



Department for
Business, Energy
& Industrial Strategy

Regulatory Delivery

ELECTROMAGNETIC COMPATIBILITY REGULATIONS 2016

Guidance

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1. Introduction

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The government respected the result and triggered Article 50 of the Treaty on European Union on 29 March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation.

Directive 2014/30/EU of 26 February 2014 on the harmonisation of the laws of Member States (the "[EMC Directive](#)") relating to electromagnetic compatibility entered into force on 20 April 2016 and has been implemented into UK law with effect from 8 December 2016 by way of the Electromagnetic Compatibility Regulations 2016 ("the Regulations"). From this date manufacturers of electronic and electrical products within scope have to comply with the Regulations.

The Regulations regulate the electromagnetic compatibility of equipment. They aim to ensure the functioning of the internal market by requiring equipment to comply with an adequate level of electromagnetic compatibility.

This Guide relates, primarily, to the position in respect of the UK Regulations. The European Commission has produced detailed guidance on the provisions of the Directive and its requirements, which should be referred to for further guidance. The European Commission's guidance can be found at:

https://ec.europa.eu/growth/sectors/electrical-engineering/emc-directive_en

The main changes the Regulations introduced relate to alignment of the New Legislative Framework (NLF) principles. The NLF is a set of legislative acts (including the Regulation (EC) No 765/2008 and the Decision No 768/2008/EC) that aim to create a more coherent and consistent legal framework for the marketing of products in the European Union across all sectors. The new content of the 2016 Regulations, amongst others, relate to definitions and detailed obligations of economic operators (manufacturers, authorised representatives, importers and distributors); definitions of "placing on the market" and "making available on the market"; market surveillance procedures including the Union safeguard procedures and enforcement penalties applicable in the UK against offences committed.

2. Scope

The scope covers most electrical and electronic equipment (whether apparatus or fixed installations) when placed on the market and/or taken into service.

There are a number of important exclusions including:

- equipment covered by other specific EU instruments governing the conformity of the equipment with the essential requirements;
- aeronautical apparatus, parts and appliances referred to in Regulation (EC) 216/2008; and

- equipment which is incapable of generating electromagnetic interference that is harmful to radio and telecommunication equipment.

For a full list of exclusions please refer to the Regulations.

The Regulations do not apply to apparatus placed on the market before 8 December 2016.

3. Obligations of manufacturers

The obligations of manufacturers of apparatus include:

1. Before placing apparatus on the market, a manufacturer must ensure that it has been designed and manufactured in accordance with the essential requirements and that they have had a relevant conformity assessment procedure carried out and technical documentation drawn up.
2. Once this has been done, a manufacturer must draw up a declaration of conformity, and affix the CE marking to the product.
3. Manufacturers must keep technical documentation and the declaration of conformity for 10 years after the apparatus has been placed on the market.
4. Manufacturers must also label apparatus with their name, registered trade name or registered trade mark and address; the type batch or serial number (or other identification) and ensure that they are accompanied by relevant instructions in a language easily understood by the end user. If the end user is in the UK, the language must be English. When placing apparatus on the market, the manufacturer must ensure that it is accompanied by information concerning the use of apparatus (see regulation 36).
5. They must take action where they have reason to believe that the apparatus they have placed on the market is not in conformity with the Regulations.
6. They must also cooperate with and provide information to enforcing authorities following any requests.

4. Obligations of authorised representatives

Manufacturers are able to appoint authorised representatives to perform certain tasks on their behalves. The obligations of authorised representatives include:

1. An authorised representative must comply with all the duties imposed on the manufacturer under the Regulations that they are appointed by mandate by the manufacturer to perform including manufacturer's obligation under regulation 11 (retention of technical documentation and EU declaration of conformity) and regulation 16 (provision of information and co-operation). A manufacturer remains responsible for the proper performance of any obligations the authorised representative performs on their behalf.

2. As far as those duties are concerned as well as penalties for failure to comply with those duties, any references in the Regulations to the manufacturer are to be taken as a reference to the authorised representative.

5. Obligations of importers

The obligations of importers include:

1. Before apparatus is placed on the market, an importer must ensure that the relevant conformity assessment has been carried out by the manufacturer.
2. The importer must ensure the manufacturer has drawn up technical documentation and Declaration of Conformity; the apparatus is CE marked and is accompanied by the required documents and information regarding the manufacturer.
3. The importer must keep a copy of the Declaration of Conformity and technical documentation for a period of 10 years after the apparatus has been placed on the market.
4. The importer must not place apparatus on the market unless it conforms with the essential requirements.
5. The importer must provide their name trade, registered trade name and a postal address at which they can be contacted on the apparatus.
6. The importer must ensure that when placing apparatus on the market, it is accompanied by instructions which can be easily understood by end user in the Member State where it is to be made available. If the end user is in the UK, that language must be English. When placing apparatus on the market they must also ensure that it is accompanied by certain information concerning the use of the apparatus (see regulation 36).
7. The importer must ensure that apparatus under their responsibility are safely stored and transported, remaining in conformity with the Regulations.
8. The importer must take action where they have reason to believe that the apparatus that they have placed on the market is not in conformity with the Regulations.
9. They must also cooperate with and provide information to enforcing authorities following any requests.

6. Obligations of distributors

The obligations of distributors include:

1. Before making apparatus available on the market a distributor must take due care to ensure that it is in conformity with Part 2 of the Regulations, meaning that the apparatus is in conformity with the essential requirements and that each relevant economic operator has complied with their obligations imposed on them under Part 2 of the regulations.

2. They must verify that the apparatus bears the CE marking, is accompanied by the required documents as well as by instructions and information concerning the use of apparatus. The distributor must also make sure that the obligations on the manufacturer or importer regarding their identification has been complied with.
3. The distributor must not make apparatus available on the market if they think it is not in conformity with the essential requirements. They must take action where they have reason to believe that the apparatus that they have made available on the market is in conformity with the Regulations.
4. The distributor must ensure that apparatus under their responsibility are safely stored and transported, remaining in conformity with the Regulations.
5. They must also cooperate with and provide information to enforcing authorities following any requests.

7. Transitional arrangements

The European Directive 2014/30/EU (the Electromagnetic Compatibility Directive (EMC Directive)) from which these Regulations are transposed came fully into force on 20 April 2016 and as such from that date only products that are fully compliant with the European Directive 2014/30/EU may be placed on the European market and enjoy free movement. The UK implemented the Directive on 8 December 2016 and so products compliant with the Electromagnetic Compatibility Regulations 2006 implementing the Directive 2004/108/EC could be placed on the UK market until 8 December 2016, the date these new Regulations came into force but they cannot be placed on the market in other member States. Products complying with the legislation of all member States implementing 2004/108/EC could be placed on the EU market until 19 April 2016.

8. Enforcement and penalties

In Great Britain, the market surveillance authority for apparatus, in relation to protection and management of the radio spectrum is Office of Communications (Ofcom), and for other apparatus it is the local weights and measures authority (trading standards). In Northern Ireland, enforcement of Regulations for apparatus in relation to protection and management of the radio spectrum, it is Ofcom and for other apparatus the Department for Enterprise, Trade and Investment.

In Northern Ireland, in relation to enforcement of electricity meters, this will be carried out by the Northern Ireland Authority for Energy Regulation.

The Regulations also provide powers to the Secretary of State or a person appointed to act on their behalf to enforce the Regulations and Regulation EC 765/2008 (RAMS) which sets out requirements for market surveillance of products.

The Regulations provide powers to market surveillance authorities to take action against economic operators for products that are not in conformity with the Regulations as set out in regulation 56 to 60. Economic operators are required to co-operate with the enforcement authority and on request, must provide information and take action as appropriate.

Safeguard procedure

The UK is required under the Regulations to take all appropriate measures to withdraw from the market or to prohibit, and restrict the supply of products bearing CE Marking which may endanger the health and safety of persons, property or the environment. Under the safeguard procedure, the UK must inform the European Commission and other EU Member States immediately of any enforcement action taken indicating the reason justifying that action. This will enable Member States to take action against similar products placed on the market on their territories. Similarly, if another Member State initiates the procedure with respect to action taken on their territories, certain actions are required of UK market surveillance authorities and the Secretary of State (Regulation 58).

Regulation 58(2) allows the Secretary of State to raise an objection against the measures taken under the safeguard procedure initiated by another Member State. The European Commission will determine whether the action taken is justified; if so, the UK enforcement authority must take necessary measures to ensure electrical equipment is withdrawn from the market. Where the European Commission finds the action taken by the Member State initiating the safeguard procedure, is not justified, that Member State must withdraw that measure.

Regulators' Code

Local Authority trading standards must have regard to the Regulators' Code when developing the policies and operational procedures that guide their regulatory activities in this area. They should carry out their activities in a way that supports those they regulate to comply and grow, including choosing proportionate approaches that reflect risk.

In responding to non-compliance that they identify, regulators should clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Unless immediate action is needed to prevent a serious breach, regulators should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent. The Secretary of State takes account of the provisions of both the Regulators' Code and the Growth Duty in exercising his regulatory functions.

A link to the Regulator's Code can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

Penalties

A person committing an offence under the Regulations will be liable to a penalty. Penalties can include a fine or a prison sentence of up to three months for the most serious offences.

While it is matter for the enforcement authority to decide whether prosecution is appropriate in each case, should a prosecution take place, it is at discretion of the court to decide the penalties imposed on the offender.

9. Notified Bodies

Notified Bodies are independent organisations appointed by EU Member State governments and notified to the European Commission to carry out the procedures for conformity assessment and certification set out in the Regulations

A list of Notified Bodies, including UK Notified Bodies appointed under the Regulations, may be found on the [NANDO](#) website. Economic operators are free to select any suitable Notified Body from any Member State.

10. European Commission Guidance

Detailed guidance on the EMC Directive can be found on the European Commission's website at

https://ec.europa.eu/growth/sectors/electrical-engineering/emc-directive_en

The European Commission has produced guidance called the Blue Guide intended to contribute to a better understanding of EU product safety rules and to their more uniform and coherent application across different sectors and throughout the single market. A copy can be found at this link:

Blue Guide <http://ec.europa.eu/DocsRoom/documents/18027/>



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