Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 18,308, 12 ta' Settembru, 2008
Taqsima B

L.N. 210 of 2008

PRODUCT SAFETY ACT (CAP. 427)

Medical Devices Regulations, 2008

IN exercise of the powers conferred by articles 38 to 40 of the Product Safety Act, the Minister of Finance, Economy and Investment, on the advice of the Malta Standards Authority, has made the following regulations:-

Citation and commencement.

1. (1) The title of these regulations is the Medical Devices Regulations, 2008.

(2) These regulations transpose the following Directives:

(a) Council Directive 93/42/EEC[1] of 14th June 1993 on the approximation of the laws of the Member States relating to medical devices;

(b) Council Directive 2003/12/EC[2] of 3rd February 2003 on the reclassification of breast implants in the framework of Directive 93/42/EEC concerning medical devices;

(c) Council Directive 2003/32/EC[3] of 23rd April 2003 introducing detailed specifications as regards the requirements laid down in Council Directive 93/42/EEC with respect to medical devices manufactured utilising tissues of animal origin;

[1] OJ No. L.169, 12-07-1993, p.1. Directive as last amended by Regulation (EC) No. 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty (OJ No. L.284, 31-10-2003, p.1).

[2] OJ No. L.28, 04-02-2003, p.43.

[3] OJ No. L.105, 26-04-2003, p.18. These regulations lay down detailed specifications in relation to risks of transmitting transmissible spongiform encephalopathies (TSE) under normal conditions of use to patients or others, via medical devices manufactured utilising animal tissue which is rendered non-viable or non-viable products derived from animal tissue.

(d) Council Directive 2005/50/EC[4] of 11th August 2005 on the reclassification of hip, knee and shoulder joint replacements in the framework of Council Directive 93/42/EEC concerning medical devices;

(e) Directive 2007/47/EC[5] of the European Parliament and of the Council of 5th September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market.

(3) These regulations shall enter into force on the 21st March, 2010.

(4) The following transitional measures will remain applicable:

(a) The placing on the market and putting into service of medical devices which have been subjected to EEC pattern approval in accordance with Directive 76/764/EEC shall be accepted until 30th June 2004.

(b) The placing on the market of devices which conform to the rules in force in Malta on 31st December 1994 shall be accepted for a period of five years following the adoption of Directive 93/42/EEC. The putting into service of such devices shall be accepted until 30th June 2001 at the latest.

(c) Holders of EC design-examination certificates or EC type-examination certificates issued before 1st April 2004 for medical devices referred to in the definition for "medical device manufactured utilising tissues of animal origin" in regulation 3 of these regulations shall apply for a complementary EC design-examination certificate or EC type-examination certificate attesting to compliance with the specifications laid down in Schedule XIII to these regulations.

(d) The placing on the market and the putting into service of medical devices referred to in definition for "medical device manufactured utilising tissues of animal origin" in regulation 3 of these regulations which are covered by an EC design-examination certificate or an EC type-examination certificate issued before 1st April 2004 shall be accepted until 20th September 2004,

[4] OJ No.L.210, 12-08-2005, p.41.
[5] OJ No. L.247, 21-09-2007, p.21.

(e) Breast implants placed on the market before 1st September 2003 pursuant to regulation 6(3)(a) or 6(3)(b)(iii) of these regulations shall be subject to a conformity reassessment procedure as Class III medical devices before 1st March 2004.

(f) By way of derogation from regulation 6(10) of these regulations, the decisions on breast implants taken by the notified bodies before 1st September 2003 under regulation 6(3)(a) of these regulations may not be extended.

(g) Hip, knee and shoulder replacements that have been subject to a conformity assessment procedure pursuant to regulation 6(3)(a) of these regulations before 1st September 2007 shall be subject to a complementary conformity assessment under section 4 of Schedule II to these regulations leading to an EC design examination certificate before 1st September 2009. This provision does not preclude a manufacturer from submitting an application for conformity assessment based on regulation 6(1)(b) of these regulations.

(h) Hip, knee and shoulder replacements that have been subject to a conformity assessment procedure pursuant to regulation 6(3)(b)(iii) of these regulations before 1st September 2007 may be subject to a conformity assessment as Class III medical devices pursuant to regulation 6(1)(b)(i) or (ii) of these regulations before 1st September 2010. This provision does not preclude a manufacturer from submitting an application for conformity assessment based on regulation 6(1)(a) of these regulations.

(i) The placing on the market and the putting into service of hip, knee and shoulder replacements covered by a Decision in accordance with regulation 6(3)(a) of these regulations issued before 1st September 2007 shall be accepted until 1st September 2009.

(j) The placing on the market of hip, knee and shoulder replacements which are covered by a Decision in accordance with regulation 6(3)(b)(iii) of these regulations issued before 1st September 2007, shall be accepted until 1st September 2010 and permitted to be put into service beyond this date.

Scope and classification.

2. (1) These regulations shall apply to medical devices and their accessories as follows:

(a) for the purposes of these regulations, accessories shall be treated as medical devices in their own right; and

(b) both medical devices and accessories shall hereinafter be termed "devices".

(2) (a) Devices shall be divided into Classes I, IIa, IIb and III. Classification shall be carried out in accordance with Schedule IX to these regulations. In the event of a dispute between the manufacturer and the notified body concerned, resulting from the application of the classification rules, the matter shall be referred for decision to the Regulatory Affairs Directorate if the notified body is designated in Malta.

(b) By way of derogation from the rules set out in Schedule IX to these regulations, breast implants shall be reclassified as medical devices falling within Class III. By way of derogation from the rules set out in Schedule IX to these regulations, hip, knee and shoulder replacements shall be reclassified as medical devices falling within Class III.

(c) When it is considered that:

(i) application of the classification rules set out in Schedule IX to these regulations requires a decision with regard to the classification of a given device or category of devices; or

(ii) a given device or family of devices should be classified, by way of derogation from the provisions of Schedule IX to these regulations, in another class; or

(iii) the conformity of a device or family of devices should, by way of derogation from article 6 of these regulations, be established by applying solely one of the given procedures chosen from among those referred to in article 6 of these regulations; or

(iv) a decision is required as to whether a particular product or product group falls within one of the definitions for "accessory", "custom-made device", "device intended for clinical investigations", "in vitro diagnostic medical device" or "medical device" in article 3 of these regulations,

the Regulatory Affairs Directorate shall submit a duly substantiated request to the Commission and ask it to take the necessary measures.

(3) (a) For the purposes of these regulations, the Regulatory Affairs Directorate will act as Malta's national competent authority in terms of the Committee referred to in Article 6 of Directive 93/42/EEC and with respect to the exchange of information, necessary

to enable these regulations to be applied uniformly, with other Member States and the Commission.

(b) For the purposes of these regulations, the Regulatory Affairs Directorate will act as Malta's national competent authority with respect to exchange of experience organised by the Commission in order to coordinate the uniform application of these regulations.

3. For the purposes of these regulations, the following definitions shall apply: Definitions.

"accessory" means an article which whilst not being a device is intended specifically by its manufacturer to be used together with a device to enable it to be used in accordance with the use of the device intended by the manufacturer of the device;

"animal tissues" covered by these regulations are those tissues originating from bovine, ovine and caprine animal species, as well as deer, elk, mink and cats;

"authorised representative" means any natural or legal person established in the Community or in Malta who, explicitly designated by the manufacturer, acts and may be addressed by authorities and bodies in the Community or in Malta instead of the manufacturer with regard to the latter's obligations under these regulations;

"cell" means the smallest organised unit of any living form which is capable of independent existence and of replacement of its own substance in a suitable environment;

"CE marking" means marking as set out in Schedule XII to these regulations;

"clinical data" means the safety and, or performance information that is generated from the use of a device. Clinical data are sourced from:

(a) any clinical investigation of the device concerned; or

(b) any clinical investigation or other study reported in the scientific literature, of a similar device for which equivalence to the device in question can be demonstrated; or

(c) published and, or unpublished reports on other clinical experience of either the device in question or a similar device for which equivalence to the device in question can be demonstrated;

"the Community" means the European Community;

"custom-made device" means any device specifically made in accordance with a duly qualified medical practitioner's written prescription which gives, under his responsibility, specific design characteristics and is intended for the sole use of a particular patient. The prescription may also be made out by any other person authorised by virtue of his professional qualifications to do so. Mass-produced devices which need to be adapted to meet the specific requirements of the medical practitioner or any other professional user shall not be considered to be custom-made devices;

"derivative" means a material obtained from an animal tissue by a manufacturing process such as collagen, gelatine, monoclonal antibodies;

"device intended for clinical investigation" means any device intended for use by a duly qualified medical practitioner when conducting investigations, as referred to in Schedule X to these regulations, in an adequate human clinical environment. For the purpose of conducting clinical investigation, any other person who, by virtue of his professional qualifications, is authorised to carry out such investigation shall be accepted as equivalent to a duly qualified medical practitioner;

"device subcategory" means a set of devices having common areas of intended use or common technology;

"generic device group" means a set of devices having the same or similar intended uses or commonality of technology allowing them to be classified in a generic manner not reflecting specific characteristics;

"Harmonised Standard" means a technical specification adopted by the European Committee for Standardisation (CEN) or the European Committee for Electrotechnical Standardisation (CENELEC) or the European Telecommunications Standards Institute (ETSI), upon a remit from the European Commission in accordance with the Notification Procedure Regulations, 2003;

L.N. 373 of 2003.

"hip, knee and shoulder replacement" means an implantable component part of a total joint replacement system which is intended to provide a function similar to that of either a natural hip joint, a natural knee joint or a natural shoulder joint. Ancillary components (screws, wedges, plates and instruments) are excluded from this definition.

"inactivation" means a process by which the ability to cause infection or pathogenic reaction by transmissible agents is reduced;

"in vitro diagnostic medical device" means any medical device which is a reagent, reagent product, calibrator, control material, kit, instrument, apparatus, equipment or system,"whether used alone or in combination, intended by the manufacturer to be used in vitro for the examination of specimens, including blood and tissue donations, derived from the human body, solely or principally for the purpose of providing information:

(a) concerning a physiological or pathological state, or

(b) concerning a congenital abnormality, or

(c) to determine the safety and compatibility with potential recipients, or

(d) to monitor therapeutic measures;

"Specimen receptacles" are those devices, whether vacuum-type or not, specifically intended by their manufacturers for the primary containment and preservation of specimens derived from the human body for the purpose of in vitro diagnostic examination. For the purposes of these regulations, specimen receptacles are considered to be in vitro diagnostic medical devices. Products for general laboratory use are not in vitro diagnostic medical devices unless such products, in view of their characteristics, are specifically intended by their manufacturer to be used for in vitro diagnostic examination;

"intended purpose" means the use for which the device is intended according to the data supplied by the manufacturer on the labelling, in the instructions and, or in promotional materials;

"manufacturer" means the natural or legal person with responsibility for the design, manufacture, packaging and labeling of a device before it is placed on the market under his own name,

regardless of whether these operations are carried out by that person himself or on his behalf by a third party:

(a) provided that the obligations of these regulations to be met by manufacturers also apply to the natural or legal person who assembles, packages, processes, fully refurbishes and, or labels one or more ready-made products and, or assigns to them their intended purpose as a device with a view to their being placed on the market under his own name;

(b) provided further that the first proviso to this definition does not apply to the person who, while not a manufacturer within the meaning of this definition, assembles or adapts devices already on the market to their intended purpose for an individual patient;

"Market Surveillance Directorate" means the Market Surveillance Directorate of the Malta Standards Authority as described in the Establishment of Directorates of the Malta Standards Authority Order, 2008;

L.N. 39 of 2008.

"medical device" means any instrument, apparatus, appliance, software, material or other article, whether used alone or in combination, including the software intended by its manufacturer to be used specifically for diagnostic and, or therapeutic purposes and necessary for its proper application, intended by the manufacturer to be used for human beings for the purpose of:

(a) diagnosis, prevention, monitoring, treatment or alleviation of disease,

(b) diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap,

(c) investigation, replacement or modification of the anatomy or of a physiological process,

(d) control of conception,

and which does not achieve its principal intended action in or on the human body by pharmacological, immunological or metabolic means, but which may be assisted in its function by such means;

"medical device manufactured utilising tissues of animal origin" means medical devices manufactured utilising animal tissue which is rendered non-viable or non-viable products derived from

animal tissue. This definition does not apply to medical devices manufactured utilising tissues of animal origin which are not intended to come into contact with the human body or which are intended to come into contact with intact skin only;

"National Standard transposing the Harmonised Standard" means a Standard issued by one of the members of CEN/CENELEC/ETSI which is declared and noted to be identical to the Harmonised Standard originally issued by CEN/CENELEC/ETSI;

"non-viable" means having no potential for metabolism or multiplication;

"notified body" means a body notified to the Commission and to the Member States of the Community, assessed according to the criteria laid down in Schedule XI to these regulations and appointed to carry out the procedures referred to in regulations 6(1) to (12) of these regulations. The names of such bodies are published in the OJ;

"OJ" means the Official Journal of the European Union;

"placing on the market" means the first making available in return for payment or free of charge of a device other than a device intended for clinical investigation, with a view to distribution and, or use on the Community or Maltese market, regardless of whether it is new or fully refurbished;

"putting into service" means the stage at which a device has been made available to the final user as being ready for use on the Community or local market for the first time for its intended purpose;

"reduction, elimination or removal" means a process by which the number of transmissible agents is reduced, eliminated or removed in order to prevent infection or pathogenic reaction;

"Regulatory Affairs Directorate" means the Regulatory Affairs Directorate of the Malta Standards Authority as described in the Establishment of Directorates of the Malta Standards Authority Order, 2008; L.N. 39 of 2008.

"single use device" means a device intended to be used once only for a single patient;

"source country" means the country in which the animal was born, has been reared and, or has been slaughtered;

"starting materials" means raw materials or any other product of animal origin out of which, or with the help of which, devices referred to in the definition for "medical devices manufactured utilizing tissues of animal origin" are produced;

"tissue" means an organisation of cells and, or extra-cellular constituents;

"transmissible agents" means unclassified pathogenic entities, prions and such entities as bovine spongiform encephalopathies agents and scrapie agents;

"TSE certificate" means the TSE certificate of suitability issued by the European Directorate for the Quality of Medicines.

Applicability.

4. (1) The provisions of these regulations are applicable to all imported medical devices as well as to those manufactured for the local or Community market.

(2) Where a device is intended to administer a medicinal product within the meaning of article 2 of the Medicines Act, that device shall be governed by these regulations, without prejudice to the provisions of the Medicines Act with regard to the medicinal product. Provided that:

Cap. 458.

(a) if such a device is placed on the market in such a way that the device and the medicinal product form a single integral product which is intended exclusively for use in the given combination and which is not reusable, that single product shall be governed by the Medicines Act; and

(b) the relevant essential requirements of Schedule I to these regulations shall apply as far as safety and performance-related device features are concerned.

(3) (a) Where a device incorporates, as an integral part, a substance which, if used separately, may be considered to be a medicinal product within the meaning of article 2 of the Medicines Act and which is liable to act upon the body with action ancillary to that of the device, that device shall be assessed and authorised in accordance with these regulations.

(b) Where a device incorporates, as an integral part, a substance which, if used separately, may be considered to be a medicinal product constituent or a medicinal product derived from human blood or human plasma within the meaning of article 2 of the Medicines Act and which is liable to act upon the human body with action ancillary to that of the device, hereinafter referred to as a human blood derivative, that device shall be assessed and authorised in accordance with these regulations.

(4) Subject to the definition of a "medical device manufactured utilising tissues of animal origin" in article 3 of these regulations, no person shall place on the Maltese or Community market or put into service a device manufactured utilising either animal tissue which is rendered non-viable or non-viable products derived from animal tissues unless:

(a) there is, in respect of that device, a risk analysis and risk management scheme which is in accordance with the requirements of these regulations, in particular regulations 7(1) to (10) and Schedule XIII to these regulations; and

(b) the manufacturer of the device has fulfilled his obligations under the procedures within that scheme.

(5) These regulations shall not apply to:

(a) in vitro diagnostic devices, as defined in the definition for "in vitro diagnostic medical device" in article 3 of these regulations;

(b) active implantable devices covered by Directive 90/385/EEC, as implemented by the Active Implantable Medical Devices Regulations, 2008; L.N. 211 of 2008.

(c) medicinal products covered by the Medicines Act. In deciding whether a product falls under that Directive or these regulations, particular account shall be taken of the principal mode of action of the product;

(d) cosmetic products covered by the Cosmetic Products Regulations, 2004; L.N. 424 of 2004.

(e) human blood, blood products, plasma or blood cells of human origin or to devices which incorporate at the time of placing on the market such blood products, plasma or cells, with the

exception of devices referred to in regulation 4(3)(b) of these regulations;

(f) transplants or tissues or cells of human origin nor to product incorporating or derived from tissues or cells of human origin, with the exception of devices referred to in regulation 4(3)(b) of these regulations;

(g) transplants or tissues or cells of animal origin, unless a device is manufactured utilising animal tissue which is rendered non-viable or non-viable products derived from animal tissue.

(6) Where a device is intended by the manufacturer to be used in accordance with both the provisions on personal protective equipment in the Personal Protective Equipment Regulations, 2002 and these regulations, the relevant basic health and safety requirements of the Personal Protective Equipment Regulations, 2002 shall also be fulfilled.

L.N. 371 of 2002.

(7) These regulations constitute a specific directive within the meaning of regulation 4(5) of The Electromagnetic Compatibility Regulations, 2007.

L.N. 28 of 2007.

(8) These regulations shall not affect the application of the Nuclear Safety and Radiation Protection Regulations, 2003, nor of the Ionising Radiation Medical Exposure Control Regulations, 2004.

L.N. 44 of 2003.
L.N. 472 of 2004.

CE marking and conformity.

5. (1) The devices must meet the essential requirements set out in Schedule I to these regulations which apply to them, taking account of the intended purpose of the devices concerned.

(2) All necessary steps shall be taken to ensure that devices may be placed on the market and, or put into service only if they comply with the requirements laid down in these regulations when duly supplied and properly installed, maintained and used in accordance with their intended purpose.

(a) Where a relevant hazard exists, devices which are also machinery within the meaning of regulation 3.1.1 of the Machinery Regulations, 2002, shall also meet the essential health and safety requirements set out in Schedule I to those regulations to the extent to which those essential health and safety requirements are more specific than the essential requirements set out in Schedule I to these regulations.

L.N. 369 of 2002.

(b) All necessary steps shall be taken to ensure that devices referred to in the definition for "medical device manufactured utilising tissues of animal origin" in article 3 of these regulations are placed on the market and put into service only if they comply with the provisions of these regulations and with the specifications laid down in Schedule XIII to these regulations.

(3) Devices, other than devices which are custom-made or intended for clinical investigations, considered to meet the essential requirements referred to in sub-regulation (1) hereof must bear the CE marking of conformity when they are placed on the market.

(4) The CE marking of conformity, as shown in Schedule XII to these regulations, must appear in a visible, legible and indelible form on the device or its sterile pack, where practicable and appropriate, and on the instructions for use. Where applicable, the CE marking must also appear on the sales packaging. The CE marking shall be accompanied by the identification number of the notified body responsible for implementation of the procedures set out in Schedules II, IV, V and VI to these regulations.

(5) It is prohibited to affix marks or inscriptions which are likely to mislead third parties with regard to the meaning or the graphics of the CE marking. Any other mark may be affixed on the device, to the packaging or to the instruction leaflet accompanying the device provided that the visibility and legibility of the CE marking is not thereby reduced.

(6) (a) Compliance with the essential requirements referred to in regulation 5(1) of these regulations shall be presumed in respect of devices which are in conformity with the relevant national standards adopted pursuant to the harmonised standards the references of which have been published in the OJ.

(b) For the purposes of these regulations, reference to harmonised standards also includes the monographs of the European *Pharmacopoeia* notably on surgical sutures and on interaction between medicinal products and materials used in devices containing such medicinal products, the references of which have been published in the OJ.

(7) Where the devices are subject to other Directives concerning other aspects and which also provide for the affixing of the CE marking, the latter shall indicate that the devices also fulfil the provisions of the other Directives. Provided that should one or more of these Directives allow the manufacturer, during a transitional period,

to choose which arrangements to apply, the CE marking shall indicate that the devices fulfil the provisions only of those Directives applied by the manufacturer. In this case, the particulars of these Directives, as published in the OJ, must be given in the documents, notices or instructions required by the Directives and accompanying such devices.

(8) No obstacle shall be created to the placing on the market or the putting into service of devices bearing the CE marking provided for in regulations 5(3) to (5) of these regulations which indicate that they have been the subject of an assessment of their conformity in accordance with the provisions of regulations 6(1) to (12) of these regulations.

(9) No obstacle shall be created to:

(a) devices intended for clinical investigation being made available to medical practitioners or authorised persons for that purpose if they meet the conditions laid down in regulations 9(1) to (8) and in Schedule VIII to these regulations; and

(b) custom-made devices being placed on the market and put into service if they meet the conditions laid down in regulations 6(1) to (12) in combination with Schedule VIII to these regulations; Class IIa, IIb and III devices shall be accompanied by the statement referred to in Schedule VIII to these regulations, which shall be available to the particular patient identified by name, an acronym or a numerical code.

Such devices shall not bear the CE marking.

(10) At trade fairs, exhibitions and demonstrations, no obstacle shall be created to the showing of devices which do not conform to these regulations, provided that a visible sign clearly indicates that such devices cannot be marketed or put into service until they have been made to comply.

(11) When a device reaches the final user, regardless of whether it is for professional or other use, the information which must be made available to the user and the patient in accordance with section 13 of Schedule I to these regulations, shall be provided in, at least, the Maltese or English language.

Conformity assessment procedures.

6. (1) In the case of devices falling within Class III, other than devices which are custom-made or intended for clinical investigations, the manufacturer shall, in order to affix the CE marking, either:

(a) follow the procedure relating to the EC declaration of conformity set out in Schedule II to these regulations relating to full quality assurance system; or

(b) follow the procedure relating to the EC type-examination set out in Schedule III to these regulations, coupled with:

(i) the procedure relating to the EC verification set out in Schedule IV to these regulations; or

(ii) the procedure relating to the EC declaration of conformity set out in Schedule V to these regulations relating to production quality assurance.

(2) In the case of devices falling within Class IIa, other than devices which are custom-made or intended for clinical investigations, the manufacturer shall, in order to affix the CE marking, follow the procedure relating to the EC declaration of conformity set out in Schedule VII to these regulations, coupled with either:

(a) the procedure relating to the EC verification set out in Schedule IV to these regulations; or

(b) the procedure relating to the EC declaration of conformity set out in Schedule V to these regulations relating to production quality assurance;

(c) the procedure relating to the EC declaration of conformity set out in Schedule VI to these regulations relating to product quality assurance.

Instead of applying these procedures, the manufacturer may also follow the procedure referred to in regulation 6(3)(a) of these regulations.

(3) In the case of devices falling within Class IIb, other than devices which are custom-made or intended for clinical investigations, the manufacturer shall, in order to affix the CE marking, either:

(a) follow the procedure relating to the EC declaration of conformity set out in Schedule II to these regulations relating to full quality assurance; in this case, Section 4 of Schedule II to these regulations is not applicable; or

(b) follow the procedure relating to the EC type-examination set out in Schedule III to these regulations, coupled with:

(i) the procedure relating to the EC verification set out in Schedule IV to these regulations; or

(ii) the procedure relating to the EC declaration of conformity set out in Schedule V to these regulations relating to production quality assurance; or

(iii) the procedure relating to the EC declaration of conformity set out in Schedule VI to these regulations relating to product quality assurance.

(4) In the case of devices falling within Class I, other than devices which are custom-made or intended for clinical investigations, the manufacturer shall, in order to affix the CE marking, follow the procedure referred to in Schedule VII to these regulations and draw up the EC declaration of conformity required before placing the device on the market.

(5) In the case of custom-made devices, the manufacturer shall follow the procedure referred to in Schedule VIII to these regulations and draw up the statement set out in that Schedule before placing each device on the market.

The manufacturer of such devices may be requested to submit a list of devices which have been into service in Malta to the Regulatory Affairs Directorate.

(6) During the conformity assessment procedure for a device, the manufacturer and, or the notified body shall take account of the results of any assessment and verification operations which, where appropriate, have been carried out in accordance with these regulations at an intermediate stage of manufacture.

(7) The manufacturer may instruct his authorised representative to initiate the procedures provided for in Schedules III, IV, VII and VIII to these regulations.

(8) Where the conformity assessment procedure involves the intervention of a notified body, the manufacturer, or his authorised representative, may apply to a body of his choice within the framework of the tasks for which the body has been notified.

(9) The notified body may require, where duly justified, any information or data, which is necessary for establishing and maintaining the attestation of conformity in view of the chosen procedure.

(10) Decisions taken by the notified bodies in accordance with Schedules II, III, V and VI to these regulations shall be valid for a maximum of five years and may be extended on application, made at a time agreed in the contract signed by both parties, for further periods of a maximum length of five years.

(11) The records and correspondence relating to the procedures referred to in regulations 6(1) to (5) of these regulations shall be in the Maltese or English language or in another Community language acceptable to the notified body.

(12) By derogation from regulations 6(1) to (5) of these regulations, the Head of the Regulatory Affairs Directorate, after consulting the Superintendent of Public Health, may authorise, on duly justified request, the placing on the market and putting into service, within the Maltese territory, of individual devices for which the procedures referred to in regulations 6(1) to (5) of these regulations have not been carried out and the use of which is in the interest of protection of health.

Conformity assessment for medical devices manufactured utilising tissues of animal origin.

7. (1) With respect to medical devices referred to in the definition for "medical device manufactured utilising tissues of animal origin" in article 3 of these regulations, the following regulations shall apply in addition to the provisions mentioned in regulations 6(1) to (12) of these regulations that apply to them.

(2) Collagen, gelatine or tallow used for the manufacturing of medical devices, shall meet at least the requirements as fit for human consumption.

(3) All necessary steps shall be taken to ensure that devices referred to in the definition in sub-regulation (1) hereof are placed on the market and put into service only if they comply with the provisions of these regulations and the specifications laid down in Schedule XIII of these regulations.

(4) Conformity assessment procedures for medical devices referred to in the definition in sub-regulation (1) hereof shall include the evaluation of their compliance with the essential requirements laid down in Schedule I to these regulations and the specifications laid down in Schedule XIII to these regulations.

(5) Before lodging an application for a conformity assessment pursuant to regulation 6(1) of these regulations, the manufacturer of medical devices referred to in the definition in sub-

regulation (1) hereof shall carry out the risk analysis and the risk management scheme set out in Schedule XIII to these regulations.

(6) In order to assess the conformity of devices referred to the definition in sub-regulation (1) hereof with the provisions of these regulations and with the specifications laid down in Schedule XIII to these regulations, the Regulatory Affairs Directorate shall verify that bodies notified under regulations 13(1) to (8) of these regulations have up-to-date knowledge of these devices. If, on the basis of that verification, it is necessary to amend the tasks of a notified body, the Regulatory Affairs Directorate shall notify the Commission and other Member States accordingly.

(7) Notified bodies shall evaluate the manufacturer's risk analysis and risk management strategy, and in particular:

(a) the information provided by the manufacturer;

(b) the justification for the use of animal tissues or derivatives;

(c) the results of elimination and, or inactivation studies or of literature search;

(d) the manufacturer's control of the sources of raw materials, finished products and subcontractors;

(e) the need to audit matters related to sourcing, including third party supplies.

(8) Notified bodies shall, during the evaluation of the risk analysis and risk management in the framework of the conformity assessment procedure, take account of the TSE certificate of suitability referred to in the definition for "TSE certificate" in article 3 of these regulations, for starting materials, where available."

(9) Except for medical devices using starting materials for which a TSE certificate has been issued as referred to in regulation 7(8) of these regulations, national bodies, shall, through the Regulatory Affairs Directorate, seek the opinion of the competent authorities of the other Member States on their evaluation of and conclusions on the risk analysis and risk management of the tissues or the derivatives intended to be incorporated in the medical device as established by the manufacturer.

(10) Before issuing an EC design-examination certificate or an EC type-examination certificate, the notified bodies shall give due consideration to any comments received within 12 weeks from the date on which the opinion of the national competent authorities was sought.

Particular procedure for systems and procedure packs and procedure for sterilisation.

8. (1) By way of derogation from regulations 6(1) to (12) of these regulations, the following sub-regulations shall apply to systems and procedure packs.

(2) Any natural or legal person who puts devices bearing the CE marking together within their intended purpose and within the limits of use specified by their manufacturers, in order to place them on the market as a system or procedure pack, shall draw up a declaration by which he states that:

(a) he has verified the mutual compatibility of the devices in accordance with the manufacturers' instructions and has carried out his operations in accordance with these instructions; and

(b) he has packaged the system or procedure pack and supplied relevant information to users incorporating relevant instructions from the manufacturers; and

(c) the whole activity is subjected to appropriate methods of internal control and inspection.

(3) Where the conditions above are not met, as in cases where the system or procedure pack incorporate devices which do not bear a CE marking or where the chosen combination of devices is not compatible in view of their original intended use, the system or procedure pack shall be treated as a device in its own right and as such be subjected to the relevant procedure pursuant to regulations 6(1) to (12) of these regulations.

(4) Any natural or legal person who sterilises, for the purpose of placing on the market, systems or procedure packs referred to in regulations 8(2) and (3) of these regulations or other CE-marked medical devices designed by their manufacturers to be sterilised before use, shall, at his choice, follow one of the procedures referred to in Schedule II or Schedule V to these regulations. The application of the above-mentioned Schedules and the intervention of the notified body are limited to the aspects of the procedure relating to the obtaining of sterility until the sterile package is opened or damaged. The person shall draw up a declaration stating that sterilisation has been carried out in accordance with the manufacturer's instructions.

(5) The products referred to in regulations 8(2) to (4) of these regulations shall not themselves bear an additional CE marking. They shall be accompanied by the information referred to in section 13 of Schedule I to these regulations which includes, where appropriate, the information supplied by the manufacturers of the devices which have been put together. The declarations referred to in regulations 8(2) to (4) of these regulations shall be kept at the disposal of the Regulatory Affairs Directorate for a period of five years.

Clinical investigations.

9. (1) In the case of devices intended for clinical investigations to be conducted in Malta, the manufacturer or the authorised representative shall follow the procedure referred to in Schedule VIII to these regulations and notify the Regulatory Affairs Directorate by means of the statement mentioned in section 2(b) of Schedule VIII to these regulations.

(2) (a) In the case of devices falling within Class III and implantable and long-term invasive devices falling within Class IIa or IIb, the manufacturer may commence the relevant clinical investigation at the end of a period of 60 days after notification, unless the Regulatory Affairs Directorate have notified him within that period of a decision to the contrary based on considerations of public health or public policy.

(b) However, manufacturers may be authorised by the Regulatory Affairs Directorate to commence the relevant clinical investigations before the expiry of the period of 60 days, in so far as the Ethics Committee, established by the Clinical Trials Regulations of 2004, has issued a favourable opinion on the programme of investigation in question, including its review of the clinical investigation plan.

L.N. 490 of 2004.

(3) In the case of devices other than those referred to in regulation 9(2) of these regulations, manufacturers may be authorised by the Regulatory Affairs Directorate to commence clinical investigations immediately after the date of notification, provided that the Ethics Committee mentioned above has issued a favourable opinion on the programme of investigation in question including its review of the clinical investigation plan.

(4) The clinical investigations must be conducted in accordance with the provision of Schedule X to these regulations.

(5) (a) If necessary, any appropriate steps to ensure public health and public policy shall be taken according to the Public Health Act.

Cap. 465.

(b) Where a clinical investigation is refused or halted, the Regulatory Affairs Directorate shall communicate such decision and the grounds thereof to all Member States and the Commission. Where a significant modification or temporary interruption of a clinical investigation has been called, the Regulatory Affairs Directorate shall inform the Member States concerned about such actions and the grounds for the actions taken.

(6) (a) The manufacturer or his authorised representative shall notify the Regulatory Affairs Directorate and the competent authorities of the other Member States concerned of the end of the clinical investigation, with a justification in case of early termination.

(b) In the case of early termination of the clinical investigation on safety grounds, the notification referred to in sub-regulation (a) above shall be communicated by the Regulatory Affairs Directorate to all Member States and the Commission.

(c) The manufacturer or his authorised representative shall keep the report referred to in section 2(c)(vii) of Schedule X to these regulations at the disposal of the Regulatory Affairs Directorate and the competent authorities of the other Member States concerned.

(7) The provisions of regulations 9(1) and (2) above do not apply where the clinical investigations are conducted using devices which are authorised in accordance with regulations 6(1) to (12) of these regulations to bear the CE marking unless the aim of these investigations is to use the devices for a purpose other than that referred to in the relevant conformity assessment procedure. The relevant provisions of Schedule X to these regulations remain applicable.

Withdrawal and prohibition from market.

10. (1) Where it is ascertained that the devices referred to in regulation 5(8) and in regulation 5(9)(b) of these regulations, when correctly installed, maintained and used for their intended purpose, may compromise the health and, or safety of patients, users or, where applicable, other persons, all appropriate interim measures shall be taken by the Director of Market Surveillance to withdraw such devices from the market or prohibit or restrict their being placed on the market or put into service.

(2) If a device which is not in conformity with the relevant requirements bears the CE marking, all appropriate measures shall be taken with regard to those responsible for affixing the marking.

(3) The Market Surveillance Directorate and the Regulatory Affairs Directorate shall take the necessary steps to ensure that any

information brought to his knowledge, in accordance with the provisions of these regulations, regarding the incidents mentioned below involving a Class I, IIa, IIb or III device is recorded and evaluated centrally:

(a) any malfunction or deterioration in the characteristics and, or performance of a device, as well as any inadequacy in the labelling or the instructions for use which might lead to or might have led to the death of a patient or user or to a serious deterioration in his state of health;

(b) any technical or medical reason in relation to the characteristics or performance of a device for the reasons referred to in paragraph (a) above, leading to a systematic recall of devices of the same type by the manufacturer.

(4) The Regulatory Affairs Directorate shall be immediately informed of any such measures taken under regulations 10(1) to (3) above, indicating the reasons for such decision and, in particular, whether non-compliance is due to:

(a) failure to satisfy the essential requirements referred to in regulation 5(1) of these regulations;

(b) incorrect application of the standards referred to in regulation 5(6) of these regulations, in so far as it is claimed that the standards have been applied;

(c) shortcomings in the standards themselves.

(5) (a) The necessary steps shall be taken to ensure that the manufacturer of the device concerned, or his authorised representative, is also informed of the incidents referred to in regulation 10(3) above.

(b) An assessment of the incidents mentioned in regulation 10(3) above will be carried out by the Regulatory Affairs Directorate, if possible together with the manufacturer or his authorised representative.

(6) Any decision taken pursuant to these regulations:

(a) to refuse or restrict the placing on the market or the putting into service of a device or the carrying out of clinical investigations; or

(b) to withdraw devices from the market,

shall state the exact grounds on which it is based. Such decisions shall be notified without delay to the party concerned, who shall at the same time be informed of the remedies available to him under the Maltese law and of the time limits to which such remedies are subject.

(7) In the event of a decision as referred to in regulation 10(6) of these regulations, the manufacturer shall have an opportunity to put forward his viewpoint in advance, unless such consultation is not possible because of the urgency of the measure to be taken.

(8) Where the Director of Market Surveillance considers, in relation to a given product or group of products, that, in order to ensure the protection of health and safety and, or to ensure that public health requirements are observed, such products should be withdrawn from the market, or their placing on the market and putting into service should be prohibited, restricted or subjected to particular requirements, any necessary and justified transitional measures may be taken.

The Regulatory Affairs Directorate shall immediately inform the Commission and all other Member States of any measures taken in pursuance of sub-regulations 10(1) to (10) of these regulations, giving the reasons for such decisions.

(9) Without prejudice to sub-regulations 10(1), (2) and (4) hereof:

(a) where it is established that the CE marking has been affixed unduly or is missing in violation of these regulations, the manufacturer or his authorised representative shall be obliged to end the infringement under conditions imposed by the Director of Market Surveillance; and

(b) where non-compliance continues, all appropriate measures shall be taken by the Director of Market Surveillance to restrict or prohibit the placing on the market of the product in question or to ensure that it is withdrawn from the market, in accordance with the procedure as laid down in sub-regulations 10(1), (2) and (4) hereof.

(10) The provisions of sub-regulation (9) hereof shall also apply where the CE marking has been affixed in accordance with the procedures in these regulations, but inappropriately, on products that are not covered by these regulations.

Registration of persons responsible for placing devices on the market.

11. (1) (a) Any manufacturer who has his registered place of business in Malta and, under his own name, places devices on the market in accordance with the procedures referred to in regulations 6(4) and (5) of these regulations and any other natural or legal person engaged in the activities referred to in regulations 8(1) to (5) of these regulations shall inform the Regulatory Affairs Directorate of his registered place of business and the description of the devices concerned.

(b) For all medical devices of Classes IIa, IIb and III, all data allowing the identification of such devices together with the label and instructions for use, may be requested when such devices are put into service in Malta.

(2) (a) Where a manufacturer who places a device on the Maltese or Community market under his own name does not have a registered place of business in a Member State, he shall designate a single authorised representative in the European Union.

(b) When the authorised representative referred to herein has a registered place of business in Malta, he shall inform the Regulatory Affairs Directorate of the details referred to in sub-regulation (1) hereof.

(3) The Regulatory Affairs Directorate shall, on request, inform the other Member States and the Commission of the details referred to in regulations 11(1) and (2) of these regulations given by the manufacturer or authorised representative.

European databank.

12. (1) Regulatory data in accordance with these regulations shall be stored in a European databank accessible to the competent authorities to enable them to carry out their tasks relating to these regulations on a well-informed basis. The databank shall contain the following:

(a) data relating to registration of manufacturers and authorised representatives and devices in accordance with regulations 11(1) to (3) above, excluding data related to custom-made devices;

(b) data relating to certificates issued, modified, supplemented, suspended, withdrawn or refused according to the procedures, as laid down in Schedules II to VII to these regulations;

(c) data obtained in accordance with the vigilance procedure as defined in regulations 10(3) and (5) of these regulations;

(d) data relating to clinical investigations referred to in regulations 9(1) to (8) of these regulations.

(2) Data shall be forwarded in a standardised format by the Regulatory Affairs Directorate.

(3) The provisions of sub-regulations (1) and (2) hereof shall be implemented not later than 5th September 2012.

Notified Bodies.

13. (1) The Regulatory Affairs Directorate shall notify the Commission and other Member States of the bodies which it has designated for carrying out the tasks pertaining to the procedures referred to in regulations 6(1) to (12) of these regulations and the specific tasks for which the bodies have been designated.

(2) The Regulatory Affairs Directorate shall apply the criteria set out in Schedule XI to these regulations for the designation of bodies. Bodies that meet the criteria laid down in the national standards which transpose the relevant harmonised standards shall be presumed to meet the relevant criteria.

(3) The Regulatory Affairs Directorate shall withdraw the notification referred to in sub-regulation (1) hereof if it finds that the body no longer meets the criteria referred to in sub-regulation (2) hereof. It shall immediately inform the other Member States and the Commission thereof.

(4) The notified body and the manufacturer, or his authorised representative, shall lay down, by common accord, the time limits for completion of the assessment and verification operations referred to in Schedules II to VI to these regulations.

(5) (a) The notified body shall inform the Regulatory Affairs Directorate about all certificates issued, modified, supplemented, suspended, withdrawn or refused and the other notified bodies within the scope of these regulations about certificates suspended, withdrawn or refused and, on request, about certificates issued.

(b) The notified body shall also make available, on request, all additional relevant information.

(6) (a) Where a notified body finds that pertinent requirements of these regulations have not been met or are no longer met by the manufacturer or where a certificate should not have been issued, it shall, taking account of the principle of proportionality, suspend or withdraw the certificate issued or place any restrictions on it unless

compliance with such requirements is ensured by the implementation of appropriate corrective measures by the manufacturer.

(b) In the case of suspension or withdrawal of the certificate or of any restriction placed on it or in cases where an intervention of the competent authority may become necessary, the notified body shall inform the Regulatory Affairs Directorate thereof. The Regulatory Affairs Directorate shall inform the other Member States and the Commission.

(7) The notified body shall, on request, supply all relevant information and documents including budgetary documents, required to enable the Regulatory Affairs Directorate to verify compliance with the requirements of Schedule XI to these regulations.

(8) All necessary actions shall be taken to ensure that the notified bodies which are responsible pursuant to regulations 6(1) to (4) of these regulations for conformity assessment take account of any relevant information regarding the characteristics and performance of such devices, including in particular the results of any relevant tests and verification already carried out under pre-existing Maltese law, regulations or administrative provisions in respect of such devices.

Confidentiality.

14. (1) Without prejudice to the existing national provisions and practices on medical secrets, the Director of Market Surveillance and the Head of the Regulatory Affairs Directorate shall ensure that all the parties involved in the application of these regulations are bound to observe confidentiality with regard to all information obtained in carrying out their tasks. This does not affect the obligation of the Market Surveillance Directorate or the Regulatory Affairs Directorate with regard to mutual information and the dissemination of warnings, nor the obligations of the persons concerned to provide information under criminal law.

(2) The following information shall not be treated as confidential:

(a) information on the registration of persons responsible for placing devices on the market in accordance with regulations 11(1) to (3) of these regulations;

(b) information to users sent out by the manufacture, authorised representative or distributor in relation to a measure according to regulation 10(5)(b) of these regulations;

(c) information contained in certificates issued, modified, supplemented, suspended or withdrawn.

15. The penalties applicable for the infringement of any of the provisions above shall be those provided for in Part IV of the Product Safety Act. Penalties. Cap. 427.

16. The Medical Devices Regulations, 2003 are hereby being revoked. Revokes L.N. 47 of 2003.

Schedule I
Based on Annex I of Directive 93/42/EEC
ESSENTIAL REQUIREMENTS

I GENERAL REQUIREMENTS

(1) The devices must be designed and manufactured in such a way that, when used under the conditions and for the purposes intended, they will not compromise the clinical condition or the safety of patients, or the safety and health of users or, where applicable, other persons, provided that any risks which may be associated with their intended use constitute acceptable risks when weighed against the benefits to the patient and are compatible with a high level of protection of health and safety. This shall include:

(a) reducing, as far as possible, the risk of use error due to the ergonomic features of the device and the environment in which the device is intended to be used (design for patient safety), and

(b) consideration of the technical knowledge, experience, education and training and where applicable the medical and physical conditions of intended users (design for lay, professional, disabled or other users).

(2) The solutions adopted by the manufacturer for the design and construction of the devices must conform to safety principles, taking account of the generally acknowledged state of the art. In selecting the most appropriate solutions, the manufacturer must apply the following principles in the following order:

(a) eliminate or reduce risks as far as possible (inherently safe design and construction),

(b) where appropriate take adequate protection measures including alarms if necessary, in relation to risks that cannot be eliminated,

(c) inform users of the residual risks due to any shortcomings of the protection measures adopted.

(3) The devices must achieve the performances intended by the manufacturer and be designed, manufactured and packaged in such a way that they are suitable for one or more of the functions referred to in the definition of a “medical device” in regulation 3 of these regulations, as specified by the manufacturer.

(4) The characteristics and performances referred to in sections 1, 2 and 3 of this Schedule must not be adversely affected to such a degree that the clinical conditions and safety of the patients and, where applicable, of other persons are compromised during the lifetime of the device as indicated by the manufacturer, when the device is subjected to the stresses which can occur during normal conditions of use.

(5) The devices must be designed, manufactured and packed in such a way that their characteristics and performances during their intended use will not be adversely affected during transport and storage taking account of the instructions and

information provided by the manufacturer.

(6) (a) Any undesirable side-effect must constitute an acceptable risk when weighed against the performances intended.

(b) Demonstration of conformity with the essential requirements must include a clinical evaluation in accordance with Schedule X to these regulations.

II REQUIREMENTS REGARDING DESIGN AND CONSTRUCTION

(7) **Chemical, physical and biological properties**

(a) The devices must be designed and manufactured in such a way as to guarantee the characteristics and performances referred to in Section I of this Schedule on the 'General Requirements'. Particular attention must be paid to:

(i) the choice of materials used, particularly as regards toxicity and, where appropriate, flammability,

(ii) the compatibility between the materials used and biological tissues, cells and body fluids, taking account of the intended purpose of the device.

(iii) where appropriate, the results of biophysical or modelling research whose validity has been demonstrated beforehand.

(b) The devices must be designed, manufactured and packed in such a way as to minimize the risk posed by contaminants and residues to the persons involved in the transport, storage and use of the devices and to the patients, taking account of the intended purpose of the product. Particular attention must be paid to the tissues exposed and to the duration and frequency of exposure.

(c) The devices must be designed and manufactured in such a way that they can be used safely with the materials, substances and gases with which they enter into contact during their normal use or during routine procedures; if the devices are intended to administer medicinal products they must be designed and manufactured in such a way as to be compatible with the medicinal products concerned according to the provisions and restrictions governing these products and that their performance is maintained in accordance with the intended use.

(d) Where a device incorporates, as an integral part, a substance which, if used separately, may be considered to be a medicinal product as defined in article 2 of the Medicines Act and which is liable to act upon the body with action ancillary to that of the device, the quality, safety and usefulness of the substance must be verified by analogy with the methods specified in Annex I to Directive 2001/83/EC.

Cap 458

(i) For the substances referred to in the first paragraph, the notified body shall, having verified the usefulness of the substance as part of the medical device and taking account of the intended purpose of the device, seek a scientific opinion from one of the competent authorities designated

by the Member States or the European Medicines Agency (EMEA) acting particularly through its committee in accordance with Regulation (EC) No 726/2004[6] on the quality and safety of the substance including the clinical benefit and risk profile of the incorporation of the substance into the device. When issuing its opinion, the competent authority or the EMEA shall take into account the manufacturing process and the data related to the usefulness of incorporation of the substance into the device as determined by the notified body.

(ii) Where a device incorporates, as an integral part, a human blood derivative, the notified body shall, having verified the usefulness of the substance as part of the medical device and taking into account the intended purpose of the device, seek a scientific opinion from the EMEA, acting particularly through its committee, on the quality and safety of the substance including the clinical benefit and risk profile of the incorporation of the human blood derivative into the device. When issuing its opinion, the EMEA shall take into account the manufacturing process and the data related to the usefulness of incorporation of the substance into the device as determined by the notified body.

(iii) Where changes are made to an ancillary substance incorporated in a device, in particular related to its manufacturing process, the notified body shall be informed of the changes and shall consult the relevant medicines competent authority (the one involved in the initial consultation), in order to confirm that the quality and safety of the ancillary substance are maintained. The competent authority shall take into account the data related to the usefulness of incorporation of the substance into the device as determined by the notified body, in order to ensure that the changes have no negative impact on the established benefit and risk profile of the addition of the substance in the medical device.

(iv) When the relevant medicines competent authority (the one involved in the initial consultation) has obtained information on the ancillary substance, which could have an impact on the established benefit and risk profile of the addition of the substance in the medical device, it shall provide the notified body with advice, whether this information has an impact on the established benefit and risk profile of the addition of the substance in the medical device or not. The notified body shall take the updated scientific opinion into account in reconsidering its assessment of the conformity assessment procedure.

(e) The devices must be designed and manufactured in such a way as to reduce to a minimum the risks posed by substances leaking from the device. Special attention shall be given to substances which are carcinogenic, mutagenic or toxic to reproduction, in accordance with the Dangerous Substances (Notification) Regulations, 2004.

LN 318 of 2001

[6] Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L.136

LN 318 of 2001

(i) If parts of a device (or a device itself) intended to administer and, or remove medicines, body liquids or other substances to or from the body, or devices intended for transport and storage of such body fluids or substances, contain phthalates which are classified as carcinogenic, mutagenic or toxic to reproduction, of category 1 or 2, in accordance with the Dangerous Substances (Notification) Regulations, 2001, these devices must be labelled on the device itself and, or on the packaging for each unit or, where appropriate, on the sales packaging as a device containing phthalates.

(ii) If the intended use of such devices includes treatment of children or treatment of pregnant or nursing women, the manufacturer must provide a specific justification for the use of these substances with regard to compliance with the essential requirements, in particular of this paragraph, within the technical documentation and, within the instructions for use, information on residual risks for these patient groups and, if applicable, on appropriate precautionary measures.

(f) Devices must be designed and manufactured in such a way as to reduce, as much as possible, risks posed by the unintentional ingress of substances into the device taking into account the device and the nature of the environment in which it is intended to be used.

(8) **Infection and microbial contamination**

(a) The devices and manufacturing processes must be designed in such a way as to eliminate or reduce as far as possible the risk of infection to the patient, user and third parties. The design must allow easy handling and, where necessary, minimize contamination of the device by the patient or vice versa during use.

(b) (i) Tissues of animal origin must originate from animals that have been subjected to veterinary controls and surveillance adapted to the intended use of the tissues.

(ii) Notified bodies shall retain information on the geographical origin of the animals.

(iii) Processing, preservation, testing and handling of tissues, cells and substances of animal origin must be carried out so as to provide optimal security. In particular safety with regard to viruses and other transmissible agents must be addressed by implementation of validated methods of elimination or viral inactivation in the course of the manufacturing process.

(c) Devices delivered in a sterile state must be designed, manufactured and packed in a non-reusable pack and, or according to appropriate procedures to ensure that they are sterile when placed on the market and remain sterile, under the storage and transport conditions laid down, until the protective packaging is damaged or opened.

(d) Devices delivered in a sterile state must have been manufactured and sterilised

by an appropriate, validated method.

(e) Devices intended to be sterilised must be manufactured in appropriately controlled (e.g. environmental) conditions.

(f) Packaging systems for non-sterile devices must keep the product without deterioration at the level of cleanliness stipulated and, if the devices are to be sterilised prior to use, minimise the risk of microbial contamination; the packaging system must be suitable taking account of the method of sterilisation indicated by the manufacturer.

(g) The packaging and, or label of the device must distinguish between identical or similar products sold in both sterile and non-sterile condition.

(9) **Construction and environmental properties**

(a) If the device is intended for use in combination with other devices or equipment, the whole combination, including the connection system must be safe and must not impair the specified performances of the devices. Any restrictions on use must be indicated on the label or in the instructions for use.

(b) Devices must be designed and manufactured in such a way as to remove or minimize as far as is possible:

(i) the risk of injury, in connection with their physical features, including the volume/pressure ratio, dimensional and where appropriate ergonomic features,

(ii) risks connected with reasonably foreseeable environmental conditions, such as magnetic fields, external electrical influences, electrostatic discharge, pressure, temperature or variations in pressure and acceleration,

(iii) the risks of reciprocal interference with other devices normally used in the investigations or for the treatment given,

(iv) risks arising where maintenance or calibration are not possible (as with implants), from ageing of materials used or loss of accuracy of any measuring or control mechanism.

(c) Devices must be designed and manufactured in such a way as to minimize the risks of fire or explosion during normal use and in single fault condition. Particular attention must be paid to devices whose intended use includes exposure to flammable substances or to substances which could cause combustion.

(10) **Devices with a measuring function**

(a) Devices with a measuring function must be designed and manufactured in such a way as to provide sufficient accuracy and stability within appropriate limits of accuracy and taking account of the intended purpose of the device. The limits of

accuracy must be indicated by the manufacturer.

(b) The measurement, monitoring and display scale must be designed in line with ergonomic principles, taking account of the intended purpose of the device.

Cap 454

(c) The measurements made by devices with a measuring function must be expressed in legal units conforming to the provisions of the Metrology Act.

(11) **Protection against radiation**

(a) General

Devices shall be designed and manufactured in such a way that exposure of patients, users and other persons to radiation shall be reduced as far as possible compatible with the intended purpose, whilst not restricting the application of appropriate specified levels for therapeutic and diagnostic purposes.

(b) Intended radiation

(i) Where devices are designed to emit hazardous levels of radiation necessary for a specific medical purpose the benefit of which is considered to outweigh the risks inherent in the emission, it must be possible for the user to control the emissions. Such devices shall be designed and manufactured to ensure reproducibility and tolerance of relevant variable parameters.

(ii) Where devices are intended to emit potentially hazardous, visible and, or invisible radiation, they must be fitted, where practicable, with visual displays and, or audible warnings of such emissions.

(c) Unintended radiation

Devices shall be designed and manufactured in such a way that exposure of patients, users and other persons to the emission of unintended, stray or scattered radiation is reduced as far as possible.

(d) Instructions

The operating instructions for devices emitting radiation must give detailed information as to the nature of the emitted radiation, means of protecting the patient and the user and on ways of avoiding misuse and of eliminating the risks inherent in installation.

(e) Ionising radiation

(i) Devices intended to emit ionizing radiation must be designed and manufactured in such a way as to ensure that, where practicable, the quantity, geometry and quality of radiation emitted can be varied and controlled taking into account the intended use.

(ii) Devices emitting ionizing radiation intended for diagnostic radiology shall be designed and manufactured in such a way as to achieve appropriate image and, or output quality for the intended medical purpose whilst minimizing radiation exposure of the patient and user.

(iii) Devices emitting ionizing radiation, intended for therapeutic radiology shall be designed and manufactured in such a way as to enable reliable monitoring and control of the delivered dose, the beam type and energy and where appropriate the quality of radiation.

(12) **Requirements for medical devices connected to or equipped with an energy source**

(a) Devices incorporating electronic programmable systems must be designed to ensure the repeatability, reliability and performance of these systems according to the intended use. In the event of a single fault condition (in the system) appropriate means should be adopted to eliminate or reduce as far as possible consequent risks.

(b) For devices which incorporate software or which are medical software in themselves, the software must be validated according to the state of the art taking into account the principles of development lifecycle, risk management, validation and verification.

(c) Devices where the safety of the patients depends on an internal power supply must be equipped with a means of determining the state of the power supply.

(d) Devices where the safety of the patients depends on an external power supply must include an alarm system to signal any power failure.

(e) Devices intended to monitor one or more clinical parameters of a patient must be equipped with appropriate alarm systems to alert the user of situations which could lead to death or severe deterioration of the patient's state of health.

(f) Devices must be designed and manufactured in such a way as to minimize the risks of creating electromagnetic fields which could impair the operation of other devices or equipment in the usual environment.

(g) Protection against electrical risks

Devices must be designed and manufactured in such a way as to avoid, as far as possible, the risk of accidental electric shocks during normal use and in single fault condition, provided the devices are installed correctly.

(h) Protection against mechanical and thermal risks

(i) Devices must be designed and manufactured in such a way as to protect the patient and user against mechanical risks connected with, for example, resistance, stability and moving parts.

(ii) Devices must be designed and manufactured in such a way as to reduce to the lowest possible level the risks arising from vibration generated by the devices, taking account of technical progress and of the means available for limiting vibrations, particularly at source, unless the vibrations are part of the specified performance.

(iii) Devices must be designed and manufactured in such a way as to reduce to the lowest possible level the risks arising from the noise emitted, taking account of technical progress and of the means available to reduce noise, particularly at source, unless the noise emitted is part of the specified performance.

(iv) Terminals and connectors to the electricity, gas or hydraulic and pneumatic energy supplies which the user has to handle must be designed and constructed in such a way as to minimize all possible risks.

(v) Accessible parts of the devices (excluding the parts or areas intended to supply heat or reach given temperatures) and their surroundings must not attain potentially dangerous temperatures under normal use.

(i) Protection against the risks posed to the patient by energy supplies or substances

(i) Devices for supplying the patient with energy or substances must be designed and constructed in such a way that the flow-rate can be set and maintained accurately enough to guarantee the safety of the patient and of the user.

(ii) Devices must be fitted with the means of preventing and, or indicating any inadequacies in the flow-rate which could pose a danger.

(iii) Devices must incorporate suitable means to prevent, as far as possible, the accidental release of dangerous levels of energy from an energy and, or substance source.

(j) The function of the controls and indicators must be clearly specified on the devices.

Where a device bears instructions required for its operation or indicates operating or adjustment parameters by means of a visual system, such information must be understandable to the user and, as appropriate, the patient.

(13) **Information supplied by the manufacturer**

(a) Each device must be accompanied by the information needed to use it safely and properly, taking account of the training and knowledge of potential users, and to identify the manufacturer.

(i) This information comprises the details on the label and the data in the instructions for use.

(ii) As far as practicable and appropriate, the information needed to use the device safely must be set out on the device itself and, or on the packaging for each unit or, where appropriate, on the sales packaging. If individual packaging of each unit is not practicable, the information must be set out in the leaflet supplied with one or more devices.

(iii) Instructions for use must be included in the packaging for every device. By way of exception, no such instructions for use are needed for devices in Class I or IIa if they can be used safely without any such instructions.

(b) Where appropriate, this information should take the form of symbols. Any symbol or identification colour used must conform to the harmonized standards. In areas for which no standards exist, the symbols and colours must be described in the documentation supplied with the device.

(c) The *label* must bear the following particulars:

(i) the name or trade name and address of the manufacturer. For devices imported in Malta, in view of their distraction locally or in the Community, the label, or the outer packaging, or instructions for use, shall contain in addition the name and address of the authorised representative where the manufacturer does not have a registered place of business in Malta or in the Community;

(ii) the details strictly necessary to identify the device and the contents of the packaging especially for the users;

(iii) where appropriate, the word ‘STERILE’;

(iv) where appropriate, the batch code, preceded by the word ‘LOT’, or the serial number;

(v) where appropriate, an indication of the date by which the device should be used, in safety, expressed as the year and month;

(vi) where appropriate, an indication that the device is for single use. A manufacturer’s indication of single use must be consistent across the Community;

(vii) if the device is custom-made, the words ‘custom-made device’;

(viii) if the device is intended for clinical investigations, the words ‘exclusively for clinical investigations’;

(ix) any special storage and, or handling conditions;

(x) any special operating instructions;

(xi) any warnings and, or precautions to take;

(xii) year of manufacture for active devices other than those covered by section 13(c)(v) of this Schedule. This indication may be included in the batch or serial number;

(xiii) where applicable, method of sterilisation;

(xiv) in the case of a device within the meaning of regulation 4(3)(b) of these regulations, an indication that the device contains a human blood derivative.

(d) If the intended purpose of the device is not obvious to the user, the manufacturer must clearly state it on the label and in the instructions for use.

(e) Wherever reasonable and practicable, the devices and detachable components must be identified, where appropriate in terms of batches, to allow all appropriate action to detect any potential risk posed by the devices and detachable components.

(f) Where appropriate, the instructions for use must contain the following particulars:

(i) the details referred to in section 13(c) of this Schedule, with the exception of sections (iv) and (v);

(ii) the performances referred to in section 3 of this Schedule and any undesirable side-effects;

(iii) if the device must be installed with or connected to other medical devices or equipment in order to operate as required for its intended purpose, sufficient details of its characteristics to identify the correct devices or equipment to use in order to obtain a safe combination;

(iv) all the information needed to verify whether the device is properly installed and can operate correctly and safely, plus details of the nature and frequency of the maintenance and calibration needed to ensure that the devices operate properly and safely at all times;

(v) where appropriate, information to avoid certain risks in connection with implantation of the device;

(vi) information regarding the risks of reciprocal interference posed by the presence of the device during specific investigations or treatment;

(vii) the necessary instructions in the event of damage to the sterile packaging and, where appropriate, details of appropriate methods of resterilisation;

(viii) if the device is reusable, information on the appropriate processes to allow reuse, including cleaning, disinfection, packaging and, where appropriate, the method of sterilisation of the device to be resterilised, and any

restriction on the number of reuses.

Where devices are supplied with the intention that they be sterilised before use, the instructions for cleaning and sterilisation must be such that, if correctly followed, the device will still comply with the requirements in sections 1 to 6 of this Schedule.

If the device bears an indication that the device is for single use, information on known characteristics and technical factors known to the manufacturer that could pose a risk if the device were to be re-used. If in accordance with section 13(a) of this Schedule no instructions for use are needed, the information must be made available to the user upon request;

(ix) details of any further treatment or handling needed before the device can be used (for example, sterilisation, final assembly, etc.);

(x) in the case of devices emitting radiation for medical purposes, details of the nature, type, intensity and distribution of this radiation.

The instructions for use must also include details allowing the medical staff to brief the patient on any contra-indications and any precautions to be taken. These details should cover in particular;

(xi) precautions to be taken in the event of changes in the performance of the device;

(xii) precautions to be taken as regards exposure, in reasonably foreseeable environmental conditions, to magnetic fields, external electrical influences, electrostatic discharge, pressure or variations in pressure, acceleration, thermal ignition sources, etc.;

(xiii) adequate information regarding the medicinal product or products which the device in question is designed to administer, including any limitations in the choice of substances to be delivered;

(xiv) precautions to be taken against any special, unusual risks related to the disposal of the device;

(xv) medicinal substances or human blood derivatives incorporated into the device as an integral part in accordance with section 7(d) of this Schedule;

(xvi) degree of accuracy claimed for devices with a measuring function;

(xvii) date of issue or the latest revision of the instructions for use.

Schedule II
Based on Annex II of Directive 93/42/EEC
EC DECLARATION OF CONFORMITY (Full quality assurance system)

(1) The manufacturer must ensure application of the quality system approved for the design, manufacture and final inspection of the products concerned, as specified in section 3 and is subject to audit as laid down in sections 3(c) and 4 and to Community surveillance as specified in section 5 of this Schedule.

(2) The EC declaration of conformity is the procedure whereby the manufacturer who fulfils the obligations imposed by section 1 of this Schedule ensures and declares that the products concerned meet the provisions of this Directive which apply to them.

The manufacturer must affix the CE marking in accordance with regulations 5(3) to (5) of these regulations and draw up a written declaration of conformity. This declaration must cover one or more medical devices manufactured, clearly identified by means of product name, product code or other unambiguous reference and must be kept by the manufacturer.

(3) **Quality System**

(a) The manufacturer must lodge an application for assessment of his quality system with a notified body. The application must include:

(i) the name and address of the manufacturer and any additional manufacturing site covered by the quality system,

(ii) all the relevant information on the product or product category covered by the procedure,

(iii) a written declaration that no application has been lodged with any other notified body for the same product-related quality system,

(iv) the documentation on the quality system,

(v) an undertaking by the manufacturer to fulfil the obligations imposed by the quality system approved,

(vi) an undertaking by the manufacturer to keep the approved quality system adequate and efficacious,

(vii) an undertaking by the manufacturer to institute and keep up to date a systematic procedure to review experience gained from devices in the post-production phase, including the provisions referred to in Schedule X to these regulations, and to implement appropriate means to apply any necessary corrective action. This undertaking must include an obligation for the manufacturer to notify the competent authorities of the following incidents immediately on learning of them:

(1) any malfunction or deterioration in the characteristics and, or

performance of a device, as well as any inadequacy in the instructions for use which might lead to or might have led to the death of a patient or user or to a serious deterioration in his state of health;

(2) any technical or medical reason connected with the characteristics or performance of a device leading for the reasons referred to in the first paragraph above to systematic recall of devices of the same type by the manufacturer.

(b) Application of the quality system must ensure that the products conform to the provisions of these regulations which apply to them at every stage, from design to final inspection. All the elements, requirements and provisions adopted by the manufacturer for his quality system must be documented in a systematic and orderly manner in the form of written policies and procedures such as quality programmes, quality plans, quality manuals and quality records.

It shall include in particular the corresponding documentation, data and records arising from the procedures referred to in section 3(b)(iii) below.

It shall include in particular an adequate description of:

(i) the manufacturer's quality objectives;

(ii) the organisation of the business and in particular:

(1) the organisational structures, the responsibilities of the managerial staff and their organisational authority where quality of design and manufacture of the products is concerned,

(2) the methods of monitoring the efficient operation of the quality system and in particular its ability to achieve the desired quality of design and of product, including control of products which fail to conform,

(3) where the design, manufacture and, or final inspection and testing of the products, or elements thereof, is carried out by a third party, the methods of monitoring the efficient operation of the quality system and in particular the type and extent of control applied to the third party;

(iii) the procedures for monitoring and verifying the design of the products, including the corresponding documentation, and in particular:

(1) a general description of the product, including any variants planned, and its intended use,

(2) the design specifications, including the standards which will be applied and the results of the risk analysis, and also a description of the solutions adopted to fulfil the essential requirements which

apply to the products if the standards referred to in regulation 5(6) of these regulations are not applied in full,

(3) the techniques used to control and verify the design and the processes and systematic measures which will be used when the products are being designed,

(4) if the device is to be connected to any other device in order to operate as intended, proof must be provided that it conforms to the essential requirements when connected to any such device having the characteristics specified by the manufacturer,

(5) a statement indicating whether or not the device incorporates, as an integral part, a substance or a human blood derivative referred to in section 7(d) of Schedule I to these regulations and the data on the tests conducted in this connection required to assess the safety, quality and usefulness of that substance or human blood derivative, taking account of the intended purpose of the device,

(6) a statement indicating whether or not the device is manufactured utilising tissues of animal origin as referred to in the definition of a "medical device manufactured utilising tissues of animal origin" in regulation 3 of these regulations,

(7) the solutions adopted as referred to in section 2 of Schedule I to these regulations,

(8) the pre-clinical evaluation,

(9) the clinical evaluation referred to in Schedule X to these regulations,

(10) the draft label and, where appropriate, instructions for use.

(iv) the inspection and quality assurance techniques at the manufacturing stage and in particular:

(1) the process and procedures which will be used, particularly as regards sterilisation, purchasing and the relevant documents,

(2) the product identification procedures drawn up and kept up to date from drawings, specifications or other relevant documents at every stage of manufacture;

(v) the appropriate tests and trials which will be carried out before, during and after manufacture, the frequency with which they will take place, and the test equipment used; it must be possible to track back the calibration of the test equipment adequately.

(c) The notified body must audit the quality system to determine whether it meets the requirements referred to in section 3(b) above. It must presume that quality

systems which implement the relevant harmonized standards conform to these requirements.

(i) The assessment team must include at least one member with past experience of assessments of the technology concerned. The assessment procedure must include an assessment, on a representative basis, of the documentation of the design of any product concerned, an inspection on the manufacturer's premises and, in duly substantiated cases, on the premises of the manufacturer's suppliers and, or subcontractors to inspect the manufacturing processes.

(ii) The decision is notified to the manufacturer. It must contain the conclusions of the inspection and a reasoned assessment.

(d) The manufacturer must inform the notified body which approved the quality system of any plan for substantial changes to the quality system or the product-range covered. The notified body must assess the changes proposed and verify whether after these changes the quality system still meets the requirements referred to in section 3(b) of this Schedule. It must notify the manufacturer of its decision. This decision must contain the conclusions of the inspection and a reasoned assessment.

(4) **Examination of the design of the product**

(a) In addition to the obligations imposed by section 3 of this Schedule, the manufacturer must lodge with the notified body an application for examination of the design dossier relating to the product which he plans to manufacture and which falls into the category referred to in section 3(a) of this Schedule.

(b) The application must describe the design, manufacture and performances of the product in question. It must include the documents needed to assess whether the product conforms to the requirements of these regulations, as referred to in section 3(b)(iii) of this Schedule.

(c) The notified body must examine the application and, if the product conforms to the relevant provisions of these regulations, issue the application with an EC design-examination certificate. The notified body may require the application to be completed by further tests or proof to allow assessment of conformity with the requirements of these regulations. The certificate must contain the conclusions of the examination, the conditions of validity, the data needed for identification of the approved design, where appropriate, a description of the intended purpose of the product.

(i) In the case of devices referred to in section 7(d)(i) of Schedule I to these regulations, the notified body shall, as regards the aspects referred to in that section, consult one of the competent authorities designated by the Member States in accordance with Directive 2001/83/EC or the EMEA before taking a decision. The opinion of the competent national authority or the EMEA must be drawn up within 210 days after receipt of a valid documentation. The scientific opinion of the competent national

authority or the EMEA must be included in the documentation concerning the device. The notified body will give due consideration to the views expressed in this consultation when making its decision. It will convey its final decision to the competent body concerned.

(ii) In the case of devices referred to in section 7(d)(ii) of Schedule I to these regulations, the scientific opinion of the EMEA must be included in the documentation concerning the device. The opinion of the EMEA must be drawn up within 210 days after receipt of a valid documentation. The notified body will give due consideration to the opinion of the EMEA when making its decision. The notified body may not deliver the certificate if the EMEA's scientific opinion is unfavourable. It will convey its final decision to the EMEA.

(iii) In the case of devices manufactured utilising tissues of animal origin as referred to in the definition of a “medical device manufactured utilising tissues of animal origin” in regulation 3 of these regulations, the notified body must follow the procedures referred to in these regulations.

(d) Changes to the approved design must receive further approval from the notified body which issued the EC design-examination certificate wherever the changes could affect conformity with the essential requirements of these regulations or with the conditions prescribed for use of the product. The applicant shall inform the notified body which issued the EC design-examination certificate of any such changes made to the approved design. This additional approval must take the form of a supplement to the EC design-examination certificate.

(5) **Surveillance**

(a) The aim of surveillance is to ensure that the manufacturer duly fulfils the obligations imposed by the approved quality system.

(b) The manufacturer must authorise the notified body to carry out all the necessary inspections and supply it with all relevant information, in particular:

(i) the documentation on the quality system,

(ii) the data stipulated in the part of the quality system relating to design, such as the results of analyses, calculations, tests, the solutions adopted as referred to in section 2 of Schedule I to these regulations, preclinical and clinical evaluation, post-market clinical follow-up plan and the results of the post-market clinical follow-up, if applicable, etc.,

(iii) the data stipulated in the part of the quality system relating to manufacture, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.

(c) The notified body must periodically carry out appropriate inspections and assessments to make sure that the manufacturer applies the approved quality system and must supply the manufacturer with an assessment report.

(d) In addition, the notified body may pay unannounced visits to the manufacturer. At the time of such visits, the notified body may, where necessary, carry out or ask for tests in order to check that the quality system is working properly. It must provide the manufacturer with an inspection report and, if a test has been carried out, with a test report.

(6) **Administrative provisions**

(a) The manufacturer or his authorised representative must, for a period ending at least five years, and in the case of implantable devices at least 15 years, after the last product has been manufactured, keep at the disposal of the national authorities:

(i) the declaration of conformity,

(ii) the documentation referred to in section 3(a)(iv) of this Schedule and in particular the documentation, data and records referred to in section 3(b) of this Schedule,

(iii) the changes referred to in section 3(d) of this Schedule,

(iv) the documentation referred to in section 4(b) of this Schedule, and

(v) the decisions and reports from the notified body as referred to in sections 3(c), 4(c), 4(d), 5(c) and 5(d) of this Schedule.

(7) **Application to devices in Classes IIa and IIb**

(a) In line with regulations 6(2) and (3) of these regulations, this Schedule may apply to products in Classes IIa and IIb. section 4 of this Schedule, however, does not apply.

(b) For devices in Class IIa the notified body shall assess, as part of the assessment in section 3(c) of this Schedule, the technical documentation as described in Section 3(b)(iii) above for at least one representative sample for each device subcategory for compliance with the provisions of these regulations.

(c) For devices in Class IIb the notified body shall assess, as part of the assessment in section 3(c) of this Schedule, the technical documentation as described in section 3(b)(iii) above for at least one representative sample for each generic device group for compliance with the provisions of these regulations.

(d) In choosing any representative sample the notified body shall take into account the novelty of the technology, similarities in design, technology, manufacturing and sterilisation methods, the intended use and the results of any previous relevant assessments (e.g. with regard to physical, chemical or biological properties) that have been carried out in accordance with these regulations. The notified body shall document and keep available to the Regulatory Affairs Directorate its rationale for any sample taken.

(e) Further samples shall be assessed by the notified body as part of the surveillance assessment referred to in section 5 of this Schedule.

(8) **Application to the devices referred to in regulation 4(3)(b) of these regulations**

Upon completing the manufacture of each batch of devices referred to in regulation 4(3)(b) of these regulations, the manufacturer shall inform the notified body of the release of the batch of devices and send to it the official certificate concerning the release of the batch of human blood derivative used in the device, issued by a State laboratory or a laboratory designated for that purpose by a Member State in accordance with article 104A, sub-article (4) of the Medicines Act.

Cap 458

Schedule III
Based on Annex III of Directive 93/42/EEC
EC TYPE-EXAMINATION

(1) EC type-examination is the procedure whereby a notified body ascertains and certifies that a representative sample of the production covered fulfils the relevant provisions of these regulations.

(2) The application includes:

(a) the name and address of the manufacturer and the name and address of the authorised representative if the application is lodged by the representative,

(b) the documentation described in Section 3 below needed to assess the conformity of the representative sample of the production in question, hereinafter referred to as the 'type', with the requirements of these regulations. The applicant must make a 'type' available to the notified body. The notified body may request other samples as necessary,

(c) a written declaration that no application has been lodged with any other notified body for the same type.

(3) The documentation must allow an understanding of the design, the manufacture and the performances of the product and must contain the following items in particular:

(a) a general description of the type, including any variants planned, and any intended use,

(b) design drawings, methods of manufacture envisaged, in particular as regards sterilisation, and diagrams of components, sub-assemblies, circuits, etc.,

(c) the descriptions and explanations necessary to understand the abovementioned drawings and diagrams and the operation of the product,

(d) a list of the standards referred to in regulation 5(6) of these regulations, applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements if the standards referred to regulation 5(6) of these regulations have not been applied in full,

(e) the results of the design calculations, risk analysis, investigations, technical tests, etc. carried out,

(f) a statement indicating whether or not the device incorporates, as an integral part, a substance, or human blood derivative, referred to in section 7(d) of Schedule I to these regulations, and the data on the tests conducted in this connection which are required to assess the safety, quality and usefulness of that substance, or human blood derivative, taking account of the intended purpose of the device,

(g) a statement indicating whether or not the device is manufactured utilising tissues of animal origin as referred to in the definition for a "medical device

manufactured utilising tissues of animal origin" in article 3 of these regulations,

(h) the solutions adopted as referred to in section 2 of Schedule I to these regulations,

(i) the pre-clinical evaluation,

(j) the clinical evaluation referred to in Schedule X to these regulations,

(k) the draft label and, where appropriate, instructions for use.

(4) The notified body must:

(a) examine and assess the documentation and verify that the type has been manufactured in conformity with that documentation; it must also record the items designed in conformity with the applicable provisions of the standards referred to in regulation 5(6) of these regulations, as well as the items not designed on the basis of the relevant provisions of the abovementioned standards;

(b) carry out or arrange for the appropriate inspections and the tests necessary to verify whether the solutions adopted by the manufacturer meet the essential requirements of these regulations if the standards referred to in regulation 5(6) of these regulations have not been applied; if the device is to be connected to any other device in order to operate as intended, proof must be provided that it conforms to the essential requirements when connected to any such device having the characteristics specified by the manufacturer;

(c) carry out or arrange for the appropriate inspections and the tests necessary to verify whether, if the manufacturer has chosen to apply the relevant standards, these have actually been applied;

(d) agree with the applicant on the place where the necessary inspections and tests will be carried out.

(5) (a) If the type conforms to the provisions of these regulations, the notified body issues the applicant with an EC type-examination certificate. The certificate must contain the name and address of the manufacturer, the conclusions of the inspection, the conditions of validity and the data needed for identification of the type approved. The relevant parts of the documentation must be annexed to the certificate and a copy kept by the notified body.

(b) In the case of devices referred to in section 7(d)(i) of Schedule I to these regulations, the notified body shall, as regards the aspects referred to in that section, consult one of the authorities designated by the Member States in accordance with Directive 2001/83/EC or the EMEA before taking a decision. The opinion of the competent national authority or the EMEA must be drawn up within 210 days after receipt of a valid documentation. The scientific opinion of the competent national authority or the EMEA must be included in the documentation concerning the device. The notified body will give due

consideration to the views expressed in this consultation when making its decision. It will convey its final decision to the competent body concerned.

(c) In the case of devices referred to in section 7(d)(ii) of Schedule I to these regulations, the scientific opinion of the EMEA must be included in the documentation concerning the device. The opinion of the EMEA must be drawn up within 210 days after receipt of a valid documentation. The notified body will give due consideration to the opinion of the EMEA when making its decision. The notified body may not deliver the certificate if the EMEA's scientific opinion is unfavourable. It will convey its final decision to the EMEA.

(d) In the case of devices manufactured utilising tissues of animal origin as referred to in the definition of a “medical device manufactured utilising tissues of animal origin” in article 3 of these regulations, the notified body must follow the applicable procedures referred to in these regulations.

(6) (a) The applicant must inform the notified body which issued the EC type-examination certificate of any significant change made to the approved product.

(b) Changes to the approved product must receive further approval from the notified body which issued the EC type-examination certificate wherever the changes may affect conformity with the essential requirements or with the conditions prescribed for use of the product. This new approval must, where appropriate, take the form of a supplement to the initial EC type-examination certificate.

(7) **Administrative provisions**

(a) Other notified bodies may obtain a copy of the EC type-examination certificates and, or the supplements thereto. The Annexes to the certificates must be made available to other notified bodies on reasoned application, after the manufacturer has been informed.

(b) The manufacturer or his authorised representative must keep with the technical documentation copies of EC type-examination certificates and their additions for a period ending at least five years after the last device has been manufactured. In the case of implantable devices, the period shall be at least 15 years after the last product has been manufactured.

Schedule IV
Based on Annex IV of Directive 93/42/EEC
EC VERIFICATION

(1) EC verification is the procedure whereby the manufacturer or his authorised representative ensures and declares that the products which have been subject to the procedure set out in section 4 of this Schedule conform to the type described in the EC type-examination certificate and meet the requirements of these regulations which apply to them.

(2) (a) The manufacturer must take all the measures necessary to ensure that the manufacturing process produces products which conform to the type described in the EC type-examination certificate and to the requirements of the regulations which apply to them. Before the start of manufacture, the manufacturer must prepare documents defining the manufacturing process, in particular as regards sterilisation where necessary, together with all the routine, pre-established provisions to be implemented to ensure homogeneous production and, where appropriate, conformity of the products with the type described in the EC type-examination certificate and with the requirements of these regulations which apply to them. The manufacturer must affix the CE marking in accordance with regulations 5(3) to (5) of these regulations and draw up a declaration of conformity.

(b) In addition, for products placed on the market in sterile condition, and only for those aspects of the manufacturing process designed to secure and maintain sterility, the manufacturer must apply the provisions of sections 3 and 4 of Schedule V to these regulations.

(3) The manufacturer must undertake to institute and keep up to date a systematic procedure to review experience gained from devices in the post-production phase, including the provisions referred to in Schedule X to these regulations, and to implement appropriate means to apply any necessary corrective action. This undertaking must include an obligation for the manufacturer to notify the competent authorities of the following incidents immediately on learning of them:

(a) any malfunction or deterioration in the characteristics and, or performance of a device, as well as any inadequacy in the labelling or the instructions for use which might lead to or might have led to the death of a patient or user or to a serious deterioration in his state of health;

(b) any technical or medical reason connected with the characteristics or performance of a device for the reasons referred to in section 3(a) above leading to systematic recall of devices of the same type by the manufacturer.

(4) The notified body must carry out the appropriate examinations and tests in order to verify the conformity of the product with the requirements of the regulations either by examining and testing every product as specified in section 5 of this Schedule or by examining and testing products on a statistical basis as specified in section 6 of this Schedule, as the manufacturer decides. These checks do not apply to those aspects of the manufacturing process designed to secure sterility.

(5) **Verification by examination and testing of every product**

(a) Every product is examined individually and the appropriate tests defined in any relevant standard referred to in regulation 5(6) of these regulations or equivalent tests must be carried out in order to verify, where appropriate, the conformity of the products with the EC type described in the type-examination certificate and with the requirements of the regulations which apply to them.

(b) The notified body must affix, or have affixed its identification number to each approved product and must draw up a written certificate of conformity relating to the tests carried out.

(6) **Statistical verification**

(a) The manufacturer must present the manufactured products in the form of homogeneous batches.

(b) A random sample is taken from each batch. The products which make up the sample are examined individually and the appropriate tests defined in any relevant standard referred to in regulation 5(6) of these regulations or equivalent tests must be carried out to verify, where appropriate, the conformity of the products with the type described in the EC type-examination certificate and with the requirements of the regulation which apply to them in order to determine whether to accept or reject the batch.

(c) Statistical control of products will be based on attributes and, or variables, entailing sampling schemes with operational characteristics which ensure a high level of safety and performance according to the state of the art. The sampling schemes will be established by the harmonised standards referred to in regulation 5(6) of these regulations, taking account of the specific nature of the product categories in question.

(d) If the batch is accepted, the notified body affixes or has affixed its identification number to each product and draws up a written certificate of conformity relating to the tests carried out. All products in the batch may be put on the market except any in the sample which failed to conform.

(i) If a batch is rejected, the competent notified body must take appropriate measures to prevent the batch from being placed on the market. In the event of frequent rejection of batches, the notified body may suspend the statistical verification.

(ii) The manufacturer may, on the responsibility of the notified body, affix the notified body's identification number during the manufacturing process.

(7) **Administrative provisions**

(a) The manufacturer or his authorised representative must, for a period ending at

least five years, and in the case of implantable devices at least 15 years, after the last product has been manufactured, make available to the national authorities:

(i) the declaration of conformity,

(ii) the documentation referred to in section 2 of this Schedule,

(iii) the certificates referred to in section 5(b) and 6(d) of this Schedule,

(iv) where appropriate, the type-examination certificate referred to in Schedule III to these regulations.

(8) **Application to devices in Class IIa**

In line with regulation 6(2) of these regulations, this Schedule may apply to products in Class IIa, subject to the following:

(a) in derogation from sections 1 and 2 of this Schedule, by virtue of the declaration of conformity the manufacturer ensures and declares that the products in Class IIa are manufactured in conformity with the technical documentation referred to in section 3 of Schedule VII to these regulations and meet the requirements of these regulations which apply to them;

(b) in derogation from sections 1, 2, 5 and 6 of this Schedule, the verifications conducted by the notified body are intended to confirm the conformity of the products in Class IIa with the technical documentation referred to in section 3 of Schedule VII to these regulations.

(9) **Application to devices referred to in regulation 4(3)(b) of these regulations**

In the case of section 5 of this Schedule, upon completing the manufacture of each batch of devices referred to in the proviso to regulation 4(3)(b) of these regulations, and in the case of verification under section 6 of this Schedule, the manufacturer shall inform the notified body of the release of this batch of devices and send to it the official certificate concerning the release of the batch of human blood derivative used in the device issued by a State laboratory or a laboratory designated for that purpose by a Member State in accordance with article 104A, sub-article (4) of the Medicines Act.

Cap 458

Schedule V
Based on Annex V of Directive 93/42/EEC
EC DECLARATION OF CONFORMITY (Production quality assurance)

(1) The manufacturer must ensure application of the quality system approved for the manufacture of the products concerned and carry out the final inspection, as specified in section 3 of this Schedule, and is subject to the Maltese or Community surveillance referred to in section 4 below.

(2) (a) The EC declaration of conformity is the part of the procedure whereby the manufacturer who fulfils the obligations imposed by section 1 of this Schedule ensures and declares that the products concerned conform to the type described in the EC type-examination certificate and meet the provisions of these regulations which apply to them.

(b) The manufacturer must affix the CE marking in accordance with regulations 5(3) to (5) of these regulations and draw up a written declaration of conformity. This declaration must cover one or more medical devices manufactured, clearly identified by means of product name, product code or other unambiguous reference, and must be kept by the manufacturer.

(3) **Quality system**

(a) The manufacturer must lodge an application for assessment of his quality system with a notified body.

The application must include:

(i) the name and address of the manufacturer,

(ii) all the relevant information on the product or product category covered by the procedure,

(iii) a written declaration that no application has been lodged with any other notified body for the same products,

(iv) the documentation on the quality system,

(v) an undertaking to fulfil the obligations imposed by the quality system is approved,

(vi) an undertaking to maintain the practicability and effectiveness of the approved quality system,

(vii) where appropriate, the technical documentation on the types approved and a copy of the EC type-examination certificates,

(viii) an undertaking by the manufacturer to institute and keep up to date a systematic procedure to review experience gained from devices in the post-production phase, including the provisions referred to in Schedule X

to these regulations, and to implement appropriate means to apply any necessary corrective action. This undertaking must include an obligation for the manufacturer to notify the Regulatory Affairs Directorate of the following incidents immediately on learning of them:

(1) any malfunction or deterioration in the characteristics and, or performance of a device, as well as any inadequacy in the labelling or the instructions for use which might lead to or might have led to the death of a patient or user or to a serious deterioration in his state of health;

(2) any technical or medical reason connected with the characteristics or performance of a device for the reasons referred to in the first indent above leading to a systematic recall of devices of the same type by the manufacturer.

(b) Application of the quality system must ensure that the products conform to the type described in the EC type-examination certificate.

All the elements, requirements and provisions adopted by the manufacturer for his quality system must be documented in a systematic and orderly manner in the form of written policy statements and procedures. This quality system documentation must permit uniform interpretation of the quality policy and procedures such as quality programmes, plans, manuals and records.

It must include in particular an adequate description of:

(i) the manufacturer's quality objectives;

(ii) the organisation of the business and in particular:

(1) the organisational structures, the responsibilities of the managerial staff and their organisational authority where manufacture of the products is concerned,

(2) the methods of monitoring the efficient operation of the quality system and in particular its ability to achieve the desired quality of product, including control of products which fail to conform,

(3) where the manufacture and, or final inspection and testing of the products, or elements thereof, are carried out by a third party, the methods of monitoring the efficient operation of the quality system and in particular the type and extent of control applied to the third party;

(iii) the inspection and quality assurance techniques at the manufacturing stage and in particular:

(1) the processes and procedures which will be used, particularly as regards sterilisation, purchasing and the relevant documents,

(2) the product identification procedures drawn up and kept up to date from drawings, specifications or other relevant documents at every stage of manufacture;

(iv) the appropriate tests and trials to be carried out before, during and after manufacture, the frequency with which they will take place, and the test equipment used; it must be possible adequately to trace back the calibration of the test equipment.

(c) The notified body must audit the quality system to determine whether it meets the requirements referred to in section 3(b) above. It must presume that quality systems which implement the relevant harmonized standards conform to these requirements.

The assessment team must include at least one member with past experience of assessments of the technology concerned. The assessment procedure must include an inspection on the manufacturer's premises and, in duly substantiated cases, on the premises of the manufacturer's suppliers to inspect the manufacturing processes.

The decision must be notified to the manufacturer after the final inspection and contain the conclusions of the inspection and a reasoned assessment.

(d) The manufacturer must inform the notified body which approved the quality system of any plan for substantial changes to the quality system.

The notified body must assess the changes proposed and verify whether after these changes the quality system still meets the requirements referred to in section 3(b) of this Schedule.

After the abovementioned information has been received the decision is notified to the manufacturer. It must contain the conclusions of the inspection and a reasoned assessment.

(4) **Surveillance**

(a) The aim of surveillance is to ensure that the manufacturer duly fulfils the obligations imposed by the approved quality system.

(b) The manufacturer authorises the notified body to carry out all the necessary inspections and must supply it with all relevant information, in particular:

(i) the documentation on the quality system,

(ii) the technical documentation,

(iii) the data stipulated in the part of the quality system relating to manufacture, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.

(c) The notified body must periodically carry out appropriate inspections and assessments to make sure that the manufacturer applies the approved quality system and supply the manufacturer with an assessment report.

(d) In addition, the notified body may pay unannounced visits to the manufacturer. At the time of such visits, the notified body may, where necessary, carry out or ask for tests in order to check that the quality system is working properly. It must provide the manufacturer with an inspection report and, if a test has been carried out, with a test report.

(5) **Administrative provisions**

(a) The manufacturer or his authorised representative must, for a period ending at least five years, and in the case of implantable devices at least 15 years, after the last product has been manufactured, make available to the Market Surveillance Directorate and the Regulatory Affairs Directorate:

(i) the declaration of conformity,

(ii) the documentation referred to in section 3(a)(iv) of this Schedule,

(iii) the changes referred to in section 3(d) of this Schedule,

(iv) the documentation referred to in section 3(a)(vii) of this Schedule,

(v) the decisions and reports from the notified body as referred to in sections 4(c) and 4(d) of this Schedule,

(vi) where appropriate, the type-examination certificate referred to in Schedule III to these regulations.

(6) **Application to devices in Class IIa**

In line with regulation 6(2) of these regulations, this Schedule may apply to products in Class IIa, subject to the following:

(a) By way of derogation from sections 2, 3(a) and 3(b) of this Schedule, by virtue of the declaration of conformity the manufacturer ensures and declares that the products in Class IIa are manufactured in conformity with the technical documentation referred to in section 3 of Schedule VII to these regulations and meet the requirements of these regulations which apply to them.

(b) For devices in Class IIa the notified body shall assess, as part of the assessment in section 3(c) above, the technical documentation as described in section 3 of Schedule VII to these regulations for at least one representative sample for each device subcategory for compliance with the provisions of these regulations.

(c) In choosing any representative sample the notified body shall take into account the novelty of the technology, similarities in design, technology, manufacturing

and sterilisation methods, the intended use and the results of any previous relevant assessments (e.g. with regard to physical, chemical or biological properties) that have been carried out in accordance with these regulations. The notified body shall document and keep available to the Regulatory Affairs Directorate its rationale for any sample taken.

(d) Further samples shall be assessed by the notified body as part of the surveillance assessment referred to in section 4(c) of this Schedule.

(7) **Application to devices referred to regulation 4(3)(b) of these regulations**

Upon completing the manufacture of each batch of devices referred to in regulation 4(3)(b) of these regulations, the manufacturer shall inform the notified body of the release of the batch of devices and send to it the official certificate concerning the release of the batch of human blood derivative used in the device issued by a State laboratory or a laboratory designated for that purpose by a Member State in accordance with article 104A, sub-article (4) of the Medicines Act.

Cap 458

Schedule VI
Based on Annex VI of Directive 93/42/EEC
EC DECLARATION OF CONFORMITY (Product quality assurance)

(1) The manufacturer must ensure application of the quality system approved for the final inspection and testing of the product, as specified in section 3 and must be subject to the surveillance referred to in section 4 of this Schedule.

In addition, for products placed on the market in sterile condition, and only for those aspects of the manufacturing process designed to secure and maintain sterility, the manufacturer must apply the provisions in sections 3 and 4 of Schedule V to these regulations.

(2) The EC declaration of conformity is the part of the procedure whereby the manufacturer who fulfils the obligations imposed by section 1 above ensures and declares that the products concerned conform to the type described in the EC type-examination certificate and meet the provisions of these regulations which apply to them.

The manufacturer affixes the CE marking in accordance with regulations 5(3) to (5) of these regulations and draws up a written declaration of conformity. This declaration must cover one or more medical devices manufactured, clearly identified by means of product name, product code or other unambiguous reference, and be kept by the manufacturer. The CE marking must be accompanied by the identification number of the notified body which performs the tasks referred to in this Schedule.

(3) **Quality System**

(a) The manufacturer lodges an application for assessment of his quality system with a notified body.

The application must include:

(i) the name and address of the manufacturer,

(ii) all the relevant information on the product or product category covered by the procedure,

(iii) a written declaration that no application has been lodged with any other notified body for the same products,

(iv) the documentation on the quality system,

(v) an undertaking to fulfil the obligations imposed by the quality system is approved,

(vi) an undertaking by the manufacturer to keep the approved quality system adequate and efficacious,

(vii) where appropriate, the technical documentation on the types approved and a copy of the EC type-examination certificates,

(viii) an undertaking by the manufacturer to institute and keep up to date a systematic procedure to review experience gained from devices in the post-production phase, including the provisions referred to in Schedule X to these regulations, and to implement appropriate means to apply any necessary corrective action. This undertaking must include an obligation for the manufacturer to notify the Regulatory Affairs Directorate of the following incidents immediately on learning of them:

(1) any malfunction or deterioration in the characteristics and, or performance of a device, as well as any inadequacy in the labelling or the instructions for use which might lead to or might have led to the death of a patient or user or to a serious deterioration in his state of health;

(2) any technical or medical reason connected with the characteristics or performance of a device for the reasons referred to in the first indent above leading to a systematic recall of devices of the same type by the manufacturer.

(b) Under the quality system, each product or a representative sample of each batch is examined and the appropriate tests defined in any relevant standard referred to in regulation 5(6) of these regulations or equivalent tests are carried out to ensure that the products conform to the type described in the EC type-examination certificate and fulfil the provisions of these regulations which apply to them. All the elements, requirements and provisions adopted by the manufacturer must be documented in a systematic and orderly manner in the form of written measures, procedures and instructions. This quality system documentation must permit uniform interpretation of the quality programmes, quality plans, quality manuals and quality records.

It must include in particular an adequate description of:

(i) the quality objectives and the organisational structure, responsibilities and powers of the managerial staff with regard to product quality,

(ii) the examinations and tests that will be carried out after manufacture; it must be possible to trace back the calibration of the test equipment adequately,

(iii) the methods of monitoring the efficient operation of the quality system,

(iv) the quality records, such as reports concerning inspections, tests, calibration and the qualifications of the staff concerned, etc.

(v) where the final inspection and testing of the products, or elements thereof, are carried out by a third party, the methods of monitoring the efficient operation of the quality system and in particular the type and extent of

control applied to the third party;

The aforementioned checks do not apply to those aspects of the manufacturing process designed to secure sterility.

(c) The notified body audits the quality system to determine whether it meets the requirements referred to in section 3(b) above. It must presume that quality systems which implement the relevant harmonised standards conform to these requirements.

The assessment team must include at least one member with past experience of assessments of the technology concerned. The assessment procedure must include an inspection on the manufacturer's premises and, in duly substantiated cases, on the premises of the manufacturer's suppliers to inspect the manufacturing processes.

The decision must be notified to the manufacturer. It must contain the conclusions of the inspection and a reasoned assessment.

(d) The manufacturer must inform the notified body which approved the quality system of any plan for substantial changes to the quality system.

The notified body must assess the changes proposed and verify whether after these changes the quality system will still meet the requirements referred to in section 3(b) of this Schedule.

After receiving the abovementioned information it must notify the manufacturer of its decision. This decision must contain the conclusions of the inspection and a reasoned assessment.

(4) **Surveillance**

(a) The aim of surveillance is to ensure that the manufacturer duly fulfils the obligations imposed by the approved quality system.

(b) The manufacturer must allow the notified body access for inspection purposes to the inspection, testing and storage locations and supply it with all relevant information, in particular:

(i) the documentation on the quality system,

(ii) the technical documentation,

(iii) the quality records, such as inspection reports, test data, calibration data, qualification reports of the staff concerned, etc.

(c) The notified body must periodically carry out appropriate inspections and assessments to make sure that the manufacturer applies the approved quality system and must supply the manufacturer with an assessment report.

(d) In addition, the notified body may pay unannounced visits to the manufacturer. At the time of such visits, the notified body may, where necessary, carry out or ask for tests in order to check that the quality system is working properly and that the production conforms to the requirements of these regulations which apply to it. To this end, an adequate sample of the final products, taken on site by the notified body, must be examined and the appropriate tests defined in any relevant standard referred to in regulation 5(6) of these regulations or equivalent tests must be carried out. Where one or more of the samples fails to conform, the notified body must take the appropriate measures.

It must provide the manufacturer with an inspection report and, if a test has been carried out, with a test report.

(5) **Administrative provisions**

(a) The manufacturer or his authorised representative must, for a period ending at least five years, and in the case of implantable devices at least 15 years, after the last product has been manufactured, make available to the Market Surveillance Directorate and the Regulatory Affairs Directorate:

(i) the declaration of conformity,

(ii) the documentation referred to in section 3(a)(vii) of this Schedule,

(iii) the changes referred to in section 3(d) of this Schedule,

(iv) the decisions and reports from the notified body as referred to in sections 3(d), 4(c) and 4(d) of this Schedule,

(v) where appropriate, the certificate of conformity referred to in Schedule III to these regulations.

(6) **Application to devices in Class IIa**

In line with regulation 6(2) of these regulations, this Schedule may apply to products in Class IIa, subject to the following:

(a) By way of derogation from sections 2, 3(a) and 3(b) of this Schedule, by virtue of the declaration of conformity the manufacturer ensures and declares that the products in Class IIa are manufactured in conformity with the technical documentation referred to in section 3 of Schedule VII to these regulations and meet the requirements of these regulations which apply to them.

(b) For devices in Class IIa the notified body shall assess, as part of the assessment in section 3(c) above, the technical documentation as described in section 3 of Schedule VII to these regulations for at least one representative sample for each device subcategory for compliance with the provisions of these regulations.

(c) In choosing any representative sample the notified body shall take into account the novelty of the technology, similarities in design, technology, manufacturing

and sterilisation methods, the intended use and the results of any previous relevant assessments (e.g. with regard to physical, chemical or biological properties) that have been carried out in accordance with these regulations. The notified body shall document and keep available to the Regulatory Affairs Directorate its rationale for any sample taken.

(d) Further samples shall be assessed by the notified body as part of the surveillance assessment referred to in section 4(c) of this Schedule.

Schedule VII
Based on Annex VII of Directive 93/42/EEC
EC DECLARATION OF CONFORMITY

(1) The EC declaration of conformity is the procedure whereby the manufacturer or his authorised representative who fulfils the obligations imposed by section 2 below and, in the case of products placed on the market in a sterile condition and devices with a measuring function, the obligations imposed by section 5 below ensures and declares that the products concerned meet the provisions of these regulations which apply to them.

(2) The manufacturer must prepare the technical documentation described in section 3 below. The manufacturer or his authorised representative must make this documentation, including the declaration of conformity, available to the Market Surveillance Directorate for inspection purposes for a period ending at least five years after the last product has been manufactured. In the case of implantable devices the period shall be at least 15 years after the last product has been manufactured.

(3) The technical documentation must allow assessment of the conformity of the product with the requirements of these regulations. It must include in particular:

(a) a general description of the product, including any variants planned and its intended use,

(b) design drawings, methods of manufacture envisaged and diagrams of components, sub-assemblies, circuits, etc.,

(c) the descriptions and explanations necessary to understand the abovementioned drawings and diagrams and the operations of the product,

(d) the results of the risk analysis and a list of the standards referred to in regulation 5(6) of these regulations, applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements of the regulations if the standards referred to in regulation 5(6) of these regulations have not been applied in full,

(e) in the case of products placed on the market in a sterile condition, description of the methods used and the validation report,

(f) the results of the design calculations and of the inspections carried out, etc.; if the device is to be connected to any other device in order to operate as intended, proof must be provided that it conforms to the essential requirements when connected to any such device having the characteristics specified by the manufacturer,

(g) the solutions adopted as referred to in section 2 of Schedule I to these regulations,

(h) the pre-clinical evaluation,

(i) the clinical evaluation in accordance with Schedule X to these regulations,

(j) the label and instructions for use.

(4) The manufacturer shall institute and keep up to date a systematic procedure to review experience gained from devices in the post-production phase, including the provisions referred to in Schedule X to these regulations, and to implement appropriate means to apply any necessary corrective actions, taking account of the nature and risks in relation to the product. He shall notify the Regulatory Affairs Directorate of the following incidents immediately on learning of them:

(a) any malfunction or deterioration in the characteristics and, or performance of a device, as well as any inadequacy in the labelling or the instructions for use which might lead to or might have led to the death of a patient or user or to a serious deterioration in his state of health;

(b) any technical or medical reason connected with the characteristics on the performance of a device for the reasons referred to in sub-regulation (a) hereof leading to systematic recall of devices of the same type by the manufacturer.

(5) With products placed on the market in sterile condition and Class I devices with a measuring function, the manufacturer must observe not only the provisions laid down in this Schedule but also one of the procedures referred to in Schedule II, IV, V or VI to these regulations. Application of the abovementioned Schedules and the intervention by the notified body is limited to:

(a) in the case of products placed on the market in sterile condition, only the aspects of manufacture concerned with securing and maintaining sterile conditions,

(b) in the case of devices with a measuring function, only the aspects of manufacture concerned with the conformity of the products with the metrological requirements.

Section 6(a) of this Schedule is applicable.

(6) **Application to devices in Class IIa**

In line with regulation 6(2) of these regulations, this Schedule may apply to products in Class IIa, subject to the following derogation:

(a) where this Schedule is applied in conjunction with the procedure referred to in Schedules IV, V or VI, the declaration of conformity referred to in the abovementioned Schedules forms a single declaration. As regards the declaration based on this Schedule, the manufacturer must ensure and declare that the product design meets the provisions of these regulations which apply to it.

Schedule VIII
Based on Annex VIII of Directive 93/42/EEC
STATEMENT CONCERNING DEVICES FOR SPECIAL PURPOSES

(1) For custom-made devices or for devices intended for clinical investigations the manufacturer or his authorised representative must draw up the statement containing the information stipulated in section 2 below.

(2) The statement must contain the following information:

(a) for custom-made devices:

(i) the name and address of the manufacturer,

(ii) data allowing the identification of the device in question,

(iii) a statement that the device is intended for exclusive use by a particular patient, together with the name of the patient,

(iv) the name of the medical practitioner or other authorised person who made out the prescription and, where applicable, the name of the clinic concerned,

(v) the specific characteristics of the product as indicated by the prescription,

(vi) a statement that the device in question conforms to the essential requirements set out in Schedule I to these regulations and, where applicable, indicating which essential requirements have not been fully met, together with the grounds;

(b) for devices intended for the clinical investigations covered by Schedule X to these regulations:

(i) data allowing identification of the device in question,

(ii) the clinical investigation plan,

(iii) the investigator's brochure,

(iv) the confirmation of insurance of subjects,

(v) the documents used to obtain informed consent,

(vi) a statement indicating whether or not the device incorporates, as an integral part, a substance or human blood derivative referred to in section 7(d) of Schedule I to these regulations,

(vii) a statement indicating whether or not the device is manufactured utilising tissues of animal origin as referred to in the definition of "medical device manufactured utilising tissues of animal origin" in article 3 of these

regulations,

(viii) the opinion of the Ethics Committee concerned and details of the aspects covered by its opinion,

(ix) the name of the medical practitioner or other authorised person and of the institution responsible for the investigations,

(x) the place, starting date and scheduled duration for the investigations,

(xi) a statement that the device in question conforms to the essential requirements apart from the aspects covered by the investigations and that, with regard to these aspects, every precaution has been taken to protect the health and safety of the patient.

(3) The manufacturer must also undertake to keep available for the Regulatory Affairs Directorate and the Market Surveillance Directorate:

(a) for custom-made devices, documentation, indicating manufacturing sites and allowing an understanding of the design, manufacture and performances of the product, including the expected performances, so as to allow assessment of conformity with the requirements of these regulations.

(b) for devices intended for clinical investigations, the documentation must contain:

(i) a general description of the product and its intended use,

(ii) design drawings, methods of manufacture envisaged, in particular as regards sterilisation, and diagrams of components, sub-assemblies, circuits, etc.,

(iii) the descriptions and explanations necessary to understand the abovementioned drawings and diagrams and the operation of the product,

(iv) the results of the risk analysis and a list of the standards referred to in regulation 5(6) of these regulations, applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements of these regulations if the standards referred to in regulation 5(6) of these regulations have not been applied,

(v) if the device incorporates, as an integral part, a substance or human blood derivative referred to in section 7(d) of Schedule I to these regulations, the data on the tests conducted in this connection which are required to assess the safety, quality and usefulness of that substance or human blood derivative, taking account of the intended purpose of the device,

(vi) if the device is manufactured utilising tissues of animal origin as referred to in the definition of “medical device manufactured utilising tissues of animal origin” in article 3 of these regulations, the risk management measures in this connection which have been applied to reduce the risk of

infection,

(vii) the results of the design calculations, and of the inspections and technical tests carried out, etc.

The manufacturer must take all the measures necessary to ensure that the manufacturing process produces products which are manufactured in accordance with the documentation referred to in the first paragraph of this section.

The manufacturer must authorise the assessment, or audit where necessary, of the effectiveness of these measures.

(4) The information contained in the declarations concerned by this Schedule shall be kept for a period of time of at least five years. In the case of implantable devices the period shall be at least 15 years.

(5) For custom-made devices, the manufacturer must undertake to review and document experience gained in the post-production phase, including the provisions referred to in Schedule X to these regulations, and to implement appropriate means to apply any necessary corrective action. This undertaking must include an obligation for the manufacturer to notify the Regulatory Affairs Directorate of the following incidents immediately on learning of them and the relevant corrective actions:

(a) any malfunction or deterioration in the characteristics and, or performance of a device, as well as any inadequacy in the labelling or the instructions for use which might lead to or might have led to the death of a patient or user or to a serious deterioration in his state of health;

(b) any technical or medical reason connected with the characteristics or performance of a device for the reasons referred to in section 5(a) above leading to systematic recall of devices of the same type by the manufacturer.

Schedule IX
Based on Annex IX of Directive 93/42/EEC
CLASSIFICATION CRITERIA

(1) **Definitions for the classification rules**

(a) Duration

(i) **Transient** – Normally intended for continuous use for less than 60 minutes.

(ii) **Short term** – Normally intended for continuous use for not more than 30 days.

(iii) **Long term** – Normally intended for continuous use for more than 30 days.

(b) Invasive devices

(i) **Invasive device** – A device which, in whole or in part, penetrates inside the body, either through a body orifice or through the surface of the body.

(ii) **Body orifice** – Any natural opening in the body, as well as the external surface of the eyeball, or any permanent artificial opening, such as a stoma.

(iii) **Surgically invasive device** – An invasive device which penetrates inside the body through the surface of the body, with the aid or in the context of a surgical operation.

For the purposes of these regulations devices other than those referred to in the previous sub-regulation and which product penetration other than through an established body orifice, shall be treated as surgically invasive devices.

(iv) **Implantable device** – Any device which is intended:

(d) to be totally introduced into the human body or,

(e) to replace an epithelial surface or the surface of the eye,

by surgical intervention which is intended to remain in place after the procedure.

Any device intended to be partially introduced into the human body through surgical intervention and intended to remain in place after the procedure for at least 30 days is also considered an implantable device.

(c) Reusable surgical instrument

Instrument intended for surgical use by cutting, drilling, sawing, scratching,

scraping, clamping, retracting, clipping or similar procedures, without connection to any active medical device and which can be reused after appropriate procedures have been carried out.

(d) Active medical device

Any medical device operation of which depends on a source of electrical energy or any source of power other than that directly generated by the human body or gravity and which acts by converting this energy. Medical devices intended to transmit energy, substances or other elements between an active medical device and the patient, without any significant change, are not considered to be active medical devices.

Stand alone software is considered to be an active medical device.

(e) Active therapeutical device

Any active medical device, whether used alone or in combination with other medical devices, to support, modify, replace or restore biological functions or structures with a view to treatment or alleviation of an illness, injury or handicap.

(f) Active device for diagnosis

Any active medical device, whether used alone or in combination with other medical devices, to supply information for detecting, diagnosing, monitoring or treating physiological conditions, states of health, illnesses or congenital deformities.

(g) Central circulatory system

For the purposes of these regulations, ‘central circulatory system’ means the following vessels:

arteriae pulmonales, aorta ascendens, arcus aorta, aorta descendens to the bifurcatio aortae, arteriae coronariae, arteria carotis communis, arteria carotis externa, arteria carotis interna, arteriae cerebrales, truncus brachiocephalicus, venae cordis, venae pulmonales, vena cava superior, vena cava inferior.

(h) Central nervous system

For the purposes of these regulations, ‘central nervous system’ means brain, meninges and spinal cord.

(2) **Implementing rules**

(a) Application of the classification rules shall be governed by the intended purpose of the devices.

(b) If the device is intended to be used in combination with another device, the

classification rules shall apply separately to each of the devices. Accessories are classified in their own right separately from the device with which they are used.

(c) Software, which drives a device or influences the use of a device, falls automatically in the same class.

(d) If the device is not intended to be used solely or principally in a specific part of the body, it must be considered and classified on the basis of the most critical specified use.

(e) If several rules apply to the same device, based on the performance specified for the device by the manufacturer, the strictest rules resulting in the higher classification shall apply.

(f) In calculating the duration referred to in section 1(a) of this Schedule, continuous use means an uninterrupted actual use of the device for the intended purpose. However where usage of a device is discontinued in order for the device to be replaced immediately by the same or an identical device this shall be considered an extension of the continuous use of the device.

(3) **Classification rules for non-invasive devices**

(a) Rule 1

All non-invasive devices are in Class I, unless one of the rules set out hereinafter applies.

(b) Rule 2

All non-invasive devices intended for channelling or storing blood, body liquids or tissues, liquids or gases for the purpose of eventual infusion, administration or introduction into the body are in Class IIa:

(i) if they may be connected to an active medical device in Class IIa or a higher class,

(ii) if they are intended for use for storing or channelling blood or other body liquids or for storing organs, parts of organs or body tissues,

in all other cases they are in Class I.

(c) Rule 3

All non-invasive devices intended for modifying the biological or chemical composition of blood, other body liquids or other liquids intended for infusion into the body are in Class IIb, unless the treatment consists of filtration, centrifugation or exchanges of gas, heat, in which case they are in Class IIa.

(d) Rule 4

All non-invasive devices which come into contact with injured skin:

(i) are in Class I if they are intended to be used as a mechanical barrier, for compression or for absorption of exudates,

(ii) are in Class IIb if they are intended to be used principally with wounds which have breached the dermis and can only heal by secondary intent,

(iii) are in Class IIa in all other cases, including devices principally intended to manage the micro-environment of a wound.

(4) **Classification rules for invasive devices**

(a) Rule 5

All invasive devices with respect to body orifices, other than surgically invasive devices and which are not intended for connection to an active medical device or which are intended for connection to an active medical device in Class I:

(i) are in Class I if they are intended for transient use,

(ii) are in Class IIa if they are intended for short-term use, except if they are used in the oral cavity as far as the pharynx, in an ear canal up to the ear drum or in a nasal cavity, in which case they are in Class I,

(iii) are in Class IIb if they are intended for long-term use, except if they are used in the oral cavity as far as the pharynx, in an ear canal up to the ear drum or in a nasal cavity and are not liable to be absorbed by the mucous membrane, in which case they are in Class IIa.

All invasive devices with respect to body orifices, other than surgically invasive devices, intended for connection to an active medical device in Class IIa or a higher class, are in Class IIa.

(b) Rule 6

All surgically invasive devices intended for transient use are in Class IIa unless they are:

(i) intended specifically to control, diagnose, monitor or correct a defect of the heart or of the central circulatory system through direct contact with these parts of the body, in which case they are in Class III,

(ii) reusable surgical instruments, in which case they are in Class I,

(iii) intended specifically for use in direct contact with the central nervous system, in which case they are in Class III,

(iv) intended to supply energy in the form of ionising radiation in which case they are in Class IIb,

(v) intended to have a biological effect or to be wholly or mainly absorbed in which case they are in Class IIb.

(vi) intended to administer medicines by means of a delivery system, if this is done in a manner that is potentially hazardous taking account of the mode of application, in which case they are in Class IIb.

(c) Rule 7

All surgically invasive devices intended for short-term use are in Class IIa unless they are intended to:

(i) either specifically to control, diagnose, monitor or correct a defect of the heart or of the central circulatory system through direct contact with these parts of the body, in which case they are in Class III,

(ii) or specifically for use in direct contact with the central nervous system, in which case they are in Class III,

(iii) or to supply energy in the form of ionising radiation in which case they are in Class IIb,

(iv) or to have a biological effect or to be wholly or mainly absorbed in which case they are in Class III,

(v) or to undergo chemical change in the body, except if the devices are placed in the teeth, or to administer medicines, in which case they are in Class IIb.

(d) Rule 8

All implantable devices and long-term surgically invasive devices are in Class IIb unless they are intended:

(i) to be placed in the teeth, in which case they are in Class IIa,

(ii) to be used in direct contact with the heart, the central circulatory system or the central nervous system, in which case they are in Class III,

(iii) to have a biological effect or to be wholly or mainly absorbed, in which case they are in Class III,

(iv) or to undergo chemical change in the body, except if the devices are placed in the teeth, or to administer medicines, in which case they are in Class III.

(5) **Additional rules applicable to active devices**

(a) Rule 9

All active therapeutic devices intended to administer or exchange energy are in Class IIa unless their characteristics are such that they may administer or exchange energy to or from the human body in a potentially hazardous way, taking account of the nature, the density and site of application of the energy, in which case they are in Class IIb.

All active devices intended to control or monitor the performance of active therapeutic devices in Class IIb, or intended directly to influence the performance of such devices are in Class IIb.

(b) Rule 10

Active devices intended for diagnosis are in Class IIa:

(i) if they are intended to supply energy which will be absorbed by the human body, except for devices used to illuminate the patient's body, in the visible spectrum,

(ii) if they are intended to image *in vivo* distribution of radiopharmaceuticals,

(iii) if they are intended to allow direct diagnosis or monitoring of vital physiological processes, unless they are specifically intended for monitoring of vital physiological parameters, where the nature of variations is such that it could result in immediate danger to the patient, for instance variations in cardiac performance, respiration, activity of CNS in which case they are in Class IIb.

Active devices intended to emit ionizing radiation and intended for diagnostic and therapeutic interventional radiology including devices which control or monitor such devices, or which directly influence their performance, are in Class IIb.

(c) Rule 11

All active devices intended to administer and, or remove medicines, body liquids or other substances to or from the body are in Class IIa, unless this is done in a manner:

(i) that is potentially hazardous, taking account of the nature of the substances involved, of the part of the body concerned and of the mode of application in which case they are in Class IIb.

(d) Rule 12

All other active devices are in Class I.

(6) **Special Rules**

(a) Rule 13

All devices incorporating, as an integral part, a substance which, if used separately, can be considered to be a medicinal product, as defined in article 2 of the Medicines Act, and which is liable to act on the human body with action ancillary to that of the devices, are in Class III.

Cap 458

All devices incorporating, as an integral part, a human blood derivative are in Class III.

(b) Rule 14

All devices used for contraception or the prevention of the transmission of sexually transmitted diseases are in Class IIb, unless they are implantable or long term invasive devices, in which case they are in Class III.

(c) Rule 15

All devices intended specifically to be used for disinfecting, cleaning, rinsing or, when appropriate, hydrating contact lenses are in Class IIb.

All devices intended specifically to be used for disinfecting medical devices are in Class IIa, unless they are specifically to be used for disinfecting invasive devices in which case they are in Class IIb.

This rule does not apply to products that are intended to clean medical devices other than contact lenses by means of physical action.

(d) Rule 16

Devices specifically intended for recording of X-ray diagnostic images are in Class IIa.

(e) Rule 17

All devices manufactured utilising animal tissues or derivatives rendered non-viable are Class III except where such devices are intended to come into contact with intact skin only.

(f) Rule 18

By derogation from other rules, blood bags are in Class IIb.

Schedule X
Based on Annex X of Directive 93/42/EEC
CLINICAL EVALUATION

(1) **General provisions**

(a) As a general rule, confirmation of conformity with the requirements concerning the characteristics and performances referred to in sections 1 and 3 of Schedule I to these regulations, under the normal conditions of use of the device, and the evaluation of the side-effects and of the acceptability of the benefit/risk ratio referred to in section 6 of Schedule I to these regulations, must be based on clinical data. The evaluation of this data, hereafter referred to as "clinical evaluation", where appropriate taking account of any relevant harmonised standards, must follow a defined and methodologically sound procedure based on:

(i) either a critical evaluation of the relevant scientific literature currently available relating to the safety, performance, design characteristics and intended purpose of the device, where:

(1) there is demonstration of equivalence of the device to the device to which the data relates, and

(2) the data adequately demonstrate compliance with the relevant essential requirements.

(ii) or a critical evaluation of the results of all clinical investigations made.

(iii) or a critical evaluation of the combined clinical data provided in sections 1(a)(i) and 1(a)(ii) of this Schedule.

(b) In the case of implantable devices and devices in Class III clinical investigations shall be performed unless it is duly justified to rely on existing clinical data.

(c) The clinical evaluation and its outcome shall be documented. This documentation shall be included and, or fully referenced in the technical documentation of the device.

(d) The clinical evaluation and its documentation must be actively updated with data obtained from the post-market surveillance. Where post-market clinical follow-up as part of the post-market surveillance plan for the device is not deemed necessary, this must be duly justified and documented.

(e) Where demonstration of conformity with essential requirements based on clinical data is not deemed appropriate, adequate justification for any such exclusion has to be given based on risk management output and under consideration of the specifics of the device-body interaction, the clinical performances intended and the claims of the manufacturer. Adequacy of demonstration of conformity with the essential requirements by performance evaluation, bench testing and preclinical evaluation alone has to be duly

substantiated.

(f) All the data must remain confidential, in accordance with the provisions of regulations 14(1) and (2) of these regulations.

(2) **Clinical investigations**

(a) Objectives

The objectives of clinical investigation are:

(i) to verify that, under normal conditions of use, the performance of the devices conform to those referred to in section 3 of Schedule I to these regulations, and

(ii) to determine any undesirable side-effects, under normal conditions of use, and assess whether they constitute risks when weighed against the intended performance of the device.

(b) Ethical considerations

Clinical investigations must be carried out in accordance with the Helsinki Declaration adopted by the 18th World Medical Assembly in Helsinki, Finland, in 1964, as last amended by the World Medical Assembly. It is mandatory that all measures relating to the protection of human subjects are carried out in the spirit of the Helsinki Declaration. This includes every step in the clinical investigation from first consideration of the need and justification of the study to publication of the results.

(c) Methods

(i) Clinical investigations must be performed on the basis of an appropriate plan of investigation reflecting the latest scientific and technical knowledge and defined in such a way as to confirm or refute the manufacturer's claims for the device; these investigations must include an adequate number of observations to guarantee the scientific validity of the conclusions.

(ii) The procedures used to perform the investigations must be appropriate to the device under examination.

(iii) Clinical investigations must be performed in circumstances similar to the normal conditions of use of the device.

(iv) All the appropriate features, including those involving the safety and performances of the device, and its effect on patients, must be examined.

(v) All serious adverse events must be fully recorded and immediately notified to the Market Surveillance Directorate and the Regulatory Affairs Directorate and all competent authorities of the Member States in

which the clinical investigation is being performed.

(vi) The investigations must be performed under the responsibility of a medical practitioner or another authorised qualified person in an appropriate environment.

The medical practitioner or other authorised person must have access to the technical and clinical data regarding the device.

(vii) The written report, signed by the medical practitioner or other authorised person responsible, must contain a critical evaluation of all the data collected during the clinical investigation.

Schedule XI
Based on Annex XI of Directive 93/42/EEC
CRITERIA TO BE MET FOR THE DESIGNATION OF NOTIFIED BODIES

LN 136 of 2003

(1) Notified bodies shall be subject to the Method for Designating Conformity Assessment Bodies Regulations, 2003 and they shall also fulfil the criteria set out below.

(2) The notified body, its Director and the assessment and verification staff shall not be the designer, manufacturer, supplier, installer or user of the devices which they inspect, nor the authorized representative of any of these persons. They may not be directly involved in the design, construction, marketing or maintenance of the devices, nor represent the parties engaged in these activities. This in no way precludes the possibility of exchanges of technical information between the manufacturer and the body.

(3) The notified body and its staff must carry out the assessment and verification operations with the highest degree of professional integrity and the requisite competence in the field of medical devices and must be free from all pressures and inducements, particularly financial, which might influence their judgment or the results of the inspection, especially from persons or groups of persons with an interest in the results of the verifications.

Should the notified body subcontract specific tasks connected with the establishment and verification of the facts, it must first ensure that the subcontractor meets the provisions of the regulations and, in particular, of this Schedule. The notified body shall keep at the disposal of the Regulatory Affairs Directorate and the Market Surveillance Directorate the relevant documents assessing the subcontractor's qualifications and the work carried out by the subcontractor under these regulations.

(4) The notified body must be able to carry out all the tasks assigned to such bodies by one of Schedules II to VI to these regulations and for which it has been notified, whether these tasks are carried out by the body itself or on its responsibility. In particular, it must have the necessary staff and possess the facilities needed to perform properly the technical and administrative tasks entailed in assessment and verification. This presupposes the availability of sufficient scientific staff within the organisation who possess experience and knowledge sufficient to assess the medical functionality and performance of devices for which it has been notified, having regard to the requirements of these regulations and, in particular, those set out in Schedule I to these regulations. It must also have access to the equipment necessary for the verifications required.

(5) The notified body must have:

(a) sound vocational training covering all the assessment and verification operations for which the body has been designated,

(b) satisfactory knowledge of the rules on the inspections which they carry out and adequate experience of such inspections,

(c) the ability required to draw up the certificates, records and reports to demonstrate that the inspections have been carried out.

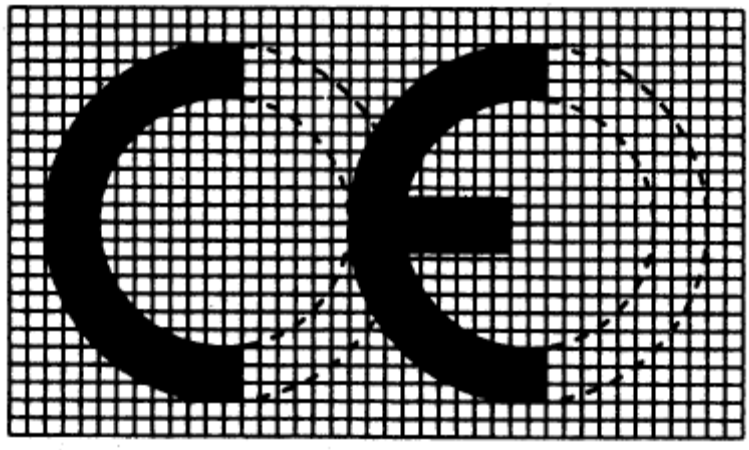
(6) The impartiality of the notified body must be guaranteed. Their remuneration must not depend on the number of inspections carried out, nor on the results of the inspections.

(7) The body must take out civil liability insurance, unless liability is assumed by the State under Maltese legislation or the Regulatory Affairs Directorate and Market Surveillance Directorate themselves carry out the inspections directly.

(8) The staff of the notified body is bound to observe professional secrecy with regard to all information gained in the course of their duties (except vis-à-vis the Regulatory Affairs Directorate or other competent administrative authorities of the State in which their activities are carried out) pursuant to these regulations or any provision of national law putting it into effect.

Schedule XII
Based on Annex XII of Directive 93/42/EEC
CE MARKING OF CONFORMITY

The CE conformity marking shall consist of the initials “CE” taking the following form:



For the avoidance of doubt, it is hereby declared that the grid providing the background in the above graduated drawing is not part of the CE marking.

If the CE marking is reduced or enlarged the proportions given in the above graduated drawing must be respected. The various components of the CE marking must have substantially the same vertical dimension, which may not be less than 5mm. This minimum dimension may be waived for small-scale devices.

Schedule XIII
Based on Annex I of Directive 2003/32/EC

1 RISK ANALYSIS AND RISK MANAGEMENT

(1) **Justification for the use of animal tissues or derivatives**

The manufacturer must justify, on the basis of his overall risk analysis and risk management strategy for a specific medical device, the decision to use animal tissues or derivatives, referred to in the definitions of a "medical device manufactured utilising tissues of animal origin" and "animal tissues" in article 3 of these regulations (specifying animal species and tissues) taking into account the expected clinical benefit, potential residual risk and suitable alternatives.

(2) **Assessment procedure**

In order to ensure a high level of protection for patients or users, the manufacturer of devices utilising animal tissues or derivatives referred to in section 1(1) above must implement an appropriate and well documented risk analysis and risk management strategy, to address all relevant relating aspects to TSE. He must identify the hazards associated with those tissues or derivatives, establish documentation on measures taken to minimise the risk of transmission and demonstrate the acceptability of the residual risk associated with the device utilising such tissues or derivatives, taking into account the intended use and the benefit of the device.

The safety of a device, in terms of its potential for passing on a transmissible agent, is dependent on all the factors described in sections 1(2)(a) to (g) of this Schedule, which must be analysed, evaluated and managed. These measures in combination determine the device safety.

There are two key steps that must be considered.

These are:

(a) selecting starting materials (tissues or derivatives) considered appropriate regarding their potential contamination with transmissible agents (see sections 1(2)(a) to (c) of this Schedule) taking into account further processing,

(b) applying a production process to remove or inactivate transmissible agents on controlled sourced tissues or derivatives (see section 1(2)(d) of this Schedule).

Furthermore, the characteristics of the device and its intended use must be taken into account (see Sections 1(2)(e) to (g) of this Schedule).

In performing the risk analysis and risk management strategy, due consideration must be given to opinions adopted by the relevant scientific committees, and where appropriate to the opinions of the Committee for Proprietary Medicinal Products CPMP, the references of which have been published in the *Official Journal of the European Union*.

(a) Animals as a source of material

The TSE risk is related to the source species, strains and nature of the starting tissue. As the accumulation of TSE infectivity occurs over an incubation period of several years, sourcing from young healthy animals is considered to be a factor reducing the risk. Risk animals such as fallen stock, emergency slaughtered and TSE suspected animals must be excluded.

(b) Geographical sourcing

Pending the classification of countries according to the BSE status in Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies[7], the Geographical BSE risk (GBR) is used when assessing the risk of the source country. The GBR is a qualitative indicator of the likelihood of the presence of one or more cattle being infected with BSE, pre-clinically as well as clinically, at a given point in time, in a country. Where presence is confirmed, the GBR gives an indication of the level of infection as specified in the table below.

GBR level	Presence of one or more cattle clinically or pre-clinically infected with the BSE agent in a geographical region/country
I	Highly unlikely
II	Unlikely but not excluded
III	Likely but not confirmed or confirmed, at a lower level
IV	Confirmed, at a higher level

Certain factors influence the geographical risk of BSE infection associated with the use of raw tissues or derivatives from individual countries. These factors are defined in article 2.3.13.2, point 1 of the International Animal Health Code of the OIE (Office International des Épizooties), which is available at web-site www.oie.int/eng/normes/Mcode/A_00067.htm

The Scientific Steering Committee has made an assessment of Geographical BSE Risk (GBR) of several third countries and Member States, and will continue to do so for all the countries, which applied for BSE status categorisation, taking the main OIE factors into account.

(c) Nature of starting tissue

The manufacturer must take into account the classification of the hazards relating to different type of starting tissue. Sourcing of animal tissue must be subject to control and individual inspection by a veterinarian and the animal carcass must be certified as fit for human consumption.

[7] OJ. L.147, 31-05-2001, p.1.

The manufacturer must ensure that no risk of cross-contamination occurs at the time of slaughtering.

The manufacturer must not source animal tissue or derivatives classified as potentially high TSE infectivity, unless sourcing of these materials is necessary in exceptional circumstances, taking into account the important benefit for the patient and the absence of an alternative starting tissue.

In addition, the provisions in Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3rd October 2002 laying down health rules concerning animal by-products not intended for human consumption must be applied.

(i) Sheep and goats

A classification of infectivity in tissues for sheep and goats has been established based on actual knowledge on the basis of the titres of transmissible agents in tissues and body fluids from naturally infected sheep and goats with clinical scrapie. A table was presented in the Scientific Steering Committee (SSC) opinion of 22nd-23rd July 1999 on 'The policy of breeding and genotyping of sheep', (as an annex)[8] and further updated in the opinion of the SSC — TSE infectivity distributed in ruminant tissues state of knowledge December 2001 — adopted 10th-11th January 2002[9].

The classification may be reviewed in the light of new scientific evidence (for example using relevant opinions from the Scientific Committees, the Committee for Proprietary Medicinal Products CPMP and Commission Measures regulating the use of material presenting risks as regards TSE). A review of the references to relevant documents/opinions will be published in the *Official Journal of the European Union* and will be listed after a Commission Decision has been taken.

(ii) Cattle

The list of specified risk material (SRM) laid down in Regulation (EC) No 999/2001 shall be considered as potentially high TSE infective.

(d) Inactivation or removal of transmissible agents

(i) For devices which cannot withstand an inactivation or elimination process without undergoing unacceptable degradation, the manufacturer must rely principally on the control of sourcing.

(ii) For other devices, if claims are made by the manufacturer for the ability of manufacturing processes to remove or inactive transmissible agents, these will have to be substantiated by appropriate documentation.

---

[8] Available on the website of the Commission http://europa.eu.int/comm/food/fs/sc/ssc/outcome_en.html

[9] Available on the website of the Commission http://europa.eu.int/comm/food/fs/sc/ssc/outcome_en.html

Relevant information from an appropriate scientific literature search and analysis can be used to support inactivation or elimination factors, where the specific processes referred to the literature are comparable to those used for the device. This search and analysis should also cover the available scientific opinions that may have been adopted by a EU Scientific Committee. These opinions shall serve as a reference, in cases where there are conflicting opinions.

When the literature search failed to substantiate the claims, the manufacturer must set up a specific inactivation and, or elimination study on a scientific basis and the following need to be considered:

(1) the identified hazard associated with the tissue,

(2) identification of the relevant model agents,

(3) rationale for the choice of the particular combinations of model agents,

(4) identification of stage chosen to eliminate and, or inactivate the transmissible agents,

(5) calculation of the reduction factors.

A final report must identify manufacturing parameters and limits that are critical to the effectiveness of the inactivation or elimination process.

Appropriate documented procedures must be applied to ensure that the validated processing parameters are applied during routine manufacture.

(e) Quantities of animal starting tissues or derivatives required to produce one unit of the medical device

The manufacturer must evaluate the quantity of raw tissues or derivatives of animal origin required to produce a single unit of the medical device. Where a purification process is involved, the manufacturer must assess whether it may have the potential to concentrate levels of transmissible agents present in the animal starting tissues or derivatives.

(f) Tissues or derivatives of animal origin coming into contact with the patients and users

The manufacturer must consider:

(i) the quantity of animal tissues or derivatives;

(ii) the contact area: its surface, type (e.g. skin, mucous tissue, brain) and condition (e.g. healthy or damaged);

(iii) the type of the tissues or derivatives coming into contact with the patients

and, or users; and

(iv) how long the device is intended to remain in contact with the body (including bioresorption effect).

The number of medical devices that could be used in a given procedure shall be taken into account.

(g) Route of administration

The manufacturer must take into account the route of administration recommended in the product information, from the highest risk down to the lowest.

(3) **Review of the assessment**

The manufacturer must establish and maintain a systematic procedure to review information gained about their medical device or similar devices in the post-production phase. The information must be evaluated for possible relevance to safety, especially:

(a) if previously unrecognised hazards are detected;

(b) if the estimated risk arising from a hazard is no longer acceptable;

(c) if the original assessment is otherwise invalidated.

If any of the above apply, the results of the evaluation shall be fed back as an input to the risk management process.

In the light of this new information, a review of the appropriate risk management measures for the device must be considered (including rationale for choosing an animal tissue or derivative). If there is a potential that the residual risk or its acceptability has changed, the impact on previously implemented risk control measures must be re-evaluated and justified.

The results of this evaluation must be documented.

2 EVALUATION OF CLASS III MEDICAL DEVICES BY NOTIFIED BODIES

For devices falling into Class III under rule 17[10] of Schedule IX to these regulations, manufacturers must provide to the notified bodies referred to in regulation 7(6) of these regulations, all relevant information to allow evaluation of their current risk analysis and risk management strategy. Any new information on TSE risk, collected by the manufacturer and relevant for their devices must be sent to the notified body for information.

[10] All medical devices utilising animal tissue or derivatives rendered non-viable except devices intended to come into contact with intact skin only.

Any change in relation to processes of sourcing, collection, handling and inactivation/elimination and that could modify the result of the manufacturer's risk management dossier must be transmitted to the notified body for the purpose of an additional approval prior to its implementation.

B 3126