

## SCHEDULE 1

Regulation 5(1), (2) and (3)

### PART 1

#### Categories of EEE to which these Regulations apply

1. Large household appliances.
2. Small household appliances.
3. IT and telecommunications equipment.
4. Consumer equipment.
5. Lighting equipment.
6. Electrical and electronic tools.
7. Toys, leisure and sports equipment.
8. Medical devices.
9. Monitoring and control instruments including industrial monitoring and control instruments.
10. Automatic dispensers.
11. Other EEE not covered by any of the categories above.

### PART 2

#### EEE to which these Regulations do not apply

12. Equipment which is necessary for the protection of the essential interests of the security of member States, including arms, munitions and war material intended for specifically military purposes.
13. Equipment designed to be sent into space.
14. Equipment which is specifically designed, and is to be installed, as part of another type of equipment to which these Regulations do not apply, which can fulfil its function only if it is part of that equipment, and which can be replaced only by the same specifically designed equipment.
15. Large-scale stationary industrial tools being a large-scale assembly of machines, equipment, and/or components—
  - (a) functioning together for a specific application;
  - (b) permanently installed and de-installed by professionals at a given place; and
  - (c) used and maintained by professionals in an industrial manufacturing facility or research and development facility.
16. Large-scale fixed installations being a large-scale combination of several types of apparatus and, where applicable, other devices, which are—
  - (a) assembled and installed by professionals;
  - (b) intended to be used permanently in a pre-defined and dedicated location; and
  - (c) de-installed by professionals.
17. Means of transport for persons or goods, excluding electric two-wheel vehicles which are not type-approved.

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**18.** Non-road mobile machinery made available exclusively for professional use, being machinery, with an on-board power source, the operation of which requires either mobility or continuous or semi-continuous movement between a succession of fixed working locations while working, and which is made available exclusively for professional use.

**19.** Active implantable medical devices.

**20.** Photovoltaic panels intended to be used in a system that is designed, assembled and installed by professionals for permanent use at a defined location to produce energy from solar light for public, commercial, industrial and residential applications.

**21.** Equipment specifically designed solely for the purposes of research and development only made available on a business-to-business basis.

## PART 3

### Categories of EEE with special rules of application

**22.** Regulations 3(1), 10, 15, 19, 20, 21, 22, 23, 25, 26, 27 and 28 do not apply—

- (a) to medical devices and monitoring and control instruments placed on the market before 22nd July 2014;
- (b) to in vitro diagnostic medical devices placed on the market before 22nd July 2016; and
- (c) to industrial monitoring and control instruments placed on the market before 22nd July 2017.

**23.—**(1) Regulations 3(1), 10, 15, 19, 20, 21, 22, 23, 25, 26, 27 and 28 do not apply to cables or spare parts for the repair, the reuse, the updating of functionalities or upgrading of capacity of the following—

- (a) EEE placed on the market before 1st July 2006;
- (b) medical devices placed on the market before 22nd July 2014;
- (c) in vitro diagnostic medical devices placed on the market before 22nd July 2016;
- (d) monitoring and control instruments placed on the market before 22nd July 2014;
- (e) industrial monitoring and control instruments placed on the market before 22nd July 2017;
- (f) EEE which benefited from an exemption listed in the Directive or the previous Directive and which was placed on the market before that exemption expired, provided that the specific exemption concerned those cables or spare parts.

(2) In this paragraph “previous Directive” means Directive [2002/95/EC](#) of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment<sup>(1)</sup>.

**24.** Regulations 3(1), 10, 15, 19, 20, 21, 22, 23, 25, 26, 27 and 28 do not apply to reused spare parts—

- (a) recovered from EEE placed on the market before 1st July 2006; and
- (b) used in equipment placed on the market before 1st July 2016,

provided that reuse takes place in auditable closed-loop business-to-business return systems, and that the reuse of parts is notified to the consumer.

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(1) OJ No L 37, 13.2.03, p 19.

## SCHEDULE 2

Regulation 36(a)

### Test purchases, powers of entry etc and warrants

#### Test purchases

**1.—**(1) The market surveillance authority may purchase EEE for the purpose of ascertaining whether the requirements of these Regulations have been complied with in respect of it.

(2) If—

- (a) EEE which has been purchased under sub-paragraph (1) or seized under paragraph 3(1) (c) of this Schedule is submitted to a test;
- (b) the test leads to the bringing of proceedings for an offence under regulation 37 or the serving of a compliance, enforcement or recall notice; and
- (c) a person—
  - (i) from whom the EEE was purchased;
  - (ii) who is a party to the proceedings; or
  - (iii) who has an interest in EEE which is identified as an infringing EEE in a compliance enforcement or recall notice,

requests the market surveillance authority to allow that person to have the EEE tested, the authority must, if it is practicable for such a test to be carried out, allow that person to have the EEE tested.

#### Power to enter premises

**2.—**(1) An authorised person may enter premises, except any premises used wholly or mainly as a private dwelling, at any reasonable hour, for the purpose of enforcing these Regulations.

(2) Before entering the premises an authorised person must give reasonable notice, unless the authorised person has a reasonable suspicion of a failure to comply with these Regulations.

(3) An authorised person must, if requested to do so, produce a written authorisation document.

(4) An authorised person may—

- (a) be accompanied by—
  - (i) such other persons as the authorised person considers necessary,
  - (ii) any representative of the European Commission; and
- (b) bring on to the premises such equipment as the authorised person considers necessary.

#### Power to inspect, seize and detain EEE etc

**3.—**(1) An authorised person may—

- (a) in order to ascertain if any provision of these Regulations has not been complied with—
  - (i) inspect any EEE, products, goods, substances, records, documents or information;
  - (ii) on entering any premises whether under a power of entry under paragraph 2 or under a warrant under paragraph 4, make such examination or investigation as is necessary;
- (b) in order to ascertain if any provision of these Regulations has not been complied with, require any person carrying on or employed in connection with a business to produce any EEE, products, goods, substances, records, documents or information and take copies of—
  - (i) any document or record; or

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- (ii) any entry in any document or record;
  - (c) in order to ascertain by testing or otherwise if any provision of these Regulations has not been complied with, and reasonably suspecting such non-compliance, seize and detain any EEE, products, goods, substances, records, documents or information;
  - (d) seize and detain any EEE, products, goods, substances, records, documents or information which may be required as evidence in any proceedings under these Regulations;
  - (e) for the purposes of exercising any powers or duties under these Regulations or RAMS, but only if and to the extent reasonably necessary in order to secure that the provisions of these Regulations are complied with, require any person having authority to do so to break open any container and, if that person does not comply or if there is no person present having authority to open it, break it open using reasonable force.
- (2) An authorised person may require information stored electronically to be made available in printed form.
- (3) An authorised person entering any premises whether under a power of entry under paragraph 2 or under a warrant under paragraph 4 must, if the occupier is present, give to the occupier or, if the occupier is absent, leave in a prominent place a notice—
- (a) summarising the authorised person’s powers of seizure and detention of EEE, products, goods, substances, records, documents and information;
  - (b) disclosing at which office of the market surveillance authority and within which hours a copy of these Regulations is available to be consulted.
- (4) An authorised person entering any premises which are unoccupied or from which the occupier is temporarily absent must leave them as effectively secured against unauthorised entry as they were before entry.
- (5) An authorised person exercising any power of seizure and detention must—
- (a) give to the person against whom the power has been exercised a notice stating what has been seized and detained;
  - (b) detain those things only for as long as is necessary for the market surveillance authority to ascertain whether any provision of these Regulations has not been complied with and, if required, to present the evidence at court.
- (6) Nothing in this paragraph compels the production by any person of a document which that person would be entitled to withhold production of in any proceedings in any court on the grounds that it is the subject of legal professional privilege or, in Scotland, that it contains a confidential communication made by or to an advocate or solicitor in that capacity.

## **Warrants**

**4.—(1)** A justice of the peace may by signed warrant permit an authorised person or any other person to enter any premises in the exercise of the powers and duties under these Regulations or Article 19 of RAMS, if necessary by reasonable force, if the justice in England and Wales on sworn information in writing, in Northern Ireland on a complaint on oath, or in Scotland by evidence on oath is satisfied—

- (a) that there are reasonable grounds to enter those premises for the purposes of enforcing these Regulations; and
  - (b) that any of the conditions in sub-paragraph (3) is met.
- (2) Reference to a justice of the peace—
- (a) in Scotland includes a sheriff;
  - (b) in Northern Ireland is a reference to a lay magistrate.

- (3) The conditions are—
  - (a) entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant has been given to the occupier;
  - (b) asking for admission to the premises, or giving such a notice, would defeat the object of the entry;
  - (c) entry is required urgently;
  - (d) the premises are unoccupied or the occupier is temporarily absent.
- (4) A warrant under sub-paragraph (1) is valid for one month.

### 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

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- (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—

- (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>(2)</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

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

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>(3)</sup>;
  - (b) in Northern Ireland in proceedings under article 62 of the Magistrates' Court (Northern Ireland) Order 1981<sup>(4)</sup>.

### **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.

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<sup>(3)</sup> 1980 c.43.

<sup>(4)</sup> S.I. 1981/1675 (N.I.26).



(3) A person aggrieved by an order made by a magistrates' court in England, Wales or Northern Ireland<sup>(5)</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.

### **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.

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(5) 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.