

## SCHEDULE 3

Regulation 36(b)

### Compliance, enforcement and recall notices

#### Compliance notice

1.—(1) The market surveillance authority may serve a notice under this paragraph on an economic operator who makes EEE available on the market if the authority has reasonable grounds for believing—

- (a) the EEE is an infringing product; or
- (b) the economic operator has failed to comply with its obligations under regulation 15, 19, 25 or 27(1).

(2) A compliance notice must—

- (a) describe the alleged infringing EEE (the “specified EEE”) or alleged failure to comply with the obligations set out in sub-paragraph 1(b) (the “alleged breach”) in a manner sufficient to identify it; and
- (b) state the exact grounds on which the notice is based.

(3) A compliance notice may—

- (a) require the economic operator in an appropriate case, and having regard to the economic operator’s ability to take the measures in light of that person’s position in the supply chain, to remedy the situation or matters which gave rise to the authority’s belief that the specified EEE was an infringing EEE or an alleged breach had occurred; or
- (b) where it is not possible for the specified EEE to cease to be an infringing EEE, require the economic operator to secure that the specified EEE is withdrawn or that its being made available on the market is prohibited or restricted.

(4) A compliance notice must tell the economic operator—

- (a) what compliance is required and the period within which it must be completed;
- (b) to give the authority evidence that the economic operator has complied with the notice;
- (c) the consequences of failing to comply with the notice; and
- (d) the rights of appeal against the notice under these Regulations and any time limits for their exercise.

(5) Proceedings must not be commenced against a person under regulation 37 in respect of an alleged contravention of a requirement of these Regulations where—

- (a) a compliance notice has been served on that person in respect of the alleged contravention; and
- (b) the specified compliance period in that notice has not come to an end.

#### Enforcement notice

2.—(1) Where the market surveillance authority serves a compliance notice on an economic operator and, at the end of the compliance period specified in the notice—

- (a) it appears to the authority that that person has failed to comply with the notice; and
- (b) the authority has reasonable grounds for considering that the specified EEE is an infringing EEE or that an alleged breach has occurred,

the authority may serve an enforcement notice on that person.

(2) An enforcement notice must—

*Status: This is the original version (as it was originally made).*

- (a) describe the specified EEE or alleged breach in a manner sufficient to identify it; and
  - (b) state the exact grounds on which the notice is based.
- (3) An enforcement notice may—
- (a) require the economic operator in an appropriate case, and having regard to the economic operator’s ability to take the measures in light of that person’s position in the supply chain, to remedy the situation or matters which gave rise to the authority’s belief that the specified EEE was an infringing EEE or that an alleged breach has occurred; or
  - (b) require the economic operator to secure that the specified EEE is withdrawn or that its being made available on the market is prohibited or restricted.
- (4) An enforcement notice must tell the economic operator—
- (a) what compliance is required and the period within which it must be completed;
  - (b) to give the authority evidence that the economic operator has complied with the notice;
  - (c) the consequences of failing to comply with the notice; and
  - (d) the rights of appeal against the notice under these Regulations and any time limits for their exercise.
- (5) Proceedings must not be commenced against a person under regulation 37 (Offences) in connection with any specified EEE which it is alleged is an infringing EEE where—
- (a) an enforcement notice has been served on that person in respect of the specified EEE; and
  - (b) the compliance period specified in that notice has not come to an end.
- (6) In this paragraph “specified EEE” means the alleged infringing EEE that has been identified in a compliance notice in accordance with paragraph 1(2)(a).

### **Supplementary provisions in relation to compliance and enforcement notices**

3.—(1) The market surveillance authority must comply with the provisions of Article 21 of RAMS in relation to the serving of a compliance or enforcement notice which imposes any requirements to secure that EEE is withdrawn from the market or that its being made available on the market is prohibited or restricted.

(2) Where the market surveillance authority has served a compliance notice or enforcement notice under this Schedule, the authority—

- (a) must keep the notice under review and may withdraw or revoke it at any time;
- (b) may vary the notice, provided it is not made more restrictive for the economic operator or more onerous for that person to comply with.

### **Recall notices**

4.—(1) The market surveillance authority may serve a recall notice on an economic operator if the authority has reasonable grounds for believing that EEE is—

- (a) an infringing EEE presenting a serious risk by reason of that infringement; and
- (b) that it has already been supplied or made available to end users.

(2) A recall notice is a notice which requires the economic operator to use reasonable endeavours to organise the return of the EEE from end users to the economic operator or another person specified in the notice.

(3) The provisions of—

- (a) regulation 15 of the General Product Safety Regulations 2005<sup>(1)</sup> (“GPSR”); and
- (b) Article 21 of RAMS,

apply in relation to the serving of a recall notice under these Regulations.

(4) For the purposes of serving a recall notice under this paragraph, regulation 15 of the GPSR applies as if—

- (a) references to the provisions of the GPSR were references to those provisions as modified by this paragraph and to these Regulations;
- (b) references to an “enforcement authority” were references to the market surveillance authority;
- (c) references to the product being “a dangerous product” were references to the EEE being an infringing EEE presenting a serious risk by reason of that infringement;
- (d) references to risks to the health and safety of persons were references to the serious risk presented by the EEE;
- (e) paragraphs (9) and (10) were omitted.

(5) In this paragraph—

- (a) “serious risk” means a serious risk to health, safety, the environment, consumers, or security, requiring rapid intervention, including a serious risk the effects of which are not immediate;
- (b) The decision whether or not an EEE presents a serious risk shall be based on an appropriate risk assessment which takes account of the nature of the hazard and the likelihood of an occurrence;
- (c) The feasibility of obtaining higher levels of safety or the availability of other EEEs presenting a lesser degree of risk shall not constitute grounds for considering that an EEE presents a serious risk.

#### **Action by the market surveillance authority**

**5.—**(1) The market surveillance authority may itself take action which an economic operator could have been required to take by a compliance, an enforcement or recall notice where the conditions for serving such a notice are met and either—

- (a) the authority has been unable to identify any economic operator on whom to serve such a notice; or
- (b) the person on whom such a notice has been served has failed to comply with it.

(2) If the market surveillance authority has taken action under paragraph (1) following the failure of an economic operator to comply with a compliance, enforcement or recall notice, the authority may recover from that person as a civil debt any costs or expenses reasonably incurred by the authority in taking the action.

(3) A civil debt recoverable under the preceding paragraph may be recovered summarily—

- (a) in England and Wales by way of complaint pursuant to section 58 of the Magistrates’ Courts Act 1980<sup>(2)</sup>;
- (b) in Northern Ireland in proceedings under article 62 of the Magistrates’ Court (Northern Ireland) Order 1981<sup>(3)</sup>.

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(1) [S.I. 2005/1803](#), as amended by [S.I. 2012/1848](#).

(2) [1980 c.43](#).

(3) [S.I. 1981/1675 \(N.I.26\)](#).

### **Compensation provisions relating to compliance, enforcement and recall notices**

6. Where the market surveillance authority serves a compliance, enforcement or recall notice, the authority is liable to pay compensation to a person in respect of any loss or damage suffered by that person by reason of the notice if—

- (a) the EEE is not an infringing EEE or the alleged breach is not a breach; and
- (b) the exercise by the authority of the power to serve the notice was not attributable to neglect or default by the person.

### **Appeals against compliance, enforcement and recall notices**

7.—(1) An application for an order to vary or set aside the terms of a compliance, enforcement or recall notice may be made—

- (a) in the case of a compliance, enforcement or recall notice, by the economic operator on whom the notice has been served; and
- (b) in the case of a compliance or enforcement notice, by a person having an interest in the product in respect of which that notice has been served.

(2) An application must be made before the end of the period of 21 days beginning with the day on which the notice was served.

(3) The appropriate court (as determined in accordance with paragraph 8) may only make an order setting aside a compliance, enforcement or recall notice if satisfied—

- (a) that the EEE is not an infringing EEE;
- (b) that the alleged breach is not a breach; or
- (c) that the serving of the notice was not proportionate.

(4) On an application to vary the terms of a compliance, enforcement or recall notice, the appropriate court may vary the terms of the notice as it considers appropriate.

### **Appropriate court for appeals against notices etc and further appeals**

8.—(1) In England and Wales or Northern Ireland the appropriate court for the purposes of paragraph 7 is—

- (a) the court in which proceedings have been brought for an offence under regulation 37(1)(a), (2)(a) or (3)(a) or paragraph 9 of this Schedule; or
- (b) in any other case a magistrates' court in England and Wales or Northern Ireland.

(2) In Scotland the appropriate court for the purposes of paragraph 7 is the sheriff for a sheriff court district in which a compliance, enforcement or recall notice has been served on an economic operator.

(3) A person aggrieved by an order made by a magistrates' court in England, Wales or Northern Ireland<sup>(4)</sup> pursuant to an application under paragraph 7(1), or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, to the county court.

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(4) In Scotland the making of, or refusal to make, an order by a sheriff is subject to appeal in accordance with sections 27 and 28 of the Sheriff Courts (Scotland) Act 1907 (c.51), as amended.

### **Offences and penalties**

**9.**—(1) It is an offence for any person to contravene or fail to comply with any of the requirements of—

- (a) an enforcement notice; or
  - (b) a recall notice.
- (2) A person convicted of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.