STATUTORY INSTRUMENTS

2005 No. 1803

The General Product Safety Regulations 2005

PART 4

MISCELLANEOUS

Reports

32.—(1) It shall be the duty of the Secretary of State to lay before each House of Parliament a report on the exercise during the period to which the report relates of the functions which are exercisable by enforcement authorities under these Regulations.

(2) The first such report shall relate to the period beginning on the day on which these Regulations come into force and ending on 31 March 2008 and subsequent reports shall relate to a period of not more than five years beginning on the day after the day on which the period to which the previous report relates ends.

(3) The Secretary of State may from time to time prepare and lay before each House of Parliament such other reports on the exercise of those functions as he considers appropriate.

(4) The Secretary of State may direct an enforcement authority to report at such intervals as he may specify in the direction on the discharge by that authority of the functions exercisable by it under these Regulations.

(5) A report under paragraph (4) shall be in such form and shall contain such particulars as are specified in the direction of the Secretary of State.

Duty to notify Secretary of State [F1]... E+W+S

33.—**[**[F2](A1) The Secretary of State must establish and operate a database containing information relating to market surveillance and product safety.**]**

[[F3](B1) The database referred to in paragraph (A1) must be designed so as to enable notifications required under paragraph (1), (2) or (4), or under Article 22 of Regulation (EC) 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, to be made to the Secretary of State through the database.**]**

[[F4](1) An enforcement authority which has received a notification of a risk under regulation 9(1) shall immediately notify the Secretary of State of the risk through the database referred to in paragraph (A1).**]**

(2) Where an enforcement authority takes a measure which restricts the placing on the market of a product, or requires its withdrawal or recall, it shall immediately notify the Secretary of State **[**[F5]of the action taken through the database referred to in paragraph (A1)**]**, specifying its reasons for taking the action. It shall also immediately notify the Secretary of State of any modification or lifting of such a measure.

[F6](3) . . . . . .

(4) Where an enforcement authority adopts or decides to adopt, recommend or agree with producers and distributors, whether on a compulsory or voluntary basis, a measure or action to prevent, restrict or impose specific conditions on the possible marketing or use of a product (other than a **[**F7medicinal**]** product) by reason of a serious risk, it shall immediately notify the Secretary of State **[**F8of the measure or action taken through the database referred to in paragraph (A1)**]**. It shall also immediately notify the Secretary of State of any modification or withdrawal of any such measure or action **[**F9through the database referred to in paragraph (A1)**]**.

F10(5) . . . . . .

F10(6) . . . . . .

F10(7) . . . . . .

F10(8) . . . . . .

F10(9) . . . . . .

(10) In this regulation—

(a) references to a product excludes a second hand product supplied as an antique or as a product to be repaired or reconditioned prior to being used, provided the supplier clearly informs the person to whom he supplies the product to that effect;

[F11(b) "medicinal product" has the meaning given to it in regulation 2 of the Human Medicines Regulations 2012.**]**

Extent Information

E1 This version of this provision extends to England and Wales and Scotland only; a separate version has been created for Northern Ireland only

Textual Amendments

F1 Words in reg. 33 heading omitted (E.W.S.) (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 6(2)** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

F2 Reg. 33(A1) inserted (E.W.S.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 6(3)** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

F3 Reg. 33(B1) inserted (E.W.S.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 6(4)** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

F4 Reg. 33(1) substituted (E.W.S.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 6(5)** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

F5 Words in reg. 33(2) inserted (E.W.S.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 6(6)** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

F6 Reg. 33(3) omitted (E.W.S.) (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 6(7)** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

F7 Word in reg. 33(4) substituted (E.W.S.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 6(8)(a)** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

F8 Words in reg. 33(4) inserted (E.W.S.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 6(8)(b)** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

F9 Words in reg. 33(4) inserted (E.W.S.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 6(8)(c)** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

F10 Reg. 33(5)-(9) omitted (E.W.S.) (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 6(9)** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

F11 Reg. 33(10)(b) substituted (E.W.S.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 6(10)** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

Duty to notify Secretary of State and Commission N.I.

33.—**[**F20(A1) The Secretary of State must establish and operate a database containing information relating to market surveillance and product safety.

(B1) The database referred to in paragraph (A1) must be designed to enable notifications by enforcement authorities under paragraphs (1), (2) or (4), to be made to the Secretary of State, through the database.**]**

(1) An enforcement authority which has received a notification under regulation 9(1) shall immediately pass **[**F21the information contained in that notification**]** on to the Secretary of State **[**F22through the database referred to in paragraph (A1)**]**, who shall immediately pass it on to the competent authorities appointed for the purpose in the **[**F23relevant states**]** where the product in question is or has been marketed or otherwise supplied to consumers.

(2) Where an enforcement authority takes a measure which restricts the placing on the market of a product, or requires its withdrawal or recall, it shall immediately notify the Secretary of State **[**F24of the action taken through the database referred to in paragraph (A1)**]**, specifying its reasons for taking the action. It shall also immediately notify the Secretary of State of any modification or lifting of such a measure.

(3) On receiving a notification under paragraph (2), or if he takes a measure which restricts the placing on the market **[**F25of Northern Ireland**]** of a product, or requires its withdrawal or recall, the Secretary of State shall (to the extent that such notification is not required under article 12 of the GPS Directive or any other **[**F26NI Protocol obligation**]**) immediately notify the European Commission of the measure taken, specifying the reasons for taking it. The Secretary of State shall also immediately notify the European Commission of any modification or lifting of such a measure. If the Secretary of State considers that the effects of the risk do not or cannot go beyond the territory of **[**F27Northern Ireland**]**, he shall notify the European Commission of the measure concerned insofar as it involves information likely to be of interest to **[**F28relevant states**]** from the product safety standpoint, and in particular if it is in response to a new risk which has not yet been reported in other notifications.

(4) Where an enforcement authority adopts or decides to adopt, recommend or agree with producers and distributors, whether on a compulsory or voluntary basis, a measure or action to prevent, restrict or impose specific conditions on the possible marketing or use of a product (other than a pharmaceutical product) by reason of a serious risk, it shall immediately notify the Secretary of State **[**F29of the measure or action taken through the database referred to in paragraph (A1)**]**. It shall also immediately notify the Secretary of State of any modification or withdrawal of any such measure or action **[**F30through the database referred to in paragraph (A1)**]**.

(5) On receiving a notification under paragraph (4), or if he adopts or decides to adopt, recommend or agree with producers and distributors, whether on a compulsory or voluntary basis, a measure or action to prevent, restrict or impose specific conditions on the possible marketing or use of a product (other than a pharmaceutical product) **[**F31on the market of Northern Ireland**]** by reason of a serious risk, the Secretary of State shall immediately notify the European Commission

of it through the Community Rapid Information System, known as RAPEX. The Secretary of State shall also inform the European Commission without delay of any modification or withdrawal of any such measure or action.

(6) If the Secretary of State considers that the effects of the risk do not or cannot go beyond the territory of **[**F32Northern Ireland**]**, he shall notify the European Commission of the measures or action concerned insofar as they involve information likely to be of interest to **[**F33relevant states**]** from the product safety standpoint, and in particular if they are in response to a new risk which has not been reported in other notifications.

(7) Before deciding to adopt such a measure or take such an action as is referred to in paragraph (5), the Secretary of State may pass on to the European Commission any information in his possession regarding the existence of a serious risk. Where he does so, he must inform the European Commission, within 45 days of the day of passing the information to it, whether he confirms or modifies that information.

(8) Upon receipt of a notification from the European Commission under article 12(2) of the GPS Directive, the Secretary of State shall notify the Commission of the following—

(a) whether the product the subject of the notification has been marketed in **[**F34Northern Ireland**]**;

(b) what measure concerning the product the enforcement authorities in **[**F34Northern Ireland**]** may be adopting, stating the reasons, including any differing assessment of risk or any other special circumstance justifying the decision as to the measure, in particular lack of action or follow-up; and

(c) any relevant supplementary information he has obtained on the risk involved, including the results of any test or analysis carried out.

(9) The Secretary of State shall notify the European Commission without delay of any modification or withdrawal of any measures notified to it under paragraph (8)(b).

(10) In this regulation—

(a) references to a product excludes a second hand product supplied as an antique or as a product to be repaired or reconditioned prior to being used, provided the supplier clearly informs the person to whom he supplies the product to that effect;

(b) "pharmaceutical product" means a product falling within Council Directive 2001/83/EC of the European Parliament and of the Council on the Community code relating to medicinal products for human use F35**[**F36as amended by Directive 2002/98/EC of the European Parliament and of the Council setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components, Commission Directive 2003/63/EC amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, Directive 2004/24/EC of the European Parliament and of the Council amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community code relating to medicinal products for human use and Directive 2004/27/EC of the European Parliament and of the Council amending Directive 2001/83/EC on the Community code relating to medicinal products for human use**]**.

Extent Information

E5 This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales and Scotland only

Textual Amendments

F20 Reg. 33(A1)(B1) inserted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(a)**

F21 Words in reg. 33(1) substituted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(b)(i)**

F22 Words in reg. 33(1) inserted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(b)(ii)**

F23 Words in reg. 33(1) substituted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(b)(iii)**

F24 Words in reg. 33(2) inserted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(c)**

F25 Words in reg. 33(3) inserted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(d)(i)**

F26 Words in reg. 33(3) substituted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(d)(ii)**

F27 Words in reg. 33(3) substituted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(d)(iii)**

F28 Words in reg. 33(3) substituted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(d)(iv)**

F29 Words in reg. 33(4) inserted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(e)(i)**

F30 Words in reg. 33(4) inserted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(e)(ii)**

F31 Words in reg. 33(5) inserted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(f)**

F32 Words in reg. 33(6) substituted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(g)(i)**

F33 Words in reg. 33(6) substituted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(g)(ii)**

F34 Words in reg. 33(8) substituted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(6)(h)**

F35 OJ No L311, 28/11/2001, p.67.

F36 Words in reg. 33(10)(b) inserted (30.10.2005) by The Medicines (Marketing Authorisations Etc.) Amendment Regulations 2005 (S.I. 2005/2759), reg. 1(a), **Sch. para. 18**

Provisions supplemental to regulation 33 E+W+S

34.—(1) A notification under regulation 33(2) **[**F12or (4)**]** to the Secretary of State F13... shall F14... provide all available details and at least the following information—

(a) information enabling the product to be identified,

(b) a description of the risk involved, including a summary of the results of any test or analysis and of their conclusions which are relevant to assessing the level of risk,

(c) the nature and the duration of the measures or action taken or decided on, if applicable,

(d) information on supply chains and distribution of the product, in particular on destination countries.

F15(2) . . . . . .

F15(3) . . . . . .

Extent Information

E2 This version of this provision extends to England and Wales and Scotland only; a separate version has been created for Northern Ireland only

Textual Amendments

F12 Words in reg. 34(1) substituted (E.W.S.) (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 7(a)(i)** (as amended by S.I. 2020/676, regs. 1(1), **2**); 2020 c. 1, **Sch. 5 para. 1(1)**

F13 Words in reg. 34(1) omitted (E.W.S.) (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 7(a)(ii)** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

F14 Words in reg. 34(1) omitted (E.W.S.) (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 7(a)(iii)** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

F15 Reg. 34(2)(3) omitted (E.W.S.) (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 7(b)** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

Provisions supplemental to regulation 33 N.I.

34.—(1) A notification under regulation 33(2) to (6), (8) or (9) to the Secretary of State or the Commission shall be in writing and shall provide all available details and at least the following information—

(a) information enabling the product to be identified,

(b) a description of the risk involved, including a summary of the results of any test or analysis and of their conclusions which are relevant to assessing the level of risk,

(c) the nature and the duration of the measures or action taken or decided on, if applicable,

(d) information on supply chains and distribution of the product, in particular on destination countries.

(2) Where a measure notified to the Commission under regulation 33 seeks to limit the marketing or use of a chemical substance or preparation, the Secretary of State shall provide to the Commission as soon as possible either a summary or the references of the relevant data relating to the substance or preparation considered and to known and available substitutes, where such information is available. The Secretary of State shall also notify the Commission of the anticipated effects of the measure on

consumer health and safety together with the assessment of the risk carried out in accordance with the general principles for the risk evaluation of chemical substances as referred to in article 10(4) of Council Regulation (EEC) No. 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances [F37], in the case of an existing substance, or in article 3(2) of Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances [F38] in the case of a new substance.

(3) Where the Commission carries out an investigation under paragraph 5 of Annex II to the GPS Directive, the Secretary of State shall supply the Commission with such information as it requests, to the best of his ability.

Extent Information

E6 This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales and Scotland only

Textual Amendments

F37 OJ L084, 05/04/1993 p1.

F38 OJ 196, 16/08/1967 P.0001; English Special Edition Series I Chapter 1967 p.0234.

Implementation of Commission decisions E+W+S

[F16]**35.** . . . . . .

Extent Information

E3 This version of this provision extends to England and Wales and Scotland only; a separate version has been created for Northern Ireland only

Textual Amendments

F16 Reg. 35 omitted (E.W.S.) (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 8** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

Implementation of Commission decisions N.I.

35.—(1) This regulation applies where the Commission adopts a decision pursuant to article 13 of the GPS Directive.

(2) The Secretary of State shall **[**[F39]in respect of Northern Ireland**]**—

(a) take such action under these Regulations, or

(b) direct another enforcement authority to take such action under these Regulations

as is necessary to comply with the decision.

(3) Where an enforcement authority serves a safety notice pursuant to paragraph (2), the following provisions of these Regulations shall not apply in relation to that notice, namely regulations 14(3), 15(4) to (6) and 16(1), 16(2)(c) and (d), 16(5) to (7) and 17.

(4) Unless the Commission's decision provides otherwise, export from **[**[F40]the **[**[F41]relevant states**]]** of a dangerous product which is the subject of such a decision is prohibited with effect from the date the decision comes into force.

(5) The enforcement of the prohibition in paragraph (4) shall be treated as an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979 [F42].

(6) The measures necessary to implement the decision shall be taken within 20 days, unless the decision specifies a different period.

(7) The Secretary of State or, where the Secretary of State has directed another enforcement authority to take action under paragraph (2)(b), that enforcement authority shall, within one month, give the parties concerned an opportunity to submit their views and shall inform the Commission accordingly.

Extent Information

E7 This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales and Scotland only

Textual Amendments

F39 Words in reg. 35(2) inserted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(7)(a)**

F40 Words in reg. 35 substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3-6**

F41 Words in reg. 35(4) substituted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(7)(b)**

F42 1979 c. 2.

Market surveillance E+W+S

36. In order to ensure a high level of consumer health and safety protection, enforcement authorities shall within the limits of their responsibility and to the extent of their ability undertake market surveillance of products employing appropriate means and procedures and co-operating with other enforcement authorities [F17]... which may include:

(a) establishment, periodical updating and implementation of sectoral surveillance programmes by categories of products or risks and the monitoring of surveillance activities, findings and results,

(b) follow-up and updating of scientific and technical knowledge concerning the safety of products,

(c) the periodical review and assessment of the functioning of the control activities and their effectiveness and, if necessary revision of the surveillance approach and organisation put in place.

Extent Information

E4 This version of this provision extends to England and Wales and Scotland only; a separate version has been created for Northern Ireland only

Textual Amendments

F17 Words in reg. 36 omitted (E.W.S.) (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 9** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

Market surveillance N.I.

36. In order to ensure a high level of consumer health and safety protection, enforcement authorities shall within the limits of their responsibility and to the extent of their ability undertake market surveillance of products employing appropriate means and procedures and co-operating with other enforcement authorities and competent authorities of other **[**[F43]relevant states**]** which may include:

(a) establishment, periodical updating and implementation of sectoral surveillance programmes by categories of products or risks and the monitoring of surveillance activities, findings and results,

(b) follow-up and updating of scientific and technical knowledge concerning the safety of products,

(c) the periodical review and assessment of the functioning of the control activities and their effectiveness and, if necessary revision of the surveillance approach and organisation put in place.

Extent Information

E8 This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales and Scotland only

Textual Amendments

F43 Words in reg. 36 substituted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(8)**

Complaints procedures

37. An enforcement authority shall maintain and publish a procedure by which complaints may be submitted by any person on product safety and on surveillance and control activities, which complaints shall be followed up as appropriate.

Co-operation between enforcement authorities

38.—(1) It shall be the duty of an enforcement authority to co-operate with other enforcement authorities in carrying out the functions conferred on them by these Regulations. In particular—

(a) enforcement authorities shall share their expertise and best practices with each other;

(b) enforcement authorities shall undertake collaborative working where they have a shared interest.

(2) **[**[F18]The Secretary of State shall inform the European Commission as to the arrangements for the enforcement of these Regulations **[**[F19]in respect of Northern Ireland**]**, including which bodies are enforcement authorities **[**[F19]in respect of Northern Ireland**].]**

Textual Amendments

F18 Reg. 38(2) omitted (E.W.S.) (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 9 para. 10** (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

F19 Words in reg. 38(2) inserted (N.I.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1112), reg. 1(b), **Sch. 3 para. 1(9)**

Information

39.—(1) An enforcement authority shall in general make available to the public such information as is available to it on the following matters relating to the risks to consumer health and safety posed by a product—

(a) the nature of the risk,

(b) the product identification,

and the measures taken in respect of the risk, without prejudice to the need not to disclose information for effective monitoring and investigation activities.

(2) Paragraph (1) shall not apply to any information obtained by an enforcement authority for the purposes of these Regulations which, by its nature, is covered by professional secrecy, unless the circumstances require such information to be made public in order to protect the health and safety of consumers.

(3) The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information)(Amendment and Specification) Order 2003 [M1] is amended—

(i) by the omission of the "General Product Safety Regulations 1994"from Schedules 3 and 4; and

(ii) by the insertion of the "General Product Safety Regulations 2005" at the end of Schedules 3 and 4.

Marginal Citations

M1 SI 2003/1400.

Service of documents

40.—(1) A document required or authorised by virtue of these Regulations to be served on a person may be so served—

(a) on an individual by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address;

(b) on a body corporate other than a limited liability partnership, by serving it in accordance with sub-paragraph (a) on the secretary of the body;

(c) on a limited liability partnership, by serving it in accordance with sub-paragraph (a) on a member of the partnership; or

(d) on a partnership, by serving it in accordance with sub-paragraph (a) on a partner or a person having the control or management of the partnership business;

(e) on any other person by leaving it at his proper address or by sending it by post to him at that address.

(2) For the purposes of paragraph (1), and for the purposes of section 7 of the Interpretation Act 1978 [M2] (which relates to the service of documents by post) in its application to that paragraph, the proper address of a person on whom a document is to be served by virtue of these Regulations shall be his last known address except that—

(a) in the case of a body corporate (other than a limited liability partnership) or its secretary, it shall be the address of the registered or principal office of the body;

(b) in the case of a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership;

(c) in the case of a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership,

and for the purposes of this paragraph the principal officer of a company constituted under the law of a country or territory outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

(3) A document required or authorised by virtue of these Regulations to be served on a person may also be served by transmitting the request by any means of electronic communication to an electronic address (which includes a fax number and an e-mail address) being an address which the person has held out as an address at which he or it can be contacted for the purposes of receiving such documents.

(4) A document transmitted by any means of electronic communication in accordance with the preceding paragraph is, unless the contrary is proved, deemed to be received on the business day after the notice was transmitted over a public electronic communications network.

Marginal Citations

M2 1978 c. 30.

Extension of time for bringing summary proceedings

41.—(1) Notwithstanding section 127 of the Magistrates' Courts Act 1980 [M3] or article 19 of the Magistrates' Courts (Northern Ireland) Order 1981 [M4], in England, Wales and Northern Ireland a magistrates' court may try an information (in the case of England and Wales) or a complaint (in the case of Northern Ireland) in respect of an offence under these Regulations if (in the case of England and Wales) the information is laid or (in the case of Northern Ireland) the complaint is made within three years from the date of the offence or within one year from the discovery of the offence by the prosecutor whichever is the earlier.

(2) Notwithstanding section 136 of the Criminal Procedure (Scotland) Act 1995 [M5], in Scotland summary proceedings for an offence under these Regulations may be commenced within three years from the date of the offence or within one year from the discovery of the offence by the prosecutor whichever is the earlier.

(3) For the purposes of paragraph (2), section 136(3) of the Criminal Procedure (Scotland) Act 1995 shall apply as it applies for the purposes of that section.

Marginal Citations

M3 1980 c. 43.
M4 S.I. 1675/1981 (N.I.26).
M5 1995 c. 46.

Civil proceedings

42. These Regulations shall not be construed as conferring any right of action in civil proceedings in respect of any loss or damage suffered in consequence of a contravention of these Regulations.

Privileged information

43.—(1) Nothing in these Regulations shall be taken as requiring a person to produce any records if he would be entitled to refuse to produce those records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, that they contain a confidential communication made by or to an advocate or solicitor in that capacity, or as authorising a person to take possession of any records which are in the possession of a person who would be so entitled.

(2) Nothing in these Regulations shall be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person's spouse or civil partner.

Evidence in proceedings for offence relating to regulation 9(1)

44.—(1) This regulation applies where a person has given a notification to an enforcement authority pursuant to regulation 9(1).

(2) No evidence relating to that statement may be adduced and no question relating to it may be asked by the prosecution in any criminal proceedings (other than proceedings in which that person is charged with an offence under regulation 20 for a contravention of regulation 9(1)), unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

Transitional provisions

45. Where, in relation to a product, a suspension notice (within the meaning of the 1987 Act) has (by virtue of regulation 11(b) of the General Product Safety Regulations 1994 [M6]) been served under section 14 of the 1987 Act and is in force immediately prior to the coming into force of these Regulations, it shall continue in force notwithstanding the revocation of the General Product Safety Regulations 1994 by these Regulations, and those Regulations shall continue to apply accordingly.

Marginal Citations
M6 S.I. 1994/2328.

Amendments to the Consumer Protection Act 1987

46.—(1) The 1987 Act is amended as follows:

(2) Omit section 10(general safety requirement).

(3) In section 11(1), omit the words " for the purposes of section 10(3) above and ".

(4) In section 13, add the following after subsection (6)—

"(7) A notice may not be given under this section in respect of any aspect of the safety of goods, or any risk or category of risk associated with goods, concerning which provision is contained in the General Product Safety Regulations 2005.".

(5) In section 19(1), in the definition of "safe", omit the words " "safer" and ".

(6) In section 39(5), omit the word " 10, ".

(7) In section 45(1), in the definition of "safety provision", omit the words " the general safety requirement in section 10 above or ".

Consequential amendments to other legislation

47.—(1) Omit " paragraph 15(1) " of Schedule 4 to the Gas Act 1995 [M7].

(2) The Criminal Justice and Police Act 2001 [M8] is amended as follows.

(3) In section 66(4), insert the following after paragraph (n)—

"(o) regulation 22 of the General Product Safety Regulations 2005 (powers of entry and search etc)".

(4) In Schedule 1, insert the following after paragraph 73F [M9]—

"**General Product Safety Regulations 2005**

73G. Each of the powers of seizure conferred by the provisions of regulation 22(4) to (6) of the General Product Safety Regulations 2005 (seizure for the purposes of ascertaining whether safety provisions have been contravened etc).".

(5) In Schedule 2—

(a) insert the following after paragraph 4—

"**4A** Regulation 23(6) of the General Product Safety Regulations 2005 (provision about the testing of seized products) shall apply in relation to items seized under section 50 of this Act in reliance on the power of seizure conferred by regulation 23 of those Regulations as it applies in relation to items seized under regulation 22 of those Regulations.".

(b) insert the following after paragraph 9—

"**9A** Regulation 26 of the General Product Safety Regulations 2005 (compensation for seizure and detention) shall apply in relation to the seizure of items under section 50 of this Act in reliance on the power of seizure conferred by regulation 22 of those Regulations, and the retention of products under regulations 22 of those Regulations.".

Marginal Citations

M7 1995 c. 45.

M8 2001 c. 16, **section 66(4)(n)** was inserted by paras 5(1) and (3) of Sch. 6 to the Human Tissue Act 2004 c. 30.

M9 Paragraph 73F is prospectively inserted by para. 18 of Schedule 16 to the Gambling Act 2005 c. 19.

Status:
Point in time view as at 31/12/2020.

Changes to legislation:
There are currently no known outstanding effects for the The General Product Safety Regulations 2005, PART 4.