For use only if the UK has left the EU without a deal

RADIO EQUIPMENT REGULATIONS 2017 as amended by the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019

Guidance

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1. Introduction

The Radio Equipment Regulations 2017 set out the essential requirements which must be met before products can be placed on the UK market. The purpose of the legislation is to ensure safe products are placed on the market by requiring manufacturers to show how their products meet the 'essential requirements'.

The Regulations regulate the safety and electromagnetic compatibility of radio equipment and promote protection of the radio spectrum. They require equipment placed on the UK market to comply with a high level of safety (in terms of the health and safety of persons and domestic animals and the protection of property); with an adequate level of electromagnetic compatibility; and to operate in a manner that promotes efficient use of the radio spectrum.

This guidance is designed to help you understand the Radio Equipment Regulations, now the UK has left the EU, as amended by the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (“2017 Regulations as amended”).

2. Legislative Background

The Radio Equipment Regulations 2017 implemented Directive 2014/53/EU on radio equipment. The EU Withdrawal Act 2018 preserves the Regulations and enables them to be amended so as to continue to function effectively now the UK has left the EU. Accordingly, the 2019 Amendment Regulations fix any deficiencies that arose from the UK leaving the EU (such as references to EU institutions) and make specific provision for the UK market.

3. Scope

The Regulations apply to all radio equipment with some notable exceptions. These exceptions include:

- equipment covered by other specific UK legislation governing the conformity of the equipment with the essential requirements;
- airborne products, parts and appliances within the scope of Article 3 of Regulation (EC) 216/2008;
- Marine equipment falling within the scope of the Merchant Shipping (Marine Equipment) Regulations 2016; and
- custom-built evaluation kits destined for professionals to be used solely at research and development facilities for such purposes.

For a full list of exclusions please refer to the Regulations, in particular regulation 3 and Schedule 1.

4. Obligations of manufacturers

A manufacturer is a person who manufactures radio equipment or has radio equipment designed or manufactured, and markets that product under their name or trade mark.
The obligations of manufacturers of radio equipment include:

1. Before placing radio equipment 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. See regulations 6-9.

2. A manufacturer must ensure that radio equipment has been constructed so that it can be operated without causing an infringement of the applicable requirements of use of the radio spectrum. See regulation 8.

3. Once this has been done, a manufacturer must draw up a declaration of conformity, and affix the UKCA marking, or for a time limited period the CE marking, to the product. See regulation 10 and see section 8 below.

4. Manufacturers must keep technical documentation and the declaration of conformity for 10 years after the radio equipment has been placed on the market. See regulation 11.

5. Manufacturers must also label radio equipment with their name, registered trade name or registered trademark and address; the type batch or serial number (or other identification) and ensure that they are accompanied by instructions and safety information in easily understandable English. When placing radio equipment on the market, the manufacturer must ensure that it is accompanied by information concerning any restrictions on putting into service or requirements for authorisation of its use as well as other information. See regulations 12-14.

6. Manufacturers must put procedures in place to ensure that series production remains in conformity with the Regulations. See regulation 17

7. Manufacturers must when appropriate, take action to carry out sample testing of equipment made available on the market by them which may present a risk, investigate complaints that equipment is not in conformity, keeping a register of such equipment and any complaints or recalls, and keeping distributors informed of any monitoring. Manufacturers must keep an entry on the register for 10 years. See regulation 18.

8. Manufacturers must take action where they have reason to believe that radio equipment they have placed on the market is not in conformity with the Regulations. See regulation 15.

9. Manufacturers must also cooperate with and provide information to enforcing authorities following any requests. See regulation 16.

5. Obligations of authorised representatives

Manufacturers are able by written mandate to appoint authorised representatives to perform certain tasks on their behalf.

Mandated authorised representatives established in the EEA or Switzerland prior to the UK leaving the EU continue to be recognised as authorised representatives by the UK to act in the UK for the purposes of the legislation. However, any authorised representatives appointed and mandate after the UK left the EU to act in the UK must be established in the UK to be recognised under UK law.

Businesses with an existing authorised representative based in the EEA or Switzerland can continue to use their authorised representatives in the same way.
No UK-based authorised representatives are recognised under EU law. This means they cannot carry out tasks on the manufacturer’s behalf for radio equipment being placed on the EU market. Therefore, a manufacturer exporting radio equipment to the EU, who wishes to appoint an authorised representative to carry out tasks for them in respect of that equipment, must appoint an authorised representative based in the EU.

The obligations of authorised representatives include:

1. Performance of the tasks and duties specified in the mandate including manufacturer’s obligations under regulation 11 (retention of technical documentation and UK 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. However, the authorised representative is also obliged to comply with the obligations imposed on the manufacturer in relation to the tasks for which they are appointed and as far as those obligations are concerned, as well as penalties for failure to comply, any references in the 2017 Regulations as amended to the manufacturer are to be taken as including the authorised representative.

6. **Obligations of importers**

An importer is a person or business based in the UK who places radio equipment on the UK market from a country outside the UK. This means that UK businesses who used to act as a ‘distributor’ legally become an ‘importer’ if they place radio equipment from an EEA country on the UK market.

Importers have additional legal obligations which go beyond those of distributors, such as checking that manufacturers have carried out the right conformity assessment procedures and included their name, registered trade name or mark and a postal address on the equipment or, where this is not possible, on its packaging or in accompanying documentation.

To assist with the transition, the UK is applying a transitional period of 18 months to allow UK suppliers of goods from the EEA or Switzerland (who post exit are importers) to provide their details on the accompanying documentation as an alternative to placing them on the radio equipment itself.

The EU does not have any such transitional provision. In the absence of this, radio equipment being exported from the UK to the EU must be labelled with the EU-based importer’s address.

The obligations of importers in the UK include:

1. An importer must not place radio equipment on the market unless it conforms with the essential requirements. Before placing radio equipment on the market, an importer must ensure that the relevant conformity assessment has been carried out by the manufacturer. See regulations 20 and 21.

2. The importer must ensure the manufacturer has drawn up the technical documentation and a Declaration of Conformity; the radio equipment is UK marked and is accompanied by the required documents and information regarding the manufacturer. See regulation 21.

3. The importer must keep a copy of the Declaration of Conformity and technical documentation for a period of 10 years after the radio equipment has been placed on the market. See regulation 28.
4. Where an importer believes equipment is not in conformity, he must not place it on the market and, where it presents a risk, inform the manufacturer and the market surveillance authority of that risk. See regulation 22.

5. The importer must provide their name, registered trade name or mark and a postal address at which they can be contacted on the radio equipment (or – see above for transitional provisions – on its packaging or in accompanying documentation). See regulation 23.

6. The importer must ensure that when placing radio equipment on the market, it is accompanied by instructions and safety information that are clear, legible and in easily understandable English. See regulation 24. When placing radio equipment on the market they must also ensure that it is accompanied by certain information concerning the use of the radio equipment. See regulation 21.

7. The importer must ensure that while radio equipment is under their responsibility their storage and transport conditions do not jeopardise their conformity with the essential requirements. See regulation 25.

8. When appropriate, the importer must take action to monitor equipment made available on the market by them which may present a risk, keeping a register of such equipment and any complaints or action taken. See regulation 26.

9. The importer must take action where they have reason to believe that the radio equipment that they have placed on the market is not in conformity with the 2017 Regulations as amended; including informing the relevant market surveillance authority where there is a risk to the health and safety of people. See regulation 27.

10. The importer must also cooperate with and provide information to enforcing authorities following any requests. See regulation 29.

7. Obligations of distributors

UK businesses which were distributors of radio equipment within the EU single market should now consider whether they are importers from the EU single market and therefore what additional requirements they might face – see section 6 above. The same applies to distributors of radio equipment from the EEA and Switzerland.

A distributor is any person, other than the manufacturer or importer, who makes radio equipment available on the market.

The obligations of distributors include:

1. Before making radio equipment available on the market, the distributor must take due care to ensure that it is in conformity with the Regulations. See regulation 30.

2. Before making radio equipment available on the market, the distributor must also verify that the radio equipment bears the UK marking, is accompanied by the required documents as well as by instructions and information concerning the use of radio equipment. The distributor must also make sure that certain obligations on the manufacturer or importer have been complied with. See regulation 31.

3. The distributor must not make radio equipment 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 radio equipment that they have made available on the market is not in conformity with the Regulations. See regulations 32 and 34.
4. The distributor must ensure that while radio equipment is under their responsibility, its storage and transport conditions does not jeopardise its conformity with the essential health and safety requirements. See regulation 33.

5. The distributor must also cooperate with and provide information to enforcing authorities following any requests. See regulation 35.

8. Transitional arrangements

‘Deeming’ provision

Radio equipment which has undergone full conformity assessment under the equivalent EU requirements and bear the CE conformity mark will be deemed compliant with the UK legislation and can be placed on the UK market as if they had been UKCA conformity marked.

The UK continues to recognise the competency of EU recognised conformity assessment bodies (notified bodies) to assess radio equipment for the UK market. Equipment assessed by an EU recognised notified body prior to the UK leaving the EU does not need reassessment before being placed on the UK market. Furthermore, for a time-limited period, equipment assessed by an EU recognised notified body can be placed on the UK market.

This ‘deeming provision’ will be available for a time-limited period. This will be the subject of amending legislation in the future at a time yet to be decided. The Government will consult with industry and provide notice before ending this time-limited period.

9. UK Conformity Mark

Assessment through third-party organisations:

The UKCA conformity mark will replace the CE marking for radio equipment placed on the UK market which have been assessed by a UK approved body. In all other cases, manufacturers will be able to continue using the CE marking for equipment being placed on the UK market instead of the new UKCA marking, intended to be for a time-limited period. The Government will engage with industry before making any decision on when this period will end.

Rules around physically affixing the new UKCA conformity marking mirror those which currently apply for the application of the CE marking.

Self-assessment:

CE marking based on self-declaration of conformity by the manufacturer is still possible where it is currently allowed, including when exporting to the EU.

Manufacturers selling radio equipment on the UK market can alternatively affix the new UKCA conformity marking before placing equipment on the UK market. It will also be possible to affix both the UKCA marking and the CE marking to the same equipment on the basis of self-declaration. When exporting to the EU, the CE marking remains mandatory.
Placing CE marked goods on the UK market:
Radio equipment that meet EU regulatory requirements, including those with a CE marking, which has been assessed by an EU recognised conformity assessment body or which has been self-declared can still be placed on the UK market for a time-limited period. ‘EU-recognised’ does not include UK approved bodies. Manufacturers which have had their radio equipment assessed by EU recognised bodies are obliged to use the CE marking and cannot use the UKCA marking.

Further guidance on UKCA marking can be found here: https://www.gov.uk/government/publications/prepare-to-use-the-ukca-mark-after-brexit/using-the-ukca-marking-if-the-uk-leaves-the-eu-without-a-deal


10. Enforcement and penalties

In Great Britain, the enforcing authority for radio equipment, in relation to protection and management of the radio spectrum is the Office of Communications (OFCOM), and for other aspects including safety of radio equipment it is the local weights and measures authority (trading standards). In Northern Ireland, the enforcing authority for radio equipment in relation to protection and management of the radio spectrum is OFCOM and for other aspects including safety of radio equipment the District Councils.

The Regulations also provide powers to the Secretary of State or a person appointed to act on their behalf to enforce the Regulations.

The Regulations provide powers to enforcing authorities to take action against economic operators for products that present a risk or are not in conformity with the Regulations as set out in regulation 57 to 60, 62 and 63 and Schedule 10. Economic operators are required to cooperate with the enforcement authority and on request, must provide information and take action as appropriate.

The UK market surveillance authorities (local Trading Standards authorities) will take all appropriate measures to withdraw from the market or to prohibit and restrict the supply of products which may endanger the health and safety of persons, property or the environment.

Regulators’ Code

Local Trading Standards authorities must continue to 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:

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 or both for the most serious offences. See regulations 65 and 66.

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 the discretion of the court to decide the penalties imposed on the offender.

11. Approved Bodies

The UK has established a new framework for UK based bodies to assess products against UK rules. Existing UK notified bodies have been granted new UK ‘approved body’ status and are listed on a new UK database. There is no need for existing notified bodies to seek re-accreditation in order to benefit from UK approved body status. These approved bodies have been given a 4-digit approved body number.

Approved bodies can assess products for the UK market against UK essential requirements (which are substantially the same as EU essential requirements).

Approved bodies are conformity assessment bodies which were notified bodies before the UK left the EU or have been approved by the Secretary of State to carry out the procedures for conformity assessment and certification for the UK market as set out in the 2017 Regulations (as amended).

UK Approved bodies must be established in the UK and be independent of the manufacturer. Approved bodies must examine the technical documentation and supporting evidence in respect of a product to assess the adequacy of the technical design.

Where an approved body finds that essential safety requirements have not been met by a manufacturer, they must not issue a certificate of conformity and they must require the manufacturer to take corrective measures.

A list of UK approved bodies can be found [link to be added].


You can find further and more detailed guidance on Directive 2014/53/EU here:

The European Commission’s ‘Blue Guide’ aims to give a better understanding of EU product safety rules and their application across different sectors throughout the EU single market. You can view that here: http://ec.europa.eu/DocsRoom/documents/18027/

13. Glossary

- Approved Bodies – A conformity assessment body which has been approved by the Secretary of State or was a ‘Notified Body’ prior to the UK leaving the EU.
- **Authorised Representative** – A person appointed in writing by a manufacturer to perform specific tasks for the manufacturer. Manufacturers remain ultimately responsible for ensuring these tasks are carried out properly. This includes persons who are based in the EU, the EEA or Switzerland, if they were appointed before the UK left the EU.

- **Declaration of conformity** – A document prepared by the manufacturer which must detail, among other things, the following:
  - The specific product to which the declaration is referring;
  - The name and address of the manufacturer and, where applicable, their authorised representative.

  This must be kept by the manufacturer for a period of ten years from the date on which the product was placed on the market. This declaration must be made available to the enforcing authority upon request.

- **Distributor** – Any person in the UK supply chain, other than the manufacturer or the importer, who makes radio equipment products available on the UK market.

- **Enforcing Authority** – In Great Britain, for radio equipment in the use in the workplace, this is the Health and Safety Executive. For radio equipment for consumer use this is local Trading Standards authorities. In Northern Ireland, for radio equipment in use in the workplace, this is the Health and Safety Executive Northern Ireland. For radio equipment for consumer use in Northern Ireland this is district councils.

- **Importer** – A person established in the UK who places radio equipment from a country outside of the UK on the market. A person who, before the UK left the EU, distributed radio equipment within the EU (including the UK) will now be an importer if they are bringing radio equipment into the UK from another country (including EU Member States).

- **Manufacturer** – A person who manufactures radio equipment or has radio equipment designed or manufactured and markets that product under their name or trademark.

- **UK Conformity Marking** – The UKCA (UK Conformity Assessed) marking is the new UK conformity marking used for certain goods being placed on the UK market, in place of the CE marking which is the conformity marking used in the European Union.
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