come into force on 26th December 2017.

**Interpretation and application**

2.—(1) In these Regulations—

“the 1987 Act” means the Consumer Protection Act 1987<sup>(1)</sup>;

“accreditation” has the meaning set out in point 10 of Article 2 of RAMS (as amended from time to time);

“accreditation certificate” means a certificate, issued by either the United Kingdom Accreditation Service (a company limited by guarantee incorporated in England and Wales under number 03076190) or by a national accreditation body in another Member State, attesting that a conformity assessment body meets the notified body requirements;

“authorised representative” means a person appointed in accordance with regulation 19;

“CE marking” means a marking which takes the form set out in Annex II of RAMS (as amended from time to time);

“competent national authority” means an authority having responsibility for enforcing the law of a Member State which implements the Directive;

“conformity assessment” means the process demonstrating whether the essential requirements relating to radio equipment have been fulfilled;

“conformity assessment body” means a body that performs conformity assessment activities;

“distributor” means any person in the supply chain, other than the manufacturer, authorised representative or the importer, who makes radio equipment available on the market;

“the Directive” means [Directive 2014/53/EU](#) of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment<sup>(2)</sup>;

“economic operator” means a manufacturer, authorised representative, importer or distributor;

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(1) 1987 c.43.

(2) OJ L 153, 22.5.2014, p.62.

“electromagnetic disturbance” has the meaning set out in point (5) of paragraph 1 of Article 3 of [Directive 2014/30/EU](#) of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to electromagnetic compatibility<sup>(3)</sup>;

“enforcing authority” means any person enforcing these Regulations under regulation 56 (enforcement);

“essential requirements” means the requirements set out in regulation 6;

“EU declaration of conformity” means a declaration of conformity required to be drawn up in accordance with regulation 42 by regulation [10\(1\)\(a\)](#) (EU declaration of conformity);

“European Commission” means the Commission of the European Union;

“harmful interference” has the meaning set out in point (r) of Article 2 of [Directive 2002/21/EC](#) of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services<sup>(4)</sup> (as amended from time to time);

“harmonised standard” has the meaning set out in Article 2(1)(c) of Regulation (EU) No 1025/2012 of the European Parliament and of the Council on European standardisation<sup>(5)</sup> (as amended from time to time);

“importer” means any person who—

- (a) is established within the EU; and
- (b) places radio equipment from a third country on the EU market;

“make available on the market” means any supply for distribution, consumption or use of radio equipment on the EU market in the course of a commercial activity, whether in return for payment or free of charge, and related expressions must be construed accordingly;

“manufacturer” means a person who—

- (a) manufactures radio equipment or has radio equipment designed or manufactured; and
- (b) markets that radio equipment under that person’s name or trade mark;

“market surveillance authority” has the meaning set out in regulation 55 (designation of market surveillance authorities”);

“national accreditation body” has the meaning set out in point 11 of Article 2 of RAMS (as amended from time to time);

“notified body requirements” means the requirements set out in Schedule 8 (notified body requirements);

“OFCOM” means the Office of Communications established under the Office of Communications Act 2002<sup>(6)</sup>;

“Official Journal” means the Official Journal of the European Union;

“place on the market” means the first making available on the EU market of radio equipment, and related expressions must be construed accordingly;

“put into service” means the first use of radio equipment in the EU by its end-user for the purposes for which it was intended, and related expressions must be construed accordingly;

“radiodetermination” means the determination of the position, velocity and/or other characteristics of an object, or the obtaining of information relating to those parameters, by means of the propagation properties of radio waves;

“radio communication” means communication by means of radio waves;

(3) OJ L 96, 29.3.2014, p.79.

(4) OJ L 108, 24.04.2002, p.33.

(5) OJ L 316, 14.11.2012, p.12.

(6) [2002 c.11](#).

“radio equipment” means—

- (a) an electrical or electronic product, which intentionally emits and/or receives radio waves for the purpose of radio communication and/or radiodetermination, or
- (b) an electrical or electronic product which must be completed with an accessory, such as antenna, so as to intentionally emit and/or receive radio waves for the purpose of radio communication and/or radiodetermination;

“radio waves” means electromagnetic waves of frequencies lower than 3,000 GHz, propagated in space without artificial guide;

“RAMS” means Regulation (EC) No 765/2008<sup>(7)</sup> of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products;

“recall” means taking any measure aimed at achieving the return of radio equipment that has already been made available to the end-user and related expressions must be construed accordingly;

“relevant conformity assessment procedure” means a conformity assessment procedure referred to in regulation 41 (conformity assessment procedures);

“relevant economic operator” means, in relation to radio equipment, an economic operator with obligations in respect of that radio equipment under Part 2;

“technical documentation” has the meaning set out in regulation 45 (technical documentation);

“technical specification” means a document that prescribes technical requirements to be fulfilled by radio equipment;

“weights and measures authority” means a local weights and measures authority within the meaning set out in section 69 of the Weights and Measures Act 1985<sup>(8)</sup>;

“withdraw” means taking any measure aimed at preventing radio equipment in the supply chain from being made available on the market and related expressions must be construed accordingly.

(2) In these Regulations, a reference to radio equipment being “in conformity with Part 2” means that—

- (a) the radio equipment is in conformity with the essential requirements, and
- (b) each relevant economic operator has complied with the obligations imposed on them under Part 2 which must be satisfied at or before the time at which they make the radio equipment available on the market.

(3) In these Regulations (except in Part 4 (notification of conformity assessment bodies) and Schedules 8 (notified body requirements) and 9 (operational obligations of notified bodies)), “notified body” means—

- (a) a notified body within the meaning set out in regulation 46 (notified bodies), or
- (b) a notified body under the laws of any other Member State which implements the Directive.

(4) In regulations 18 and 26 (monitoring in relation to manufacturers and importers respectively) “risk” means a risk which could arise from lawful and readily predictable human behaviour.

(5) In the other provisions of these Regulations, “risk” means a risk—

- (a) which could arise from lawful and readily predictable human behaviour, or
- (b) of non-conformity with the essential requirements.

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(7) OJ L 218, 13.8.2008, p.30.

(8) 1985 c.72; section 69 was amended by Schedule 1 to the Statute Law (Repeals) Act 1989 (c.43); paragraph 75 of Schedule 16 to the Local Government (Wales) Act 1994 (c.19); and paragraph 144 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39).

(6) In these Regulations, a reference to a Member State must be read as a reference to an EEA State and a reference to the EU must be read as a reference to the European Economic Area.

### Scope

3.—(1) These Regulations apply to radio equipment.

(2) These Regulations do not apply to—

- (a) radio equipment which has been placed on the market before the commencement date,
- (b) equipment listed in Schedule 1 (radio equipment outside the scope of these Regulations), or
- (c) radio equipment exclusively used for activities concerning public security, defence, State security (including the economic well-being of the State) or the activities of the State in the area of criminal law.

(3) Save as provided for in regulation 6(1)(a), radio equipment falling within the scope of these Regulations are not subject to [Directive 2014/35/EU](#) of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits<sup>(9)</sup> or the Electrical Equipment (Safety) Regulations 2016<sup>(10)</sup>.

(4) Save as provided for in regulation 6(1)(b), radio equipment falling within the scope of these Regulations are not subject to [Directive 2014/30/EU](#) of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to electromagnetic compatibility or the Electromagnetic Compatibility Regulations 2016<sup>(11)</sup>.

### Exception for trade fairs and exhibitions

4.—(1) Nothing in these Regulations prevents the display, of radio equipment which does not comply with these Regulations, at a trade fair, exhibition or similar event provided that a visible sign clearly indicates that the radio equipment—

- (a) is not in conformity with Part 2, and
- (b) may not be made available on the market or put into service until it has been brought into conformity with Part 2.

(2) Nothing in these Regulations prevents the demonstration, of radio equipment which does not comply with these Regulations, at a trade fair, exhibition or similar event provided that all reasonable measures have been taken to avoid harmful interference, electromagnetic disturbances and risk to health and safety of persons, domestic animals or property.

### Putting into service and use

5.—(1) Nothing in these Regulations prevents the putting into service and use of radio equipment in the United Kingdom which is in conformity with these Regulations when the radio equipment is properly installed, maintained and used for its intended purpose.

(2) Nothing in these Regulations prevents the application of additional requirements for the putting into service or use of radio equipment in the United Kingdom for reasons related to—

- (a) the effective and efficient use of the radio spectrum,
- (b) the avoidance of harmful interference,
- (c) the avoidance of electromagnetic disturbances, or

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<sup>(9)</sup> OJ L 96, 29.3.2014, p.357.

<sup>(10)</sup> S.I. 2016/1101.

<sup>(11)</sup> S.I. 2016/1091.

- (d) public health.

## PART 2

### Obligations of economic operators

#### CHAPTER 1

##### General

#### **Essential requirements**

- 6.—(1) Radio equipment must be constructed so as to ensure—
- (a) the protection of health and safety of persons and of domestic animals and the protection of property, including the objectives with respect to safety requirements set out in [Directive 2014/35/EU](#) of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits (but as if there were no voltage limit),
  - (b) an adequate level of electromagnetic compatibility as set out in [Directive 2014/30/EU](#) of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to electromagnetic compatibility.
- (2) Radio equipment must be constructed so that it both effectively uses and supports the efficient use of radio spectrum in order to avoid harmful interference.

#### CHAPTER 2

##### Manufacturers

#### **Design and manufacture in accordance with essential requirements**

7. Before placing radio equipment on the market, a manufacturer must ensure that it has been designed and manufactured in accordance with the essential requirements.

#### **Construction must allow operation in at least one Member State**

8. Before placing radio equipment on the market, a manufacturer must ensure it has been constructed so that the radio equipment can be operated in at least one Member State without causing an infringement of the applicable requirements on the use of the radio spectrum in the relevant Member State or Member States.

#### **Technical documentation and conformity assessment**

9. Before placing radio equipment on the market, a manufacturer must—
- (a) draw up the relevant technical documentation in accordance with regulation [45](#) (technical documentation), and
  - (b) ensure the relevant conformity assessment procedure is carried out.

#### **EU declaration of conformity and CE marking**

- 10.—(1) Where the compliance of radio equipment with the essential requirements has been demonstrated by a relevant conformity assessment procedure, the manufacturer must, before placing the radio equipment on the market—

- (a) draw up an EU declaration of conformity in accordance with regulation 42 (EU declaration of conformity), and
  - (b) affix the CE marking in accordance with regulation 44 (CE marking).
- (2) The manufacturer must keep the EU declaration of conformity up to date.
- (3) Where radio equipment is subject to more than one EU instrument requiring an EU declaration of conformity to be drawn up, the manufacturer must draw up a single EU declaration of conformity which—
- (a) meets the requirements of all of the EU instruments concerned,
  - (b) identifies the EU instruments, and
  - (c) includes references to the publication of those EU instruments in the Official Journal.

#### **Retention of technical documentation and EU declaration of conformity**

**11.** A manufacturer must, for a period of 10 years beginning on the day on which the radio equipment is placed on the market, keep and, upon request, make available to an enforcing authority the following in relation to radio equipment—

- (a) a copy of the EU declaration of conformity, and
- (b) the technical documentation.

#### **Identification of the radio equipment and manufacturer**

**12.—**(1) Before placing radio equipment on the market, a manufacturer must ensure that the radio equipment bears—

- (a) a type, batch or serial number, or
- (b) another element which allows the radio equipment to be identified.

(2) Before placing radio equipment on the market, a manufacturer must indicate on the radio equipment—

- (a) the name, registered trade name or registered trade mark of the manufacturer,
- (b) a postal address at which the manufacturer can be contacted.

(3) The information specified in paragraph (2) must be in a language which can be easily understood by end-users and the competent national authority in the Member State in which it is to be made available to such end-users.

(4) Where the size or nature of the radio equipment prohibits a manufacturer from complying with the requirement in paragraph (1) or paragraph (2), the manufacturer must provide the required information either on the radio equipment's packaging or in a document which accompanies the radio equipment.

(5) The manufacturer's postal address must indicate a single point at which the manufacturer can be contacted.

#### **Instructions and information to be included with the radio equipment**

**13.—**(1) When placing radio equipment on the market, a manufacturer must ensure that radio equipment is accompanied with instructions and safety information which—

- (a) are in a language which can be easily understood by consumers and other end-users in the Member State in which the radio equipment is to be made available to such consumers and other end-users,

- (b) include information required to use the radio equipment in accordance with its intended use,
  - (c) include a description of accessories and components, including software, which allow the radio equipment to operate as intended, and
  - (d) are clear and understandable.
- (2) In the case of radio equipment which can intentionally emit radio waves, the manufacturer must also include information about—
- (a) the frequency band or bands in which the radio equipment can operate, and
  - (b) the maximum radio-frequency power transmitted in the frequency band or bands in which the radio equipment operates.
- (3) When placing radio equipment on the market, a manufacturer must ensure that each item of radio equipment is accompanied by either a copy of the EU declaration of conformity or a simplified EU declaration of conformity drawn up in accordance with regulation 43 (simplified EU declaration of conformity).
- (4) Where the radio equipment is to be made available to consumers and other end-users in the United Kingdom, the language which can be easily understood is English.

**Information to be included where there are restrictions on putting into service or requirements for authorisation of use**

**14.**—(1) Where there are restrictions on putting into service or requirements for authorisation of use, a manufacturer must include information on the packaging of the radio equipment which identifies the Member States and the geographical area within a Member State where the restrictions on putting into service or the requirements for authorisation of use exist.

- (2) The information referred to in paragraph (1) must—
- (a) be completed in the instructions required by regulation 13,
  - (b) subject to paragraph (3), be presented in the manner and form specified in Commission Implementing Regulation specifying how to present the information provided for in Article 10(10) of [Directive 2014/53/EU](#) of the European Parliament and the Council (EU) 2017/1354(12).

(3) Paragraph (2)(b) of this Regulation applies to radio equipment placed on the market or after 8th August 2018.

**Duty to take action in respect of radio equipment placed on the market which is considered not to be in conformity**

**15.**—(1) A manufacturer who considers, or has reason to believe, that radio equipment which they have placed on the market is not in conformity with Part 2, if appropriate, must immediately take the corrective measures necessary to—

- (a) bring the radio equipment into conformity,
- (b) withdraw the radio equipment, or
- (c) recall the radio equipment.

(2) Where the radio equipment presents a risk, the manufacturer must immediately inform the market surveillance authority, and the competent national authorities of any other Member State in which the manufacturer made the radio equipment available on the market, of the risk, giving details of—

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(12) OJ L190/7 21.7.2017.

- (a) the respect in which the radio equipment is considered not to be in conformity with Part 2, and
- (b) any corrective measures taken and the results of those measures.

### **Provision of information and cooperation**

**16.**—(1) Further to a request from—

- (a) an enforcing authority, where radio equipment has been placed by a manufacturer on the market in the United Kingdom, or
- (b) a competent national authority, where the radio equipment has been placed by a manufacturer on the market in another Member State,

the manufacturer must, within such reasonable period as the authority may specify, provide the authority concerned with all the information and documentation necessary to demonstrate that the radio equipment is in conformity with Part 2.

(2) A request referred to in paragraph (1)—

- (a) is one that was made during the period of 10 years beginning on the day that the manufacturer places the radio equipment on the market, and
- (b) must be accompanied by the reasons for making the request.

(3) The information referred to in paragraph (1)—

- (a) may be provided in electronic form, and
- (b) must be in a language which can be easily understood by the authority concerned.

(4) A manufacturer must, at the request of the authority concerned, cooperate with that authority on any action taken to—

- (a) evaluate radio equipment in accordance with regulation 59 (evaluation of radio equipment presenting a risk),
- (b) eliminate the risks posed by radio equipment which the manufacturer has placed on the market.

### **Compliance procedures for series production**

**17.**—(1) A manufacturer must ensure, before placing radio equipment on the market, that procedures are in place to ensure that series production remains in conformity with Part 2.

(2) In doing so, the manufacturer must take adequate account of—

- (a) any change in radio equipment design or characteristics, and
- (b) any change in a harmonised standard or in another technical specification by reference to which the EU declaration of conformity was drawn up.

### **Monitoring**

**18.**—(1) When appropriate, with regard to the risks to the health and safety of end-users presented by radio equipment, a manufacturer must—

- (a) carry out sample testing of radio equipment manufactured by it which has been made available on the market,
- (b) investigate complaints that radio equipment manufactured by it is not in conformity with Part 2,
- (c) keep a register of—
  - (i) complaints that radio equipment is not in conformity with Part 2,



- (ii) radio equipment which is not in conformity with Part 2, and
  - (iii) radio equipment recalls, and
  - (d) keep distributors informed of any monitoring carried out under this regulation.
- (2) A manufacturer must keep an entry made in the register for a period of at least 10 years beginning on the day on which the obligation to make the entry arose.

### **Authorised representatives**

**19.**—(1) A manufacturer may, by written mandate, appoint a person established within the EU as their authorised representative to perform specified tasks on that manufacturer’s behalf.

- (2) The authorised representative must perform the tasks specified in the mandate.
- (3) The mandate must allow the authorised representative to do at least the following—
  - (a) perform the manufacturer’s obligations under regulation 11 (retention of technical documentation and EU declaration of conformity),
  - (b) perform the manufacturer’s obligations under regulation 16 (provision of information and cooperation).
- (4) The mandate must not include the obligations contained in—
  - (a) regulation 7 (design and manufacture in accordance with essential requirements),
  - (b) regulation 9 (technical documentation and conformity assessment), or
  - (c) regulation 10 (EU declaration of conformity and CE marking).
- (5) An authorised representative must comply with all the obligations imposed on the manufacturer by these Regulations which relate to the tasks that the authorised representative is appointed by the manufacturer to perform and, accordingly—
  - (a) as far as those obligations are concerned, references in these Regulations to the manufacturer are to be taken as including a reference to the authorised representative, and
  - (b) if the authorised representative contravenes or fails to comply with any of those obligations, the authorised representative may be proceeded against as though the authorised representative was the manufacturer.
- (6) A manufacturer who has appointed an authorised representative to perform, on the manufacturer’s behalf, an obligation under these Regulations remains responsible for the proper performance of that obligation.

## CHAPTER 3

### Importers

#### **Prohibition on placing on the market radio equipment which is not in conformity**

**20.** An importer must not place radio equipment on the market unless it is in conformity with the essential requirements.

#### **Requirements which must be satisfied before an importer places radio equipment on the market**

- 21.** Before placing radio equipment on the market, an importer must ensure that—
- (a) a relevant conformity assessment has been carried out by the manufacturer,

- (b) that the radio equipment has been constructed so that it can be operated in at least one Member State without causing an infringement of the applicable requirements on the use of the radio spectrum in the relevant Member State or Member States,
- (c) the manufacturer has drawn up the technical documentation,
- (d) the radio equipment—
  - (i) bears the CE marking, and
  - (ii) is accompanied by the information and documents referred to in regulations 13 (instructions and information to be included with the radio equipment) and 14 (information to be included where there are restrictions on putting into service or requirements for authorisation of use),
- (e) the manufacturer has complied with the requirements set out in regulation 12 (identification of the radio equipment and manufacturer).

### **Prohibition on placing on the market radio equipment considered not to be in conformity with the essential requirements**

22.—(1) Where an importer considers, or has reason to believe, that radio equipment is not in conformity with the essential requirements, the importer must not place the radio equipment on the market.

(2) Where the radio equipment presents a risk, the importer must inform the manufacturer and the market surveillance authority of that risk.

### **Information identifying importer**

23.—(1) Before placing radio equipment on the market, an importer must indicate on the radio equipment—

- (a) the name, registered trade name or registered trade mark of the importer, and
- (b) a postal address at which the importer can be contacted.

(2) The information specified in paragraph (1) must be in a language which can be easily understood by end-users and the competent national authority in the Member State in which it is to be made available to such end-users.

(3) Where it is not possible to indicate the information specified in paragraph (1) on the radio equipment, the importer must indicate that information—

- (a) on the packaging, or
- (b) in a document accompanying the radio equipment.

### **Instructions and safety information**

24.—(1) When placing radio equipment on the market, an importer must ensure that it is accompanied by instructions and safety information in a language which can be easily understood by consumers and other end-users in the Member State in which the radio equipment is to be made available to such consumers and other end-users.

(2) Where the radio equipment is being made available to consumers and other end-users in the United Kingdom, the language which can be easily understood by consumers and other end-users is English.

### **Storage and transport**

**25.** Where an importer has responsibility for radio equipment, the importer must ensure that the conditions under which the radio equipment is stored or transported do not jeopardise the radio equipment's conformity with the essential requirements.

### **Monitoring**

**26.**—(1) When appropriate, with regard to the risks to the health and safety of end-users presented by radio equipment, an importer must—

- (a) carry out sample testing of radio equipment made available by the importer on the market,
- (b) investigate complaints that radio equipment made available on the market by the importer is not in conformity with Part 2,
- (c) keep a register of—
  - (i) complaints that radio equipment is not in conformity with Part 2,
  - (ii) radio equipment which is not in conformity with Part 2, and
  - (iii) radio equipment recalls, and
- (d) keep distributors informed of any monitoring carried out under this regulation.

(2) An importer must keep an entry made in the register for a period of at least 10 years beginning on the day on which the obligation to make the entry arose.

### **Duty to take action in respect of radio equipment placed on the market which is considered not to be in conformity**

**27.**—(1) An importer who considers, or has reason to believe, that radio equipment which they have placed on the market is not in conformity with Part 2 must immediately take the corrective measures necessary to—

- (a) bring the radio equipment into conformity,
- (b) withdraw the radio equipment, or
- (c) recall the radio equipment.

(2) Where the radio equipment presents a risk, the importer must immediately inform the market surveillance authority, and the competent national authorities of any other Member State in which the importer made the radio equipment available on the market, of the risk, giving details of—

- (a) the respect in which the radio equipment is considered not to be in conformity with Part 2, and
- (b) any corrective measures taken.

### **Retention of technical documentation and EU declaration of conformity**

**28.** An importer must, for a period of 10 years beginning on the day on which the radio equipment is placed on the market, upon request, make available to an enforcing authority the following in relation to radio equipment—

- (a) a copy of the EU declaration of conformity, and
- (b) the technical documentation.

### **Provision of information and cooperation**

**29.**—(1) Further to a reasoned request from an enforcing authority or a competent national authority of another Member State, an importer, within such period as the authority may specify,

must provide the authority with all the information and documentation necessary to demonstrate that the radio equipment is in conformity with Part 2.

- (2) A request referred to in paragraph (1)—
  - (a) may only be made during the period of 10 years beginning on the day that the importer places the radio equipment on the market, and
  - (b) must be accompanied by the reasons for making the request.
- (3) The information referred to in paragraph (1)—
  - (a) may be provided in electronic form, and
  - (b) must be in a language which can be easily understood by the authority concerned.
- (4) An importer must, at the request of the enforcing authority or the competent national authority, cooperate with the authority on any action taken to—
  - (a) evaluate radio equipment in accordance with regulation 59 (evaluation of radio equipment presenting a risk),
  - (b) eliminate the risks posed by radio equipment which the importer has placed on the market.

## CHAPTER 4

### Distributors

#### **Duty to act with due care**

**30.** When making radio equipment available on the market, a distributor must act with due care to ensure that it is in conformity with Part 2.

#### **Requirements which must be satisfied before a distributor makes radio equipment available on the market**

**31.—**(1) Before making radio equipment available on the market, the distributor must verify that—

- (a) the radio equipment—
    - (i) bears the CE marking,
    - (ii) is accompanied by the required documents,
    - (iii) is accompanied by instructions and safety information in a language which can be easily understood by consumers and other end-users in the Member State in which the radio equipment is to be made available on the market,
  - (b) the manufacturer has complied with the requirements set out in—
    - (i) regulation 8 (construction must allow operation in at least one Member State),
    - (ii) regulation 12 (identification of the radio equipment and manufacturer),
    - (iii) regulation 13 (instructions and information to be included with the radio equipment),
    - (iv) regulation 14 (information to be included where there are restrictions on putting into service or requirements for authorisation of use), and
  - (c) the importer has complied with the requirements set out in regulation 23 (information identifying importer).
- (2) Where the radio equipment is to be made available to consumers and other end-users in the United Kingdom, the language which can easily be understood is English.
- (3) In paragraph (1)(a)(ii), “required documents” means any documents that are required to be provided pursuant to regulations 12(4), 14 and 23(3).

### **Prohibition on making available on the market where radio equipment not considered to be in conformity with the essential requirements**

**32.**—(1) Where a distributor considers, or has reason to believe, that radio equipment is not in conformity with the essential requirements, the distributor must not make the radio equipment available on the market.

(2) Where the radio equipment presents a risk, the distributor must inform the following persons of the risk—

- (a) the manufacturer or, where appropriate, the importer, and
- (b) the market surveillance authority.

### **Storage and transport**

**33.** Where a distributor has responsibility for radio equipment, the distributor must ensure that the conditions under which it is stored or transported do not jeopardise the radio equipment's conformity with the essential requirements.

### **Duty to take action in respect of radio equipment made available on the market which is not in conformity**

**34.**—(1) A distributor who considers, or has reason to believe, that radio equipment which the distributor has made available on the market is not in conformity with Part 2 must make sure that the necessary corrective measures are taken to—

- (a) bring that radio equipment into conformity,
- (b) withdraw the radio equipment, or
- (c) recall the radio equipment.

(2) Where the radio equipment presents a risk, the distributor must immediately inform the market surveillance authority, and the competent national authorities of the other Member States in which the distributor has made the radio equipment available on the market, of that risk, giving details of—

- (a) the respect in which the radio equipment is considered not to be in conformity with Part 2, and
- (b) any corrective measures taken.

### **Provision of information and cooperation**

**35.**—(1) Further to a reasoned request from an enforcing authority or a competent national authority of another Member State, a distributor, within such period as the authority may specify, must provide the authority with all the information and documentation necessary to demonstrate that the radio equipment is in conformity with Part 2.

(2) A request referred to in paragraph (1)—

- (a) may only be made during the period of 10 years beginning on the day on which the radio equipment was made available on the market, and
- (b) must be accompanied by the reasons for making the request.

(3) The information referred to in paragraph (1)—

- (a) may be provided in electronic form, and
- (b) must be in a language which can be easily understood by the authority concerned.

(4) A distributor must, at the request of the enforcing authority or a competent national authority of another Member State, cooperate with the authority on any action taken to—

- (a) evaluate radio equipment in accordance with regulation 59 (evaluation of radio equipment presenting a risk), and
- (b) eliminate the risks posed by radio equipment which the distributor has made available on the market.

## CHAPTER 5

### Importers and distributors

#### **Cases in which obligations of manufacturers apply to importers and distributors**

**36.** An economic operator (“A”) who would, but for this regulation, be considered an importer or distributor, is to be considered a manufacturer for the purposes of these Regulations and is subject to the obligations of a manufacturer under Part 2, where A—

- (a) places radio equipment on the market under A’s own name or trademark, or
- (b) modifies radio equipment already placed on the market in such a way that it may affect whether the radio equipment is in conformity with Part 2.

## CHAPTER 6

### All economic operators

#### **Translation of declaration of conformity**

**37.**—(1) Before placing radio equipment on the market or making radio equipment available on the market, an economic operator must ensure that the EU declaration of conformity and, where appropriate, the simplified EU declaration of conformity is prepared in, or translated into, the language required by the Member State in which it is to be placed on the market or made available on the market.

(2) Where the radio equipment is to be placed on the market or made available on the market in the United Kingdom, the language required is English.

#### **Identification of economic operators**

**38.**—(1) An economic operator (“E”), who receives a request from the market surveillance authority before the end of the relevant period, must, within such period as the authority may specify, identify to the authority—

- (a) any economic operator who has supplied E with radio equipment, and
  - (b) any economic operator to whom E has supplied radio equipment.
- (2) The relevant period is—
- (a) for information under paragraph (1)(a), 10 years beginning on the day on which E was supplied with the radio equipment,
  - (b) for information under paragraph (1)(b), 10 years beginning on the day on which E supplied the radio equipment.

#### **Prohibition on improper use of CE marking**

**39.**—(1) An economic operator must not affix the CE marking to radio equipment unless—

- (a) that economic operator is the manufacturer, and
- (b) the conformity of the radio equipment with the essential requirements has been demonstrated by a relevant conformity assessment procedure.

(2) An economic operator must not affix to radio equipment a marking other than the CE marking which purports to attest that the radio equipment is in conformity with the essential requirements.

(3) An economic operator must not affix to radio equipment a marking, sign or inscription which is likely to mislead any other person as to the meaning or form of the CE marking.

(4) An economic operator must not affix to radio equipment any other marking if the visibility, legibility and meaning of the CE marking would be impaired as a result.

## PART 3

### Conformity assessment

#### Presumption of conformity

**40.**—(1) Radio equipment which is in conformity with a harmonised standard (or part of such a standard), the reference to which has been published in the Official Journal, must be presumed to be in conformity with the essential requirements covered by that standard (or that part of that standard).

(2) The presumption in paragraph (1) is rebuttable.

#### Conformity assessment procedures

**41.**—(1) The manufacturer must perform a conformity assessment of the radio equipment, in all its possible configurations, with a view to meeting the essential requirements.

(2) The conformity assessment must take into account all intended operating conditions.

(3) In relation to the assessment of compliance with regulation 6(1)(a), the conformity assessment must also take into account all reasonably foreseeable conditions.

(4) In relation to the assessment of compliance with regulation 6(1)(a) or (b), one of the following procedures must be used—

- (a) internal production control set out in Schedule 2 (conformity assessment module A),
- (b) EU-type examination that is followed by the conformity to type based on internal production control set out in Schedule 3 (conformity assessment modules B and C),
- (c) conformity based on full quality assurance set out in Schedule 4 (conformity assessment module H).

(5) In relation to the assessment of compliance with regulation 6(2), where the manufacturer has applied harmonised standards, the references of which have been published in the Official Journal, the manufacturer must use one of the procedures in paragraph (4) for the conformity assessment.

(6) In relation to the assessment of compliance with regulation 6(2), where the manufacturer has not applied or has only partly applied harmonised standards, the references of which have been published in the Official Journal, or where harmonised standards do not exist, the manufacturer must use the procedure in either paragraph (4)(b) or paragraph (4)(c).

#### EU declaration of conformity

**42.** The EU declaration of conformity for radio equipment must—

- (a) state that the fulfilment of the essential requirements has been demonstrated in respect of that radio equipment,
- (b) contain the elements specified and have the model structure set out in Schedule 6 (EU declaration of conformity) for the relevant conformity assessment procedure followed in respect of that radio equipment.

### **Simplified EU declaration of conformity**

43.—(1) Where only a simplified EU declaration of conformity is provided pursuant to regulation 13(3), it must contain the elements specified and have the model structure set out in Schedule 7 (simplified EU declaration of conformity).

(2) The full text of the EU declaration of conformity must be made available at the internet address referred to in the simplified EU declaration of conformity.

### **CE marking**

44.—(1) The CE marking must be affixed visibly, legibly and indelibly to the radio equipment or to its data plate, unless that is not possible or not warranted on account of the nature of the radio equipment.

(2) The CE marking must be affixed visibly and legibly to the radio equipment packaging.

(3) On account of the nature of the radio equipment, the height of the CE marking affixed to radio equipment may be lower than 5 mm, provided that the marking remains visible and legible.

(4) When the conformity assessment procedure in Schedule 4 (conformity assessment module H) has been applied, the CE marking must be followed by the identification number of the notified body which carried out the relevant conformity assessment procedure for the radio equipment.

(5) The identification number in paragraph (4) must have the same height as the CE marking and be affixed—

- (a) by the notified body itself, or
- (b) under the instructions of the notified body, by the manufacturer or the manufacturer's authorised representative.

### **Technical documentation**

45.—(1) The technical documentation produced by the manufacturer for the radio equipment must contain all the relevant data or details of the means used by the manufacturer to ensure that the radio equipment complies with the essential requirements.

(2) The technical documentation in paragraph (1) must—

- (a) contain, at least, the elements set out in Schedule 5 (contents of technical documentation),
- (b) be drawn up before the radio equipment is placed on the market, and
- (c) be continuously updated.

(3) The technical documentation in paragraph (1) and correspondence relating to any EU-type examination procedure must be drawn up in an official language of the Member State in which the notified body is established or in a language acceptable to that body.

(4) Where the technical documentation does not comply with the requirements in paragraphs (1), (2) or (3) and in doing so fails to present sufficient relevant data or details of the means used to ensure compliance of radio equipment with the essential requirements, the market surveillance authority may ask the manufacturer or importer to have a test performed, within a specified period, by a body acceptable to the market surveillance authority, at the expense of the manufacturer or the importer to verify conformity with the essential requirements.



## PART 4

### Notification of conformity assessment bodies

#### Notified bodies

- 46.**—(1) For the purposes of this Part, a notified body is a conformity assessment body—
- (a) which has been notified by the Secretary of State to the European Commission and to the other Member States—
    - (i) under regulation 47 (notification), or
    - (ii) before the commencement date, in accordance with Article 22 of the Directive, and
  - (b) in respect of which no objections are raised by the European Commission or other Member States—
    - (i) within 2 weeks of the date of notification, where the notification is accompanied by an accreditation certificate, or
    - (ii) within 2 months of the date of notification, where the notification is not accompanied by an accreditation certificate.
- (2) Paragraph (1) has effect subject to regulation 52 (changes to notifications).

#### Notification

- 47.**—(1) The Secretary of State may notify to the European Commission and the other Member States only those conformity assessment bodies that qualify for notification.
- (2) A conformity assessment body qualifies for notification if the first and the second conditions below are met.
- (3) The first condition is that the conformity assessment body applied to the Secretary of State to become a notified body and that application was accompanied by—
- (a) a description of—
    - (i) the conformity assessment activities that the body intends to carry out,
    - (ii) the conformity assessment module or modules for which the body claims to be competent, and
    - (iii) the radio equipment for which the body claims to be competent, and
  - (b) either—
    - (i) an accreditation certificate, or
    - (ii) the documentary evidence necessary for the Secretary of State to verify, recognise and regularly monitor the body's compliance with the notified body requirements.
- (4) The second condition is that the Secretary of State is satisfied that the conformity assessment body meets the notified body requirements.
- (5) For the purposes of paragraph (4), the Secretary of State may accept an accreditation certificate, provided in accordance with paragraph (3)(b), as sufficient evidence that the conformity assessment body meets the notified body requirements.
- (6) When deciding whether to notify a conformity assessment body that qualifies for notification to the European Commission and the other Member States, the Secretary of State may—
- (a) have regard to any other matter which appears to the Secretary of State to be relevant, and
  - (b) set conditions that the conformity assessment body must meet.

(7) The Secretary of State must inform the European Commission of the United Kingdom's procedures for the assessment and notification of conformity assessment bodies, and any changes to those procedures.

### **Presumption of conformity of notified bodies**

**48.**—(1) Where a conformity assessment body demonstrates its conformity with the criteria laid down in a harmonised standard (or part of such a standard), the reference of which has been published in the Official Journal, the Secretary of State must presume that the conformity assessment body meets the notified body requirements covered by that standard (or part of that standard).

(2) The presumption in paragraph (1) is rebuttable.

### **Contents of notification**

**49.** A notification under regulation 47 (notification) must include—

- (a) details of—
  - (i) the conformity assessment activities,
  - (ii) the conformity assessment module,
  - (iii) the radio equipment,

in respect of which the conformity assessment body has been approved by the Secretary of State for notification, and

- (b) either—
  - (i) an accreditation certificate, where the notification is based on the accreditation, or
  - (ii) documentary evidence which attests to the conformity assessment body's competence, and to the arrangements in place to ensure that the conformity assessment body will be monitored regularly and will continue to meet the notified body requirements.

### **Monitoring**

**50.**—(1) The Secretary of State must monitor each notified body with a view to verifying that the notified body—

- (a) continues to meet the notified body requirements,
- (b) meets any conditions set in accordance with regulation 47(6)(b), and
- (c) carries out its functions in accordance with these Regulations.

(2) The Secretary of State must inform the European Commission of the United Kingdom's procedures for the monitoring of notified bodies, and any changes to those procedures.

### **United Kingdom Accreditation Service**

**51.** The Secretary of State may authorise the United Kingdom Accreditation Service (a company limited by guarantee incorporated in England and Wales under number 03076190) to carry out the following activities on behalf of the Secretary of State—

- (a) assessing whether a conformity assessment body meets the notified body requirements,
- (b) monitoring notified bodies in accordance with regulation 50 (monitoring).

### **Changes to notifications**

**52.**—(1) The Secretary of State must restrict, suspend or withdraw a notified body's status as a notified body under regulation 46 where the Secretary of State determines that the body—

- (a) no longer meets a notified body requirement, or
- (b) is failing to fulfil its obligations under these Regulations, other than a condition set in accordance with regulation 47(6)(b).

(2) The Secretary of State may restrict, suspend or withdraw the notified body's status as a notified body under regulation 46—

- (a) with the consent of a notified body, or
- (b) where the Secretary of State determines that a notified body no longer meets a condition set in accordance with regulation 47(6)(b).

(3) In deciding what action is required under paragraph (1) or (2), the Secretary of State must have regard to the seriousness of the failure.

(4) Before taking action under paragraph (1) or (2), the Secretary of State must—

- (a) give notice in writing to the notified body that the Secretary of State intends to take such action and the reasons for taking such action, and
- (b) give the notified body an opportunity to make representations within a reasonable period from the date of that notice and consider any such representations.

(5) Where the Secretary of State takes action under paragraph (1) or (2), the Secretary of State must immediately inform the European Commission and the other Member States.

(6) Where the Secretary of State has taken action in respect of a notified body under paragraph (1) or (2), or where a notified body has ceased its activity, the body must—

- (a) as directed by the Secretary of State, transfer its files relating to the activities it has undertaken as a notified body to another notified body or to the Secretary of State, or
- (b) keep the documents relating to the activities it has undertaken as a notified body available for the Secretary of State and the enforcing authority for a period of 10 years from the date on which the product to which the document relates was placed on the market.

### **Operational obligations of notified bodies**

**53.** When a notified body carries out a relevant conformity assessment procedure, Schedule 9 (operational obligations of notified bodies) has effect.

### **Subsidiaries and contractors**

**54.**—(1) Where a notified body subcontracts specific conformity assessment activities, or has such activities carried out by a subsidiary, the activities are only to be treated as having been carried out by a notified body for the purposes of regulation 41 (conformity assessment procedures) where the conditions in paragraphs (2) and (3) are met.

(2) The notified body must—

- (a) ensure that the subcontractor or subsidiary satisfies the notified body requirements, and
- (b) inform the Secretary of State accordingly.

(3) The notified body must have obtained the agreement of the client to the use of a subcontractor or subsidiary.

(4) Where a notified body subcontracts specific conformity assessment activities, or has such activities carried out by a subsidiary, the notified body must for a period of at least 10 years beginning

on the day on which the activities are carried out, keep available for inspection by the Secretary of State all the relevant documentation concerning—

- (a) the assessment of the qualifications of the subcontractor or the subsidiary, and
- (b) the conformity assessment activities carried out by the subcontractor or subsidiary under Schedule 3 (conformity assessment modules B and C) or Schedule 4 (conformity assessment module H).

(5) When monitoring a notified body in accordance with regulation 50, the Secretary of State must treat the notified body as responsible for the activities performed by a subcontractor or subsidiary, wherever the subcontractor or subsidiary is established.

## PART 5

### Market surveillance and enforcement

#### Designation of market surveillance authorities

55.—(1) The market surveillance authority is—

- (a) within its area in Great Britain, the weights and measures authority, and
- (b) within its area in Northern Ireland, the district council.

(2) The market surveillance authority must make adequate arrangements for market surveillance under these Regulations and RAMS (in its application to radio equipment).

(3) When a market surveillance authority carries out market surveillance under these Regulations, Part 2 of Schedule 10 (notices which may be served by enforcing authorities) has effect.

#### Designation of enforcing authorities

56.—(1) It is the duty of the following authorities to enforce these Regulations and RAMS (in its application to radio equipment)—

- (a) in Great Britain—
  - (i) OFCOM, insofar as action taken to enforce these Regulations relates to the protection and management of the radio spectrum,
  - (ii) within their area, the weights and measures authorities.
- (b) in Northern Ireland—
  - (i) OFCOM, insofar as action taken to enforce these Regulations relates to the protection and management of the radio spectrum,
  - (ii) within their area, the district councils.

(2) The Secretary of State, or a person appointed by the Secretary of State to act on behalf of the Secretary of State, may enforce these Regulations and RAMS (in its application to radio equipment).

(3) In Scotland, only the Lord Advocate may commence proceedings for an offence.

#### Enforcement powers

57.—(1) For the purposes of enforcing these Regulations, Schedule 10 (enforcement and investigatory powers) applies.

(2) Where the enforcing authority has reasonable grounds to suspect that the CE marking has been affixed to radio equipment which does not satisfy the essential requirements, it may serve a compliance notice on—

- (a) the manufacturer, if the manufacturer is established in the United Kingdom,
- (b) the manufacturer's authorised representative in the United Kingdom, or
- (c) the importer.

(3) Where a compliance notice is served in accordance with paragraph (2), no other notice as referred to in Part 2 of Schedule 10 can be issued and no proceedings pursuant to regulation 63 (enforcement action in respect of formal non-compliance) can be brought, until the person on whom that notice has been served has failed to comply with its requirements.

(4) A compliance notice must—

- (a) state that the enforcing authority suspects that the CE marking has been affixed pursuant to regulation 44 (CE marking) in circumstances where that radio equipment does not comply with the requirements of these Regulations,
- (b) state the reasons for that suspicion,
- (c) identify the requirements with which it is suspected that the radio equipment does not comply,
- (d) specify a date by which any necessary action to remedy non-compliance must have been taken,
- (e) require the person on whom the notice is served to—
  - (i) take the necessary action to ensure that the radio equipment to which the notice relates conforms with the requirements of these Regulations and RAMS concerning the CE marking and to end the infringement by the date specified in the notice, or
  - (ii) to provide evidence, by the date specified in the notice, that demonstrates to the satisfaction of the enforcement authority that all provisions of these Regulations which apply to the radio equipment have been complied with, and
- (f) warn the person on whom the notice is served that if the radio equipment does not comply with the requirements of these Regulations by the date specified in the notice, further enforcement action may be taken under these Regulations in respect of the radio equipment referred to in the notice or any radio equipment of the same type placed on the market by that person.

(5) A compliance notice may include directions as to the measures to be taken by the person upon whom it is served in order to ensure that the radio equipment complies with the requirements of these Regulations which apply to it, by the date specified in the notice.

(6) In this regulation, “enforcement officer” means—

- (a) an officer of an enforcing authority who is authorised in writing by that authority to act as an enforcement officer for the purposes of this Part,
- (b) a person appointed by the Secretary of State who is authorised in writing by the Secretary of State to act as an enforcement officer for the purposes of this Part.

### **Exercise of enforcement powers**

**58.** When enforcing these Regulations, the enforcing authority must exercise its powers in a manner which is consistent with—

- (a) regulation 59 (evaluation of radio equipment presenting a risk),
- (b) regulation 60 (enforcement action in respect of radio equipment which is not in conformity and which presents a risk),
- (c) regulation 61 (EU safeguard procedure),

- (d) regulation 62 (enforcement action in respect of radio equipment which is in conformity, but presents a risk),
- (e) regulation 63 (enforcement action in respect of formal non-compliance),
- (f) regulation 64 (restrictive measures).

### **Evaluation of radio equipment presenting a risk**

**59.**—(1) Where a market surveillance authority has sufficient reason to believe that radio equipment presents a risk, that authority must carry out an evaluation in relation to the radio equipment covering the relevant requirements of Part 2 applying in respect of that radio equipment.

(2) Where an enforcing authority other than the market surveillance authority has sufficient reason to believe that radio equipment presents a risk, that authority may carry out an evaluation in relation to the radio equipment covering the relevant requirements of Part 2 applying in respect of that radio equipment.

### **Enforcement action in respect of radio equipment which is not in conformity and which presents a risk**

**60.**—(1) Where, in the course of the evaluation referred to in regulation 59, an enforcing authority finds that the radio equipment is not in conformity with Part 2, it must without delay require a relevant economic operator to—

- (a) take appropriate corrective actions to bring the radio equipment into conformity with those requirements,
- (b) withdraw the radio equipment, or
- (c) recall the radio equipment,

within such reasonable period as the authority prescribes, which is commensurate with the nature of the risk presented by the radio equipment.

(2) The enforcing authority must inform the notified body which carried out the conformity assessment procedure in respect of the radio equipment of—

- (a) the respect in which the radio equipment is not in conformity with Part 2, and
- (b) the actions which the enforcing authority has required the economic operator to take.

(3) Where the enforcing authority is not the Secretary of State and it considers that the lack of conformity referred to in paragraph (1) is not restricted to the United Kingdom, it must notify the Secretary of State of—

- (a) the results of the evaluation, and
- (b) the actions which it has required the economic operator to take.

(4) Where the Secretary of State receives notification under paragraph (3), or otherwise considers that the lack of conformity referred to in paragraph (1) is not restricted to the United Kingdom, the Secretary of State must inform the European Commission and the other Member States of—

- (a) the results of the evaluation, and
- (b) any actions which the enforcing authority has required the economic operator to take.

(5) Where the relevant economic operator does not take adequate corrective action within the prescribed period, the enforcing authority must take appropriate measures to—

- (a) prohibit or restrict the radio equipment being made available on the market in the United Kingdom,
- (b) withdraw the radio equipment from the United Kingdom market, or

(c) recall the radio equipment.

(6) Where the enforcing authority is not the Secretary of State and it takes measures under paragraph (5), it must notify the Secretary of State of those measures without delay.

(7) Where the Secretary of State receives notification under paragraph (6), or takes measures under paragraph (5), the Secretary of State must notify the European Commission and the other Member States of those measures without delay.

(8) The notifications under paragraphs (6) and (7) must include details about the radio equipment and, in particular—

- (a) the data necessary for the identification of the radio equipment which is not in conformity with Part 2,
- (b) the origin of the radio equipment,
- (c) the nature of the lack of conformity alleged and the risk involved,
- (d) the nature and duration of the measures taken,
- (e) the arguments put forward by the relevant economic operator, and
- (f) whether the lack of conformity is due to either of the following—
  - (i) failure of the radio equipment to meet the essential requirements, or
  - (ii) shortcomings in the harmonised standards referred to in regulation 40 (presumption of conformity) conferring a presumption of conformity.

### **EU safeguard procedure**

**61.**—(1) Where another Member State has initiated the procedure under Article 40 of the Directive (as amended from time to time), each enforcing authority (other than the Secretary of State) must, without delay, inform the Secretary of State of—

- (a) any measure taken by the enforcing authority in respect of the radio equipment, and
- (b) any additional information which the enforcing authority has at its disposal relating to the lack of conformity of the radio equipment.

(2) Where another Member State has initiated the procedure under Article 40 of the Directive (as amended from time to time), the Secretary of State must, without delay, inform the European Commission and the other Member States of—

- (a) any measure taken by an enforcing authority in respect of the radio equipment,
- (b) any additional information which an enforcing authority has at its disposal relating to the lack of conformity of the radio equipment, and
- (c) any objections that the Secretary of State may have to any measure taken by the Member State initiating the procedure.

(3) Where a measure taken by another Member State in respect of radio equipment is deemed justified under Article 40(7) of the Directive (as amended from time to time) (no objections raised by Member States or the European Commission in respect of a provisional measure taken by an enforcing authority), the market surveillance authority must ensure that appropriate measures, such as withdrawal or recall, are taken in respect of the radio equipment without delay.

(4) Where a measure taken by another Member State in respect of radio equipment is considered justified by the European Commission under Article 41(1) of the Directive (as amended from time to time) (consideration by the European Commission of objections raised by a Member State about, or compatibility with EU law of, measures taken by an economic operator, or a provisional measure taken by an enforcing authority), the market surveillance authority must take the necessary measures to ensure that the radio equipment is withdrawn or recalled from the United Kingdom market.

(5) Where the market surveillance authority is not the Secretary of State and the market surveillance authority has taken action under paragraph (3) or (4), it must inform the Secretary of State.

(6) Where the Secretary of State receives notification under paragraph (5) or has taken action under paragraphs (3) or (4), the Secretary of State must inform the European Commission of the action taken.

(7) If a measure taken by an enforcing authority under regulation 60 (enforcement action in respect of radio equipment which is not in conformity and which presents a risk) is considered unjustified by the European Commission under Article 41(1) of the Directive (as amended from time to time), the enforcing authority must withdraw that measure.

### **Enforcement action in respect of radio equipment which is in conformity, but presents a risk**

**62.**—(1) Where, having carried out an evaluation under regulation 59 (evaluation of radio equipment presenting a risk), an enforcing authority finds that although the radio equipment is in conformity with Part 2, it presents a risk, the enforcing authority must require a relevant economic operator to take appropriate measures to—

- (a) ensure that the radio equipment, when placed on the market, no longer presents a risk,
- (b) withdraw the radio equipment within a prescribed period, or
- (c) recall the radio equipment within a prescribed period.

(2) Where an enforcing authority is not the Secretary of State and it takes measures under paragraph (1), it must notify the Secretary of State immediately.

(3) Where the Secretary of State receives notification under paragraph (2) or takes measures under paragraph (1), the Secretary of State must notify the European Commission and the other Member States immediately.

(4) The notifications referred to in paragraphs (2) and (3) must include details about the radio equipment and, in particular—

- (a) the data necessary for the identification of the radio equipment concerned,
- (b) the origin and the supply chain of the radio equipment,
- (c) the nature of the risk involved, and
- (d) the nature and duration of the measures taken by the enforcing authority.

(5) In this regulation, “prescribed period” means a period which is—

- (a) prescribed by the enforcing authority, and
- (b) reasonable and commensurate with the nature of the risk presented by the radio equipment.

### **Enforcement action in respect of formal non-compliance**

**63.**—(1) Where an enforcing authority makes one of the following findings relating to radio equipment, it must require a relevant economic operator to put an end to the non-compliance within such reasonable period as the authority specifies—

- (a) the CE marking—
  - (i) has not been affixed, or
  - (ii) has been affixed otherwise than in accordance with regulations 39 (prohibition on improper use of CE marking) and 44 (CE marking),
- (b) where the conformity assessment procedure set out in Schedule 4 (full quality assurance) is applied, the identification number of the notified body—



- (i) has not been affixed, or
  - (ii) has been affixed otherwise than in accordance with regulation 44 (CE marking),
  - (c) the EU declaration of conformity—
    - (i) has not been drawn up, or
    - (ii) has been drawn up otherwise than in accordance with regulations 10 (EU declaration of conformity and CE marking) and 42 (EU declaration of conformity),
  - (d) the technical documentation is either not available or not complete,
  - (e) the following information that is required to be included is absent, false or incomplete—
    - (i) the information specified in regulation 12(1) or (2) (identification of the radio equipment and manufacturer), or
    - (ii) the information specified in regulation 23(1) (information identifying importer),
  - (f) the information specified in regulation 13(1), (2) or (3) (instructions and information to be included with the radio equipment) is absent,
  - (g) the requirements set out in regulation 38 (identification of economic operators) on the identification of economic operators have not been met.
- (2) Until the specified period has elapsed, the enforcing authority must not commence proceedings under these Regulations, or take any other enforcement action under these Regulations, against the relevant economic operator in respect of the non-compliance referred to in paragraph (1).
- (3) Where the non-compliance referred to in paragraph (1) persists beyond the specified period, the enforcing authority must take appropriate measures to—
- (a) restrict or prohibit corresponding radio equipment being made available on the market,
  - (b) ensure that the radio equipment is withdrawn, or
  - (c) ensure that the radio equipment is recalled.
- (4) This regulation does not apply where radio equipment presents a risk.

### **Restrictive measures**

- 64.** When enforcing these Regulations, an enforcing authority must comply with the requirements of Article 21 of RAMS (as amended from time to time) in relation to any measure to—
- (a) prohibit or restrict radio equipment being made available on the market,
  - (b) withdraw radio equipment, or
  - (c) recall radio equipment.

### **Offences**

**65.—**(1) It is an offence for a person to contravene or fail to comply with any requirement of regulations 7 to 15, 16(4), 17 and 18, 20 to 28, 29(4), 30 to 34, 35(4).

(2) It is an offence for any person to contravene or fail to comply with any requirement of a withdrawal or recall notice served on that person by an enforcing authority under these Regulations.

### **Penalties**

**66.—**(1) Subject to paragraph (2), a person guilty of an offence under regulation 65 is liable on summary conviction—

- (a) in England and Wales, to a fine or imprisonment for a term not exceeding 3 months or to both,

- (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding 3 months or to both.
- (2) A person guilty of an offence under regulations 11, 16, 28 and 35 is liable on summary conviction—
  - (a) in England and Wales, to a fine,
  - (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.

### **Defence of due diligence**

**67.**—(1) Subject to paragraphs (2) and (4), in proceedings for an offence under regulation 65 (offences), it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under paragraph (1) which involves a third party allegation unless P has—

- (a) served a notice in accordance with paragraph (3), or
- (b) obtained the leave of the court.
- (3) The notice must—
  - (a) give any information in P’s possession which identifies or assists in identifying the person who—
    - (i) committed the act or default, or
    - (ii) supplied the information on which P relied.
  - (b) be served on the person bringing the proceedings not less than 7 clear days before—
    - (i) in England, Wales and Northern Ireland, the hearing of the proceedings,
    - (ii) in Scotland, the trial diet.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied upon the information, having regard in particular—

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

(5) In this regulation, “third party allegation” means an allegation that the commission of the offence was due—

- (a) to the act or default of another person, or
- (b) to reliance on information supplied by another person.

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

**68.**—(1) Where the commission of an offence by one person (“A”) under regulation 65 (offences) is due to anything which another person (“B”) did or failed to do in the course of business, B is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against A.

(2) Where a body corporate commits an offence, a relevant person is also guilty of the offence where the body corporate’s offence was committed—

- (a) with the consent or connivance of the relevant person, or
- (b) as a result of the negligence of the relevant person.

- (3) In paragraph (2), “relevant person” means—
- (a) a director, manager, secretary or other similar officer of the body corporate,
  - (b) in relation to a body corporate managed by its members, a member of that body corporate performing managerial functions,
  - (c) in relation to a Scottish partnership, a partner, or
  - (d) a person purporting to act as a person described in sub-paragraphs (a), (b) or (c).

### **Time limit for prosecution of offences**

**69.**—(1) Subject to paragraph (4), in England and Wales an information relating to an offence under regulation 65 (offences) that is triable by a magistrates’ court may be so tried if it is laid within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

- (2) Subject to paragraph (4), in Scotland—
- (a) summary proceedings for an offence under regulation 65 may be commenced before the end of 12 months after the date on which evidence sufficient in the Lord Advocate’s opinion to justify the proceedings came to the Lord Advocate’s knowledge,
  - (b) section 136(3) of the Criminal Procedure (Scotland) Act 1995(13) (time limit for certain offences) applies for the purpose of this paragraph as it applies for the purpose of that section.

(3) Subject to paragraph (4), in Northern Ireland summary proceedings for an offence under regulation 65 may be instituted within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the knowledge of the prosecutor.

(4) No proceedings may be brought more than 3 years after the commission of the offence.

(5) For the purposes of this regulation a certificate of the prosecutor (or in Scotland, the Lord Advocate) as to the date on which the evidence referred to in paragraphs (1), (2) or (3) came to light, is conclusive evidence.

### **Service of documents**

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

- (a) delivering it to that person in person,
- (b) leaving it at that person’s proper address, or
- (c) sending it by post or electronic means to that person’s proper address.

(2) In the case of a body corporate, a document may be served on a director of that body.

(3) In the case of a partnership, a document may be served on a partner or a person having control or management of the partnership business.

(4) For the purposes of this regulation, “proper address” means—

- (a) in the case of a body corporate or its director—
  - (i) the registered or principal office of that body, or
  - (ii) the email address of the secretary or clerk of that body,
- (b) in the case of a partnership, a partner or person having control or management of the partnership business—

- (i) the principal office of the partnership, or
- (ii) the email address of a partner or person having that control or management,
- (c) in any other case, a person's last known address, which includes an email address.

(5) If a person to be served with a document has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept service, that address must also be treated as that person's proper address.

(6) In this regulation, "partnership" includes a Scottish partnership.

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

**71.**—(1) This regulation applies where a person commits an offence under regulation 65 (offences).

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person to reimburse the enforcing authority for any expenditure which the enforcing authority has incurred in investigating the offence.

### **Action by enforcing authority**

**72.**—(1) An enforcing authority may itself take action which an economic operator could have been required to take by a notice served under these Regulations where the conditions for serving such a notice are met and either—

- (a) the enforcing authority has been unable to identify any economic operator on whom to serve such a notice, or
- (b) the economic operator on whom such a notice has been served has failed to comply with it.

(2) If the enforcing authority has taken action as a result of the condition in paragraph (1)(b) being met, the authority may recover from the economic operator, as a civil debt, any costs or expenses reasonably incurred by the enforcing authority in taking the action.

(3) A civil debt recoverable under paragraph (2) may be recovered summarily—

- (a) in England and Wales by way of a complaint pursuant to section 58 of the Magistrates' Courts Act 1980(14),
- (b) in Northern Ireland in proceedings under article 62 of the Magistrates' Court (Northern Ireland) Order 1981(15).

### **Appeals against notices**

**73.**—(1) An application for an order to vary or set aside the terms of a notice served under these Regulations may be made—

- (a) by the economic operator on whom the notice has been served,
- (b) by a person having an interest in the radio equipment in respect of which the notice has been served, unless the notice is a recall notice.

(2) An application must be made before the end of the period of 21 days beginning with the day on which the notice was served.

(3) The appropriate court may only make an order setting aside a notice served under these Regulations if satisfied—

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(14) 1980 c. 43. Section 58 was amended by paragraph 40 of Schedule 10 to the Crime and Courts Act 2013 (c. 22).

(15) S.R. (NI) 1981 No 1675.

- (a) that the requirements of these Regulations and of RAMS (in its application to radio equipment) have been complied with in respect of the radio equipment to which the notice relates, or
  - (b) that the enforcing authority failed to comply with regulation 58 (exercise of enforcement powers) when serving the notice.
- (4) On an application to vary the terms of a notice served under these Regulations, the appropriate court may vary the terms of the notice as it considers appropriate.
- (5) In this regulation—
- (a) the “appropriate court” is to be determined in accordance with regulation 74 (appropriate court for appeals against notices),
  - (b) “notice” means any notice served in accordance with Schedule 10.

### **Appropriate court for appeals against notices**

74.—(1) In England and Wales or Northern Ireland, the appropriate court for the purposes of regulation 73 (appeals against notices) is—

- (a) the court in which proceedings have been brought in relation to the radio equipment for an offence under regulation 65 (offences),
- (b) in any other case, a magistrates’ court.

(2) In Scotland, the appropriate court for the purposes of regulation 73 is the sheriff of a sheriffdom in which the person making the appeal resides or has a registered or principal office.

(3) A person aggrieved by an order made by a magistrates’ court in England and Wales or Northern Ireland pursuant to an application under regulation 73, 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.

### **Compensation**

75.—(1) Where an enforcing authority serves a relevant notice in respect of radio equipment, the enforcing authority is liable to pay compensation to a person having an interest in the radio equipment for any loss or damage suffered by reason of the notice if both of the conditions in paragraph (2) are met.

(2) The conditions are that—

- (a) the radio equipment in respect of which the relevant notice was served neither—
  - (i) presents a risk, nor
  - (ii) contravenes any requirements of these Regulations, and
- (b) the exercise of the power to serve the relevant notice was not attributable to neglect or default by a relevant economic operator.

(3) In this regulation, “relevant notice” means a suspension, withdrawal or recall notice served in accordance with these Regulations.

## PART 6

### Miscellaneous

#### Review

- 76.**—(1) The Secretary of State must from time to time—
- (a) carry out a review of the regulatory provision contained in these Regulations, and
  - (b) publish a report setting out the conclusions of the review.
- (2) The first report must be published before the end of the period of 5 years beginning with the commencement date.
- (3) Subsequent reports must be published at intervals not exceeding 5 years.
- (4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015<sup>(16)</sup> requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the Directive is implemented in other Member States.
- (5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—
- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph 1(a),
  - (b) assess the extent to which those objectives are achieved,
  - (c) assess whether those objectives remain appropriate, and
  - (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.
- (6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

#### Transitional provision

- 77.** Nothing in these Regulations prevents the making available on the market of radio equipment which—
- (a) is in conformity with the requirements of [Directive 1999/5/EC](#) of the European Parliament and the Council on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity<sup>(17)</sup>, and
  - (b) is placed on the market on or before the commencement date.

#### Revocations and savings

- 78.**—(1) Subject to paragraph (2), the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000<sup>(18)</sup> are revoked.
- (2) The Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 continue to apply to any equipment placed on the market in accordance with those Regulations before the commencement date.
- (3) In relation to radio equipment placed on the market before the commencement date, the amendments in regulations 79 and 80 do not apply.

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<sup>(16)</sup> 2015 c.26. Section 30(3) was amended by the Enterprise Act 2016 (c.12), section 19.

<sup>(17)</sup> OJ L 91, 7.4.1999, p.10.

<sup>(18)</sup> S.I. 2000/730; amended by S.I. 2003/1903, S.I. 2003/3144, S.I. 2005/281, S.I. 2015/1630 and S.I. 2016/1101.

### Consequential and other amendments

**79.**—(1) The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004(**19**) is amended as follows.

(2) In Schedule 1, for “Radio Equipment and Telecommunications Terminal Equipment Regulations 2000” substitute “Radio Equipment Regulations 2017”.

**80.**—(1) The Consumer Rights Act 2015(**20**) is amended as follows.

(2) In paragraph 10 of Schedule 5—

(a) omit the entry “paragraph 1(1)(b) or (2)(b) or 2 of Schedule 9 to the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (SI 2000/730)”, and

(b) at the appropriate place insert—

“regulation 56(1)(a)(ii) or (b)(ii) or (2) of the Radio Equipment Regulations 2017 (S.I. 2017/1206)”.

**81.**—(1) The Electromagnetic Compatibility Regulations 2016(**21**) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1), omit the definition of “notified body”, and

(b) after paragraph (4), insert—

“(5) In these Regulations (except Part 4 (notification of conformity assessment bodies) and Schedules 5 (requirements for notified bodies) and 6 (operational obligations of notified bodies)), “notified body” means—

(a) a notified body within the meaning set out in regulation 43 (notified bodies), or

(b) a notified body under the laws of any other Member State which implements the Directive.”.

(3) In regulation 52 (designation of enforcing authorities) omit paragraph (4).

**82.**—(1) The Pressure Equipment (Safety) Regulations 2016(**22**) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) for the definition of “authorised representative” substitute—

““authorised representative” means a person established within the EU appointed in accordance with regulation 19(1) (manufacturer’s authorised representative);”,

(ii) omit the definition of “notified body”, and

(b) after paragraph (6), insert—

“(7) In these Regulations (except Part 4 (notification of conformity assessment bodies) and Schedules 4 (notified body requirements) and 6 (operational obligations of notified bodies, recognised third party organisations and user inspectorates)), “notified body” means—

(a) a notified body within the meaning set out in regulation 51 (notified bodies), or

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(19) S.I. 2004/693 to which there are amendments not relevant to these Regulations.

(20) 2015 c.15.

(21) S.I. 2016/1091.

(22) S.I. 2016/1105.

- (b) a notified body under the laws of any other Member State which implement the Directive.”.

**83.**—(1) The Simple Pressure Vessels (Safety) Regulations 2016<sup>(23)</sup> are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) in paragraph (4), omit the definition of “notified body”, and
- (b) after paragraph (6), insert—

“(7) In these Regulations (except Part 4 (notification of conformity assessment bodies) and Schedule 4 (notified bodies), “notified body” means—

- (a) a notified body within the meaning set out in regulation 45 (notified bodies), or
- (b) a notified body under the laws of any other Member State which implements the Directive.”.

**84.**—(1) The Electrical Equipment (Safety) Regulations 2016<sup>(24)</sup> are amended as follows.

(2) In paragraph (1) of regulation 2, for the definition of “authorised representative” substitute—

““authorised representative” means a person established within the EU appointed in accordance with regulation 14 (manufacturer’s authorised representatives);”.

(3) In paragraph (3) of regulation 3, for “apparatus covered by the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000” substitute “equipment covered by the Radio Equipment Regulations 2017”.

(4) In regulation 29 (duty to take action in respect of electrical equipment placed on the market which is not considered to be in conformity)—

- (a) in the title of the regulation, for “placed” substitute “made available”,
- (b) in paragraph (1), for “placed” substitute “made available”.

**85.**—(1) The Recreational Craft Regulations 2017<sup>(25)</sup> are amended as follows.

(2) In regulation 29 (duty not to place a product on the market where the distributor suspects that it is not in conformity)—

- (a) in the title of the regulation, for “place a product” substitute “make a product available”,
- (b) in paragraph (1), for “place the product” substitute “make the product available”.

*Margot James*  
Minister for Small Business, Consumer and  
corporate Responsibility  
Department for Business, Energy & Industrial  
Strategy

4th December 2017

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<sup>(23)</sup> S.I. 2016/1092.

<sup>(24)</sup> S.I. 2016/1101.

<sup>(25)</sup> S.I. 2017/737.