STATUTORY INSTRUMENTS

S.I. No. 240 of 2001

European Communities (Radio Equipment and Telecommunications Terminal Equipment) Regulations, 2001.

Made by
the Minister for Public Enterprise

(Pn. 10052)

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I, Mary O'Rourke, Minister for Public Enterprise, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999[1], hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Radio Equipment and Telecommunications Terminal Equipment) Regulations, 2001.

Interpretation.

2. (1) In these Regulations —

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

"authorised officer" means a person appointed as an authorised officer under Regulation 15;

"Commission" means the Commission of the European Communities;

"Community" means the European Community;

"Directive" means Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999[1];

"Director" means Director of Telecommunications Regulation;

"equipment class" means a class identifying particular types of apparatus that under the Directive and these Regulations are considered similar and

[1] O.J. No. L 91, 7.4.99, p.10

those interfaces for which the apparatus is designed and any such apparatus may belong to more than one equipment class;

"Minister" means Minister of Public Enterprise;

"notified body" means a body —

(a) which has been appointed in accordance with Regulation 9, or

(b) which has been appointed by any other Member State, and the appointment has been notified by the Member State to the Commission and the other Member States pursuant to Article 11 of the Directive,

to carry out one or more of the conformity assessment procedures laid down in Schedule 3, 4 or 5;

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Directive.

(3) In these Regulations, unless otherwise indicated —

(a) a reference to a Regulation or Schedule is to a Regulation of or Schedule to these Regulations,

(b) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs.

Scope of Regulations

3. (1) These Regulations apply to apparatus which —

(a) incorporates, as an integral part, or as an accessory:

(i) a medical device within the meaning of Article 1 of Council Directive 93/42/EEC of 14 June 1993[2], or

[2] O.J. No.L 169, 12.7.1993, p.1

(ii) an active implantable medical device within the meaning of Article 1 of Council Directive 90/385/EEC of 20 June 1990[3],

without prejudice to the application of Directives 93/42/EC and 90/385/EEC respectively, and

(b) constitutes a component or a separate technical unit of a vehicle within the meaning of Council Directive 72/245/EEC[4] or a component of a separate technical unit of a vehicle within the meaning of Article 1 of Council Directive 92/61/EEC[5] of 30 June 1992 without prejudice to the application of Directives 72/245/EEC or 92/61/EEC respectively.

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

(3) These Regulations shall not apply to apparatus used exclusively by the Garda Siochana or the Defence Forces or for State security (including the economic well being of the State in the case of activities pertaining to State security matters) and the activities of the State in the enforcement of criminal law.

Essential requirements

4. (1) Apparatus shall conform to the following essential requirements:

(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 Directive 73/23/EEC[6], but with no voltage limit applying; and

(b) the protection requirements with respect to electromagnetic compatibility contained in Directive 89/336/EEC.[7]

[3] O.J. No. L 189, 20.7.1990 p. 17 as amended by Directive 93/68/EEC (O.J. No. L 220, 30.8.1993 p. 1)
[4] O.J. No.L 152, 6.7.1972, p.15 as last amended by Directive 95/54/EC (O.J. No. L 266, 8.11.1995 p. 1)
[5] O.J. No.L 225, 10.8.1992, p.72 as amended by the 1994 Act of Accession
[6] O.J. No.L 77, 26.3.1973, p.29 as amended by Directive 93/68/EEC (OJ No.L 220, 30.8.1993, p.1)
[7] O.J. No.L 139, 23.5.1989, p.19 as last amended by Directive 93/68/EEC (OJ No.L 220, 30.8.1993, p.1)

(2) In addition, to the requirements for all apparatus set out in paragraph 1, radio equipment shall be so constructed that it effectively uses the spectrum allocated to terrestrial and space radio communication and orbital resources so as to avoid harmful interference.

(3) Where the Commission has adopted measures, pursuant to Articles 14 and 15 of the Directive, determining that apparatus within certain equipment classes or apparatus of particular types shall be so constructed that one or more of the following shall apply:

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

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

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

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

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

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

the apparatus within the scope of the measure adopted by the Commission shall conform to the requirements specified in that measure from the date specified therein.

(4) Notwithstanding other means of complying with these essential requirements, apparatus which meets the relevant harmonised standards or parts thereof, whose reference numbers have been published in the Official Journal of the European Communities shall be presumed to be in compliance with such of the essential requirements referred to in this Regulation as are covered by the said harmonised standards or parts thereof.

(5) Where the Director is of the opinion that conformity with a harmonised standard does not ensure compliance with the essential

requirements referred in this Regulation which the said standard is intended to cover, the Director shall bring the matter to the attention of the Telecommunication Conformity Assessment and Market Surveillance Committee.

Notification and publication of interface specifications

5. (1) With regard to the provision of services, which commence after the making of these Regulations, an operator of a public telecommunications network, over which such services are provided, shall publish and make readily available accurate and adequate technical specifications of interfaces offered by them in the State before services provided through such interfaces are made publicly available.

(2) With regard to the provision of services, which commenced before the making of these Regulations, an operator of a public telecommunications network, over which such services are provided, shall make readily available accurate and adequate technical specifications of interfaces being offered by them in the State at the time of the making of these Regulations and shall publish such specifications within one month of their making.

(3) An operator referred to in this Regulation shall publish any updated specifications as soon as may be after the adoption of any such updates.

(4) An operator referred to in this Regulation shall ensure that publication under the obligations of this Regulation accord with any requirements or instructions specified by the Director, at his or her discretion, from time to time.

(5) The specifications required under paragraphs (1) to (4) shall:

(a) be sufficient in detail to permit the design of telecommunications equipment capable of utilising all services provided through the corresponding interface;

(b) include all the information necessary, including details of changes in existing interfaces specifications, to allow manufacturers to carry out, at their choice, the relevant tests for the essential requirements applicable to the telecommunications terminal equipment.

(6) The Director shall notify to the Commission: —

(a) details of regulated interfaces which have not been notified under the provisions of Directive 98/34/EC[8];

(b) the types of interfaces offered by operators of public telecommunications networks.

Placing apparatus on the market

6. (1) A person shall not place on the market apparatus unless the apparatus complies with the appropriate essential requirements mentioned in Regulation 4 when it is properly installed and maintained and used for its intended purpose.

(2) The manufacturer or person responsible for placing apparatus on the market shall ensure that the apparatus is accompanied by the following —

(a) information for the user on the intended use of the apparatus; and

(b) a declaration of conformity in English to the appropriate essential requirements referred to in Regulation 4.

(3) The information required under paragraph (2), which shall be prominently displayed —

(a) in the case of radio equipment, shall be sufficient to identify on the packaging and the instructions for use of the apparatus the Member State or the geographical area within a Member State where the equipment is intended to be used and shall alert the user by the marking on the apparatus referred to in paragraph 5 of Schedule 7, to potential restrictions or requirements for authorisation of use of the radio equipment in certain Member States;

(b) in the case of telecommunications terminal equipment, shall be sufficient to identify interfaces of the public

[8] OJ No. L 204, 21.7.1998, p.37 as amended by Directive 98/48/EC (OJ No.L 217, 5.8.1998, p.15)

telecommunications networks to which it is intended to connect the apparatus;

(4) Notwithstanding paragraph (1), the display of apparatus, at trade fairs, exhibitions, demonstrations and other similar events, which does not comply with these Regulations is permitted provided that a visible sign clearly indicating that such apparatus may not be marketed or put into service until it has been made to comply, is associated with such apparatus.

(5) Notwithstanding paragraph (1), apparatus placed on the market before the date on which a measure referred to in paragraph (3) of Regulation 4 comes into force can continue to be placed on the market for such period as may be specified in accordance with Article 6.2 of the Directive.

(6) In the case of radio equipment that uses frequency bands whose use is not harmonised throughout the Community, the manufacturer or his or her authorised personal representative established within the Community or the person responsible for placing the equipment on the market shall notify the Director of the intention to place such equipment on the market in the State. This notification shall —

(a) be provided not less than 4 weeks before the intended date for placing such equipment on the market,

(b) provide information about the radio characteristics of the equipment and, in particular, information relating to the frequency bands, channel spacing, type of modulation and RF power,

(c) provide, where appropriate, the identification numbers of all the notified bodies used, and

(d) be in such form as may be decided by the Director from time to time.

(7) In paragraph (6) "radio equipment that uses frequency bands whose use is not harmonised throughout the Community" means all radio equipment except those —

(a) which do not transmit;

(b) which can only transmit under the control of a network; or

(c) which use a frequency band, which is allocated, to the same radio interface in every Member State in the following way:

(i) there is a common frequency allocation;

(ii) within this allocation, the allotment and either or both the assignment of radio frequencies or radio frequency channels follow a common plan or arrangement; and

(iii) the equipment satisfies common parameters (such as frequency, power, duty cycle, bandwidth and other radio parameters).

Putting into service and right to connect

7. (1) Subject to paragraphs (2) and (3), 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 applicable requirements of these Regulations.

(2) Where apparatus declared to be compliant with the provisions of these Regulations causes or may cause serious damage to a network or harmful radio interference or harm to the network or its functioning, the operator may make an application to the Director to be authorised to refuse connection, to disconnect such apparatus or to withdraw it from service and if the Director is satisfied that such action is justified the Director may authorise the operator to refuse connection, to disconnect such apparatus or to withdraw it from service.

(3) In case of emergency, an operator may disconnect apparatus if the protection of the network requires the equipment to be disconnected without delay and if the user can be offered, without delay and without costs for him, an alternative solution.

(4) If an operator disconnects apparatus under paragraph (3) he shall immediately inform the Director. The operator shall also provide the Director with such relevant information concerning the disconnection as he or she may request from the operator, as soon as may be thereafter.

(5) Where the Director issues an authorisation pursuant to paragraph (2) the Director shall also notify each such authorisation to the Commission.

Conformity assessment procedures

8. (1) The conformity assessment procedures identified in this Regulation shall be used to demonstrate the compliance of the apparatus with all the relevant essential requirements identified in Regulation 4.

(2) In order to demonstrate conformity to the essential requirements identified in Regulation 4, the manufacturer may choose from the relevant procedures applicable to the apparatus as follows:

(a) for telecommunications terminal equipment, which does not make use of the spectrum allocated to terrestrial or space radio communication and receiving parts of radio equipment the procedures described in any one of Schedules 2, 4 or 5 shall apply,

(b) where a manufacturer has applied the harmonised standards referred to in Regulation 4(4) radio equipment not within the scope of paragraph (a) shall be subject to the procedures described in any one of Schedules 3, 4 or 5, or

(c) where a manufacturer has not applied or has only partially applied the harmonised standards referred to in Regulation 4(4), radio equipment not within the scope of paragraph (a) shall be subject to the procedures described in either Schedule 4 or 5.

(3) As an alternative to the use of paragraphs (a) to (c) above, compliance of the apparatus with the essential requirements identified in Regulation 4(1)(a) and (b) may be demonstrated using the procedures specified in Directive 73/23/EEC and Directive 89/336/EEC respectively, where the apparatus is within the scope of those Directives.

(4) Records and correspondence relating to the conformity assessment procedures referred to in paragraphs (2) and (3) carried out in the State shall be English, or in a language accepted by the notified body concerned.

Notified bodies

9. (1) The Director may from time to time appoint such persons as he or she sees fit to be notified bodies under these Regulations taking account of the criteria in Annex VI to the Directive. The Director may, in making such an appointment, attach such conditions thereto as he or she sees fit.

(2) The Director shall inform the Commission and other Member States of the names of the notified bodies appointed under paragraph (1).

(3) An appointment under paragraph (1):

(a) may be for a fixed or indefinite period;

(b) may be revoked by the Director at any time; and

(c) shall be revoked by the Director if he or she has reason to believe that the notified body in the State does not meet or has ceased to meet the conditions referred to in paragraph (1).

(4) The Director may amend or revoke any or all of the conditions, if any, attached under paragraph (1) to an appointment made under that paragraph, or attach additional conditions from time to time to such appointment for the efficient and proper functioning of the body in question.

(5) Where an appointment has been revoked under paragraph (4) the Director shall so inform the Commission and the other Member States.

CE marking

10. (1) Apparatus complying with all relevant essential requirements of these Regulations shall bear the CE conformity marking specified in Schedule 6, which indicates its conformity with all provisions of these Regulations and the Directive.

(2) It shall be the responsibility of the manufacturer, his or her authorised representative within the Community or the person responsible for placing the apparatus on the market to affix the marking referred to in paragraph (1).

(3) The CE marking shall be accompanied by —

(a) the identification number or numbers of the notified body or bodies, where the procedures identified in Schedules 3, 4 or 5 are used, and

(b) in the case of radio equipment, the equipment class identifier, where such an identifier has been assigned in accordance with Article 4.1 of the Directive.

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

(5) No apparatus, whether or not it complies with the relevant essential requirements, may bear any marking that is likely to deceive third parties as to the meaning and form of the CE marking specified in Schedule 6.

(6) The manufacturer shall identify the apparatus by —

(a) the name of the manufacturer or the person responsible for placing the apparatus on the market, and

(b) the type, and either or both the batch and serial numbers.

(7) Where the apparatus is subject to other Community Directives that concern other aspects and also provide for the affixing of the CE marking, the marking shall indicate that such apparatus also fulfils the provisions of that legislation. However, should that legislation allow the manufacturer, during a transitional period, to choose which arrangements to apply, the CE marking shall indicate that the apparatus fulfils the provisions only of those directives applied by the manufacturer. In this case, the particulars of those directives, as published in the Official Journal of the European Communities, must be given in the documents, notices or instructions required by those directives and accompanying such products.

Directions of Director

11. (1) The Director may, where he or she is of the opinion that any apparatus to which these Regulations apply does not comply with these

Regulations, or in the case of radio equipment where he or she is of the opinion that it has caused or may cause harmful interference, by direction in writing, direct any person to do one or more of the following:

(a) to withdraw the apparatus from the market or from service,

(b) not to place on the market, or put into service the apparatus,

(c) to refrain in total or in part from moving the apparatus, or

(d) to do or refrain from doing any other thing to comply with these Regulations and the Directive,

and the Director may take any other appropriate measures, including the seizing and removing of apparatus from the market to ensure compliance with these Regulations and the avoidance of harmful interference.

(2) The Director shall give the opportunity to any person to whom he or she has given a direction, or who is otherwise affected by measures taken by the Director under paragraph (1) to make representations to the Director. If, because of the urgency of the matter, this opportunity is not given before serving the direction or the taking of other measures, the Director shall give such opportunity, as soon as may be, thereafter.

(3) A direction given under this Regulation shall be in writing and —

(a) state the reasons upon which it is based, and

(b) advise the person of the right of appeal under Regulation 13.

(4) The Director may, where he or she considers it appropriate to do so, withdraw, or amend by a further direction in writing any direction given under this Regulation.

(5) A direction given under this Regulation may require that the measures to be taken or to be refrained from taking, be undertaken —

(a) immediately because of the urgency of the matter,

(b) from a specified date,

(c) by a specified date, or

(d) between specified dates.

(6) A direction given under this Regulation shall, subject to Regulation 13 take effect on the date specified therein.

(7) The Director shall in accordance with the provisions of Article 9 of the Directive notify the Commission of any relevant direction or other measures taken pursuant to paragraph (1).

(8) Where a person fails to comply with a direction given under this Regulation, the Director may, institute in a court of competent jurisdiction, proceedings for an order requiring the person to comply with the terms of the direction.

Service of Directions

12. (1) Subject to paragraphs (2) and (3), a direction under Regulation 11 shall be addressed to the person concerned by name and may be given to the person in one of the following ways —

(a) by delivering it to the person,

(b) by leaving it at the address at which the person carries on business or ordinarily resides or, in the case in which an address for service has been furnished, at that address,

(c) by sending it by post in a prepaid registered letter to the address at which the person carries on business or ordinarily resides or, in a case in which an address for service has been furnished, to that address,

(d) where there is a facility for receiving the text of the notice by electronic means at the address at which the person carries on business or ordinarily resides, by transmitting the text of the notice by such means to such address, provided that the notice is also delivered in any of the other ways referred to in this paragraph.

(2) Where a direction under Regulation 11 is to be given to a person who is the owner or occupier of land or property and the name of the person cannot be ascertained by reasonable inquiry, it may be addressed to

the person by using the words "the owner" or, as the case may require, "the occupier".

(3) For the purposes of this Regulation, a company within the meaning of the Companies Acts, 1963 to 1999, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

Right of appeal against a direction or other measure

13. (1) A person aggrieved by a direction given or other measure taken under Regulation 11 may appeal to the appropriate court against the giving of the direction or taking of the measure.

(2) An appeal under this Regulation shall state the grounds on which the appeal is made and be made by written notice, which shall be lodged with the appropriate office of the court by the appellant not later than 14 days from the date upon which the direction concerned was given to him or her or the measure was taken.

(3) A copy of the notice by which a person makes an appeal under this Regulation shall be given by him or her to the Director.

(4) Where an appeal is made under paragraph (1) the direction shall remain in force until the appeal is determined or withdrawn, subject to any decision to the contrary by the High Court.

(5) On the hearing of an appeal under this Regulation the appropriate court may, as it thinks fit, confirm the direction or measure concerned or annul the direction or measure and make any other such order as it considers appropriate.

(6) In this Regulation "the appropriate court" means-

(a) in case the estimated value of the apparatus concerned does not exceed £5,000, or such other amount as may stand specified for the time being by law as that Court's jurisdiction in tort, the District Court,

(b) in case the estimated value of the apparatus concerned does not exceed £30,000, or such other amount as may stand

specified for the time being by law as that Court's jurisdiction in tort, the Circuit Court,

(c) in any case, the High Court.

(7) If, in relation to an appeal under this Regulation to the District Court, that court becomes of an opinion during the hearing of the appeal that the value of the apparatus, the subject of the appeal, exceeds that court's jurisdiction in tort, it may, if it so thinks fit, transfer the appeal to the Circuit Court or the High Court, whichever it considers appropriate having regard to its opinion of the value of the apparatus.

(8) If, in relation to an appeal under this Regulation to the Circuit Court, that court becomes of opinion during the hearing of the appeal that the value of the apparatus, the subject of the appeal, exceeds that courts' jurisdiction in tort, it may, if it so thinks fit, transfer the appeal to the High Court.

(9) Paragraphs (6) and (7) are without prejudice to the jurisdiction of a court (being either the District Court or the Circuit Court) to determine an appeal under this Regulation in relation to which it was, at the time of the hearing of the appeal, the appropriate court.

(10) An appeal under this Regulation to the District Court shall be determined by the judge of the District Court for the District Court district in which the apparatus concerned was placed on the market or the appellant ordinarily resides.

(11) An appeal under this Regulation to the Circuit Court shall be determined by the judge of the Circuit Court for the circuit in which the apparatus concerned was placed on the market or the appellant ordinarily resides.

Power of Director to make applications to High Court.

14. (1) If the Director is of the opinion that apparatus to which these Regulations apply is being or may be placed on the market and is likely to cause serious injury or damage to property or harmful interference, he or she may apply to the High Court for an order requiring any person placing or having placed the apparatus on the market, to withdraw the apparatus from the market or to prohibit any person intending to place apparatus on

the market from doing so and the High Court may, on hearing the application grant relief of that nature.

(2) An application for an order under this Regulation shall be by motion, and the High Court when considering the matter may make such interim or interlocutory order, as it considers appropriate.

Appointment and powers of authorised officers

15. (1) The Director may appoint such and so many of his or her officers or officers of the Director of Consumer Affairs or any other persons whom he or she considers to be suitably qualified to be authorised officers for the purpose of these Regulations and the Directive.

(2) An authorised officer shall be furnished with a certificate of his or her appointment as an authorised officer and, when exercising a power under these Regulations, shall, if requested by any person affected, produce to the person the certificate for inspection by him or her.

(3) An authorised officer may, for the purposes of enabling the Director to exercise his or her functions under these Regulations and to ensure compliance with these Regulations and the Directive —

(a) enter at all reasonable times any premises, place, vehicle, vessel or aircraft at or in which he or she has reasonable grounds for suspecting that there is present apparatus to which these Regulations apply or that records relating to the aforesaid are kept,

(b) at such premises, place, vehicle, vessel or aircraft, search for such apparatus and records, inspect such apparatus and records and take copies of, or extracts from, any books, records (in whatever form kept) or other documents relating to such apparatus which he or she finds in the course of his or her inspection,

(c) require any person in or at the premises, place, vehicle, vessel or aircraft, the owner or person in charge thereof or any person employed in connection with any activity carried on therein or thereat to give him or her such information and to produce to him or her such books, records or other documents which are within that person's power of procurement as he or she, or the Director, may reasonably

require for the purposes of his or her functions under these Regulations,

(d) in or at the premises, place, vehicle, vessel or aircraft, seize any apparatus or part thereof to which these Regulations or the Directive apply, or any books, records or other documents that he or she or the Director, may reasonably require for the purposes of his or her or its functions under these Regulations,

(e) carry out or have carried out therein or thereat such examinations, tests, inspections and checks of any apparatus found there, as he or she considers reasonable,

(f) secure for later inspection the premises, place, vessel, vehicle or aircraft or any records, books, documents or apparatus found there, and

(g) as regards any apparatus or any article or substance used in the manufacture of an apparatus the officer finds at or in such premises, place, vehicle, vessel or aircraft, require any person in charge or any person who appears to the officer to be in possession of the apparatus or the article or substance, to supply without payment, for test, examination or analysis sufficient samples thereof.

(4) Regulation 17 shall apply to anything seized under paragraph (3).

(5) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under Regulation 16.

Search warrant

16. (1) If a judge of the District Court is satisfied, by information on oath of an authorised officer, that there are reasonable grounds for believing that there is present at or in any specified premises, place, vehicle, vessel or aircraft, apparatus which the officer requires to inspect for the purposes of these Regulations or which does not comply with these Regulations or evidence otherwise of or related to a suspected offence under these Regulations that judge may issue to the authorised officer a warrant under this Regulation.

(2) A warrant issued under this Regulation shall be expressed and shall operate to authorise any one or more of the following, the authorised officer to whom it is issued, or such number of members of the Garda Síochána or other persons authorised by the person to whom the warrant is granted, to enter at any time or times within one month from the date of the issue of the warrant (if need be by force) the premises, place, vehicle, vessel or aircraft named in the said information and there to search for and examine any apparatus as aforesaid and to seize anything which he or she believes to be evidence of, or evidence related to, a suspected offence under these Regulations and to exercise all or any of the powers conferred on an authorised officer under Regulation 15.

(3) An application under paragraph (1) in the case of a premises or place shall be made to the judge of the District Court in whose District Court district the premises or place is situated.

Provisions in relation to items seized

17. (1) Anything seized by the Director or an authorised officer under these Regulations may, without prejudice to paragraph (2), in the case of an authorised officer, be given by him or her to the Director, or any other person designated, for examination by him or her. If a thing aforesaid is given to the Director, or such other person for examination, as appropriate, it shall, as soon as may be after the examination is completed, be returned, as the Director considers appropriate, to the said authorised officer or to any other such officer to whom duties are, for the time being, assigned in relation to the matter concerned.

(2) Anything referred to in paragraph (1) which an authorised officer believes to be evidence of, or evidence related to, an offence under these Regulations (whether as a result of an examination referred to in that paragraph or not) may, without prejudice to the right of the Director, or other person, as appropriate, retain the thing for the purposes of an examination as aforesaid, —

(a) for such period from the date of seizure of the thing as is reasonable, or

(b) if proceedings are commenced under these Regulations in which the thing is to be used in evidence, until the conclusion of those proceedings, and shall then, as soon as

may be after the expiration of that period or, as the case may be, the conclusion of those proceedings be delivered to the person who, in the opinion of the authorised officer to whom duties are, for the time being assigned in relation to the matter, is the owner of the thing.

(3) Anything seized by an authorised officer under these Regulations which that officer or any other such officer to whom duties are, for the time being, assigned in relation to the matter, becomes of the opinion is not evidence of, or evidence related to, an offence under these Regulations shall, as soon as may be after that officer becomes of that opinion, reclaimed upon notification of such an opinion, within a period of 6 months or else shall be forfeit.

(4) If the authorised officer concerned referred to in paragraph (2) or (3) becomes of the opinion that he or she is unable to ascertain the identity of the owner of the thing referred to in the said paragraph (2) or (3), as the case may be, and records that opinion in writing then, on and from that opinion being so recorded, the Police (Property) Act, 1897, shall apply to the thing in the same manner as that Act applies to property which has come into the possession of the Garda Síochána in the circumstances mentioned in that Act.

Offences and Penalties

18. (1) Any person who contravenes or fail to comply with a provision of Regulation 5 (other than paragraph (6)), 6, 7 (other than paragraph (5)), 8, 9, or 10 is guilty of an offence.

(2) A person who —

(a) obstructs or impedes an authorised officer in the exercise of his or her powers under these Regulations,

(b) refuses to produce any apparatus, article, substance, book, record or other document or to answer any question that an authorised officer lawfully requires him or her to produce or to answer,

(c) produces or causes to be produced any book, record or other document to an authorised officer which is false or

misleading in any material respect knowing it to be so false or misleading,

(d) gives to an authorised officer any information, which is false or misleading in any material respect knowing it to be so false or misleading,

is guilty of an offence.

(3) Proceedings for an offence under this Regulation may be brought and prosecuted by the Director.

(4) Where an offence under these Regulations has been committed by a body corporate, and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a Director, manager, secretary, or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate is guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(5) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding €3000 (£2,362.69).

Application of other Regulations to Apparatus

19. (1) The 1989 European Communities (Electromagnetic Compatibility) Regulations, 1998 (S.I. No. 22 of 1998) shall not apply to apparatus to which these Regulations apply, with the exception of the protection requirements in Article 4 and Annex II and the conformity assessment procedure in Article 10(1) and 10(2) and Annex I to, Council Directive 89/336/EEC.

(2) The European Communities (Low Voltage Electrical Equipment) Regulations, 1992 (S.I. 428 of 1992) shall not apply to apparatus to which these Regulations apply, with the exception of the objectives with respect to safety requirements in Article 2 and Annex 1 and the conformity assessment procedure in Annex III, Section B, and Annex IV to Council Directive 73/23/EEC.

Application of the Wireless Telegraphy Act, 1926

20. (1) Notwithstanding section 3(1) of the Wireless Telegraphy Act, 1926, a person shall not be required to hold a licence under that Act to keep or have in his or her possession any apparatus for wireless telegraphy solely for the purpose of placing that apparatus on the market, within the meaning of the Directive.

(2) Nothing in the Wireless Telegraphy Acts, 1926 to 1988, shall operate so as to restrict or prevent any person from working or using an apparatus for wireless telegraphy, which is lawfully in their possession, or which is otherwise in compliance with the licensing requirements of those Acts for its intended purpose where it complies with the provisions of the Directive, save where such restriction or prevention is related to the effective and appropriate use of the radio frequency spectrum, avoidance of harmful interference or matters relating to public health.

Revocations

21. The following are revoked -

(a) Regulation 8 of the European Communities (Telecommunications Services) Regulations, 1992 (S.I. No. 45 of 1992),

(b) the European Communities (Telecommunications Terminal Equipment) Regulations, 1997 (S.I. No. 73 of 1997),

(c) the European Communities (Satellite Earth Station Equipment) Regulations, 1998 (S.I. No. 179 of 1998), and

(d) the Wireless Telegraphy (Control of Sale, Letting on Hire or Manufacture, and Importation of Radio Transceivers), Order 1981 (S.I. No. 400 of 1981).

Regulation 3 (1)

SCHEDULE 1

EQUIPMENT NOT COVERED BY THESE REGULATIONS

1. Radio equipment used by radio amateurs within Article 1, definition

53, of the International Telecommunications Union (ITU) radio regulations unless the 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 96/98/EC of 20 December 1996 on marine equipment.[9]

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 procedures in the field of civil aviation.[10]

6. Air-traffic-management equipment and systems within the meaning of Article 1 of Council Directive 93/65/EEC of 19 July 1993 on the definition and use of compatible technical specifications for the procurement of air-traffic-management equipment and systems.[11]

Regulation 8(2)(a)

SCHEDULE 2

CONFORMITY ASSESSMENT PROCEDURE

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 paragraph 2, ensures and declares that the products concerned satisfy the requirements of the Directive or these Regulations that apply to them. The manufacturer or his authorised

[9] OJ L 46, 17.2.1997, p.25.
[10] OJ L 373, 31.12.1991, p.4. Regulation as amended by Commission Regulation (EC) No 2176/96 (OJ L 291, 14.11.1996, p.15).
[11] OJ L 187, 29.7.1993, p.52. Directive as last amended by Commission Directive 97/15/EC (OJ L 95, 10.4.1997, p.16).

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 paragraph 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) a general description of the product,

(b) conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.,

(c) descriptions and explanations necessary for the understanding of said drawings and schemes and the operation of the product,

(d) a list of the standards referred to in Article 5 of the Directive, applied in full or in part, and descriptions and explanations of the solutions adopted to meet the essential requirements of the Directive or these Regulations where such standards referred to in Article 5 of the Directive have not been applied or do not exist,

(e) results of design calculations made, examinations carried out, etc.,

(f) 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 paragraph 2 and with the requirements of the Directive that apply to them.

Regulation 8(2)(b)

SCHEDULE 3

CONFORMITY ASSESSMENT PROCEDURE

(Internal production control plus specific apparatus tests) [12]

This Schedule consists of Schedule 2, plus the following supplementary requirements:

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.

Regulation 8(2)

SCHEDULE 4

CONFORMITY ASSESSMENT PROCEDURE

(Technical construction file)

This Schedule consists of Schedule 3 plus the following supplementary requirements:

The technical documentation described in paragraph 4 of Schedule 2 and the declaration of conformity to specific radio test suites described in Schedule 3 must form a technical construction file.

The manufacturer, his authorised representative established within the

[12] Annex based on Module A with additional requirements appropriate to the sector.

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 Regulations 6(6) and 11.

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 State for inspection.

Regulation 8(2)

SCHEDULE 5

CONFORMITY ASSESSMENT PROCEDURE

Full quality assurance

1. Full quality assurance is the procedure whereby the manufacturer who satisfies the obligations of paragraph 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 Regulation 10(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 paragraph 3 and must be subject to surveillance as specified in paragraph 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:

(a) all relevant information for the products envisaged, and

(b) 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:

(a) the quality objectives and the organisational structure, responsibilities and powers of the management with regard to design and product quality,

(b) 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 Regulation 4(4) 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,

(c) 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,

(d) the corresponding manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used,

(e) the examinations and tests 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,

(f) the means by which it is ensured that the test and examination facilities respect the appropriate requirements for the performance of the necessary test,

(g) the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.,

(h) 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 paragraph 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 paragraphs 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. Community 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:

(a) the quality system documentation,

(b) the quality records as foreseen by the design part of the quality system, such as results of analyses, calculations, tests, etc.,

(c) 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:

(a) the documentation referred to in the second indent of paragraph 3.1,

(b) the updating referred to in the second paragraph of paragraph 3.4,

the decisions and reports from the notified body which are referred to in the final paragraph of paragraph 3.4 and in paragraph 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 references to the product concerned, issued and withdrawn.

Regulation 10

SCHEDULE 6

MARKING OF EQUIPMENT

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 of the Directive.

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'.

Given under my Official Seal,

5th June 2001

L.S.

Mary O'Rourke,
Minister for Public Enterprise.

Explanatory Note

(This note is not part of the Instrument and does not purport to be a legal interpretation)

The purpose of these regulations is to give legal effect to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity.

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