



STATUTORY INSTRUMENTS.

**S.I. No. 69 of 2017**



EUROPEAN COMMUNITIES (ELECTROMAGNETIC  
COMPATIBILITY) REGULATIONS 2017

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I, MARY MITCHELL O’CONNOR, Minister for Jobs, Enterprise and Innovation, 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 2014/30/EU of the European Parliament and of the Council of 26 February 2014<sup>1</sup>, hereby make the following regulations:

## Part 1

## GENERAL PROVISIONS

*Citation and commencement*

1. (1) These Regulations may be cited as the European Communities (Electromagnetic Compatibility) Regulations 2017.

(2) These Regulations and the Regulations of 2016 may be cited together as the European Communities (Electromagnetic Compatibility) Regulations 2016 and 2017.

*Interpretation*

2. (1) In these Regulations—

“authorised officer” means a person appointed under Regulation 26;

“competent national authority” means—

(a) in relation to the State, the Regulator, and

(b) in relation to another Member State, the competent authority under the Directive, of that other Member State;

“Directive” means Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility (recast)<sup>1</sup>;

“fixed installation compliance notice” has the meaning assigned to it by Regulation 19(11);

“formal non-compliance notice” has the meaning assigned to it by Regulation 24;

<sup>1</sup>OJ No. L96, 29.3.2014, p.79.

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 10th March, 2017.*

“notice of appeal” has the meaning assigned to it by Regulation 30;

“notice under these Regulations” means all of the following:

- (a) a fixed installation compliance notice;
- (b) a formal non-compliance notice;
- (c) a risk compliance notice;

“notified body” has the meaning assigned to it by the Regulations of 2016;

“Regulator” means the Commission for Communications Regulation;

“Regulation (EC) No. 765/2008” has the meaning assigned to it by the Regulations of 2016;

“Regulations of 2007” means the European Communities (Electromagnetic Compatibility) Regulations 2007 (S.I. No. 109 of 2007);

“Regulations of 2016” means the European Communities (Electromagnetic Compatibility) Regulations 2016 (S.I. No. 145 of 2016);

“risk compliance notice” has the meaning assigned to it by Regulation 22;

“Union” means the European Union.

(2) A word or expression which is used in these Regulations and which is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

#### *Application*

3. (1) These Regulations shall apply to equipment.

(2) These Regulations shall not apply to—

- (a) equipment covered by Directive 1999/5/EC<sup>2</sup>,
- (b) aeronautical products, parts and appliances as referred to in Regulation (EC) No. 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No. 1592/2002 and Directive 2004/36/EC<sup>3</sup>,
- (c) radio equipment used by radio amateurs within the meaning of the Radio Regulations adopted in the framework of the Constitution of the International Telecommunication Union and the Convention of the International Telecommunication Union, unless the equipment is made available on the market,

<sup>2</sup>OJ No. L91, 7.4.1999, p.10.

<sup>3</sup>OJ No. L79, 19.3.2008, p.1.

- (d) equipment the inherent nature of the physical characteristics of which is such that:
  - (i) it is incapable of generating or contributing to electromagnetic emissions which exceed a level allowing radio and telecommunication equipment and other equipment to operate as intended; and
  - (ii) it operates without unacceptable degradation in the presence of the electromagnetic disturbance normally consequent upon its intended use,
- (e) custom built evaluation kits destined for professionals to be used solely at research and development facilities for such purposes.

(3) For the purposes of subparagraph (c) of paragraph (2), kits of components to be assembled by radio amateurs and equipment made available on the market and modified by and for the use of radio amateurs are not regarded as equipment made available on the market.

(4) Where, for the equipment referred to in paragraph (1), the essential requirements set out in Annex I to the Directive are wholly or partly laid down more specifically by other Union legislation, these Regulations shall not apply, or shall cease to apply, to that equipment in respect of such requirements from the date of implementation of that Union legislation.

(5) These Regulations shall not affect the application of Union or national legislation regulating the safety of equipment.

*Making available on the market, and putting into service, equipment*

4. A person shall not—

- (a) make available on the market equipment to which these Regulations apply, or
- (b) put into service equipment to which these Regulations apply,

unless that equipment complies with these Regulations when it is properly installed, maintained and used for its intended purpose.

*Exception for trade fairs, exhibitions and similar events*

5. (1) Nothing in these Regulations shall prevent the display or demonstration of equipment which does not comply with these Regulations at trade fairs, exhibitions or similar events if a visible sign clearly indicates that the equipment may not be made available on the market or put into service until it has been brought into conformity with these Regulations.

(2) A person shall not demonstrate equipment which does not comply with these Regulations unless adequate measures are taken to avoid electromagnetic disturbances during the demonstration.

*Essential requirements for equipment to which these Regulations apply*

6. (1) Equipment to which these Regulations apply shall meet the essential requirements set out in Annex I to the Directive.

(2) A person shall not—

(a) make available on the market equipment to which these Regulations apply, or

(b) put into service equipment to which these Regulations apply,

unless the equipment concerned meets the essential requirements set out in Annex I to the Directive.

(3) A person who—

(a) owns a fixed installation which is put into service, or

(b) operates a fixed installation which is put into service,

shall not put the fixed installation concerned into service unless the fixed installation concerned meets the essential requirements set out in Annex I to the Directive.

## Part 2

### OBLIGATIONS OF ECONOMIC OPERATORS

*Obligations of manufacturers*

7. (1) A manufacturer shall ensure that apparatus placed on the market has been designed and manufactured in accordance with the essential requirements set out in Annex I to the Directive.

(2) A manufacturer shall—

(a) draw up the technical documentation referred to in Annex II to the Directive or Annex III to the Directive, and

(b) carry out the relevant conformity assessment procedure referred to in Regulation 14 or have it carried out.

(3) Where compliance of apparatus with the applicable requirements has been demonstrated by the procedure referred to in paragraph (2)(b), the manufacturer concerned shall—

(a) draw up an EU declaration of conformity, and

(b) affix the CE marking,

in accordance with these Regulations.

(4) A manufacturer shall keep the technical documentation and the EU declaration of conformity for 10 years after the apparatus has been placed on the market.

(5) A manufacturer shall ensure that procedures are in place for series production to remain in conformity with these Regulations, having regard to any changes in apparatus design or characteristics and the harmonised standards or other technical specifications by reference to which conformity of apparatus is declared.

(6) A manufacturer shall ensure that apparatus which the manufacturer has placed on the market—

- (a) bears a type, batch or serial number or other element allowing for the identification of the apparatus, or
- (b) where the size or nature of that apparatus does not allow it, that the required information is provided on the packaging or in a document accompanying the apparatus.

(7) A manufacturer shall—

- (a) indicate on the apparatus the name of the manufacturer concerned, the registered trade name, or registered trade mark, and the postal address at which the manufacturer can be contacted, or
- (b) where it is not possible to indicate the matters referred to in subparagraph (a) on the apparatus, indicate that information on its packaging or in a document accompanying the apparatus,

and for the purposes of subparagraphs (a) and (b)—

- (i) the address shall indicate a single point at which the manufacturer can be contacted, and
- (ii) the contact details shall be in a language easily understood by end-users and market surveillance authorities.

(8) A manufacturer shall—

- (a) ensure that the apparatus is accompanied by instructions and the information referred to in Regulation 18 in—
  - (i) the English language, and
  - (ii) language which is clear, understandable and intelligible, and
- (b) provide those instructions and that information in a manner that is clear, understandable and intelligible.

(9) A manufacturer shall ensure that the labelling of apparatus is clear, understandable and intelligible.

(10) Where a manufacturer considers, or has reason to believe, that an apparatus which the manufacturer has placed on the market is not in conformity with these Regulations, the manufacturer shall immediately take the corrective measures necessary to bring that apparatus into conformity including withdrawing it or recalling it, if appropriate.

(11) Where apparatus placed on the market presents a risk, the manufacturer shall—

- (a) immediately inform the competent national authorities of the Member States in which the manufacturer has made the apparatus available on the market of the risk, and
- (b) provide details, in particular, of the non-compliance and of the corrective measures taken by the manufacturer.

(12) A manufacturer shall—

- (a) further to a reasoned request from the Regulator or a competent national authority of another Member State, provide it with all of the information and documentation in paper or electronic form necessary to demonstrate the conformity of the apparatus with these Regulations in English or, in the case of a competent national authority, a language which can be easily understood by that authority, and
- (b) cooperate with that authority, at its request, on any action taken to eliminate the risks posed by the apparatus which the manufacturer has placed on the market.

#### *Authorised representatives*

8. (1) Subject to paragraphs (2) and (3), a manufacturer may, by a written mandate (in these Regulations referred to as a “mandate”), appoint a person to be an authorised representative.

(2) The obligations of a manufacturer referred to in Regulations 7(1) and 7(2)(a) shall not be included in the authorised representative's mandate.

(3) An authorised representative shall perform the tasks specified in the written mandate under paragraph (1).

(4) The mandate shall allow the authorised representative to—

- (a) keep the EU declaration of conformity and the technical documentation at the disposal of national market surveillance authorities for 10 years after the apparatus has been placed on the market,
- (b) further to a reasoned request from the Regulator or a competent national authority of another Member State, provide the Regulator or, as the case may be, the competent national authority concerned, with all the information and documentation necessary to demonstrate the conformity of the apparatus, and

- (c) co-operate with the Regulator or a competent national authority of another Member State, at the request of the Regulator, or as the case may be, the competent national authority concerned, on any action taken to eliminate the risks posed by the apparatus covered by the authorised representative's mandate.
- (5) For the purposes of paragraph (4), an authorised representative shall—
- (a) keep the EU declaration of conformity and the technical documentation at the disposal of national market surveillance authorities for 10 years after the apparatus has been placed on the market,
  - (b) further to a reasoned request from the Regulator or a competent national authority of another Member State, provide the Regulator or, as the case may be, the competent national authority concerned, with all the information and documentation necessary to demonstrate the conformity of the apparatus, and
  - (c) cooperate with the Regulator or a competent national authority of another Member State, at the request of the Regulator, or as the case may be, the competent national authority concerned, on any action taken to eliminate the risks posed by the apparatus covered by the authorised representative's mandate.
- (6) For the purposes of paragraph (2)—
- (a) an authorised representative shall not perform the obligations referred to in paragraph (2), and
  - (b) a manufacturer shall not include the obligations referred to in paragraph (2) in a mandate under this Regulation.

*Obligations of importers*

9. (1) An importer shall not place apparatus on the market unless the apparatus is in compliance with these Regulations.
- (2) Before placing apparatus on the market an importer shall ensure that—
- (a) the appropriate conformity assessment procedure referred to in Regulation 14 has been carried out by the manufacturer,
  - (b) the manufacturer has drawn up the technical documentation,
  - (c) the apparatus bears the CE marking and is accompanied by the required documents, and
  - (d) the manufacturer has complied with the requirements set out in Regulations 7(6) and 7(7).
- (3) Where an importer considers, or has reason to believe, that apparatus is not in conformity with the essential requirements set out in Annex I to the



Directive, the importer shall not place the apparatus on the market until it has been brought into conformity.

(4) Where the apparatus presents a risk, the importer shall inform the manufacturer and the Regulator and the market surveillance authorities in the other Member States of that risk.

(5) An importer shall indicate on the apparatus—

(a) the name of the importer, registered trade name or registered trade mark, and

(b) the postal address at which the importer can be contacted.

(6) Where it is not possible to comply with paragraph (5), the importer shall indicate the information specified in subparagraphs (a) and (b) of that paragraph on its packaging or in a document accompanying the apparatus.

(7) For the purposes of paragraphs (5) and (6), the contact details shall be in a language easily understood by end-users and market surveillance authorities.

(8) An importer shall ensure that the apparatus is accompanied by instructions and the information, referred to in Regulation 18, which shall be in the English language.

(9) An importer shall ensure that, while an apparatus is under his or her responsibility, the storage or transport conditions do not jeopardise the compliance of the apparatus with the essential requirements set out in Annex I to the Directive.

(10) An importer who considers, or has reason to believe, that an apparatus which the importer has placed on the market is not in conformity with these Regulations shall immediately take the corrective measures necessary to bring the apparatus into conformity, to withdraw the apparatus or to recall the apparatus, if appropriate.

(11) Where the apparatus referred to in paragraph (10) presents a risk, the importer shall—

(a) immediately inform the Regulator and the competent national authorities of any other Member States in which the importer has made the apparatus available on the market of the risk, and

(b) give details of—

(i) the non-compliance concerned, and

(ii) any corrective measures taken.

(12) An importer shall, for 10 years after the apparatus has been placed on the market—

- (a) keep a copy of the EU declaration of conformity at the disposal of the Regulator and the market surveillance authorities of any other Member State, and
- (b) ensure that the technical documentation can be made available to those authorities upon request.

(13) An importer shall, at the reasoned request of a competent national authority—

- (a) provide the competent national authority with all the information and documentation in paper or electronic form, that is necessary to demonstrate the conformity of the apparatus in language which can be easily understood by the competent national authority concerned, and
- (b) co-operate with that competent national authority, on any action taken to eliminate the risks posed by the apparatus which the importer has placed on the market.

*Obligations of distributors*

10. (1) A distributor shall not make apparatus available on the market without acting with due care in relation to the requirements of these Regulations.

(2) Before making apparatus available on the market, a distributor shall verify—

- (a) the apparatus—
  - (i) bears the CE marking,
  - (ii) is accompanied by the required documents, and
  - (iii) is accompanied by instructions and information referred to in Regulation 18 in a language which can be easily understood by consumers and other end-users in the Member State in which the apparatus is to be made available on the market,
- (b) the manufacturer has complied with the requirements set out in Regulations 7(6) and 7(7), and
- (c) the importer has complied with the requirements set out in Regulation 9(5) and 9(7).

(3) Where a distributor considers or has reason to believe that the apparatus is not in conformity with the essential requirements set out in Annex I to the Directive, the distributor—

- (a) shall not make the apparatus available on the market until it has been brought into conformity, and
- (b) where the apparatus presents a risk, shall inform—

- (i) the manufacturer or the importer to that effect, and
- (ii) the Regulator and the market surveillance authorities of the other Member States.

(4) A distributor shall ensure that, while apparatus is under the responsibility of the distributor, the storage or transport conditions do not jeopardise its compliance with the essential requirements set out in Annex I to the Directive.

(5) Where a distributor considers, or has reason to believe, that apparatus which the distributor has made available on the market is not in conformity with these Regulations, the distributor shall make sure that the corrective measures necessary to bring that apparatus into conformity, to withdraw it or recall it, where appropriate, are taken.

(6) Where the apparatus presents a risk, the distributor shall—

- (a) immediately inform the competent national authorities in any Member State in which the distributor made the apparatus available on the market to that effect, and
- (b) give details, in particular, of the non-compliance and of any corrective measures taken.

(7) A distributor shall—

- (a) further to a reasoned request from the Regulator or a competent national authority in another Member State, provide the Regulator or, as the case may be, the competent national authority concerned with information and documentation, in paper or electronic form, which is necessary to demonstrate the conformity of the apparatus, and
- (b) shall cooperate with the Regulator, or as the case may be, a competent national authority referred to in subparagraph (a), on any action taken to eliminate the risks posed by apparatus which the distributor has made available on the market.

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

11. An importer or a distributor shall be subject to the obligations of the manufacturer under Regulation 7, where the importer or distributor places apparatus on the market under his or her name or trade mark or modifies apparatus already placed on the market in such a way that compliance with these Regulations may be affected.

*Identification of economic operators*

12. (1) An economic operator shall, on request, identify the following to the Regulator, as the case may be, a market surveillance authorities of the other Member States:

- (a) any other economic operator who has supplied the first-mentioned economic operator with apparatus;
  - (b) any other economic operator to whom the first-mentioned economic operator has supplied apparatus.
- (2) An economic operator shall take all steps necessary to ensure that the economic operator concerned is able to present the information referred to in paragraph (1) for—
- (a) 10 years after the economic operator concerned has been supplied with the apparatus, and
  - (b) 10 years after the economic operator concerned has supplied the apparatus.

### Part 3

#### CONFORMITY OF EQUIPMENT

##### *Presumption of conformity of equipment*

13. Equipment which is in conformity with a harmonised standard (or part of such standard) the reference to which has been published in the Official Journal of the European Union shall be presumed to be in conformity with the essential requirements set out in Annex I to the Directive covered by that standard (or part of that standard).

##### *Conformity assessment procedures for apparatus*

14. (1) Compliance of apparatus with the essential requirements set out in Annex I to the Directive shall be demonstrated by means of either of the following conformity assessment procedures:

- (a) internal production control set out in Annex II to the Directive;
  - (b) EU type examination that is followed by Conformity to type based on internal production control set out in Annex III to the Directive.
- (2) For the purposes of the procedure referred to in subparagraph (b) of paragraph (1), the manufacturer may choose to restrict the application of the procedure referred to in that subparagraph to some aspect of the essential requirements, provided that for the other aspects of the essential requirements the procedure referred to in subparagraph (a) of paragraph (1) is applied.

##### *EU declaration of conformity*

15. (1) The EU declaration of conformity shall—

- (a) state that the fulfilment of the essential requirements set out in Annex I to the Directive has been demonstrated,
- (b) have the model structure set out in Annex IV to the Directive,

- (c) contain the elements specified in the relevant modules set out in Annexes II and III to the Directive,
- (d) be continuously updated, and
- (e) be translated into the language, or languages, required by the Member State in which the apparatus is placed, or made available, on the market.

(2) Where apparatus is subject to more than one Union act requiring an EU declaration of conformity—

- (a) a single EU declaration of conformity shall be drawn up in respect of all such Union acts, and
- (b) the declaration referred to in subparagraph (a) shall contain the identification of the Union acts concerned including their publication references.

(3) By drawing up the EU declaration of conformity, the manufacturer shall assume responsibility for the compliance of the apparatus with the requirements laid down in these Regulations.

*General principles of CE marking*

16. (1) The CE marking shall be subject to the general principles set out in Article 30 of Regulation (EC) No. 765/2008.

(2) A person who makes an apparatus available on the market shall comply with the requirements of Article 30 of Regulation (EC) No. 765/2008.

*Rules and conditions for affixing CE marking*

17. (1) A person who affixes the CE marking shall comply with this Regulation.

(2) The CE marking shall, subject to paragraph (3), be affixed visibly, legibly and indelibly to the apparatus or to its data plate.

(3) Where it is not possible or warranted, on account of the nature of the apparatus, to comply with paragraph (2), the CE marking shall be affixed to the packaging and to the accompanying documents.

(4) The CE marking shall be affixed before the apparatus is placed on the market.

*Information concerning use of apparatus*

18. (1) For the purposes of compliance with Regulations 7(8), 9(8) and 10(2), this Regulation shall apply to the provision of information that is to accompany apparatus.

(2) Apparatus shall be accompanied by information on any specific precaution that must be taken when the apparatus is assembled, installed, maintained or used, in order to ensure that, when put into service, the apparatus is in conformity with the essential requirements set out in point 1 of Annex I to the Directive.

(3) In the case of apparatus for which compliance with the essential requirements set out in point 1 of Annex I to the Directive is not ensured in residential areas, such apparatus shall be accompanied by a clear indication of such restriction of use, where appropriate also on the packaging.

(4) The information required to enable apparatus to be used in accordance with the intended purpose of the apparatus shall be included in the instructions accompanying the apparatus.

*Fixed installations*

19. (1) Subject to paragraph (2), apparatus which—

- (a) has been made available on the market, and
- (b) may be incorporated into a fixed installation,

shall be subject to all relevant provisions for apparatus set out in these Regulations.

(2) The requirements of—

- (a) Regulations 6 to 12, and
- (b) Regulations 14 to 18,

shall not be compulsory in the case of apparatus which is intended for incorporation into a particular fixed installation and is otherwise not made available on the market.

(3) For the purposes of the apparatus referred to in paragraph (2), the accompanying documentation for such apparatus shall—

- (a) identify the fixed installation and its electromagnetic compatibility characteristics,
- (b) indicate the precautions to be taken for the incorporation of the apparatus into the fixed installation in order not to compromise the conformity of that installation, and
- (c) include the information referred to in—
  - (i) paragraphs (6) and (7) of Regulation 7, and
  - (ii) paragraphs (5) and (7) of Regulation 9.

(4) A person who installs a fixed installation shall—

- (a) keep a record of the good engineering practices referred to in point 2 of Annex I to the Directive, and
- (b) provide a copy of that record to the owner of the fixed installation.

(5) The owner of the fixed installation shall—

- (a) hold the documentation referred to in paragraph (4)(a) provided to him or her pursuant to paragraph (4)(b), and
- (b) provide the documentation referred to in paragraph (a) for inspection, by the Regulator, for as long as the fixed installation is in operation.

(6) The Regulator may request the owner of the fixed installation to provide the documentation referred to in paragraph (5)(b) for inspection during the period in which the fixed installation is in operation.

(7) Where—

- (a) the Regulator is satisfied that there are indications of non-compliance of the fixed installation, and
- (b) without prejudice to the generality of subparagraph (a), there are complaints about disturbances being generated by the installation,

the Regulator may—

- (i) request evidence of compliance of the fixed installation, and
- (ii) when appropriate, initiate an evaluation.

(8) A request under paragraph (7)(i) may specify a period within which the evidence is to be provided to the Regulator.

(9) A person to whom a request for evidence of compliance is made under paragraph (7)(i) shall comply with the request.

(10) A person who installs a fixed installation shall install the fixed installation—

- (a) in accordance with—
  - (i) good engineering practices, and
  - (ii) the information provided in respect of the intended use of the components of the fixed installation, and
- (b) with a view to meeting the essential requirements set out in paragraph 1 of Annex I to the Directive.

(11) Where, as a result of an evaluation referred to in paragraph (7)(ii), the Regulator establishes that a fixed installation is not in compliance with these Regulations, the Regulator—

- (a) shall, by notification in writing (a "fixed installation compliance notice"), direct the owner or operator of the fixed installation to bring the fixed installation into compliance with the essential requirements set out in Annex I to the Directive, and
- (b) shall, in the fixed installation compliance notice referred to in subparagraph (a), specify appropriate measures to be taken by the owner or operator of the fixed installation.

(12) Except in circumstances warranting immediate action, before serving a fixed installation compliance notice, the Regulator shall consult with the person on whom the proposed notification is proposed to be served.

(13) In circumstances warranting immediate action, as soon as may be after serving a fixed installation compliance notice, the Regulator shall consult with the person on whom the notification was served.

(14) A person to whom a fixed installation compliance notice is given shall comply with the requirements specified in that notice unless it is withdrawn or amended by the Regulator under Regulation 28(5) or annulled under Regulation 30(6).

(15) Where a person provides accompanying documentation for apparatus referred to in paragraph (2), the accompanying documentation shall comply with the requirements of paragraph (3).

#### Part 4

##### UNION MARKET SURVEILLANCE, CONTROL OF APPARATUS ENTERING THE UNION MARKET AND UNION SAFEGUARD PROCEDURE

##### *Union market surveillance and control of apparatus entering Union market: appointment of Regulator as market surveillance authority*

20. For the purposes of these Regulations and the Directive, the Regulator shall be the market surveillance authority in the State.

##### *Article 37 of Directive: consequential provisions*

21. (1) For the purposes of Article 37 of the Directive and the application, to apparatus, of Articles 15(3) and 16 to 29 of Regulation (EC) No. 765/2008, the Regulator shall—

- (a) be the market surveillance authority, within the meaning of Regulation (EC) No. 765/2008, in the State for the purposes of those Articles and in relation to that application,



- (b) perform the functions assigned to a market surveillance authority in those Articles of Regulation (EC) No. 765/2008 and in relation to that application, and
- (c) perform the functions specified in Articles 20, 22 and 23(2) of Regulation (EC) No. 765/2008 in relation to that application.

(2) Without prejudice to paragraph (1)(b), for the purposes of Article 19 of Regulation (EC) No. 765/2008, where, pursuant to that Article, the Regulator considers it is necessary to do so, the Regulator may destroy or otherwise render inoperable apparatus presenting a serious risk referred to in that Article.

*Procedure for dealing with apparatus presenting risk at national level*

22. (1) Where the Regulator has sufficient reason to believe that an apparatus to which these Regulations apply presents a risk to aspects of public interest protection covered by these Regulations, the Regulator shall carry out an evaluation in relation to the apparatus concerned covering all relevant requirements laid down in these Regulations.

(2) The relevant economic operators shall cooperate as necessary with the Regulator for the purpose of the evaluation referred to in paragraph (1).

(3) Where, in the course of the evaluation referred to in paragraph (1), the Regulator finds that the apparatus does not comply with the requirements laid down in these Regulations, the Regulator shall without delay require, by notice in writing (a "risk compliance notice"), the relevant economic operator to—

- (a) take all appropriate corrective actions to bring the apparatus into compliance with those requirements,
- (b) to withdraw the apparatus from the market, or
- (c) to recall the apparatus,

within a reasonable period, commensurate with the nature of the risk, as the Regulator considers appropriate.

(4) The Regulator shall inform the relevant notified body of the measures referred to in paragraph (3).

(5) Where, pursuant to paragraph (3), a risk compliance notice is given to a person-

- (a) Regulation 28 shall apply to that notice,
- (b) without prejudice to Regulation 28, Article 21 of Regulation (EC) No. 765/2008 shall apply to the measures specified in that notice,
- (c) the Regulator shall ensure that any measure specified in that notice complies with Article 21 of Regulation (EC) No. 765/2008 and without prejudice to the generality of the foregoing, for the purposes of

making representations, the Regulator shall have regard to the period specified in Article 21 of Regulation (EC) No. 765/2008 in respect of the making of those representations.

(6) Where the Regulator considers that non-compliance is not restricted to the State, the Regulator shall inform the Commission and the other Member States of the results of the evaluation and of the actions which the Regulator has required the economic operator to take.

(7) The economic operator shall ensure that all appropriate corrective action specified in the risk compliance notice is taken in respect of all the apparatus concerned that it has made available on the market throughout the Union unless the notice is withdrawn or amended under Regulation 28(5) or annulled under Regulation 30(6).

(8) Where the relevant economic operator does not take adequate corrective action within the period referred to in paragraph (3), the Regulator shall take all appropriate provisional measures to—

- (a) prohibit, or restrict, the apparatus being made available on the market in the State,
- (b) to withdraw that apparatus from the market in the State, or
- (c) to recall that apparatus.

(9) Where, pursuant to paragraph (8), the Regulator takes a measure specified in that paragraph, the Regulator shall—

- (a) notify the economic operator of the measure concerned, by notice in writing, and
- (b) paragraph (5) shall apply to that notice.

(10) An economic operator shall comply with a measure taken under paragraph (8) unless the notice in writing in which they are specified is withdrawn or amended under Regulation 28(5) or annulled under Regulation 30(6).

(11) The Regulator shall inform the Commission and the other Member States, without delay, of a measure, referred to in paragraph (8), which it has taken pursuant to that paragraph.

(12) The information provided in accordance with paragraph (11) shall—

- (a) include all available details,
- (b) without prejudice to the generality of subparagraph (a), include details of—
  - (i) the data necessary for the identification of the non-compliant apparatus,

- (ii) the origin of the apparatus,
  - (iii) the nature of the non-compliance alleged and the risk involved,
  - (iv) the nature and duration of the national measures taken, and
  - (v) the arguments put forward by the relevant economic operator,  
and
- (c) indicate, in the information, whether the non-compliance is due to either—
- (i) the failure of the apparatus to meet the requirements relating to aspects of public interest protection covered by these Regulations, or
  - (ii) shortcomings in the harmonised standards referred to in Regulation 13 conferring a presumption of conformity.

(13) Where another Member State initiates the procedure under Article 38 of the Directive—

- (a) the Regulator shall without delay inform the Commission and the other Member States of—
  - (i) any measures adopted, and
  - (ii) any additional information at the disposal of the Regulator relating to the non-compliance of the apparatus concerned, and
- (b) where the Regulator disagrees with the adopted national measure, the objections of the Regulator.

(14) Where, within 3 months of receipt of the information referred to in paragraph (11) no objection has been raised by—

- (a) another Member State, or
- (b) the Commission,

in respect of a provisional measure taken by a Member State, that measure shall be deemed justified.

(15) The Regulator shall ensure that appropriate restrictive measures, such as withdrawal of the apparatus from the market, are taken in respect of the apparatus concerned without delay.

*Union safeguard procedure*

23. Where, pursuant to Article 39 of the Directive, a national measure of a Member State—

- (a) is considered justified, the Regulator shall—

- (i) take the necessary measures to ensure that the non-compliant apparatus is withdrawn from the market in the State, and
- (ii) inform the Commission accordingly, or

(b) is considered unjustified, the Regulator shall withdraw that measure.

*Formal non-compliance*

24. (1) Without prejudice to Regulation 22, where the Regulator makes one of the following findings, the Regulator shall, by notice in writing (a “formal non-compliance notice”), require the relevant economic operator to put an end to the non-compliance concerned:

- (a) the CE marking has been affixed in violation of—
    - (i) Article 30 of Regulation (EC) No. 765/2008, or
    - (ii) Regulation 17;
  - (b) the CE marking has not been affixed;
  - (c) the EU declaration of conformity has not been drawn up;
  - (d) the EU declaration of conformity has not been drawn up correctly;
  - (e) the technical documentation is either not available or not complete;
  - (f) the information referred to in—
    - (i) Regulation 7(7), or
    - (ii) paragraphs (5) and (6) of Regulation 9,
 is absent, false or incomplete;
  - (g) any other administrative requirement provided for in Regulation 7 or Regulation 9 is not fulfilled.
- (2) For the purposes of paragraph (1)—
- (a) the Regulator, in a formal non-compliance notice, shall specify the measures to be taken to end the non-compliance concerned, and
  - (b) Regulation 28 shall apply to that notice.
- (3) Where the non-compliance referred to in paragraph (1) persists, the Regulator shall take all appropriate measures to—
- (a) restrict or prohibit the apparatus being made available on the market, or
  - (b) ensure that it is recalled or withdrawn from the market.

(4) Where, pursuant to paragraph (3), the Regulator takes a measure specified in that paragraph—

- (a) the Regulator shall notify the economic operator of the measure concerned, by notice in writing, and
- (b) Regulation 28 shall apply to that notice.

(5) A person to whom a formal non-compliance notice, or a notice under paragraph (4), is given shall comply with the notice unless the notice concerned is withdrawn or amended under Regulation 28(5) or is annulled under Regulation 30(6).

## Part 5

### SURVEILLANCE, INSPECTIONS, ETC.

#### *Inspections and surveillance*

25. (1) The Regulator may-

- (a) carry out inspections of apparatus where the Regulator considers it appropriate having regard to the requirements of these Regulations,
- (b) require an economic operator, or the owner or installer of a fixed installation, to provide the Regulator with any information he or she may require having regard to the requirements of these Regulations, and
- (c) carry out inspections of fixed installations where the Regulator considers it appropriate having regard to the requirements of these Regulations.

(2) The Regulator shall carry out surveillance of equipment made available on the market having regard to the requirements of these Regulations.

(3) Without prejudice to the generality of paragraph (1), the requirements of these Regulations include the requirements arising from Regulation 21 and subparagraphs (b) and (c) of Regulation 22(5) and the performance of functions in respect of an Article of Regulation (EC) No. 765/2008 referred to in those Regulations.

#### *Authorised officers*

26. (1) The Regulator may appoint such and so many of the members of the staff of the Regulator, or other person whom the Regulator considers to be suitably qualified, to be an authorised officer for the purpose of these Regulations, the Directive and the Articles of Regulation (EC) No. 765/2008 referred to in Regulations 21 and 22(5).

(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, the authorised officer shall produce the certificate for inspection, at the request of any person affected.

(3) An authorised officer may do one or more of the following for the purposes of these Regulations:

- (a) enter at all reasonable times any premises, place, vehicle, vessel, or aircraft at or in which the officer has reasonable grounds for suspecting that there is equipment present or that records relating to equipment are kept;
- (b) search and inspect the premises, place, vehicle, vessel or aircraft and any equipment, books, documents or records found there;
- (c) carry out or have carried out such tests and measurements of equipment as the officer considers appropriate;
- (d) require any person in or at the premises, place, vehicle, vessel or aircraft, the owner, occupier or person in charge of the premises, place, vehicle, vessel or aircraft or any person employed in connection with any activity carried on in or at the premises, place, vehicle, vessel or aircraft—
  - (i) to produce to the officer books, records or other documents relating to equipment which are within the person's power of procurement and, in the case of information that is illegible, to reproduce it in a legible form, and
  - (ii) to provide the officer with such information as the authorised officer may reasonably require for the purposes of the performance, by the Regulator, of the functions of the Regulator under these Regulations;
- (e) in or at the premises, place, vehicle, vessel or aircraft, seize any equipment or part thereof or any books, records or other documents relating to equipment that the officer may reasonably require for the purposes of the Regulator's functions under these Regulations;
- (f) secure for later inspection all or any part of the premises, place, vehicle, vessel or aircraft or any books, documents or records relating to equipment found there;
- (g) remove and retain books, documents or records relating to equipment for further inspection for such period as may be reasonable;
- (h) take extracts from or make copies of books, documents or records relating to equipment;
- (i) require any person referred to in paragraph (d) to maintain books, documents or records relating to equipment for such period of time as may be reasonable;

- (j) require any person in or at the premises, place, vehicle, vessel or aircraft who has charge of, or is otherwise concerned with the operation of equipment or any associated article, substance or material to afford the officer all reasonable assistance in relation to the equipment;
- (k) take photographs or make any record or visual recording of any activity on, in or at the premises, place, vehicle, vessel or aircraft;
- (l) as regards any equipment, the authorised officer finds at or in the 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 equipment, to supply without payment, for test, examination or analysis samples of that equipment.

(4) Where an authorised officer in exercise of his or her powers under this Regulation is prevented from entering any premises, place, vehicle, vessel or aircraft, the Regulator may apply to a judge of the District Court under Regulation 27 for a warrant authorising such entry.

(5) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless the Regulator has obtained a warrant under Regulation 27 authorising such entry.

(6) A person shall not—

- (a) obstruct, impede or assault an authorised officer in the exercise of a power under this Regulation,
- (b) alter any equipment which is the subject matter of an inspection under this Regulation by an authorised officer,
- (c) alter, suppress or destroy any books, documents or records relating to equipment which, under this Regulation, the person concerned—
  - (i) has been required to produce, or
  - (ii) may reasonably expect to be required to produce,
- (d) produce or cause to be produced to an authorised officer any book, record or other document, relating to equipment, which is false or misleading in any material respect,
- (e) give to an authorised officer any information which is false or misleading in any material respect, or
- (f) falsely represent himself or herself to be an authorised officer.

(7) An authorised officer appointed under the Regulations of 2007 and holding office immediately before this Regulation comes into operation continues in office as if appointed under this Regulation.

(8) An authorised officer, where he or she considers it necessary, may be accompanied by a member of An Garda Síochána when performing any powers conferred on the authorised officer under this Regulation.

*Search warrant*

27. (1) The Regulator may apply to a judge of the District Court for a warrant authorising the matters set out in paragraph (3).

(2) If the judge of the District Court is satisfied, on the sworn information 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—

(a) any equipment or record relating to equipment which—

(i) the officer requires to inspect for the purposes of these Regulations, or

(ii) does not comply with these Regulations, or

(b) evidence of or related to a suspected offence under these Regulations,

that judge may issue a warrant to an authorised officer.

(3) A warrant issued under this Regulation shall authorize and be expressed to authorise the authorised officer to whom it is issued—

(a) at any time or times within one month after the date of issue of the warrant, to enter the premises, place, vehicle, vessel or aircraft specified in the warrant, if need be by reasonable force, and

(b) to exercise all or any of the powers conferred on an authorised officer under these Regulations.

(4) A warrant issued under this Regulation shall authorise any Garda Síochána or authorised officer specified in the warrant—

(a) at any time or times within one month after the date of issue of the warrant, to enter the premises, place, vehicle, vessel or aircraft specified in the warrant in accordance with paragraph (3)(a), and

(b) to exercise all or any of the powers conferred on an authorised officer under these Regulation, on behalf of the authorised officer to whom the warrant is issued.

(5) An application under this Regulation shall be made to the judge of the District Court in the District Court district in which the premises is located.

*Requirements for notices under these Regulations and certain other notices*

28. (1) This Regulation shall apply to—

(a) a notice under these Regulations, and



- (b) a notice referred to in—
  - (i) Regulation 22(9), and
  - (ii) Regulation 24(4).
- (2) A notice referred to in paragraph (1) shall—
  - (a) be in writing,
  - (b) be given without delay to the person concerned,
  - (c) specify the direction, measure or other requirement concerned and state the exact grounds on which that direction, measure or other requirement is based,
  - (d) inform the person to whom the notice concerned is given of—
    - (i) his or her right to make representations under paragraph (3), and
    - (ii) the right of appeal under Regulation 30, and
  - (e) explain the direction, measure or other requirement specified in the notice concerned and any time limits associated with such direction, measure or requirement.
- (3) Subject to paragraph (4), a person to whom a notice referred to in paragraph (1) is given may make representations to the Regulator in advance of any measures referred to in the notification being taken.
- (4) Where, due to the urgency of a direction, measure or other requirement specified in a notice referred to in paragraph (1), it is not possible to give a person, referred to in paragraph (3), the opportunity to make representations to the Regulator in advance of the taking by the Regulator of any measure or other actions, the Regulator shall give such opportunity to the person referred to in paragraph (3), as soon as may be, thereafter.
- (5) The Regulator may, where he or she considers it is appropriate to do so, withdraw or amend a notice referred to in paragraph (1).
- (6) Without prejudice to paragraph (5), the Regulator shall, where he or she is satisfied that the economic operator concerned has taken effective action, withdraw the notice concerned.
- (7) A direction, measure or other requirement specified in a notice referred to in paragraph (1) may be required to 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.

(8) Where a person fails to comply with a notice referred to in paragraph (1) or a direction or requirement of such notice, the Regulator may institute, in a court of competent jurisdiction, proceedings for an order requiring the person to comply with the terms of the notice concerned.

*Service of notices*

29. (1) A notice or other document that is required to be served on or given to a person under these Regulations shall be addressed to the person concerned by name, and may be so served on or 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) by electronic means, in a case in which the person has given notice in writing to the Regulator of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to, him or her in that manner; or
- (e) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the notice relates to a premises, by delivering it to the premises or by affixing it in a conspicuous position on or near the premises.

(2) Where a notice or other document 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 these Regulations, a company within the meaning of the Companies Acts or the Companies Act 2014 (No. 38 of 2014) 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.

(4) In this Regulation, a reference to "notice" includes a notice referred to in Regulation 28(1).

*Right of appeal against notifications or other measures*

30. (1) A person aggrieved by a notice referred to in Regulation 28(1) may appeal the notice concerned to the appropriate court.

(2) An appeal under this Regulation shall state the grounds on which the appeal is made and be made by written notice ("notice of appeal"), which shall be lodged with the appropriate office of the appropriate court by the appellant not later than 14 days from the date upon which the notice referred to in paragraph (1) was given to him or her.

(3) Where a person appeals a notice referred to in paragraph (1) he or she shall—

(a) give the Regulator a copy of the notice of appeal at the same time he or she lodges the notice of appeal in accordance with paragraph (2), and

(b) notify the Regulator in writing of the grounds of the appeal.

(4) The Regulator shall be entitled to appear, be heard and adduce evidence at the hearing of the appeal.

(5) Where an appeal is brought under paragraph (1), the notification or measure shall remain in force until the appeal is determined or withdrawn, subject to any decision to the contrary by the appropriate court.

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

(7) If, in relation to an appeal under this Regulation to the District Court, the court is of the opinion that the value of the equipment, 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 equipment.

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

(9) Paragraphs (7) and (8) 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 in which the equipment concerned were 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 equipment concerned were placed on the market or the appellant ordinarily resides.

(12) In this Regulation “appropriate court” means—

- (a) where the estimated value of the equipment concerned does not exceed €15,000, 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) where the estimated value of the equipment concerned does not exceed €75,000, or such other amount as may stand specified for the time being by law as that Court's jurisdiction in tort, the Circuit Court, and
- (c) where the estimated value of the equipment concerned exceeds €75,000, the High Court.

*Offences and penalties*

31. (1) A person who fails to comply with—

- (a) paragraph (a) or (b) of Regulation 4,
- (b) subparagraph (a) or (b) of Regulation 6(2),
- (c) subparagraph (a) or (b) of Regulation 6(3),
- (d) subparagraph (a) or (b) of Regulation 7(6),
- (e) subparagraph (a) or (b) of Regulation 7(7),
- (f) subparagraph (a) of Regulation 8(5),
- (g) subparagraph (a), (b), (c), (d), (e) or (f) of paragraph (6) of Regulation 26, or
- (h) Regulation 5(2), 7(1), 7(2), 7(3), 7(4), 7(5), 7(8), 7(9), 7(10), 7(11), 7(12), 9(1), 9(2), 9(4), 9(8), 9(9), 9(10), 9(11), 9(12), 9(13), 10(1), 10(2), 10(3), 10(4), 10(5), 10(6), 10(7), 12(2), 16(2), 17(1), 19(4), 19(5), 19(14), 19(15), 22(7), 22(10) or 24(5),

shall be guilty of an offence.

(2) A person who contravenes paragraph (a) or (b) of Regulation 8(6), shall be guilty of an offence.

(3) A person who fails to indicate the information specified in subparagraphs (a) and (b) of paragraph (5) of Regulation 9—

- (a) on the apparatus,
- (b) on the packaging of, or in a document accompanying, the apparatus, or
- (c) in accordance with Regulation 9(7),

shall be guilty of an offence.

(4) A person who—

- (a) issues a false or misleading EU declaration of conformity, or
- (b) presents false or misleading technical documentation to a person appointed under Regulation 10(4) of the Regulations of 2016,

shall be guilty of an offence.

(5) Where a person to whom a request was made by the Regulator under Regulation 12(1) fails to identify to the Regulator—

- (a) an economic operator who has supplied that person with apparatus, or
- (b) an economic operator to whom that person has supplied apparatus,

that person shall be guilty of an offence.

(6) A person who fails to affix the CE marking—

- (a) to apparatus in accordance with Regulation 17(2), or
- (b) to the packaging and accompanying documents of the apparatus in accordance with Regulation 17(3),

shall be guilty of an offence.

(7) A person who fails to affix the CE marking before the apparatus is placed on the market shall be guilty of an offence.

(8) Where a request is made under Regulation 19(7)(i) and the person to whom that request is made—

- (a) fails to comply with that request, or
- (b) if a period is specified in that request pursuant to Regulation 19(8), fails to comply with that request within that period,

that person shall be guilty of an offence.

(9) A person who provides the Regulator with any information which is false or misleading in any material respect, shall be guilty of an offence.

(10) A person who is guilty of an offence under these Regulations shall be liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years or both.

(11) Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Regulator.

(12) 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 a person who at the time of the offence—

(a) was a director, manager, secretary or other officer of the body corporate, or

(b) purported to act in any such capacity,

that person, as well as the body corporate, shall be guilty of an offence and is liable to be proceeded against and punished as if that person were guilty of the first-mentioned offence.

(13) Unless it is satisfied that there are special and substantial reasons for not so doing, the court shall, where a person is convicted of an offence, order the person to pay to the prosecution the costs and expenses, measured by the court, incurred by the prosecution in relation to the prosecution of the offence, including the costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees, consultants and advisers engaged by the Regulator.

## Part 6

### MISCELLANEOUS

#### *Savings and transitional provisions*

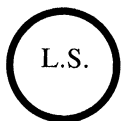
32. (1) These Regulations shall not impede the making available on the market or the putting into service (or both of them) of equipment covered by Directive 2004/108/EC which is in conformity with that Directive and which was placed on the market before 20 April 2016.

(2) Notwithstanding the repeal of Directive 2004/108/EC by the Directive, a reference in any enactment or other document to Directive 2004/108/EC shall be construed as a reference to the Directive and shall be read in accordance with the correlation table in Annex VI to the Directive.

(3) In paragraph (2), “enactment” has the meaning assigned to it by the Interpretation Act 2005 (No. 23 of 2005).

*Revocations*

33. The Regulations of 2007 are revoked.



GIVEN under my Official Seal,  
28 February 2017.

MARY MITCHELL O'CONNOR,  
Minister for Jobs Enterprise and Innovation.

## 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 further legal effect to Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility (recast).

The Regulations seek to ensure that electromagnetic disturbances produced by electrical equipment do not affect the functioning of other such equipment and that such equipment has an appropriate level of immunity to electromagnetic disturbances thereby creating an acceptable electromagnetic environment.

The Regulations came into effect on the making of these Regulations.

These Regulations may be cited together with the European Communities (Electromagnetic Compatibility) Regulations 2016. The European Communities (Electromagnetic Compatibility) Regulations 2016 transposed the provisions of the Directive in so far as they relate to the notification of conformity assessment bodies.

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