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STATUTORY INSTRUMENTS

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**1992 No. 711**

**The Gas Appliances (Safety) Regulations 1992**

Preliminary

**Citation, commencement and revocation**

1.—(1) These Regulations may be cited as the Gas Appliances (Safety) Regulations 1992.

(2) These Regulations (except paragraph (3) below) shall come into force on 6th April 1992 and the said paragraph (3) shall come into force on 1st January 1996.

(3) The Gas Cooking Appliances (Safety) Regulations 1989(1) and, to the extent only that they apply to appliances, the Heating Appliances (Fireguards) (Safety) Regulations 1991(2) are hereby revoked.

**Interpretation**

2.—(1) In these Regulations, subject to the provisions of this paragraph and unless the context otherwise requires,—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974(3);

“the 1987 Act” means the Consumer Protection Act 1987;

“appliance” means an appliance burning gaseous fuel (that is to say, any fuel which is in a gaseous state at a temperature of 15 degrees Celsius at a pressure of 1 bar) used for cooking, heating, hot water production, refrigeration, lighting or washing and having, where applicable, a normal water temperature not exceeding 105 degrees Celsius and includes forced draught burners and heating bodies to be equipped with such burners but does not include an appliance specifically designed for use in an industrial process carried out on industrial premises;

“appropriate fee” has the meaning assigned to it in regulation 6;

“the Commission” means the Commission of the European Communities;

“the Community” means the European Economic Community;

“the Department” means the Department for Economic Development;

“the Directive” means Council Directive [90/396/EEC](#) on the approximation of the laws of Member States relating to appliances burning gaseous fuels(4);

“design documentation” means the documentation referred to in Annex IV of the Directive which is set out in Schedule 1;

“documentation of the quality system” shall be construed in accordance with regulation 14(3);

“EC certificate of conformity” means a certificate of conformity issued under regulation 17 or 18;

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(1) [S.I. 1989/149](#).

(2) [S.I. 1991/2693](#).

(3) [1974 c. 37](#).

(4) [OJNo. L196, 26.7.1990, p. 15](#).

“EC declaration of conformity (guarantee of product or production quality)” shall be construed in accordance with regulation 16;

“EC declaration of conformity to type” shall be construed in accordance with regulation 21;

“EC mark” means a mark consisting of the symbol “CE” (of which a form is shown for the purpose of illustration in Schedule 2) followed by the last two figures of the year in which it is marked on or in relation to an appliance together with the identification symbol of the relevant notified body;

“EC type-examination certificate” means a certificate issued by a notified body under regulation 10(4) or, as the case may be, issued under a corresponding provision of the law of another member State;

“essential requirements” means the requirements in Annex I of the Directive which is set out in Schedule 3;

“the Executive” means the Health and Safety Executive;

“fitting” means a safety device, a controlling device or a regulating device, and includes a sub-assembly of an appliance, but does not include a forced draught burner or heating body to be equipped with such a burner which is separately marketed for trade use and is designed to be incorporated into an appliance or assembled to constitute an appliance;

“fitting certificate”, in relation to a fitting, means a certificate to the effect that it conforms with the provisions of the Directive which apply to it;

“normally used” shall be construed in accordance with regulation 7(2) and “used normally” in Annex I of the Directive (set out in Schedule 3) shall be construed accordingly;

“notified body”—

- (a) means a body which is approved by the Secretary of State and whose name is notified by him to the Commission and to other member States in accordance with regulation 5(1); and
- (b) in the definition of “EC mark” in this paragraph and in the expressions “a notified body” in regulations 21(3)(b) and 22(1)(a), “all other notified bodies” in regulations 10(6), 12(2)(b), 13(2)(b), 14(6)(b)(ii), 15(2)(b) and 23(3)(b), “another notified body” in regulations 11(2)(b) and 14(1), “any other notified body” in regulations 10(6) and 11(1) and “relevant notified body” in Schedule 2 also means a body which is approved for the purposes of the Directive by another member State and whose name is notified to the Commission and other member States pursuant to article 9(1) of the Directive;

“quality system” means a system of which the purpose is to ensure that appliances conform with the type as described in the EC type-examination certificate and satisfy the essential requirements which apply to them;

“safe” has the same meaning as in section 19(1) of the 1987 Act except that the references in that subsection to “risk” shall be construed as including references to any risk of—

- (a) injury or impairment to the health or safety of any domestic animal; and
- (b) damage to any property;

“supply”, in relation to an appliance or a fitting,—

- (a) includes offering to supply, agreeing to supply, exposing for supply and possessing for supply, and
- (b) except in regulation 4(4) or in relation to an appliance which has previously been put into service by any person, includes its first putting into service in the United Kingdom by the manufacturer or by the importer into the United Kingdom;

and cognate expressions shall be construed accordingly; and

“type” has the meaning assigned to it in paragraph (2)(a) of regulation 10 and “approved type” means a type approved by a notified body under that regulation or approved under a corresponding provision of the law of another member State.

(2) Any reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations.

### **Essential requirements**

3.—(1) For the purposes of these Regulations—

(a) subject to paragraph (2) below, an appliance or a fitting shall be taken to satisfy the essential requirements,—

(i) if it satisfies a national standard which implements the relevant harmonised standard; or

(ii) where there is no relevant harmonised standard, if it satisfies a national standard of which the text is communicated to the Commission pursuant to Article 5(2) of the Directive and which, pursuant to that provision, is notified by the Commission to the member States as being presumed to conform to the essential requirements; and

(b) a quality system shall be taken to satisfy the requirements of these Regulations if it complies with a national standard which implements the relevant harmonised standard.

(2) Paragraph (1)(a) above has effect in any case only where—

(a) the national standard in question relates to all the matters relevant to the essential requirements, and

(b) there are no reasonable grounds for suspecting that the appliance or fitting does not satisfy the essential requirements.

(3) In paragraph (1) above, “harmonised standard”,—

(a) in relation to appliances and fittings, means a technical specification—

(i) which is adopted by one or both of the European Committee for Standardisation and the European Committee for Electrotechnical Standardisation upon a remit from the Commission in accordance with Council Directive [83/189/EEC](#) of 28th March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations<sup>(5)</sup>, as amended, and

(ii) of which the reference number is published in the Official Journal of the European Communities in pursuance of article 5(1)(a) of the Directive; and

(b) in relation to quality systems, means a technical specification which is adopted by one or both of the European Committee for Standardisation and the European Committee for Electrotechnical Standardisation.

### **Application of Regulations**

4.—(1) Subject to the following provisions of this regulation, these Regulations do not apply to—

(a) any appliance which does not bear the EC mark; or

(b) any fitting in respect of which a fitting certificate has not been issued, and which, in either case, was supplied for the first time in the Community before 1st January 1992.

(2) Before 1st January 1996,—

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(5) OJ No. L109, 26.4.1983, p. 8.

- (a) in the case of any appliance or fitting to which the Gas Cooking Appliances (Safety) Regulations 1989<sup>(6)</sup> or the Heating Appliances (Fireguards) (Safety) Regulations 1991<sup>(7)</sup> apply, these Regulations do not apply if the said Regulations of 1989 or 1991, as the case may require, are complied with; and
  - (b) in the case of any other appliance or fitting, these Regulations do not apply if—
    - (i) the general safety requirement (construed in accordance with subsections (2) and (3) of section 10 of the 1987 Act (general safety requirement)), or
    - (ii) section 6 of the 1974 Act (general duties of manufacturers etc as regards articles and substances for use at work),
 is complied with.
- (3) Before 1st January 1996, a person shall not be guilty of an offence arising out of a failure to comply with any provision of these Regulations,—
- (a) in the case of appliances and fittings within paragraph (2)(a) above, if the failure also constitutes an offence in relation to the Regulations of 1989 or 1991, as the case may be; and
  - (b) in the case of appliances and fittings within paragraph (2)(b) above, if the failure is also an offence under section 10 (general safety requirement) of the 1987 Act or (being a failure to discharge a duty under the said section 6 of the 1974 Act) under section 33(1)(a) of the 1974 Act (offences).
- (4) These Regulations do not have effect in relation to the supply by any person of an appliance which—
- (a) has at any time been put into service by another person; and
  - (b) is supplied by a person who supplies appliances in the course of any business, whether after repairing or reconditioning them or not.

#### **Appointment and functions of notified bodies**

**5.—**(1) The Secretary of State may approve one or more bodies to perform functions under these Regulations and, where he does so, shall notify its or their names to the Commission and to the other member States.

(2) Any such approval—

- (a) may be given for an unlimited period or for a specified period; and
- (b) may be given subject to conditions,

and the Secretary of State may withdraw an approval if the body ceases to satisfy or comply with any such condition.

(3) A notified body may—

- (a) carry out or secure the carrying out of examinations and tests and issue EC type- examination certificates in respect of models of appliances and fittings under regulation 10;
- (b) carry out or secure the carrying out of examinations and evaluations and approve quality systems under regulation 14;
- (c) carry out or secure the carrying out of examinations and issue EC certificates of conformity of appliances and fittings under regulations 17 and 18;

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<sup>(6)</sup> S.I. 1989/149.

<sup>(7)</sup> S.I. 1991/2693.

- (d) carry out or secure the carrying out of examinations and issue EC certificates of conformity in respect of batches of appliances and fittings under regulation 18;
- (e) require an applicant to supply further specimens of the model to which an application under regulation 10 relates; and
- (f) do such other things as may be required or permitted under these Regulations.

### **Fees**

6. A notified body may require a fee to be paid by the applicant in connection with the performance of functions under regulations 10, 14, 17, 18, 19 and 22 (in those regulations referred to as “the appropriate fee”) and the fee in every case shall not exceed the sum of—

- (a) the costs of the notified body of and in connection with the functions carried out or to be carried out by it under the Regulations (“the relevant service”); and
- (b) an amount on account of profit which is reasonable in the circumstances having regard to—
  - (i) the character and extent of the work done or to be done by the notified body in providing the relevant service, and
  - (ii) the commercial rate normally charged on account of profit for that work or similar work.

### **Supply of gas appliances and fittings**

#### **Appliances and fittings to satisfy the essential requirements and to be safe**

7.—(1) No person shall supply an appliance or a fitting which does not satisfy the essential requirements.

(2) No person shall supply an appliance which, when normally used, is not safe; and, in this paragraph, “normally used” in relation to use means use—

- (a) when correctly installed and regularly serviced in accordance with the manufacturer’s instructions referred to in paragraph 1(2) of Annex I of the Directive (set out in Schedule 3);
- (b) within the normal variations of gas quality and pressure; and
- (c) in accordance with its intended purpose or in a way which can reasonably be foreseen.

(3) No person shall supply—

- (a) an appliance to which the EC mark has not been affixed; or
- (b) a fitting in respect of which a fitting certificate has not been issued,

as required by the Directive.

#### **Obligation on suppliers of appliances and fittings**

8. No person shall supply an appliance or a fitting in respect of which there is not in force at that time—

- (a) an EC type-examination certificate and either—
  - (i) an EC declaration of conformity to type made in accordance with regulation 21, or
  - (ii) an EC declaration of conformity (guarantee of product or production quality) made in accordance with regulation 16, or
  - (iii) an EC certificate of conformity issued by a notified body under regulation 17 or 18, or

(iv) a fitting certificate issued by a notified body under regulation 24(4); or  
(b) an EC unit verification issued by a notified body under regulation 19,  
or a corresponding declaration issued by a manufacturer, or a corresponding certificate or verification issued, under the law of another member State.

### **Application of regulations 7 and 8**

9. Regulations 7 and 8 do not apply in any case in which the person placing an appliance or fitting on the market reasonably believes that it will not be put into service in the United Kingdom or in any other member State.

## **Certification and attestation**

### **EC type-examination**

10.—(1) Where an application to a notified body for EC type-examination is made under these Regulations by the manufacturer or by his authorised representative established in the Community (“the applicant”), the application shall be in writing and shall include—

- (a) the name and address of the manufacturer and, if the application is lodged by the authorised representative, his name and address;
- (b) a declaration that an application for EC type-examination in respect of the appliance or fitting has not been made to any other notified body; and
- (c) the design documentation.

(2) The applicant shall supply to the notified body—

- (a) an appliance or fitting which, so far as concerns its characteristics relevant to any type of risk relevant to the essential requirements, is representative of the production envisaged (the “type”); and
- (b) such further appliances or fittings as the notified body may reasonably require for the purposes of this regulation,

and shall undertake to pay the appropriate fee to the notified body.

(3) On an application made to it under paragraph (1) above the notified body shall—

- (a) examine the design documentation and check that the type has been manufactured in conformity with that documentation; and
- (b) carry out, or have carried out, examinations and tests to check whether the type satisfies the essential requirements.

(4) Where the notified body, after carrying out its duties under paragraph (3) above, is satisfied that the type complies with the essential requirements which apply to it, the notified body shall, on payment of the appropriate fee, issue to the applicant an EC type-examination certificate in respect of that type.

(5) An EC type-examination certificate shall identify the type to which it relates and—

- (a) shall state the conclusions of the EC type-examination carried out by the notified body;
- (b) shall indicate any conditions to be satisfied for its continued validity;
- (c) shall be accompanied by the data and descriptions necessary for identification of the approved appliance or fitting; and
- (d) if relevant to its compliance with the essential requirements, shall be accompanied by a description of its functioning,

and there shall be annexed to the certificate all relevant drawings and diagrams.

(6) The notified body shall forthwith inform all other notified bodies of—

- (a) each EC type-examination certificate issued by it; and
- (b) particulars of additions and amendments relating to documents already issued,

and, on request made by it, shall send to any other notified body a copy of any EC type-examination certificate that it has issued and, if any other notified body satisfies the notified body that there is good reason why they should be made available to it, copies of the annexes to the certificate and reports on the examinations and tests which the notified body has carried out.

(7) Where—

- (a) an EC type-examination certificate issued under this regulation is in force in respect of an approved type; and
- (b) the manufacturer or his authorised representative established in the Community proposes to make modifications or additions to the approved type which affect its conformity with the essential requirements or with the prescribed conditions for use of the appliance,

the manufacturer or such representative (instead of making an application under paragraph (1) above) may make an application in writing to the notified body which issued the certificate for approval of modifications or additions to the approved type; and the foregoing provisions of this regulation shall have effect in relation to such an application as they have effect in relation to an application for an EC type-examination.

#### **Application to be made to a single notified body**

**11.**—(1) No person shall make an application for EC type-examination under regulation 10 in respect of a type at any time when there is pending in respect of that type an application for EC type-examination made by any person to any other notified body.

(2) Where—

- (a) an application for EC type-examination is made to a notified body under regulation 10 in respect of a type; and
- (b) to the knowledge of the notified body, an application to another notified body for an EC type-examination certificate in respect of that type is pending,

the notified body shall not consider, or shall not further consider, the application until that other application has been determined or withdrawn.

#### **Refusal of EC type-examination certificate**

**12.**—(1) If a notified body is minded to refuse to issue an EC type-examination certificate under regulation 10, it shall give the applicant the opportunity, within a reasonable period, of making representations as to why it should not be refused.

(2) Where the notified body, after considering any representations made in accordance with paragraph (1) above, refuses to issue an EC type-examination certificate or to extend its period of validity, it shall in writing—

- (a) inform the applicant and the Secretary of State of its decision and the grounds for its decision; and
- (b) inform all other notified bodies of the decision.

#### **Withdrawal of EC type-examination certificate**

**13.**—(1) If it appears to a notified body—

- (a) that—

- (i) there has been a breach of any condition subject to which the body issued an EC type-examination certificate, and
- (ii) the person to whom it was issued is unable or unwilling to effect a sufficient remedy;  
or

- (b) that appliances or fittings which conform with the type in respect of which an EC type-examination certificate has been issued do not satisfy the essential requirements,

the notified body may withdraw the certificate after giving the person to whom it was issued the opportunity of making representations within a reasonable period as to why it should not be withdrawn.

(2) Where a notified body, having considered any representations made under paragraph (1) above, withdraws an EC type-examination certificate, it shall, in writing,—

- (a) inform the person to whom it was issued and the Secretary of State of the withdrawal of the certificate and of its reasons for the withdrawal; and
- (b) inform all other notified bodies of its withdrawal.

### **Quality system approval**

14.—(1) Where an application for approval of—

- (a) a quality system relating to production quality as provided in paragraph 3.3 of Annex II of the Directive; or
- (b) a quality system relating to product quality as provided in paragraph 4.3 of the said Annex II,

is made to a notified body (whether the relevant EC type-examination certificate was issued by it or by another notified body), the application shall be made in writing and shall be accompanied by an undertaking by the manufacturer—

- (i) to carry out the obligations arising from the approved quality system;
- (ii) to maintain the approved quality system to ensure its continuing suitability and effectiveness; and
- (iii) to pay the appropriate fee,

and such systems shall be designed to secure that appliances and fittings comply with the essential requirements which apply to them.

(2) The manufacturer shall make available to the notified body—

- (a) a copy of the EC type-examination certificate;
- (b) all relevant information including in particular the documentation of the quality system; and
- (c) the design documentation of the appliances or fittings.

(3) The documentation of the quality system shall be systematic and shall permit a clear interpretation to be made of the manufacturer's quality programme, plans, manuals and records and shall include, in particular, descriptions of—

- (a) the manufacturer's quality objectives relating to production of the appliances or fittings;
- (b) the manufacturer's management structures and the responsibilities of managers within that structure which are relevant to the quality of production;
- (c) in the case of an application under paragraph (1)(a) above,—

- (i) the manufacturing process, quality control and quality assurance techniques and systems employed in production of the appliances or fittings, and

- (ii) the nature and frequency of examinations and tests carried out before, during and after the manufacture of appliances or fittings;
  - (d) in the case of an application under paragraph (1)(b) above, the nature of examinations and tests carried out after the manufacture of each appliance or fitting;
  - (e) the method employed to monitor attainment of the quality objectives referred to in subparagraph (a) above; and
  - (f) the method employed to monitor the effectiveness of the examinations and tests referred to in subparagraph (d) above.
- (4) On an application made to it under paragraph (1) above the notified body shall take all necessary steps to examine and evaluate the quality system.
- (5) If the notified body is minded to refuse to approve the quality system, it shall give the applicant the opportunity, within a reasonable period, of making representations as to why it should not be refused.
- (6) The notified body shall, in writing,—
- (a) inform the manufacturer of—
    - (i) the results of the examination, and
    - (ii) the reasons for the decision;
  - (b) if it is satisfied that the quality system satisfies the relevant provisions of Annex II of the Directive, on payment of the appropriate fee,—
    - (i) notify the applicant of its approval of the quality system; and
    - (ii) inform all other notified bodies of its decision.
- (7) Where—
- (a) an approval of a quality system under this regulation is in force; and
  - (b) the manufacturer proposes to make modifications or additions to the approved quality system,

the manufacturer (instead of making an application under paragraph (1) above) may make an application in writing to the notified body which gave the approval for approval of modifications or additions to the quality system; and the foregoing provisions of this regulation shall have effect in relation to such an application as they have effect in relation to an application for approval of a quality system.

#### **Withdrawal of quality system approval**

**15.—**(1) If it appears to a notified body which approved a quality system under regulation 14 that the person to whom it was issued—

- (a) has failed to implement the approved quality system; and
- (b) is unable or unwilling to effect a sufficient remedy,

the notified body may withdraw the approval after giving the person to whom it was issued the opportunity of making representations within a reasonable period as to why it should not be withdrawn.

(2) Where the notified body, having considered any representations made under paragraph (1) above, withdraws a quality system approval, it shall, in writing,—

- (a) inform the person to whom it was issued and the Secretary of State of the withdrawal of the approval and of its reasons for the withdrawal; and
- (b) inform all other notified bodies of its withdrawal.

### **EC declaration of conformity (guarantee of product or production quality)**

16. Where a manufacturer has implemented a quality system which has been approved under regulation 14 or under a corresponding provision of the law of another member State and he is satisfied that an appliance or a fitting has been manufactured in conformity with an approved type,—

- (a) in the case of an appliance,
  - (i) he may issue a declaration that the appliance conforms with the relevant EC type-examination certificate and satisfies the relevant essential requirements (an “EC declaration of conformity (guarantee of product or production quality)”), and
  - (ii) if he does so, shall affix the EC mark in accordance with regulation 24; and
- (b) in the case of a fitting, shall supply a fitting certificate.

### **EC verification (individual appliances and fittings)**

17.—(1) Where a manufacturer or his authorised representative established in the Community submits an appliance or a fitting to a notified body for verification under this regulation together with an undertaking to pay the appropriate fee, the notified body shall examine the appliance or fitting and carry out tests to establish whether—

- (a) it conforms with the relevant EC type-examination certificate; and
- (b) it satisfies the essential requirements and the provisions of the Directive which apply to it.

(2) If, having carried out the examination, the notified body is satisfied that an EC certificate of conformity should be issued, it shall, on payment of the appropriate fee, issue an EC certificate of conformity (which may relate to more than one appliance or fitting and shall be retained by the manufacturer or his authorised agent established in the Community), and

- (a) in the case of an appliance, shall affix to the appliance the EC mark; and
- (b) in the case of a fitting, shall issue a fitting certificate,

in accordance with regulation 24.

### **EC verification by batch (statistical method)**

18.—(1) Where a manufacturer or his authorised representative established in the Community submits a batch of appliances or fittings to a notified body for verification under this regulation together with an undertaking to pay the appropriate fee, the approved body shall carry out an examination and tests of appliances or fittings in the batch in accordance with paragraph (2) below to establish whether items in the batch—

- (a) conform with the relevant EC type-examination certificate; and
- (b) satisfy the essential requirements and the provisions of the Directive which apply to it.

(2) The notified body shall examine and carry out tests on appliances or fittings in the batch by reference to a sampling plan designed to ensure—

- (a) a standard quality level corresponding to a 95% probability of acceptance with a range of non-conformity between 0.5% and 1.5%; and
- (b) a limit quality corresponding to a 5% probability of acceptance with a percentage of non-conformity between 5% and 10%.

(3) If, having carried out the examination, the notified body is satisfied that an EC certificate of conformity should be issued it shall, on payment of the appropriate fee, issue an EC certificate of conformity which—

- (a) shall identify any appliance or fitting in the batch with which the notified body is not satisfied having regard to the foregoing provisions of this regulation; and

- (b) shall be retained by the manufacturer or his authorised representative established in the Community.
- (4) Where the notified body issues an EC certificate of conformity in respect of a batch, the manufacturer or his authorised agent established in the Community—
  - (a) may supply any appliance or fitting in the batch other than one within subparagraph (b) below; and
  - (b) shall not supply any appliance or fitting which is identified in the EC certificate of conformity as one with which the notified body was not satisfied.
- (5) Where the notified body declines to issue an EC certificate of conformity in respect of a batch,—
  - (a) the notified body shall take all reasonable steps to ensure that no appliance or fitting in the batch is supplied by any person; and
  - (b) no person shall supply any appliance or fitting which was comprised in the batch.
- (6) If, having regard to the objectives of the Directive, it appears to the notified body that the number of batches of appliances or fittings to which an EC type-examination certificate applies and in respect of which it has declined to issue an EC certificate of conformity is unsatisfactory, it may suspend verification under this regulation in respect of appliances or fittings to which that EC type-examination certificate applies.
- (7) In this regulation, “batch” means a number of appliances or fittings—
  - (a) all of which are of the same model and have the same design characteristics; and
  - (b) in the case of appliances, to all of which the manufacturer has affixed the EC mark in accordance with regulation 24 and the distinguishing number or mark of the notified body to which the batch is submitted under this regulation.

### **EC unit verification**

- 19.**—(1) Where a manufacturer or his authorised representative established in the Community desires that an EC certificate of conformity shall be issued by a notified body under this regulation, he shall—
- (a) inform the notified body of his desire;
  - (b) provide the design documentation to the notified body; and
  - (c) either—
    - (i) submit the appliance to the notified body, or
    - (ii) if the notified body so decides, make provision for the notified body to carry out its functions under this regulation at the place where the appliance is installed,
- and shall undertake to pay the appropriate fee to the notified body.
- (2) The notified body shall examine the appliance and carry out tests to establish whether it satisfies the essential requirements and the provisions of the Directive which apply to it.
- (3) If, having carried out the examination and tests, the notified body is satisfied that an EC certificate of conformity should be issued, it shall, on payment of the appropriate fee,—
- (a) issue an EC certificate of conformity, which shall be retained by the manufacturer or his authorised representative established in the Community; and
  - (b) affix the EC mark and the distinguishing number or mark of the notified body in accordance with regulation 24.

### **Refusal to issue certificate of conformity**

**20.**—(1) If a notified body is minded to refuse to issue an EC certificate of conformity under any of regulations 17, 18 and 19, it shall give the applicant the opportunity of making representations within a reasonable period as to why it should not be refused.

(2) Where a notified body, having considered any representations made in accordance with paragraph (1) above, refuses to issue an EC certificate of conformity, it shall, in writing, inform the applicant of its decision and the grounds for its decision.

### **EC declaration of conformity to type (type examination)**

**21.**—(1) Where an EC type-examination certificate has been issued in respect of a type and the manufacturer is satisfied—

- (a) that an appliance or a fitting has been manufactured by him in conformity with that certificate; and
- (b) that the requirements of regulation 7 are satisfied in relation to the appliance or fitting, he may—
  - (i) in the case of an appliance, issue an EC declaration of conformity to type; and
  - (ii) in the case of a fitting, supply a fitting certificate,

but subject to regulation 22.

(2) An EC declaration of conformity to type may relate to more than one appliance or fitting and shall be retained by the manufacturer.

(3) If the manufacturer issues an EC declaration of conformity to type he shall, in the case of an appliance, affix the EC mark in accordance with regulation 24.

### **Surveillance by notified bodies**

**22.**—(1) Before a manufacturer issues an EC declaration of conformity to type or a fitting certificate under regulation 21, he shall—

- (a) appoint a notified body for the purposes of EC surveillance under the Directive, and
- (b) undertake to pay from time to time the appropriate fee for work done by a notified body under this regulation;

and the notified body shall carry out checks under this paragraph.

(2) Where a quality system was approved under regulation 14, the notified body which approved the quality system shall be the body to carry out EC surveillance under this paragraph.

(3) In carrying out EC surveillance under this regulation, the notified body,—

- (a) in the case of surveillance under paragraph (1) above, shall, at intervals of not more than one year, carry out sufficient random examinations and checks in order to ensure that appliances or fittings manufactured by the manufacturer conform to the relevant EC type-examination certificate and the relevant essential requirements; and
- (b) in the case of surveillance under paragraph (2) above,—
  - (i) shall, at intervals of not more than two years, carry out checks in order to ensure that the manufacturer is maintaining and applying the quality system; and
  - (ii) may, from time to time as it thinks fit, carry out visits at the places of manufacture, inspection, testing and storage and carry out, or have carried out, tests on appliances or fittings to check whether the manufacturer is maintaining and applying the quality system,

and shall, in each case, provide the manufacturer with a report on its findings.

(4) A manufacturer shall, upon request made by it (if it is not the notified body which made the report) provide to the notified body which issued the EC type-examination certificate a copy of any report made to him under paragraph (3) above and shall permit inspection of the original thereof.

(5) For the purpose of assisting the notified body to carry out EC surveillance under paragraph (2) above, the manufacturer shall, in respect of each appliance or fitting keep available for inspection by the notified body all necessary information, including—

- (a) the documentation of the quality system;
- (b) the design documentation of the appliance or fitting; and
- (c) the quality records.

(6) For the purposes of the foregoing provisions of this regulation, a duly authorised officer of the notified body responsible for EC surveillance may, on production if requested of his credentials, at all reasonable times enter any premises used for the purpose of manufacture, inspection, testing or storage of any appliance or fitting by or on behalf of the manufacturer.

(7) If the notified body is not satisfied that the appliances or fittings tested by it satisfy the requirements of the relevant EC type-examination certificate or of these Regulations, it shall give to the manufacturer a report advising him of the steps necessary to remedy the non-compliance and,—

- (a) if—
  - (i) it is the notified body which issued the EC type-examination certificate, consider whether it should exercise its powers under regulation 13, or
  - (ii) it is not the notified body which issued the EC type-examination certificate, notify the notified body which issued it; or
- (b) if—
  - (i) it is the notified body which approved the quality system, consider whether it should exercise its powers under regulation 15, or
  - (ii) it is not the notified body which approved the quality system, notify the notified body which issued it.

(8) Upon receipt of a notification under paragraph (7) above, it shall be the duty of a notified body to consider whether it should exercise its powers under regulation 13 or 15.

(9) A manufacturer shall, on demand, pay to the notified body the appropriate fee for work done by it under this regulation.

#### **Failure to comply with Regulations: powers of notified bodies**

**23.—**(1) If, after carrying out its functions under regulation 22, a notified body is satisfied—

- (a) that—
  - (i) an EC mark has been wrongly affixed to an appliance under these Regulations, or
  - (ii) a fitting certificate has been wrongly issued in respect of a fitting, because it has not been manufactured wholly in accordance with an approved type; or
- (b) that an appliance or a fitting does not satisfy the essential requirements; or
- (c) that a manufacturer who has issued an EC declaration of conformity to type has not carried out the obligations placed on him by these Regulations; or
- (d) that all necessary information has not been kept available by the manufacturer for inspection in accordance with regulation 22 above,

it shall give notice to the manufacturer specifying the matters mentioned in paragraph (2) below.

(2) The following matters shall be specified in a notice given under paragraph (1) above—

- (a) the respects in which—
    - (i) an appliance or fitting does not conform with an approved type, or
    - (ii) an appliance or fitting does not comply with the essential requirements, or
    - (iii) the manufacturer has failed to carry out his obligations under these Regulations, or
    - (iv) the manufacturer has failed to keep necessary information available for inspection;
  - (b) that, unless within such period as may be specified in the notice, steps are taken which ensure—
    - (i) that the appliance or fitting or any appliance or fitting of the same type does so conform or comply,
    - (ii) that the manufacturer does so act, or
    - (iii) that the necessary information is kept available for inspection within a specified period,

any EC type-examination certificate issued under regulation 10, any approval of a quality system under regulation 14, any EC verification issued under regulation 17 or 18 or any EC unit verification issued under regulation 19 will be suspended; and
  - (c) if the notified body thinks fit, that any such certificate, approval or verification shall be suspended forthwith.
- (3) If the notified body decides that any such certificate, approval or verification should be suspended, it shall immediately—
- (a) give notice of the decision to the manufacturer; and
  - (b) inform the Secretary of State and all other notified bodies of the decision.
- (4) A notice under this regulation shall be in writing and shall—
- (a) specify the date on which it is to take effect; and
  - (b) specify the grounds for the decision.

#### Affixing of EC mark etc.

#### **EC mark to be affixed to appliances and fitting certificate to be supplied with fittings**

**24.**—(1) In accordance with the preceding provisions of these Regulations, there shall be affixed to each appliance (or on a data plate securely affixed to the appliance) in a visible, easily legible and indelible form—

- (a) the EC mark by way of confirmation—
    - (i) that the appliance conforms with a type in respect of which an EC type-examination certificate is in force in accordance with these Regulations, or
    - (ii) that an EC certificate of conformity has been issued by it in accordance with these Regulations in respect of the appliance;
  - (b) the name (or, if it enables him to be identified, the trade name or trade mark) of—
    - (i) the manufacturer of the appliance, if he is established in the Community; or
    - (ii) his authorised representative established in the Community, if he is not so established;
  - (c) the type of any electrical supply to be used in connection with the appliance; and
  - (d) the distinguishing number or mark of the notified body.
- (2) No person shall affix to an appliance, or use in relation to an appliance, any mark or inscription which is capable of being confused with the EC mark affixed in accordance with these Regulations.

(3) A data plate shall be so designed that it cannot be re-used.

(4) In the case of a fitting, the notified body or the manufacturer shall, in accordance with the preceding provisions of these Regulations, issue a certificate (which may relate to a number of identical fittings and is, in these Regulations, called a “fitting certificate”) by way of confirmation by the notified body or the manufacturer that the fitting to which the certificate relates conforms with the provisions of the Directive which relate to it; and a fitting certificate shall describe—

(a) the characteristics of the fitting; and

(b) the manner in which the fitting is to be incorporated into an appliance, or in which it and other fittings are to be assembled, in order to comply with the essential requirements,

and it shall be the duty of the manufacturer or his authorised representative established in the Community to supply a copy of the certificate with the fitting.

#### **Conformity with other directives etc.**

**25.** Notwithstanding anything in the foregoing provisions of these Regulations, neither a notified body nor a manufacturer shall affix an EC mark to an appliance if the mark so affixed could be taken as indicating that the appliance conformed also to any legally binding Community provisions with which it did not comply.

### **Enforcement**

#### **Duties of enforcement authorities**

**26.** Every authority and council on whom a duty is imposed by virtue of section 27 of the 1987 Act shall give immediate notice to the Secretary of State of—

(a) any suspension notice served by it in respect of any appliance or fitting to which these Regulations apply;

(b) any application made by it for an order for forfeiture of such an appliance or fitting; and

(c) any other thing done in respect of any appliance or fitting for the purposes of, or in connection with, sections 14 to 17 of that Act.

#### **Offences relating to domestic animals and to property**

**27.—(1)** Any person who without reasonable excuse contravenes or fails to comply with regulation 7(1) or (2) in so far as it applies to injury or impairment to the health or safety of any domestic animal or damage to any property shall be guilty of an offence under this paragraph and punishable on summary conviction with imprisonment for not more than three months or with a fine of not more than level 5 on the standard scale.

(2) Where the commission by any person of an offence under paragraph (1) above is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

(3) Where an offence under this regulation committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed guilty of the offence.

(4) Where the affairs of a body corporate are managed by its members, paragraph (3) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

## Proceedings

28.—(1) A magistrates' court,—

- (a) in England and Wales, may try an information, and
- (b) in Northern Ireland, may try a complaint,

in respect of an offence committed under—

- (i) section 12 of the 1987 Act in relation to a contravention of these Regulations, or
- (ii) regulation 27,

if the information is laid or the complaint is made, as the case may require, within twelve months from the time when the offence is committed.

(2) In Scotland, summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.

(3) Without prejudice to the provisions of paragraphs (1) and (2) above, regulation 30 and the provisions of Part IV of the 1987 Act, in so far as these Regulations apply in relation to such appliances as are mentioned in paragraph (4) below—

- (a) the Executive (or, for Northern Ireland, the Department) may make arrangements for the enforcement of these Regulations; and
- (b) the provisions of the 1974 Act or the Health and Safety at Work (Northern Ireland) Order 1978<sup>(8)</sup> (“the 1978 Order”) mentioned in paragraph (5) below shall apply as if—
  - (i) subject to paragraph (6) below, these Regulations were health and safety regulations and, accordingly, relevant statutory provisions within the meaning of the 1974 Act (or the 1978 Order),
  - (ii) any reference therein to an enforcing authority were a reference to the Executive (or the Department),
  - (iii) any reference therein to any provision of the 1974 Act (or the 1978 Order) were a reference to that provision as, and so far as, it is applied by this paragraph, and section 34(3) of the 1974 Act and article 32(3) of the 1978 Order shall have effect with the substitution for the words “six months” of the words “twelve months”.

(4) The appliances referred to in paragraph (3) above are—

- (a) appliances or fittings designed for use or operation, whether exclusively or not, by persons at work; and
- (b) appliances or fittings designed for use, otherwise than at work, in non-domestic premises made available to persons as a place where they may use the appliances or fittings provided for their use there.

(5) The provisions referred to in paragraph (3) above are—

- (a) subsections (6) and (7)(b) of section 18, sections 19 to 28, subsections (1)(e) to (o), (2), (3), (4)(d) and (e) and (5) of section 33, subsection (3), (4) and (5) of section 34 and sections 35 to 39, 41 and 42 of the 1974 Act; and
- (b) paragraph (3) of article 2, articles 21 to 30, paragraphs (1)(e) to (o), (2), (4), (5)(d) and (e) and (6) of article 31, paragraphs (3) and (4) of article 32 and articles 33 to 36, 38 and 39 of the 1978 Order.

(6) Any criminal proceedings for a contravention of these Regulations brought by virtue of paragraphs (3) to (5) above shall be brought under section 12 of the 1987 Act or, where appropriate, under that section taken with regulation 27(1).

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<sup>(8)</sup> S.I. 1978/1039 (NI 9).

(7) The Executive or the Department shall, where action has been taken by it to prohibit or restrict the supply of any appliance which bears the EC mark or of any fitting in respect of which a fitting certificate has been issued, forthwith inform the Secretary of State of the action taken, and the reason for it, with a view to this information being passed by him to the Commission.

### General

#### **Requirement to give information about appliance which does not bear the EC mark**

**29.** A person who supplies

- (a) an appliance which does not bear the EC mark; or
- (b) a fitting which is not accompanied by a fitting certificate,

shall, on his being required at a reasonable time to give such information, give to an enforcement authority, the Executive or the Department, or to any of its officers, all the information which he has about—

- (i) the date when the appliance or fitting was first supplied in the Community; and
- (ii) the basis on which the appliance is not so marked or the fitting is not accompanied by a fitting certificate.

#### **Regulations to be treated as safety regulations within the meaning of the 1987 Act**

**30.** Subject to regulation 27, these Regulations shall be treated for all purposes as if they were safety regulations within the meaning of the 1987 Act.

Department of Trade and Industry  
11th March 1992

*E. Leigh*  
Parliamentary Under-Secretary of State,