

Statutory Instrument 2000 No. 730

The Radio Equipment and Telecommunications Terminal Equipment Regulations 2000

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STATUTORY INSTRUMENTS

2000 No. 730

TELECOMMUNICATIONS

The Radio Equipment and Telecommunications Terminal
Equipment Regulations 2000

<i>Made</i>	<i>9th March 2000</i>
<i>Laid before Parliament</i>	<i>13th March 2000</i>
<i>Coming into force</i>	<i>8th April 2000</i>

ARRANGEMENT OF REGULATIONS

PART I

INTRODUCTORY

- [1. Citation, commencement, revocations and disapplications.](#)
- [2. Interpretation.](#)

PART II

GENERAL PRINCIPLES

- [3. Scope and Exclusions.](#)
- [4. Essential Requirements.](#)

PART III

COMPLIANCE

- [5. General duty relating to the placing on the market and putting into service of apparatus.](#)
- [6. Exceptions in respect of placing on the market and putting into service.](#)
- [7. The right to connect.](#)
- [8. Transitional provisions in respect of placing on the market and putting into service.](#)
- [9. Conformity assessment procedures for apparatus.](#)
- [10. CE marking.](#)
- [11. Information accompanying apparatus.](#)
- [12. Notice to be given to the Secretary of State before placing radio equipment on the market.](#)
- [13. Publication of and access to information.](#)
- [14. Notified bodies.](#)
- [15. Notified bodies appointed by the Secretary of State.](#)
- [16. Fees.](#)
- [17. Modification of Licences.](#)

PART IV

ENFORCEMENT

- [18. Enforcement Notices.](#)
- [19. Offences.](#)
- [20. Penalties.](#)
- [21. Defence of due diligence.](#)
- [22. Liability of persons other than the principal offender.](#)
- [23. Savings for action taken under other enactments.](#)

SCHEDULES

- [1. Excluded Equipment.](#)

- [2. Conformity assessment procedure \(internal production control\).](#)
- [3. Conformity assessment procedure \(internal production control plus specific apparatus tests\).](#)
- [4. Conformity assessment procedure \(Technical construction file\).](#)
- [5. Conformity assessment procedure \(Full quality assurance\).](#)
- [6. Minimum Criteria to be taken into account when designating notified bodies.](#)
- [7. The CE Mark.](#)
- [8. Conditions inserted in Public Telecommunications Network Operators' licences.](#)
- [9. Enforcement.](#)

The Secretary of State, being a Minister designated^[1] for the purposes of section 2(2) of the European Communities Act 1972^[2] in relation to measures relating to the approval of radio equipment and telecommunications terminal equipment, in exercise of the powers conferred on him by that section, hereby makes the following Regulations:

PART I

INTRODUCTORY

Citation, commencement, revocations and disapplications

1. - (1) These Regulations may be cited as the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 and shall come into force on 8th April 2000.

(2) The following Orders and Regulations are hereby revoked:

Telecommunication Apparatus (Advertisements) Order 1982^[3]

Telecommunication Apparatus (Advertisements) Order 1985^[4]

Telecommunication Apparatus (Advertisements) (Amendments) Order 1985^[5]

Telecommunication Apparatus (Marking and Labelling) Order 1982^[6]

Telecommunication Apparatus (Marking and Labelling) Order 1985[7]

Telecommunication Apparatus (Marking and Labelling) (Amendment) Order 1985[8]

Telecommunication Apparatus (Bell Noise Labelling) Order 1985[9]

Telecommunication Apparatus (Approval Fees) (British Approvals Board for Telecommunications) Order 1990[10]

Telecommunication Apparatus (Approval Fees) (British Approvals Board for Telecommunications) Order 1992[11]

Telecommunications Terminal Equipment Regulations 1992[12]

Telecommunications Terminal Equipment (Amendment and Extension) Regulations 1994[13]

Telecommunications Terminal Equipment (Amendment) Regulations 1995 [14]

(3) Sections 22 and 84 of the Act, the Electromagnetic Compatibility Regulations 1992, except for regulations 5 and 31[15], and the Electrical Equipment (Safety) Regulations 1994, except for regulations 5 and 7[16], shall cease to apply to apparatus covered by these Regulations.

Interpretation

2. - (1) In these Regulations (except in Schedule 9) -

"the Act" means the Telecommunications Act 1984[17];

"active implantable medical device" shall have the meaning in Article 1 of Council Directive 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices[18];

"apparatus" means any equipment that is either radio equipment or telecommunications terminal equipment or both;

"the CE marking" has the meaning given in regulation 10;

"the Commission" means the Commission of the European Communities;

"a component or a separate technical unit of a vehicle" shall have the meaning in Article 2 of Council Directive 92/61/EEC[19];

"the Directive" means Directive 1999/5/EC of the European Parliament and of the Council on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity[20];

"the Director" means the Director General of Telecommunications appointed under section 1 of the Act;

"enforcement authority" has the meaning given in paragraphs 1 and 2 of Schedule 9;

"equipment class" means a class identifying particular types of apparatus which under the Directive are considered similar and those interfaces for which the apparatus is designed. Apparatus may belong to more than one equipment class;

"harmful interference" means interference which endangers the functioning of a radio navigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with the applicable Community or national regulations;

"harmonised standard" means a technical specification adopted by a recognised standards body under a mandate from the Commission in conformity with the procedures laid down in Directive 98/34/EC of the European Parliament and of the Council^[21] for the purpose of establishing a European requirement, compliance with which is not compulsory;

"interface" means either or both of -

(i) a network termination point which is a physical connection point at which a user is provided with access to public telecommunications network, and

(ii) an air interface specifying the radio path between radio equipment

and their technical specifications;

"medical device" shall have the meaning in Article 1 of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices^[22];

"public telecommunications networks" means telecommunications networks used wholly or partly for the provision of publicly available telecommunications services;

"radio equipment" means a product, or a relevant component thereof, capable of communication by means of the emission and/or reception of radio waves utilising the spectrum allocated to terrestrial/space radio communication;

"radio waves" means electromagnetic waves of frequencies from 9 kHz to 3,000 GHz, propagated in space without artificial guide;

"responsible person" means the manufacturer of apparatus or his authorised representative within the Community, or any other person who places the

apparatus on the market;

"technical construction file" means a file describing the apparatus and providing information and explanations as to how the essential requirements (within the meaning of regulation 4) applicable to the apparatus have been met;

"telecommunications terminal equipment" means a product enabling communication, or a relevant component thereof, which is intended to be connected directly or indirectly by any means whatsoever to interfaces of public telecommunications networks;

and any other expression used in these Regulations which is also used in the Directive has the same meaning in these Regulations as it has in the Directive.

(2) For the purposes of these Regulations, unless the context otherwise requires, a reference to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations and a reference -

(i) in a regulation to a paragraph is a reference to a paragraph in that regulation;

(ii) to an Annex is a reference to an Annex of the Directive.

(3) For the purposes of these Regulations, Annexes I, II, III, IV, V, VI and VII are respectively set out in Schedules 1, 2, 3, 4, 5, 6 and 7, and a reference to a paragraph in an Annex is a reference to a paragraph in that Annex as set out in the respective Schedule.

PART II

GENERAL PRINCIPLES

Scope and Exclusions

3. - (1) Subject to paragraphs (4) and (5), these Regulations shall apply to all apparatus.

(2) Where apparatus incorporates, as an integral part or as an accessory -

(a) a medical device; or

(b) an active implantable medical device,

nothing in these Regulations shall affect the application of Council Directive 93/42/EEC of 14 June 1993^[23]; or Council Directive 90/385/EEC of 20 June 1990^[24]; or the Medical Devices Regulations 1994^[25]; or the Active Implantable Medical Devices Regulations 1992^[26].

(3) Where apparatus constitutes a component or a separate technical unit of a

vehicle, nothing in these Regulations shall affect the application of Council Directive 72/245/EEC of 20 June 1972[27]; or Council Directive 92/61/EEC of 30 June 1992[28]; or the Motor Vehicles (Type Approval) Regulations 1980[29]; or the Motorcycle (EC Type Approval) Regulations 1995[30].

(4) These Regulations shall not apply to apparatus exclusively used for the purposes of 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.

(5) These Regulations shall not apply to equipment listed in Schedule 1.

Essential Requirements

4. - (1) Apparatus when properly installed and maintained and used for its intended purpose shall satisfy the essential requirements set out in this regulation.

(2) The following essential requirements shall apply to all apparatus:

(a) the protection of the health and safety of the user and any other person, including the objectives with respect to safety requirements contained in Council Directive 73/23/EEC[31] (but as if there were no voltage limit);

(b) the protection requirements with respect to electromagnetic compatibility contained in Council Directive 89/336/EEC[32];

(3) In addition, radio equipment shall be so constructed that it effectively uses the spectrum allocated to terrestrial/space radio communication and orbital resources so as to avoid harmful interference.

(4) When a measure has been adopted by the Commission pursuant to Articles 3.3, 6.2 and 15 of the Directive and published in the Official Journal of the European Communities determining that apparatus shall be so constructed that -

(a) it interworks via networks with other apparatus and that it can be connected to interfaces of the appropriate type throughout the community; or that

(b) it does not harm the network or its functioning nor misuse network resources, thereby causing an unacceptable degradation of service; or that

(c) it incorporates safeguards to ensure that the personal data and privacy of the user and of the subscriber are protected; or that

(d) it supports certain features ensuring avoidance of fraud; or that

(e) it supports certain features ensuring access to emergency services; or that

(f) it supports certain features in order to facilitate its use by users with a disability,

apparatus within the scope of that measure shall meet the requirements of that

measure from the date specified in that measure.

PART III

COMPLIANCE

General duty relating to the placing on the market and putting into service of apparatus

5. - (1) Subject to regulations 6, 7 and 8, no person shall place on the market or put into service any apparatus unless the requirements of paragraph (2) and (in the case of radio equipment) the requirements of paragraph (3) have been complied with in relation to it.

(2) The requirements in respect of any apparatus are that:

(a) it satisfies the essential requirements set out in regulation 4: and without prejudice to other means of complying for the purpose of satisfying those requirements, where a harmonised standard covers one or more of the relevant essential requirements, any apparatus or part thereof constructed in accordance with that harmonised standard or part thereof shall be presumed to comply with that or, as the case may be, those essential requirements;

(b) the information has been provided in accordance with regulation 11;

(c) the appropriate conformity assessment procedures in respect of the apparatus have been carried out in accordance with regulation 9;

(d) the CE marking has been affixed to it by the manufacturer of the apparatus or other responsible person in accordance with regulation 10 and Schedule 7; and

(e) a declaration of conformity has been drawn up in respect of it by the manufacturer of the apparatus or other responsible person in accordance with Schedule 2, 3, 4 or 5.

(3) In respect of radio equipment using frequency bands whose use is not harmonised throughout the Community it is also a requirement that notification of intention to place it on the market shall have been given in accordance with regulation 12.

Exceptions in respect of placing on the market and putting into service

6. - (1) For the purposes of regulation 5, apparatus shall not be regarded as being placed on the market where that apparatus -

(a) is intended to be exported to a country outside the Community; or

(b) is imported into the Community for re-export to a country outside the Community; or

(c) is transferred from the manufacturer in a third country to his authorised representative established within the Community who is responsible on behalf of the manufacturer for ensuring compliance with the Directive; or

(d) is transferred to a manufacturer for further processing (for example, to modify the product or to integrate it into another product, or to put his own name on the product);

save that this paragraph shall not apply if the CE marking, or any inscription liable to be confused therewith, is affixed thereto.

(2) The following principles shall apply in respect of the application of the Act and the Wireless Telegraphy Acts 1949 to 1967[33]:

(a) the display at trade fairs, exhibitions and demonstrations of apparatus which does not comply with the provisions of these Regulations is permitted if a notice is displayed in relation to the apparatus to the effect -

(i) that it does not satisfy those provisions; and

(ii) that it may not be placed on the market or put into service until those provisions are satisfied by a responsible person; and

(b) the switching on of radio equipment may be restricted for reasons related to the effective and appropriate use of the radio spectrum, avoidance of harmful interference or public health.

The right to connect

7. - (1) Operators of public telecommunications networks shall not refuse to connect telecommunications terminal equipment to appropriate interfaces on technical grounds, where that equipment complies with the requirements of regulation 4.

(2) Where they consider that apparatus declared to be compliant with the provisions of the Directive causes serious damage to a network or harmful interference or harm to the network or its functioning, the Secretary of State and the Director shall, in exercising their functions under Part II and sections 47 to 49 of the Act, ensure that public telecommunications operators may refuse connection, disconnect such apparatus or withdraw it from service.

(3) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that in case of emergency, a public telecommunications operator may disconnect apparatus if the protection of the network requires the apparatus to be disconnected without delay, provided that the user is offered an alternative solution without delay and without cost to the user.

Transitional provisions in respect of placing on the market and putting into service

8. Notwithstanding the provisions of regulation 5, apparatus may be placed on

the market before 8 April 2001, and apparatus so placed on the market may be put into service, if (in either case) it is in accordance with the provisions of Council Directive 98/13/EC[34], the Telecommunications Terminal Equipment Regulations 1992[35], or section 22 or 84 of the Act.

Conformity assessment procedures for apparatus

9. - (1) For the purposes of regulation 5(2)(c), the appropriate conformity assessment procedure for apparatus shall, subject to paragraph (2), be chosen from the procedures set out in Schedules 2, 3, 4 and 5 as follows:

(a) for telecommunications terminal equipment which does not make use of the spectrum allocated to terrestrial/space radio communications and for the receiving parts of radio equipment, the conformity assessment procedures which may be chosen from are those laid down in Schedules 2, 4 and 5;

(b) where radio equipment is not within the scope of subparagraph (a) above and the manufacturer has fully applied harmonised standards, the conformity assessment procedures which may be chosen from are those laid down in Schedules 3, 4 and 5;

(c) where radio equipment is not within the scope of subparagraph (a) above and the manufacturer has not applied harmonised standards or has applied them only in part, the conformity assessment procedures which may be chosen from are those laid down in Schedules 4 and 5.

(2) As an alternative to the procedures set out in paragraph (1), compliance of the apparatus with the essential requirements identified in -

(a) regulation 4(2)(a) may be demonstrated by using the procedures specified in Council Directive 73/23/EEC, and

(b) regulation 4(2)(b) may be demonstrated by using the procedures specified in Article 10(1) and 10(2) of Directive 89/336/EEC,

where apparatus is within the scope of either of those Directives.

(3) Any technical documentation or other information in relation to apparatus required to be retained under the conformity assessment procedure used shall be retained by the person specified in that respect in that conformity assessment procedure for the appropriate period specified in that procedure.

CE marking

10. - (1) In these Regulations, "the CE marking" means a marking in the form set out in paragraph 1 of Annex VII as set out in Schedule 7.

(2) The CE marking shall be accompanied by -

(a) the identification number of all notified bodies used where the conformity assessment procedure is carried out in accordance with Schedule 3, 4 or 5;

(b) in the case of radio equipment, the equipment class identifier where one

has been assigned.

(3) There shall be marked on the apparatus, on any instructions accompanying it or on any packaging relating to it -

(a) the name of the responsible person; and

(b) the type and batch or serial number assigned to the apparatus by the manufacturer.

(4) Where apparatus is subject to other directives concerning other aspects and which also provide for the affixing of the CE marking, the markings shall indicate that the apparatus in question is also presumed to conform to the provisions of those other directives. However, should one or more of those directives allow the manufacturer, during a transitional period, to choose which arrangements to apply, the CE marking shall indicate conformity to the provisions only of those directives applied by the manufacturer. In this case the particulars of those directives, as published in the Official Journal, must be given in the documents, notices or instructions required by those directives and accompanying such products.

(5) Subject to paragraph (6) any other marking may be affixed to apparatus provided that the visibility and legibility of the CE marking is not thereby reduced.

(6) The affixing of markings on apparatus which are likely to mislead third parties as to the meaning or form of the CE marking is prohibited.

Information accompanying apparatus

11. There shall be prominently displayed on or accompany the apparatus information for the user as follows:

(a) in the case of all apparatus -

(i) its intended use; and

(ii) a declaration of its conformity to the applicable essential requirements;

(b) in the case of radio equipment, sufficient information on the packaging and the instructions for use to identify the Member States or the geographical area within the Member States where it is intended to be used; and marking on the apparatus as provided for in paragraph 5 of Schedule 7 shall be used when appropriate to alert the user that restrictions or requirements for authorisation of the use of the radio equipment apply in certain Member States;

(c) in the case of telecommunications terminal equipment, sufficient information to identify the interfaces of public telecommunications networks to which the equipment is intended to be connected.

Notice to be given to the Secretary of State before placing radio equipment on the market

12. - (1) The responsible person shall, not less than four weeks before the date it is intended to place on the market in the United Kingdom radio equipment using frequency bands whose use is not harmonised throughout the Community, give notice in writing to the Secretary of State at the Radiocommunications Agency which contains -

(a) such information as is required by the Secretary of State about the radio characteristics of the equipment, in particular its frequency bands, channel spacing, type of modulation and RF power; and

(b) where appropriate the identification number of all the notified bodies used.

(2) Notice given under paragraph (1) shall be effective in respect of all items of equipment, whether placed on the market at the same time or at different times, which are in all material respects identical to each other.

Publication of and access to information

13. In exercising their functions under Part II of the Act, the Secretary of State and the Director shall ensure that operators of public telecommunications networks shall -

(a) publish and make readily available accurate and adequate technical specifications of all interfaces offered by them before services provided through such interfaces are made publicly available, and shall regularly publish any updated specifications, and

(b) provide in such publication the following information:

(i) sufficient details of technical interface specifications to permit the design of telecommunications terminal equipment capable of utilising all services provided through the corresponding interface;

(ii) details of changes in existing interface specifications, including information on network characteristics which are found to affect the correct operation of terminal equipment;

(iii) all the information necessary to allow manufacturers to carry out relevant tests, at their choice, for the essential requirements applicable to telecommunications terminal equipment.

Notified bodies

14. For the purposes of these Regulations, a notified body is a body which has been -

(a) appointed as a notified body pursuant to regulation 15; or

(b) appointed by a Member State other than the United Kingdom and notified to the Commission and the other Member States pursuant to Article 11 of the Directive.

Notified bodies appointed by the Secretary of State

15. - (1) The Secretary of State, applying the criteria in Schedule 6 and such other criteria as he thinks fit, may from time to time appoint such persons as he thinks fit to be notified bodies.

(2) An appointment -

(a) may relate to such descriptions of apparatus as the Secretary of State may from time to time determine;

(b) may be made subject to such conditions as the Secretary of State may from time to time determine, and such conditions may include conditions which are to apply upon or following termination of the appointment;

(c) shall, without prejudice to the generality of subparagraph (b) and subject to paragraph (4), require the appointed body to carry out the procedures and specific tasks for which it has been appointed including (where so provided as part of those procedures) surveillance to ensure that the responsible person duly fulfils the obligations arising out of the relevant conformity assessment procedure;

(d) shall be terminated upon 90 days' notice in writing given to the Secretary of State by the notified body; and

(e) may be terminated if it appears to the Secretary of State that any of the conditions of the appointment are not complied with.

(3) Subject to paragraph (2)(d) and (e), an appointment under this regulation may be for the time being or for such period as may be specified in the appointment.

(4) A notified body appointed by the Secretary of State shall not be required to carry out the functions referred to in paragraph (2)(c) if -

(a) the documents submitted to it in relation to carrying out such functions are not in English or another language acceptable to that body; or

(b) the responsible person has not submitted with his application the amount of the fee which the body requires to be submitted with the application pursuant to regulation 16.

(5) If for any reason the appointment of a notified body is terminated under this regulation, the Secretary of State may -

(a) give such directions (either to the body the subject of the termination or to another notified body) for the purpose of making such arrangements for the determination of outstanding applications as he considers appropriate; and

(b) without prejudice to the generality of the foregoing, authorise another notified body to take over its functions in respect of such cases as he may

specify.

Fees

16. - (1) A notified body appointed by the Secretary of State may charge such fees in connection with, or incidental to, the performance of its functions as it may determine: provided that such fees shall not exceed the sum of the following -

- (a) the costs incurred or to be incurred by the notified body in performing the relevant function; and
- (b) an amount on account of profit which is reasonable in the circumstances having regard to -
 - (i) the character and extent of the work done or to be done by the body on behalf of the applicant; and
 - (ii) the commercial rate normally charged on account of profit for that work or similar work.

(2) A notified body may require the payment of fees or a reasonable estimate thereof in advance of carrying out the work requested by the applicant.

Modification of Licences

17. - (1) The following amendments shall be made to Schedule 1 to the Telecommunications (Licence Modification) (Standard Schedules) Regulations 1999^[36] ("the Standard Schedule Regulations"):

- (a) in Part 1 of Schedule 1 thereof -
 - (i) for the definitions of "Applicable Terminal Equipment", "Approved Apparatus" and "Compliant Terminal Equipment", there shall be substituted the definitions set out in Part I of Schedule 8; and
 - (ii) after the definition of "Revised Voice Telephony Regulations" there shall be inserted the following definition:

" "RTTE Regulations" means the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000";
- (b) in Part 2 of Schedule 1 thereof -
 - (i) there shall be substituted for conditions 5 and 15 the conditions set out in Part II of Schedule 8;
 - (ii) in condition 20.8, after the word "Regulations" there shall be inserted the words "or the RTTE Regulations"; and
 - (iii) in condition 55.11, there shall be substituted for the words "Council Directive 91/263/EEC or Council Directive 93/97 EEC" the words "the Terminal Equipment Regulations or with the appropriate essential requirements of the RTTE Regulations".

(c) in Schedule 3 thereof for the definition of "Applicable Terminal Equipment" and "Compliant Terminal Equipment" there shall be substituted the definitions thereof set out in Part 1 of Schedule 8.

(2) Each licence issued under section 7 of the Act which, other than by virtue of incorporation of the standard Schedules as defined in regulation 2 of the Standard Schedule Regulations, contains -

(a) a definition or condition substantially in the same terms as any of those referred to in subparagraphs (a)(i), (b)(i) and (c) of paragraph (1) shall be modified by the substitution therefor of the equivalent set out in Part I or II of Schedule 8; or

(b) a condition substantially in the same terms as condition 20.8 or 55.11 in Part 2 of Schedule 1 to the Standard Schedule Regulations shall be modified by the substitution therefor of a condition in the same terms as condition 20.8 or 55.11 amended in accordance with subparagraph (ii) or (iii) of paragraph (1)(b); or

(c) a condition relating to Technical Requirements or Approval of Equipment shall be modified by the substitution therefor of the condition relating thereto set out in Part III of Schedule 8;

and in each such licence there shall be inserted in the appropriate place in alphabetical order the definitions set out in paragraph (1)(a)(ii) and (if no such definition is in the licence already) the definition of "Terminal Equipment Regulations" set out in Part 1 of Schedule 1 to the Standard Schedule Regulations.

PART IV

ENFORCEMENT

Enforcement Notices

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

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

(a) the manufacturer of the apparatus or his authorised representative established within the Community; or

(b) in a case where neither the manufacturer of the apparatus nor his

authorised representative established within the Community has placed the apparatus on the market, the person who places it on the market in the United Kingdom;

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

(3) Notwithstanding the provisions of paragraph (2), for the purpose of ascertaining whether or not the CE marking has been correctly affixed, action may be taken pursuant to section 29 of the Consumer Protection Act 1987^[37] as it is applied by Schedule 9.

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

(a) state that the enforcement authority suspects that the CE marking has not been correctly affixed to the apparatus;

(b) specify the respect in which it is so suspected and give particulars thereof;

(c) require the person to whom the notice is given -

(i) to secure that any apparatus to which the notice relates conforms as regards the provisions concerning the correct affixation of the CE marking within such period as may be specified in the notice; or

(ii) to provide evidence within that period, to the satisfaction of the enforcement authority, that the CE marking has been correctly affixed; and

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

Offences

19. Any person who -

(a) contravenes or fails to comply with regulation 5(1) or 12; or

(b) fails to supply or retain a copy of the appropriate documentation as required by regulation 9(3),

shall be guilty of an offence.

Penalties

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

(a) to imprisonment for a term not exceeding 3 months; or

(b) to a fine not exceeding level 5 on the standard scale,

or to both.

(2) A person guilty of an offence under regulation 19(b) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

21. - (1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 19 above it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

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

(a) to the act or default of another; or

(b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings (or, in Scotland, the trial diet), he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided in paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular -

(a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and

(b) to whether he had any reason to disbelieve the information.

Liability of persons other than the principal offender

22. - (1) Where the commission by any person of an offence under regulation 19 is due to the act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations

(including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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

Savings for action taken under other enactments

23. Nothing in these Regulations shall be construed as preventing the taking of any action in respect of any relevant apparatus under the provisions of any other enactment.

Patricia Hewitt,

Minister for Small Business and E-Commerce, Department of Trade and Industry

9th March 2000

SCHEDULE 1

Regulations 2(3) and 3(5)

(Annex 1 of Directive 99/5/EC)

EQUIPMENT NOT COVERED BY THIS DIRECTIVE AS REFERRED TO IN ARTICLE 1(4)

1. Radio equipment used by radio amateurs within Article 1, definition 53, of the International Telecommunications Union (ITU) radio regulations unless that equipment is available commercially.

Kits of components to be assembled by radio amateurs and commercial equipment modified by and for the use of radio amateurs are not regarded as commercially available equipment.

2. Equipment falling within the scope of Council Directive 96/98EC of 20 December 1996 on marine equipment.[\[38\]](#)

3. Cabling and wiring.

4. Receive only radio equipment intended to be used solely for the reception of sound and TV broadcasting services.

5. Products, appliances and components within the meaning of Article 2 of Council Regulation (EEC) No. 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedure in the field of civil aviation.[\[39\]](#)

6. Air-traffic management equipment and systems within the meaning of Article 1 of Council Directive 93/65EEC of 19 July 1993 on the definition and use of compatible technical specifications for the procurement of air-traffic management equipment and systems.[\[40\]](#)

SCHEDULE 2

Regulations 2(3), 5(2)(e) and 9(1)

(Annex II of Directive 99/5/EC)

CONFORMITY ASSESSMENT PROCEDURE REFERRED TO IN ARTICLE 10(3)

Module A (internal production control)

1. This module describes the procedure whereby the manufacturer or his authorised representative established within the Community, who carries out the obligations laid down in point 2, ensures and declares that the products concerned satisfy the requirements of this Directive that apply to them. The manufacturer or his authorised representative established within the Community must affix the CE marking to each product and draw up a written declaration of conformity.

2. The manufacturer must establish the technical documentation described in point 4 and he or his authorised representative established within the Community must keep it for a period ending at least 10 years after the last product has been manufactured at the disposal of the relevant national authorities of any Member State for inspection purposes.

3. Where neither the manufacturer nor his authorised representative is established within the Community, the obligation to keep the technical documentation available is the responsibility of the person who places the product on the Community market.

4. The technical documentation must enable the conformity of the product with the essential requirements to be assessed. It must cover the design, manufacture and operation of the product, in particular:

- a general description of the product;
- conceptual design and

manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.; - descriptions and explanations necessary for the understanding of said drawings and schemes and the operation of the product; - a list of the standards referred to in Article 5, applied in full or in part, and descriptions and explanations of the solutions adopted to meet the essential requirements of the Directive where such standards referred to in Article 5 have not been applied or do not exist; - results of design calculations made, examinations carried out, etc.; - test reports.

5. The manufacturer or his authorised representative must keep a copy of the declaration of conformity with the technical documentation.

6. The manufacturer must take all measures necessary in order that the manufacturing process ensures compliance of the manufactured products with the technical documentation referred to in point 2 and with the requirements of this Directive that apply to them.

SCHEDULE 3

Regulations 2(3), 5(2)(e),9(1) and 10(2)

(Annex III of Directive 99/5/EC)

CONFORMITY ASSESSMENT PROCEDURE REFERRED TO IN ARTICLE
10(4)

(Internal production control plus specific apparatus tests).

This Annex consists of Annex II, plus the following supplementary requirement:

For each type of apparatus, all essential radio test suites must be carried out by the manufacturer or on his behalf. The identification of the test suites that are considered to be essential is the responsibility of a notified body chosen by the manufacturer except where the test suites are defined in the harmonised standards. The notified body must take due account of previous decisions made by notified bodies acting together.

The manufacturer or his authorised representative established within the Community or the person responsible for placing the apparatus on the market must declare that these tests have been carried out and that the apparatus complies with the essential requirements and must affix the notified body's identification number during the manufacturing process.

SCHEDULE 4

Regulations 2(3), 5(2)(e),9(1) and 10(2)

(Annex IV of Directive 99/5/EC)CONFORMITY ASSESSMENT PROCEDURE REFERRED TO IN ARTICLE
10(5)**(Technical construction file).**

This Annex consists of Annex III plus the following supplementary requirements:

The technical documentation described in point 4 of Annex II and the declaration of conformity to specific radio test suites described in Annex III must form a technical construction file.

The manufacturer, his authorised representative established within the Community or the person responsible for placing the apparatus on the market, must present the file to one or more notified bodies, each of the notified bodies must be informed of others who have received the file.

The notified body must review the file and if it is considered that it has not been properly demonstrated that the requirements of the Directive have been met, the notified body may issue an opinion to the manufacturer, his representative or the person responsible for placing the apparatus on the market and must inform the other notified bodies who have received the file accordingly. Such an opinion must be given within four weeks of receipt of the file by the notified body. On receipt of this opinion, or after the end of the four-week period, the apparatus may be placed on the market, without prejudice to Articles 6(4) and 9(5).

The manufacturer or his authorised representative established within the Community or the person responsible for placing the apparatus on the market must keep the file for a period ending at least 10 years after the last apparatus has been manufactured at the disposal of the relevant national authorities of any Member States for inspection.

SCHEDULE 5

Regulations 2(3), 5(1) 9(1) and 10(2)

(Annex V of Directive 99/5/EC)CONFORMITY ASSESSMENT PROCEDURE REFERRED TO IN
ARTICLE 10**Full quality assurance**

1. Full quality assurance is the procedure whereby the manufacturer who satisfies the obligations of point 2 ensures and declares that the products concerned satisfy the requirements of the Directive that apply to them. The manufacturer must affix the marks referred to in Article 12(1) to each product and

draw up a written declaration of conformity.

2. The manufacturer must operate an approved quality system for design, manufacture and final product inspection and testing as specified in point 3 and must be subject to surveillance as specified in point 4.

3. Quality system.

3.1. The manufacturer must lodge an application for assessment of his quality system with a notified body. The application must include:

- all relevant information for the products envisaged,
- the quality system's documentation.

3.2 The quality system must ensure compliance of the products with the requirements of the Directive that apply to them. All the elements, requirements and provisions adopted by the manufacturer must be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. This quality system documentation must ensure a common understanding of the quality policies and procedures such as quality programmes, plans, manuals and records.

It must contain in particular an adequate description of :

- the quality objectives and the organisational structure, responsibilities and powers of the management with regard to design and product quality,
- the technical specifications, including the harmonised standards and technical regulations as well as relevant test specifications that will be applied and, where the standards referred to in Article 5(1) will not be applied in full, the means that will be used to ensure that the essential requirements of the Directive that apply to the products will be met,
- the design control and design verification techniques, processes and systematic actions that will be used when designing the products pertaining to the product category covered,
- the corresponding manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used,
- the examinations and test that will be carried out before, during and after manufacture, and the frequency with which they will be carried out, as well as the results of the tests carried out before manufacture where appropriate,
- the means by which it is ensured that the test and examination facilities respect the appropriate requirements for the performance of the necessary test,
- the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.,
- the means to monitor the achievement of the required design and product quality and the effective operation of the quality system.

3.3 The notified body must assess the quality system to determine whether it satisfies the requirements referred to in point 3.2. It must presume compliance with these requirements in respect of quality systems that implement the relevant harmonised standard.

The notified body must assess in particular whether the quality control system ensures conformity of the products with the requirements of the Directive in the light of the relevant documentation supplied in respect of points 3.1 and 3.2 including, where relevant, test results supplied by the manufacturer.

The auditing team must have at least one member experienced as an assessor in the product technology concerned. The evaluation procedure must include an assessment visit to the manufacturer's premises.

The decision must be notified to the manufacturer. The notification must contain the conclusions of the examination and the reasoned assessment decision.

3.4 The manufacturer must undertake to fulfil the obligations arising out of the quality system as approved and to uphold it so that it remains adequate and efficient.

The manufacturer or his authorised representative must keep the notified body that has approved the quality system informed of any intended updating of the quality system.

The notified body must evaluate the modifications proposed and decide whether the amended quality system will still satisfy the requirements referred to in point 3.2 or whether a reassessment is required.

It must notify its decision to the manufacturer. The notification must contain the conclusions of the examination and the reasoned assessment decision.

4. EC surveillance under the responsibility of the notified body.

4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

4.2. The manufacturer must allow the notified body access for inspection purposes to the locations of design, manufacture, inspection and testing, and storage and must provide it with all necessary information, in particular:

- the quality system documentation,
- the quality records as foreseen by the design part of the quality system, such as results of analyses, calculations, tests, etc.,
- the quality records as foreseen by the manufacturing part of the quality system, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.

4.3 The notified body must carry out audits at reasonable intervals to make sure that the manufacturer maintains and applies the quality system and must provide an audit report to the manufacturer.

4.4. Additionally, the notified body may pay unexpected visits to the manufacturer. At the time of such visits, the notified body may carry out tests or have them carried out in order to check the proper functioning of the quality system where necessary; it must provide the manufacturer with a visit report and, if a test has been carried out, with a test report.

5. The manufacturer must, for a period ending at least 10 years after the last product has been manufactured, keep at the disposal of the national authorities:

- the documentation referred to in the second indent of point 3.1,
- the updating referred to in the second paragraph of point 3.4,
- the decisions and reports from the notified body which are referred to in the final paragraph of point 3.4 and in points 4.3 and 4.4.

6. Each notified body must make available to the other notified bodies the relevant information concerning quality system approvals including reference to the product(s) concerned, issued and withdrawn.

SCHEDULE 6

Regulations 2(3) and 15

(Annex VI of Directive 99/5/EC)

MINIMUM CRITERIA TO BE TAKEN INTO ACCOUNT WHEN DESIGNATING NOTIFIED BODIES IN ACCORDANCE WITH ARTICLE 11(1)

1. The notified body, its director and the staff responsible for carrying out the tasks for which the notified body has been designated must not be a designer, manufacturer, supplier or installer of radio equipment or telecommunications terminal equipment, or a network operator or a service provider, nor the authorized representative of any of such parties. They must be independent and not become directly involved in the design, construction, marketing or maintenance of radio equipment or telecommunications terminal equipment, nor represent the parties engaged in these activities. This does not preclude the possibility of exchanges of technical information between the manufacturer and the notified body.

2. The notified body and its staff must carry out the tasks for which the notified body has been designated with the highest degree of professional integrity and technical competence and must be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of any inspection, especially from persons or groups of persons with an interest in such results.

3. The notified body must have at its disposal the necessary staff and facilities to enable it to perform properly the administrative and technical work associated with the tasks for which it has been designated.

4. The staff responsible for inspections must have:

- sound technical and professional training,
- satisfactory

knowledge of the requirements of the tests or inspections that are carried out and adequate experience of such tests or inspections, - the ability to draw up the certificates, records and reports required to authenticate the performance of the inspections.

5. The impartiality of inspection staff must be guaranteed. Their remuneration must not depend on the number of tests or inspections carried out nor on the results of such inspections.

6. The notified body must take out liability insurance unless its liability is assumed by the Member State in accordance with national law, or the Member State itself is directly responsible.

7. The staff of the notified body is bound to observe professional secrecy with regard to all information gained in carrying out its tasks (except vis-à-vis the competent administrative authorities of the United Kingdom) under the Directive or any provision of national law giving effect thereto.

SCHEDULE 7

Regulations 2(3), 5(2)(d) and 10

(Annex VII of Directive 99/5/EC)

THE CE MARK

1. The CE conformity marking must consist of the initials 'CE' taking the following form:



If the CE marking is reduced or enlarged, the proportions given in the above graduated drawing must be respected.

2. The CE marking must have a height of at least 5 mm except where this is not possible on account of the nature of the apparatus.

3. The CE marking must be affixed to the product or to its data plate. Additionally it must be affixed to the packaging, if any, and to the accompanying documents.

4. The CE marking must be affixed visibly, legibly and indelibly.

5. The equipment class identifier must take a form to be decided by the Commission in accordance with the procedure laid down in Article 14.

Where appropriate it must include an element intended to provide information to the user that the apparatus makes use of radio frequency bands where their use is not harmonised throughout the Community.

It must have the same height as the initials "CE".

SCHEDULE 8

Regulation 17

PART I

SUBSTITUTE DEFINITIONS

"Applicable Terminal Equipment" means apparatus which is applicable terminal equipment within the meaning of regulation 4 of the Terminal Equipment Regulations or regulation 2(1)(c) of the RTTE Regulations;

"Approved Apparatus" means in relation to any system apparatus approved under Section 22 of the Act or which meets the appropriate essential requirements of regulation 4 of the RTTE Regulations;

"Compliant Terminal Equipment" means Applicable Terminal Equipment which at the time of being placed on the market within the European Community ("the applicable time") satisfied the requirements of regulation 8 of the Terminal Equipment Regulations or met the appropriate essential requirements of regulation 4 of the RTTE Regulations and either -

(i) has not subsequently been modified so as to cease to satisfy or (as the case may be) meet those requirements as they were at the applicable time, or

(ii) has subsequently been so modified but in such a way that it satisfied or (as the case may be) met those requirements as they were at the time of modification.

PART II

Condition 5

SUBSTITUTE CONDITIONS IN THE STANDARD SCHEDULES

Connection of Systems and Apparatus

5.1 To the extent that the Licensee runs a Mobile Public Telephone System, and subject to Conditions 56A and 65 and to the following provisions of this Condition the Licensee shall at the written request of:

- (a) a Service Provider to whom the Licensee is obliged to provide Mobile Radio Telecommunication Services; or
- (b) in any case where the Licensee has agreed to provide Mobile Radio Telecommunication Services to any person, that person,

connect or permit the connection of the Applicable Systems to any telecommunication system designed or adapted to be capable of use while in motion which is composed of apparatus which is approved under section 22 of the Act for connection to the Applicable Systems, is Compliant Terminal Equipment, and shall not discontinue a connection of any such system lawfully made.

5.2 To the extent that the Licensee runs a system other than a Mobile Public Telephone System, the Licensee:

- (a) shall connect or permit the connection of, at a Network Termination Point within Network Termination and Testing Apparatus situated on Serviced Premises, the Applicable Systems to:
 - (i) any item of telecommunication apparatus which is approved for the time being for connection to that Applicable System under section 22 of the Act or is Compliant Terminal Equipment; or
 - (ii) any other telecommunication system to which this Condition applies which is or is to be run by the Crown or which is composed of apparatus which is approved for connection to that system or is Compliant Terminal Equipment,

which is owned by or supplied to another person;

- (b) shall not discontinue such connection of any such apparatus or system lawfully made.

5.3 Apparatus shall not be regarded as approved for connection to any system for the purposes of paragraph 5.1 or 5.2 unless that apparatus is Compliant Terminal Equipment or has been so approved:

- (a) by the Secretary of State; or
- (b) by some other person by virtue of an authorisation given by the Secretary of State being an authorisation which required the person authorised, before approving any apparatus or designating any standard to which apparatus must conform if it is to be approved, to be satisfied that connection of the apparatus to the system would not be likely:

(i) to cause the death of, or personal injury to, or damage to the property of the Licensee or any person engaged in the running of that system; or

(ii) materially to impair the quality of any telecommunication service provided by means of that system or any system connected to it (other than the system being connected).

5.4 No apparatus or system is required under paragraph 5.1 or 5.2 to be, or to be permitted to be, connected or kept connected to the Applicable Systems if that apparatus, or any apparatus comprised in that system, as the case may be:

(a) conformed to the relevant standard or standards at the time when the connection to the Applicable Systems was made but no longer does so and does not conform to the relevant standard or standards (if any) for the time being designated under section 22(6) of the Act;

(b) was at the time when the connection to the Applicable Systems was made but has since ceased to be Compliant Terminal Equipment; or

(c) is in the opinion of the Secretary of State and the Director causing serious damage to a network or harmful radio interference or harm to the network or its functioning and the Licensee has been authorised by the Secretary of State and the Director to refuse connection, or to disconnect such apparatus or withdraw it from service.

(d) is, in case of emergency, required to be disconnected to protect the network, provided that:

(i) the user may be offered, without delay and without costs, an alternative solution, and

(ii) the Licensee immediately informs the Secretary of State and the Director.

5.5 Paragraphs 5.1, 5.2, 5.3 and 5.4 do not apply to any system run by a Schedule 2 Public Operator to which Condition 9 or Part C applies, or to apparatus comprised in such a system.

5.6 Except with the consent of the Director the Licensee shall not connect nor permit to be connected any Relevant Terminal Apparatus to any of the Applicable Systems on Served Premises except by means of Network Termination and Testing Apparatus.

Condition 15

PUBLICATION OF INTERFACES

Publication of Commonly Provided Interfaces

15.1

(a) The Licensee shall, in relation to all commonly provided Customer Interfaces in use by the Licensee at the time this Condition comes into force, notify such Interfaces to the Director and publish within 90 days of this Condition coming into force, in an accurate and adequate manner and in accordance with paragraph 15.6 below the Interface Specifications;

Where the Licensee wishes to introduce new, or up-date the existing Interface Specifications, the Licensee must publish, up to twelve months prior to the provisions of any service provided through such Interfaces or within a lesser period with the consent of the Director, in an accurate and adequate manner, the new or amended Interface Specifications in accordance with paragraph 15.6 below.

(b) The Licensee shall, in relation to Network Interconnection Interfaces relating to any service described in sub-paragraph (i) or (ii) in the definition of Network Services, in use by the Licensee at the time this Condition comes into force, notify such Interfaces to the Director and publish Interface Specifications relating to such Interfaces within 90 days of this Condition coming into force, in accordance with paragraph 15.6 (a), (d) and (e) below.

Publication of new Commonly Provided Interfaces

15.2 Where the Director has determined that the Licensee has Interface Control in relation to any new commonly provided Interface Specification relating to any service described in sub-paragraph (i) or (ii) of the definition of Network Services, which the Licensee intends to use and which is not published under paragraph 15.1:

(a) the Licensee shall notify such Interface Specification to the Director at the commencement of the Relevant Consulting Period;

(b) the Licensee shall, if so directed by the Director, consult with Interested Parties during the Relevant Consulting Period;

(c) the Licensee may, during and after the Relevant Consulting Period, modify any such Interface Specification in line with representations made and any advice offered by the Director to the Licensee relating to such representations;

(d) the Licensee shall, after the end of the Relevant Consulting Period, publish the Interface in accordance with sub-paragraph 15.6 below; and

(e) the Licensee shall not make any modifications to the Applicable Systems conforming to the new Interface Specification until a sufficient period has elapsed after publication of the Interface Specification to enable any Relevant Party to have a reasonable period in which to make any appropriate modifications to apparatus connected to the Applicable Systems. Such period shall be not less than 12 months, except where the Director has consented to a shorter period following the written application

of the Licensee.

15.3 Where the Licensee does not have Interface Control in relation to any new commonly provided Interface Specification relating to any service described in sub-paragraph (i) or (ii) of the definition of Network Service, which the Licensee intends to use, and which is not published under paragraph 15.1 above:

- (a) the Licensee shall notify such Interface Specification to the Director;
- (b) the Licensee shall publish the Interface Specification in accordance with paragraph 15.6 below; and
- (c) the Licensee shall not make any modifications to the Applicable Systems conforming to the new Interface Specification until a sufficient period has elapsed after publication of the Interface Specification to enable any Relevant Party to have a reasonable period in which to make any appropriate modifications to apparatus connected to the Applicable Systems. Such period shall be not less than 12 months, except where the Director has consented to a shorter period following the written application of the Licensee, or, in the case of an interface specification related to the provision of Mobile Radio Telecommunication Services not less than 90 days.

Modifications of Commonly Provided Interface Specifications

15.4 Where any Interface Specification to which paragraph 15.1, 15.2 or 15.3 apply is modified by the Licensee:

- (a) the Licensee shall notify such modification to the Director and publish such modification in accordance with paragraph 15.6 below;
- (b) the Licensee shall not make any modifications to the Applicable Systems conforming to the new Interface Specification until a sufficient period has elapsed after publication of the Interface Specification to enable any Relevant Party to have a reasonable period in which to make any appropriate modifications to apparatus connected to the Applicable Systems. Such period shall be not less than 3 months, except where the Director has consented to a shorter period following the written application of the Licensee; and
- (c) the modification shall include any change in the description of any Interface which may affect the maintenance of effective interoperability of services by means of the Interface described in the relevant Interface Specification.

Withdrawals of Commonly Provided Interfaces

15.5 Where any interface described in any Interface Specification to which paragraph 15.1, 15.2 or 15.3 apply is withdrawn by the Licensee:

- (a) the Licensee shall notify such withdrawal to the Director and publish such withdrawal in accordance with paragraph 15.6 below; and

(b) the Licensee shall not make any modifications to the Applicable Systems conforming to the new Interface Specification until a sufficient period has elapsed after publication of the Interface Specification to enable any Relevant Party to have a reasonable period in which to make any appropriate modifications to apparatus connected to the Applicable Systems. Such period shall not be less than 12 months, except where the Director has consented to a shorter period following the written application of the Licensee.

Publication Requirements

15.6 The requirements as to publication are that:

(a) the description of the Technical Characteristics must be such as to assist in securing the effective interoperability of telecommunication systems and apparatus, and, in particular, (although without prejudice to the generality of the foregoing) the correct operation of Terminal Equipment;

(b) the Interface Specification published shall: (i) be in sufficient detail to permit the design of telecommunications terminal equipment capable of utilising all services provided through the corresponding interface; (ii) detail any changes in existing Interface Specifications; and (iii) include, inter alia, all the information necessary to allow manufacturers to carry out, at their choice, the relevant tests for the essential requirements applicable to the telecommunications terminal equipment;

(c) the Interface Specifications shall be made readily available by the Licensee;

(d) the Licensee shall ensure that each Interface Specification is published in a manner appropriate for bringing the matters to which the Interface Specification relates to the attention of:

(i) the Secretary of State, the British Standards Institution, all persons to whom functions have been delegated pursuant to section 25 of the Act, all Operators with whom the Licensee is obliged to negotiate Interconnection under Condition 9, or offer to enter into Interconnection agreements with, as the case may be, under Part C of this Licence, appropriate representatives of suppliers, and manufacturers of Telecommunication apparatus and systems and appropriate representatives of users or consumer interests; and

(ii) any person whom the Director considers likely to be affected by or to have an interest in such matters and whom the Director has determined for the purpose of this sub-paragraph; and

(iii) any other person likely to be affected by or to have an interest in such matters; and

(e) where the Director considers it necessary to enable Interested Parties to obtain easy access to the information contained in Interface Specifications, he may direct the Licensee to send copies of any Interface Specification, or

any class of Interface Specification, to any person specified by him for the purposes of this sub-paragraph.

Amendments of Interface Specifications directed by the Director

15.7 If, following any representation made to him, the Director concludes that any Interface Specification contains insufficient information for its purpose he may direct the Licensee to:

- (a) amend the Interface Specification in order to remedy the defect; and
- (b) publish the amended Interface Specification in accordance with the provisions of paragraph 15.6 and in relation to any period specified by the Director which takes into account the need to ensure a sufficient period has elapsed after publication of the amended Interface Specification to enable any Relevant Party to have a reasonable period in which to make any appropriate modifications to apparatus connected to the Applicable Systems.

15.8 To the extent that the Licensee is running a Fixed Public Telephone System by means of which it provides Fixed Publicly Available Telephone Services, the Licensee shall inform the Director in writing, without undue delay, of any particular network characteristics which are found to affect the correct operation of apparatus. Such information shall be made available to Terminal Equipment suppliers at their request by the Director pursuant to Regulation 17(4)(c) of the Revised Voice Telephony Regulations.

15.9 Nothing in this Condition shall require the Licensee to publish or send to the Director information which it has already published or sent to the Director.

PART III

OTHER SUBSTITUTE CONDITIONS

TECHNICAL REQUIREMENTS

The Applicable Systems shall, unless the Director agrees otherwise, be connected to a public telecommunication system only if such relevant technical requirements, if any, for connection to that public telecommunication system, as the Director may from time to time specify, and which are described in a list kept for the purpose by the Director and made available by him for inspection by the general public, are complied with provided that those relevant technical requirements do not impose requirements that are not within the appropriate essential requirements of Regulation 4 of the RTTE Regulations.

APPROVAL OF EQUIPMENT

1. Where Apparatus comprised in the Applicable Systems is connected to a public telecommunication system, it shall either be approved for such connection under section 22 of the Act, or Compliant Terminal Equipment, or included in

Schedule 1 to the RTTE Regulations.

2. Where the Applicable Systems are capable of conveying Messages which have been or are to be conveyed also by a public telecommunication system, any Apparatus comprised in the Applicable Systems which interworks with the public telecommunication system at any time:

- (a) in the case of Apparatus to which the Terminal Equipment Regulations apply, shall be Compliant Terminal Equipment; or
- (b) in the case of Apparatus to which the RTTE Regulations apply, shall be compliant with the appropriate essential requirements of Regulation 4 of the Regulations, unless it is Apparatus included in Schedule 1 to the Regulations; or
- (c) in other cases, shall unless the Director has consented otherwise and has not withdrawn that consent, be Apparatus which is approved for the time being under section 22 of the Act for connection to the Applicable Systems.

3. For the purposes of this Condition, approvals framed by reference to branch systems should be regarded as approvals for connection to the Applicable Systems.

SCHEDULE 9

Regulation 18

ENFORCEMENT

Enforcement in Great Britain

1. - (1) In Great Britain, it shall be the duty of the Secretary of State, and of every weights and measures authority within their area, to enforce these Regulations; and a reference in the provisions applied to these Regulations by subparagraph (2) to an "enforcement authority" shall be construed accordingly.

(2) Sections 14, 15, 28 to 35, 37, 38, 44 and 47 of the Consumer Protection Act 1987, shall apply for the purposes of providing for the enforcement of these Regulations and in respect of proceedings for contravention thereof as if -

- (a) references to safety provisions were references to these Regulations;
- (b) references to goods were references to apparatus as the context may require;
- (c) in section 14, in sub-section (6), for "six months" there was substituted "three months";
- (d) references to proceedings for the forfeiture of goods under section 16 or

17 were references to the forfeiture of apparatus under paragraph 3 or 4.

(e) in sections 28, 29, 30, 33, 34 and 35, the words "or any provision made by or under Part III of this Act" on each occasion that they occur, were omitted;

(f) in section 28, sub-sections (3), (4), and (5) were omitted;

(g) in section 29, sub-section (4) was omitted;

(h) in section 30, sub-sections (7) and (8) were omitted; and

(i) in section 38(1), paragraphs (a) and (b) were omitted.

(3) Sections 39 and 40 of the 1987 Act shall apply to offences under section 32 of that Act as it is applied to these Regulations by sub-paragraph(2).

(4) In England and Wales, a magistrates' court may try an information in respect of an offence committed under these Regulations if the information is laid within twelve months from the time when the offence is committed, and 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.

Enforcement in Northern Ireland

2. - (1) In Northern Ireland, it shall be the duty of the Secretary of State, and of every district council within their area, to enforce these Regulations; and a reference in the provisions applied to these Regulations by sub-paragraph (2) and paragraph 1(2) to an "enforcement authority" shall be construed accordingly.

(2) The provisions of paragraph 1(2) and (3) shall have effect.
A:\07301029.TXT (3) A magistrates' court may try a complaint in respect of an offence committed under these Regulations if the complaint is made within twelve months from the time when the offence is committed.

Forfeiture of apparatus: England and Wales and Northern Ireland

3. - (1) An enforcement authority in England and Wales or Northern Ireland may apply under this paragraph for an order for the forfeiture of any apparatus on the grounds that there has been a contravention in relation thereto of regulation 5.

(2) An application under this paragraph may be made -

(a) where proceedings have been brought in a magistrates' court in respect of an offence in relation to some or all of the apparatus under regulation 19 to that court; and

(b) where no application for the forfeiture of the apparatus has been made under sub-paragraph (a), by way of complaint to a magistrates' court.

(3) On an application under this paragraph the court shall make an order for the forfeiture of the apparatus if it is satisfied that there has been a contravention in relation thereto of regulation 5.

(4) For the avoidance of doubt it is hereby declared that a court may infer for the purposes of this paragraph that there has been a contravention in relation to any apparatus of regulation 5 if it is satisfied that regulation has been contravened in relation to any apparatus (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) Any person aggrieved by an order made under this paragraph by a magistrates' court, or by a decision of such court not to make such an order, may appeal against that order or decision -

(a) in England and Wales, to the Crown Court

(b) in Northern Ireland, to the county court,

and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of an order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Court Act 1980^[41], or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981^[42] (statement of case)).

(6) Subject to sub-paragraph (7), where any apparatus is forfeited under this paragraph it shall be destroyed in accordance with such directions as the court may give.

(7) On making an order under this paragraph a magistrates' court may, if it considers it appropriate to do so, direct that the apparatus to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person -

(a) does not supply the apparatus to any person otherwise than -

(i) to a person who carries on a business of buying of the same description as the first mentioned product and repairing or reconditioning it; or

(ii) as scrap (that is to say, for the value of materials included in the apparatus rather than for the value of the apparatus itself); and

(b) complies with any order to pay costs or expenses which has been made against that person in the proceedings for the order for forfeiture.

Forfeiture of apparatus: Scotland

4. - (1) In Scotland a sheriff may make an order for forfeiture of any apparatus for private use or consumption in relation to which there has been a contravention of any provision of regulation 5 -

(a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995^[43]; or

(b) where a person is convicted of any offence in respect of any such

contravention, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under sub-paragraph (1)(a) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the apparatus to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the apparatus should not be forfeited.

(3) Service under sub-paragraph (2) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.

(4) Any person upon whom a notice is served under sub-paragraph (2) and any other person claiming to be the owner of, or otherwise to have an interest in, the apparatus to which an application under this paragraph relates shall be entitled to appear at the hearing of the application to show cause why the apparatus as the case may be should not be forfeited.

(5) The sheriff shall not make an order following an application under sub-paragraph (1)(a) -

(a) if any person on which notice is served under sub-paragraph (2) does not appear, unless service of the notice on that person is proved; or

(b) if no notice under sub-paragraph (2) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The sheriff shall make an order under this paragraph only if he is satisfied that there has been a contravention in relation to the apparatus of regulation 5.

(7) For the avoidance of doubt it is declared that the sheriff may infer for the purposes of this paragraph that there has been a contravention in relation to any apparatus of regulation 5 if he is satisfied that that regulation has been contravened in relation to an item of apparatus which is representative of that apparatus (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(8) Where an order for the forfeiture of any apparatus is made following an application by the procurator-fiscal under sub-paragraph (1)(a), any person who appeared, or was entitled to appear, to show cause why it should not be forfeited may, within twenty-one days of the making of the order, appeal to the High Court by Bill of Suspension on the ground of an alleged miscarriage of justice; and section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under this sub-paragraph as it applies to a stated case under Part X of that Act.

(9) An order following an application under sub-paragraph (1)(a) shall not take effect -

(a) until the end of the period of twenty-one days beginning with the day after the day on which the order is made; or

(b) if an appeal is made under sub-paragraph (8) within that period, until the appeal is determined or abandoned.

(10) An order under sub-paragraph (1)(b) shall not take effect -

(a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995; or

(b) if an appeal is made within that period, until the appeal is determined or abandoned.

(11) Subject to sub-paragraph (12), apparatus forfeited under this paragraph shall be destroyed in accordance with such directions as the sheriff may give.

(12) If he thinks fit, the sheriff may direct the apparatus to be released to such person as he may specify, on condition that that person does not supply it to any person otherwise than -

(a) to a person who carries on a business of buying apparatus of the same description as the first-mentioned and repairing or reconditioning it; or

(b) as scrap (that is to say, for the value of materials included in the apparatus rather for the value of the apparatus).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 1999/5/EC of the European Parliament and of the Council on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity.

Regulation 3 applies the Regulations to all radio or telecommunications terminal equipment ("RTTE equipment") except for apparatus covered by certain other Directives or Regulations, apparatus used for purposes of public security, defence or criminal enforcement and equipment specified in Schedule 1.

Regulation 4 prescribes the essential requirements that must be satisfied by RTTE equipment.

Regulation 5 prohibits RTTE equipment from being placed on the market or put into service until certain provisions have been complied with, except where it is for export, reprocessing or display at a trade fair (regulation 6), where public telecommunication operators to refuse connection in order to protect the network (regulation 7) or where, during a one-year transitional period, it complies with the

provisions being superseded by these Regulations (regulation 8).

Regulations 9 to 13 provide for conformity assessment, CE marking, accompanying information, notices to the Secretary of State and publication of information.

Regulations 14 to 16 provide for notified bodies to carry out conformity assessment and for their fees.

Regulation 17 modifies existing telecommunication licences in compliance with the Directive.

Regulations 18 to 23 provide for enforcement.

A Regulatory Impact Assessment is available and can be obtained from Communications and Information Industries Directorate, Department of Trade and Industry, 151 Buckingham Palace Road, London SW1W 9SS.

Notes:

[1] S.I. 1989/1327 and S.I. 1999/2788.[back](#)

[2] 1972 c. 68.[back](#)

[3] S.I. 1982/490.[back](#)

[4] S.I. 1985/719.[back](#)

[5] S.I. 1985/1030.[back](#)

[6] S.I. 1982/491.[back](#)

[7] S.I. 1985/717.[back](#)

[8] S.I. 1985/1031.[back](#)

[9] S.I. 1985/718.[back](#)

[10] S.I. 1990/1679.[back](#)

[11] S.I. 1992/1875.[back](#)

[12] S.I. 1992/2423.[back](#)

[13] S.I. 1994/3129.[back](#)

[14] S.I. 1995/144.[back](#)

[15] S.I. 1992/2372.[back](#)

- [16] S.I. 1994/3260.[back](#)
- [17] 1984 c. 12.[back](#)
- [18] OJL No. 189, 20.7.1990, p 17.[back](#)
- [19] OJL No. 225, 10.8.1992, p 72.[back](#)
- [20] OJL No. 91, 7.4.1999, p 10.[back](#)
- [21] OJL No. 204, 21.7.1998, p 37.[back](#)
- [22] OJL No. 169, 12.7.1993, p 1.[back](#)
- [23] OJL No. 169, 12.7.1993, p 1.[back](#)
- [24] OJL No. 189, 20.7.1990, p 17.[back](#)
- [25] S.I. 1994/3017.[back](#)
- [26] S.I. 1992/3146.[back](#)
- [27] OJL No. 152, 6.7.1972, p 15 as last amended by Commission Directive 95/54/EC (OJL 266.8.11.1995, p 1).[back](#)
- [28] OJL No. 225, 10.8.1992, p 72.[back](#)
- [29] S.I. 1980/1182.[back](#)
- [30] S.I. 1995/1513.[back](#)
- [31] OJL No. 77, 26.3.1973, p 29.[back](#)
- [32] OJL No. 139, 23.5.1989, p 19.[back](#)
- [33] 1949 c. 54 and 1967 c. 72.[back](#)
- [34] OJL No. 74, 12.3.1998, p 1.[back](#)
- [35] S.I. 1992/2423, amended by S.I. 1994/3129, 1995/144.[back](#)
- [36] S.I. 1999/2450.[back](#)
- [37] 1987 c. 43.[back](#)
- [38] OJL No. 46, 17.2.1997, p 25.[back](#)
- [39] OJL No. 373, 31.12.1991, p 4 Regulation as amended by Commission Regulation (EC) No. 2176/96 (OJL 291, 14.11.1996, p 15).[back](#)

[40] OJL No. 189, 29.7.1993, p 52 Directive as last amended by Commission Directive 97/15/EC (OJL 95, 10.4.1997, p 16).[back](#)

[41] 1980 c. 43.[back](#)

[42] S.I. 1981/1675 (N.I.26).[back](#)

[43] 1995 c. 46.[back](#)

ISBN 0 11 098835 3

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