



STATUTORY INSTRUMENTS.

S.I. No. 145 of 2016



EUROPEAN COMMUNITIES (ELECTROMAGNETIC
COMPATIBILITY) REGULATIONS 2016

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The Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on him 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 2014¹, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Communities (Electromagnetic Compatibility) Regulations 2016.

(2) These Regulations shall, subject to paragraph (3), come into operation on 20 April 2016.

(3) The following Regulations come into operation on the day these Regulations are made—

(a) Regulations 2, 3, 4, 5, 6, 7, 8, 9, 10 and 13,

(b) Regulation 14 in so far as it relates to Regulation 13, and

(c) Regulations 15, 16(1), 18 and 19.

Interpretation

2. (1) In these Regulations—

“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)¹;

“market surveillance authority” has the meaning assigned to it by Regulation (EC) No. 765/2008;

“notifying authority” means the Regulator designated under Regulation 5;

“notified body” means a body—

(a) which has been notified in accordance with these Regulations, and

(b) in respect of which, pursuant to that notification, Regulation 10(3) has been satisfied;

¹OJ No. L.96, 29.3.2014, p.79.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 29th March, 2016.*

“Regulation (EC) No. 765/2008” means Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93²;

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

“Regulator” means the Commission for Communications Regulation.

(2) A word or an expression which is used in these Regulations and 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 as specified in Article 3 of the Directive.

(2) These Regulations shall not apply to the equipment and other matters specified in Article 2(2) of the Directive.

Notification of bodies authorised to carry out third-party conformity assessment tasks

4. The Regulator shall notify the Commission and other Member States of bodies authorised to carry out third-party conformity assessment tasks under the Directive.

Designation of Regulator as notifying authority

5. (1) The Regulator is designated as the notifying authority for the purposes of Article 21 of the Directive.

(2) The Regulator shall—

(a) set up the necessary procedures for—

(i) the assessment and notification of conformity assessment bodies, and

(ii) the monitoring of notified bodies, including the monitoring of compliance by a notified body with Regulation 8, and

(b) carry out the procedures referred to in subparagraph (a).

Information obligation of Regulator

6. The Regulator shall inform the Commission of its procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies and of any changes to those procedures.

²OJ No. L218, 13.8.2008, p.30.

Requirements for notified bodies

7. (1) A conformity assessment body shall meet the requirements laid down in paragraphs (2) to (11) of Article 24 of the Directive for the purposes of notification.

(2) For the purposes of paragraph (1), the presumption, referred to in Article 25 of the Directive, of compliance with the requirements laid down in paragraphs (2) to (11) of Article 24 of the Directive, shall apply—

- (a) where, as required by Article 25 of the Directive, a conformity assessment body demonstrates its conformity with the criteria laid down in the relevant harmonised standards, or parts of such standards, referred to in that Article, and
- (b) in so far as the applicable harmonised standards, referred to in subparagraph (a), cover those requirements.

Subsidiaries of, and subcontracting by, notified bodies

8. Where a notified body subcontracts specific tasks connected with conformity assessment, or has recourse to a subsidiary, the notified body shall comply with Article 26 of the Directive.

Application for notification

9. (1) An application for notification shall be made in accordance with Article 27 of the Directive.

(2) For the purposes of an application for notification referred to in paragraph (1) and Article 27(2) of the Directive, the accreditation certificate that is to accompany the application may be an accreditation certificate issued by the Irish National Accreditation Board.

(3) Without prejudice to any other enactment, the Irish National Accreditation Board may issue an accreditation certificate for the purposes of an application referred to in paragraph (1).

Notification procedure

10. (1) Where the Regulator is satisfied that the conformity assessment body, which has made an application referred in accordance with Regulation 9, satisfies the requirements laid down in Article 24 of the Directive, the Regulator may notify that conformity assessment body.

(2) The Regulator shall—

- (a) make the notification in accordance with paragraphs (2),(3) and (4) of Article 28 of the Directive, and
- (b) shall comply with paragraph (6) of Article 28 of the Directive.

(3) A conformity assessment body which has been, in accordance with this Regulation, notified by the Regulator, may perform the activities of a notified

body only where no objections are raised by the Commission or the other Member States within—

- (a) 2 weeks of a notification where an accreditation certificate is used in the notification, or
- (b) 2 months of a notification where accreditation is not used in the notification.

(4) A body referred to in paragraph (3) which complies with that paragraph shall be considered to be a notified body for the purposes of the Directive and these Regulations.

Changes to notifications

11. (1) Where the Regulator has ascertained, or has been informed, that a notified body—

- (a) no longer meets the requirements laid down in Article 24 of the Directive, or
- (b) is failing to fulfil its obligations under these Regulations,

the Regulator shall restrict, suspend or withdraw notification, as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations.

(2) The Regulator shall immediately inform the Commission and the other Member States of the matters referred to in paragraph (1).

(3) The Regulator shall—

- (a) inform the notified body concerned of a restriction, suspension or withdrawal of a notification under paragraph (1) as soon as possible, and
- (b) request the notified body concerned to make representations to it in respect of the restriction, suspension or withdrawal, as the case may be, of a notification.

(4) Where a notified body is aggrieved by a decision of the Regulator to restrict, suspend or withdraw its notification the notified body may appeal the decision to the District Court.

(5) Where—

- (a) a restriction, suspension or withdrawal of a notification, is made, or
- (b) the notified body concerned has ceased its activity,

the Regulator shall take appropriate steps—

- (i) to ensure that the files of that notified body are processed by another notified body, or
- (ii) to keep those files in a manner that will permit the Regulator to have access to them for the performance by it of its functions under these Regulations.

Obligation on Regulator for purposes of Article 31 of Directive

12. (1) The Regulator shall comply with paragraph (2) of Article 31 of the Directive.

(2) The Regulator may request the notified body concerned provides it with information or documents relating to or connected with the performance by it of its functions under paragraph (1).

(3) A notified body shall comply with a request referred to in paragraph (2).

Operational obligations of notified bodies

13. (1) A notified body shall carry out a conformity assessment—

- (a) in accordance with the conformity assessment procedures provided for in Annex III to the Directive, and
- (b) in a proportional manner, avoiding unnecessary burdens for economic operators.

(2) A conformity assessment body shall—

(a) perform its activities taking due account of—

- (i) the size of an undertaking,
- (ii) the sector in which it operates,
- (iii) its structure,
- (iv) the degree of complexity of the apparatus technology concerned, and
- (v) the mass or serial nature of the production process, and

(b) in performing its activities pursuant to paragraph (a), shall respect the degree of rigour and the level of protection required for the compliance of the apparatus with the Directive.

(3) Where a notified body finds that the essential requirements set out in Annex 1 to the Directive or corresponding harmonised standards or other technical specifications have not been met by a manufacturer, the notified body shall—

(a) require that manufacturer to take appropriate corrective measures, and

(b) not issue a certificate.

(4) Where, in the course of the monitoring of conformity following the issue of a certificate, a notified body finds that an apparatus no longer complies, it shall—

(a) require the manufacturer to take appropriate corrective measures, and

(b) suspend or withdraw the certificate if necessary.

(5) Where—

(a) a manufacturer does not take the corrective measures referred to in subparagraph (3) or (4), or

(b) the corrective measures referred to in subparagraph (3) or (4) are taken but do not have the required effect,

the notified body shall restrict, suspend or withdraw any certificate, as it considers appropriate, having regard to all the circumstances.

Appeal to District Court

14. (1) Where—

(a) an economic operator is aggrieved by a decision by a notified body pursuant to Regulation 13 which affects the economic operator, or

(b) a notified body is aggrieved by a decision of the Regulator referred to in Regulation 11,

the economic operator concerned, or as the case may be the notified body concerned, may, within the period of 7 days beginning on the day on which the decision is taken or communicated to the economic operator, or as the case may be the notified body, appeal to a judge of the District Court in the District Court District in which the economic operator, or as the case may be the notified body, carries on business against the decision and, in determining the appeal, the judge may—

(i) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the decision, with or without modification, or

(ii) direct that the decision be cancelled.

(2) The judge of the District Court determining an appeal under paragraph (1) may make such order as to the payment of costs in respect of the appeal as he or she considers appropriate.

Information to be provided by notified body

15. (1) A notified body shall inform the Regulator of all or any of the following:

(a) any refusal, restriction, suspension or withdrawal of a certificate;

- (b) any circumstances affecting the scope of, or conditions for, notification;
- (c) any request for information which the notified body has received from a market surveillance authority regarding conformity assessment activities;
- (d) on request, conformity assessment activities performed within the scope of their notification and any other activity performed, including cross-border activities and subcontracting.

(2) A notified body shall provide the other bodies notified under the Directive carrying out similar conformity assessment activities covering the same apparatus with relevant information on issues relating to negative and, on request, positive conformity assessment results.

Notified bodies and Annex III of Directive

16. (1) A notified body shall comply with Annex III of the Directive.

(2) A manufacturer shall comply with the obligation for a manufacturer set out in paragraph 7 of Part A of Annex III of the Directive.

Coordination of notified bodies

17. (1) A notified body shall participate in the work of a sectoral group of notified bodies that operates pursuant to Article 36 of the Directive.

(2) Participation under paragraph (1) may be—

- (a) directly, or
- (b) by means of designated representatives.

Service of notices

18. (1) Subject to paragraphs (2) and (3), a notification under Regulation 11 or 13 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, or

- (e) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the compliance 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 notification under Regulation 11 or 13 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 Act 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.

Status of notification to Commission under 2007 Regulations.

19. Without prejudice to the repeal of Directive 2004/108/EC³ pursuant to Article 45 of the Directive on 20 April 2016, nothing in these Regulations shall affect a notification made in respect of a person notified to the Commission under Regulation 14 of the Regulations of 2007.



GIVEN under the Official Seal of the Minister for Jobs, Enterprise and Innovation,
23 March 2016.

RICHARD BRUTON,
Minister for Jobs, Enterprise and Innovation.

³OJ No. L 390, 31.12.04, p.24.

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 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 transpose the provisions of the Directive in so far as they relate to the notification of conformity assessment bodies.

The Regulations, with the exception of Regulations 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, Regulation 14 in so far as it relates to Regulation 13, Regulations 15, 16(1), 18 and 19 which take effect on the making of the Regulations, come into operation on 20 April 2016.

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