

2006 No. 2164

WEIGHTS AND MEASURES

The Measuring Instruments
(Exhaust Gas Analysers)
Regulations 2006

<i>Made - - - - -</i>	<i>4th August 2006</i>
<i>Laid before Parliament</i>	<i>9th August 2006</i>
<i>Coming into force</i>	
<i>regulations 1, 2, 7, 9 and 10 and Part 1 of Schedule 2</i>	<i>7th September 2006</i>
<i>remaining regulations</i>	<i>30th October 2006</i>



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The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

He has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to, and for purposes ancillary to, the regulation of specifications, construction, placing on the market and use of articles, instruments, containers or other equipment intended for weighing, measuring or testing(b).

PART 1
PRELIMINARY

Citation and commencement

1.—(1) These Regulations may be cited as the Measuring Instruments (Exhaust Gas Analysers) Regulations 2006.

(2) This regulation, regulations 2, 7, 9 and 10 and Part 1 of Schedule 2 shall come into force on 7th September 2006.

(3) The remaining regulations shall come into force on 30th October 2006.

(a) 1972 c. 68.
(b) S.I. 1975/427.

Interpretation

2.—(1) In these Regulations—

“authorised representative” means a person who is established in a member State and is authorised by a manufacturer, in writing, to act on his behalf;

“CE marking” means the CE marking referred to in regulation 12;

“the Commission” means the European Commission;

“compliance notice” means a notice served in accordance with regulation 15(2);

“conformity assessment procedure” means any procedure referred to in regulation 6;

“the Directive” means Directive 2004/22/EC of the European Parliament and of the Council of 31st March 2004 on measuring instruments^(a);

“enforcement authority” means any person who is, pursuant to regulation 14, authorised to enforce these Regulations;

“enforcement notice” means a notice served in accordance with regulation 16(2);

“enforcement officer” means a person appointed by the Secretary of State to act on his behalf to enforce Part 2 of these Regulations;

“essential requirements” means the requirements set out in Schedule 1;

“exhaust gas analyser” means a measuring instrument—

(a) designed to determine the volume fractions of specified components of the exhaust gas of a motor vehicle engine with spark ignition at the moisture level of the sample analysed; and

(b) which is used or is to be used—

(i) by a person authorised by the Secretary of State to carry out the testing or inspection of vehicles under Part 2 of the Road Traffic Act 1988^(b); or

(ii) by a local authority designated, by the Secretary of State, as respects England, by the National Assembly for Wales, as respects Wales, and by the Scottish Ministers, as respects Scotland, under Part 4 of the Environment Act 1995^(c), for the purpose of testing vehicle emissions, or by any person acting on behalf of such a local authority for that purpose;

“harmonised standard” means a technical specification adopted by the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) or the European Telecommunications Standards Institute (ETSI) or jointly by two or all of these organisations, at the request of the Commission pursuant to Directive 98/34/EC of the European Parliament and of the Council of 22nd June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society Services^(d), as amended by Directive 98/48/EC^(e), and prepared in accordance with the General Guidelines agreed between the Commission and one or more of CEN, CENELEC and ETSI;

“in writing” includes text that is—

(a) transmitted by electronic means;

(b) received in legible form; and

(c) capable of being used for subsequent reference;

“M marking” means the M marking referred to in regulation 12;

(a) OJ No. L135, 30.4.2004, p.1.

(b) 1988 c.52.

(c) 1995 c.25. S.I. 2002/1808, S.I. 2003/300 (W.42), and S.S.I. 2003/212 were made under the Environment Act 1995, section 87(1)(c), (2) and (5) and Schedule 11, paragraph 5.

(d) OJ No. L204, 21.7.1998, p.37.

(e) OJ No. L217, 5.8.1998, p.18.

“manufacturer” means a person responsible for the conformity of an exhaust gas analyser with these Regulations with a view to either placing it on the market under his own name or putting it into use for his own purposes, or both;

“maximum permissible error” means, in the case of an exhaust gas analyser, when it is placed on the market or put into use, the limit of error determined in accordance with paragraph 17 of Schedule 1;

“normative document” means a document containing technical specifications adopted by the Organisation Internationale de Métrologie Légale (OIML), subject to the procedure stipulated in Article 16.1, the reference of which is published by the Commission in the Official Journal of the European Union pursuant to Article 16.1(b);

“notified body” means—

- (a) the Secretary of State; or
- (b) a United Kingdom notified body; and
- (c) for the purposes of regulations 4(1)(c), 16(1)(b) and 18(6), a person designated by another member State,

who has been notified to the Commission and the other member States pursuant to Article 11.1;

“notified body criteria” means the criteria set out in Part 1 of Schedule 2;

“place on the market” means making available for the first time in a member State an exhaust gas analyser intended for an end user, whether for reward or free of charge;

“put into use” means the first use of an exhaust gas analyser intended for the end user for the purposes for which it was intended;

“relevant national standard” means a standard applicable to an exhaust gas analyser—

- (a) implementing a harmonised standard that has been published in the Official Journal of the European Union C series; and
- (b) the reference of which is published—
 - (i) in the United Kingdom by the Secretary of State; or
 - (ii) in another member State by the competent authority pursuant to the third sub-paragraph of Article 13.1;

“relevant normative document” means a normative document applicable to an exhaust gas analyser, the reference of which is published—

- (a) in the United Kingdom by the Secretary of State; or
- (b) in another member State by the competent authority pursuant to the third sub-paragraph of Article 13.2; and

“United Kingdom notified body” means a person designated under regulation 7.

(2) In these Regulations, a reference to a member State includes Norway, Iceland and Liechtenstein^(a).

(3) References in these Regulations to an Article, Annex or a part of an Annex are references to an Article of, or an Annex or a part of an Annex to, the Directive.

Application

3.—(1) Subject to paragraphs (2) and (3), these Regulations apply to an exhaust gas analyser which is—

- (a) intended for use for the protection of the environment and public health; and
- (b) first placed on the market or put into use on or after 30th October 2006.

^(a) The application of Directive 2004/22/EC (OJ No. L135, 30.4.2004, p.1) was extended in 2005 to the European Economic Area by Decision No. 31/205 (OJ No. L198, 28.7.2005, p.20).

- (2) These Regulations do not apply to an exhaust gas analyser—
- (a) in respect of which a certificate of approval has been granted before 30th October 2006 and is in force; and
 - (b) which is first passed as fit for use for the protection of the environment and public health pursuant to the requirements of OIML R99/ISO 3930(a).

(3) These Regulations do not apply to an exhaust gas analyser which is not compliant with the essential requirements and which is displayed or presented at a trade fair, exhibition or demonstration, if a sign displayed visibly on or near the instrument clearly indicates that the instrument—

- (a) is not compliant with those requirements; and
- (b) cannot be acquired or used until it is made compliant with those requirements by the manufacturer.

PART 2

PLACING ON THE MARKET AND PUTTING INTO USE OF EXHAUST GAS ANALYSERS

Requirements for placing on the market and putting into use

4.—(1) No person shall place on the market or put into use an exhaust gas analyser unless the following requirements, or the corresponding requirements of the Directive as implemented under the law of another member State, are met—

- (a) the instrument is compliant with the essential requirements;
- (b) the manufacturer has demonstrated its compliance with the essential requirements in accordance with regulation 5; and
- (c) the instrument has affixed to it the CE marking, the M marking and the identification number of the notified body which carried out the conformity assessment procedure in respect of the instrument.

(2) A person who fails to comply with the requirements of paragraph (1) shall be guilty of an offence and any exhaust gas analyser to which the offence relates shall be liable to be forfeited.

Compliance with the essential requirements

5.—(1) A manufacturer may demonstrate that an exhaust gas analyser is compliant with the essential requirements by—

- (a) using any technical solution that is compliant with the essential requirements;
- (b) correctly applying solutions set out in the relevant national standard; or
- (c) correctly applying solutions set out in the relevant normative document,

and selecting and following one of the conformity assessment procedures.

(2) An exhaust gas analyser which is compliant with the relevant national standard or relevant normative document shall be presumed to be compliant with the essential requirements.

(3) Where the exhaust gas analyser is compliant only in part with the relevant national standard or relevant normative document, it shall be presumed to be compliant only with that part of the essential requirements which corresponds to the element of the relevant national standard or relevant normative document with which the instrument is compliant.

(a) OIML, the Organisation Internationale de Métrologie Légale, is an intergovernmental body dedicated to the harmonisation of the national metrology regulations of its members. The OIML R99 standard, edition 2000E, was developed by the OIML subcommittee TC16/SC 1, Air pollution. It was approved for final publication by OIML in 1997 and was submitted at the international conference in 2000. The OIML R99 standard is the same as ISO standard 3930. The Commission has identified and published this OIML standard pursuant to Article 16.

(4) Where an exhaust gas analyser includes or is connected to a device which is not used for the protection of the environment and public health—

- (a) that device shall not be subject to the essential requirements; and
- (b) the instrument may be considered to be compliant with the essential requirements notwithstanding that the compliance of that device with the essential requirements has not been established.

Conformity assessment procedures

6.—(1) The conformity assessment procedures are the procedures as follows—

- (a) B and F;
- (b) B and D; and
- (c) H1.

(2) The manufacturer or his authorised representative shall provide to the notified body carrying out the relevant conformity assessment procedure the technical documentation set out in Schedule 3.

(3) In this regulation—

- (a) “B” means type examination, as set out in Annex B;
- (b) “D” means declaration of conformity to type based on quality assurance of the production process, as set out in Annex D;
- (c) “F” means declaration of conformity to type based on product verification, as set out in Annex F; and
- (d) “H1” means declaration of conformity based on full quality assurance plus design examination, as set out in Annex H1.

Designation of United Kingdom notified bodies

7.—(1) The Secretary of State may, on the application of a person, designate that person to be a United Kingdom notified body.

(2) The Secretary of State shall not make a designation under paragraph (1) unless he is satisfied that the person meets the notified body criteria.

(3) A person who meets the criteria laid down in a national standard shall be presumed to meet that part of the notified body criteria which corresponds to the criteria in the national standard.

(4) A designation under paragraph (1)—

- (a) shall be in writing;
- (b) may be made subject to such conditions as may be specified in the designation, which may include conditions which—
 - (i) are to apply upon or following termination of the designation;
 - (ii) require the use of test equipment for the purpose of conformity assessment appropriate to the exhaust gas analyser being assessed; and
 - (iii) limit the description of any exhaust gas analyser for which the person is designated;
- (c) subject to regulation 10, may last for such period as may be specified in the designation;
- (d) shall specify the conformity assessment procedures and specific tasks (which may be framed by reference to any circumstances) which the person has been designated to carry out; and
- (e) may include a requirement to publish from time to time the scale of fees which the person charges pursuant to regulation 11 or such information about the basis of calculation of such fees as may be specified.

(5) In exercising the power conferred on him by paragraph (1), the Secretary of State may (in addition to the matters of which he is required to satisfy himself pursuant to paragraph (2)) have regard to any matter appearing to him to be relevant.

(6) For the purposes of paragraph (3), “national standard” means a standard applicable to the designation of notified bodies—

- (a) implementing a harmonised standard that has been published in the Official Journal of the European Union; and
- (b) the reference of which is published—
 - (i) in the United Kingdom by the Secretary of State; or
 - (ii) in another member State by the competent authority pursuant to Article 11.2.

Functions of notified bodies

8. A notified body shall carry out the functions set out in Part 2 of Schedule 2.

Provisions supplemental to regulation 7

9.—(1) The Secretary of State shall, from time to time, publish a list of notified bodies indicating, in the case of each United Kingdom notified body, the description of any exhaust gas analyser in respect of which that notified body is designated; and such a list may include information concerning any condition to which the designation of any United Kingdom notified body is subject.

(2) The Secretary of State shall, from time to time, carry out an inspection of each United Kingdom notified body with a view to verifying that it—

- (a) meets the notified body criteria;
- (b) complies with any condition to which its designation is subject; and
- (c) complies with these Regulations,

but, unless it appears to him that there are circumstances which make it necessary or expedient to do so, he shall not carry out an inspection within two years from the date of designation under regulation 7 or of any later inspection under this paragraph.

Variation and termination of designations

10.—(1) The Secretary of State may vary a designation made under regulation 7 if—

- (a) the United Kingdom notified body so requests; or
- (b) it appears to him necessary or expedient to do so.

(2) The Secretary of State may terminate the designation made under regulation 7—

- (a) on the expiry of 90 days’ notice in writing at the request of the United Kingdom notified body;
- (b) if it appears to him that any condition of the designation is not complied with; or
- (c) if in his opinion the United Kingdom notified body ceases to satisfy the notified body criteria.

(3) Where the Secretary of State is minded to—

- (a) vary a designation pursuant to paragraph (1)(b); or
- (b) terminate a designation pursuant to paragraph (2)(b) or (c),
he shall—
 - (i) give notice in writing to the United Kingdom notified body of his reasons; and
 - (ii) give that notified body the opportunity to make representations within a period of 21 days from the date of that notice and consider any representations made to him within that period.

- (4) If a designation is terminated under paragraph (2), the Secretary of State may—
- (a) give such directions (either to the United Kingdom notified body the subject of the termination or to another United Kingdom notified body) for the purposes of making arrangements for the determination of outstanding applications as he considers appropriate; and
 - (b) notwithstanding sub-paragraph (a), authorise another United Kingdom notified body to take over the functions of the United Kingdom notified body the subject of the termination in respect of such cases as he may specify.

Fees

11.—(1) A United Kingdom notified body may charge such fees in connection with, or incidental to, the carrying out of conformity assessment procedures or specific tasks as it may determine.

(2) The fees referred to in paragraph (1) shall not exceed the following—

- (a) the costs incurred or to be incurred by the United Kingdom notified body in performing the relevant function; 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 that notified body on behalf of the applicant; and
 - (ii) the commercial rate normally charged on account of profit for that work or similar work.

(3) The power in paragraph (1) includes the power to require the payment of fees or a reasonable estimate of such fees in advance of carrying out the work requested by the applicant.

(4) Where any fees payable to a United Kingdom notified body pursuant to this regulation remain unpaid 28 days after either the work has been completed or payment of the fees has been requested in writing, whichever is the later, that notified body may by 14 days' notice in writing provide that, unless the fees are paid before the expiry of the notice, the certificate or notification appropriate to the relevant conformity assessment procedure may be suspended until payment of the fees has been received.

Marking and identification requirements

12.—(1) Where an exhaust gas analyser is compliant with the essential requirements—

- (a) the manufacturer shall affix the CE marking and the M marking to the instrument; and
- (b) the notified body which carries out the conformity assessment procedure in respect of that instrument shall affix its identification number to the instrument, or may agree that the manufacturer shall do so on its behalf.

(2) Any other marking may be affixed to the exhaust gas analyser provided that the visibility and legibility of the CE marking, the M marking and the identification number of the notified body are not reduced.

(3) For the purposes of paragraph (1)—

- (a) the CE marking means the symbol “CE” which shall be compliant with the requirements of paragraphs 1, 4 and 5 of Schedule 4;
- (b) the M marking means the capital letter “M” which shall be compliant with the requirements of paragraphs 2, 4 and 5 of Schedule 4; and
- (c) the identification number of the notified body shall be compliant with the requirements of paragraphs 3, 4 and 5 of Schedule 4.

Conformity with other directives

13.—(1) Where an exhaust gas analyser falls within the scope of other directives which provide for the affixing of the CE marking, the affixing of the CE marking under these Regulations shall indicate that the instrument is also presumed to be compliant with the requirements of those other directives.

(2) Where paragraph (1) applies, the publication reference of such other directives in the Official Journal of the European Union must be given in the documents, notices or instructions required to accompany the exhaust gas analyser.

PART 3

ENFORCEMENT

Enforcement authority

14.—(1) The Secretary of State may enforce Part 2 of these Regulations and for that purpose may appoint any person to act on his behalf.

(2) No proceedings for an offence under these Regulations may be instituted in England and Wales except by or on behalf of an enforcement authority.

(3) Nothing in these Regulations shall authorise an enforcement authority to bring proceedings in Scotland for an offence.

Compliance notice procedure

15.—(1) Where an enforcement authority establishes that, in the case of an exhaust gas analyser that has been placed on the market or put into use, the CE marking or the M marking has, or both have, been affixed unduly, the following provisions of this regulation shall have effect.

(2) The enforcement authority shall serve a compliance notice on the manufacturer or his authorised representative which shall—

- (a) be in writing;
- (b) describe the exhaust gas analyser to which it relates in a manner sufficient to identify that instrument;
- (c) state that the enforcement authority is of the opinion that the CE marking or the M marking has, or both have, been affixed unduly to the exhaust gas analyser and give reasons for its opinion;
- (d) require the person on whom the notice is served to end the infringement under conditions specified in the notice;
- (e) specify the date, being not less than 21 days from the date of the notice, by which the infringement must be ended; and
- (f) warn that person that, where the non-conformity continues beyond the date specified in sub-paragraph (e), the enforcement authority may take further action under regulation 16 in respect of that exhaust gas analyser.

(3) For the purposes of paragraph (1)—

- (a) the CE marking shall be considered to have been affixed unduly if it is not compliant with the requirements of regulation 12(3)(a); and
- (b) the M marking shall be considered to have been affixed unduly if it is not compliant with the requirements of regulation 12(3)(b).

(4) Where a compliance notice is served by an enforcement authority other than the Secretary of State, it shall, at the same time as it serves that notice, send a copy to the Secretary of State.

Immediate enforcement action

- 16.—(1) Where an enforcement authority has reasonable grounds for considering that—
- (a) the manufacturer or his authorised representative has failed to comply with a compliance notice;
 - (b) an exhaust gas analyser, which is placed on the market or put into use, does not bear one or more of the CE marking, the M marking and the identification number of the notified body which carried out the conformity assessment procedure in respect of that instrument; or
 - (c) an exhaust gas analyser which bears the marking and identification requirements referred to in sub-paragraph (b) does not meet the essential requirements when placed on the market, or properly installed and put into use in accordance with the manufacturer's instructions,

the following provisions of this regulation shall have effect.

(2) The enforcement authority shall serve an enforcement notice on the manufacturer or his authorised representative which shall—

- (a) be in writing;
- (b) describe the exhaust gas analyser to which it relates in a manner sufficient to identify that instrument;
- (c) specify, with reasons, the respects in which, in the opinion of the enforcement authority, the requirements of these Regulations have not been complied with;
- (d) specify the date, being not less than 21 days from the date of the notice, by which the person to whom the notice is given is required to comply with it; and
- (e) inform that person of the judicial remedies available to him and of the time limits to which those remedies are subject.

(3) A notice under paragraph (2) may—

- (a) require the exhaust gas analyser to be withdrawn from the market; or
- (b) prohibit or restrict the placing on the market or putting into use of the exhaust gas analyser; and
- (c) specify that unless steps are taken which ensure—
 - (i) that the exhaust gas analyser is compliant with the requirements of these Regulations; or
 - (ii) that the manufacturer or his authorised representative acts as required under sub-paragraph (a) or (b),

any certificate or notification, issued by a notified body in accordance with the relevant conformity assessment procedure applicable to the exhaust gas analyser that the instrument satisfies the essential requirements, may be withdrawn by that notified body.

(4) Where an enforcement notice is served by an enforcement authority other than the Secretary of State, it shall, at the same time as it serves that notice, send a copy to the Secretary of State.

(5) In the case of a certificate or notification referred to in paragraph (3)—

- (a) which is granted by a United Kingdom notified body, if the Secretary of State is of the opinion that consideration ought to be given to whether the certificate or notification should be withdrawn, he shall inform that notified body of that fact; and
- (b) which is granted under the law of another member State, if the Secretary of State is of the opinion that consideration ought to be given to whether the certificate or notification should be withdrawn, he shall inform the relevant competent authority of that fact.

Review by the Secretary of State

17.—(1) Where a person is aggrieved by a compliance notice or an enforcement notice served by an enforcement authority other than the Secretary of State, that person may apply to the Secretary of State to review such notice.

(2) An application under paragraph (1) shall—

- (a) be in writing;
- (b) state the grounds on which the application is made; and
- (c) be sent to the Secretary of State within 21 days from the date of the notice referred to in paragraph (1).

(3) The Secretary of State may—

- (a) hold an inquiry in connection with the notice which is the subject of his review; and
- (b) appoint an assessor for the purposes of assisting him with his review.

(4) The Secretary of State shall, within a reasonable time, inform the aggrieved person and the enforcement authority referred to in paragraph (1) in writing of his decision whether to uphold the notice served by that authority, together with reasons for his decision.

(5) Where the Secretary of State does not uphold any notice referred to in paragraph (1), he shall give instructions for the withdrawal of that notice.

Unauthorised application of authorised marks

18.—(1) Subject to paragraph (2), a person shall be guilty of an offence if, in the case of an exhaust gas analyser, he—

- (a) affixes an authorised mark to the instrument otherwise than in accordance with these Regulations;
- (b) alters or defaces an authorised mark affixed to the instrument;
- (c) removes an authorised mark affixed to the instrument; or
- (d) affixes any other marking to the instrument which is likely to deceive any person as to the meaning or form, or both, of an authorised mark.

(2) Where the alteration or defacement of an authorised mark is occasioned solely—

- (a) in the course of the adjustment or repair of an exhaust gas analyser by a person regularly engaged in the business of repair of such instruments, or by his authorised agent; or
- (b) by an enforcement officer in the carrying out of any of his functions under these Regulations,

that person or his authorised agent, or enforcement officer shall not be guilty of an offence under paragraph (1)(b).

(3) A person shall be guilty of an offence if he places on the market, puts into use or uses for the protection of the environment and public health an exhaust gas analyser—

- (a) which, to his knowledge, bears—
 - (i) an authorised mark affixed otherwise than in accordance with these Regulations;
 - (ii) an authorised mark that has been altered or defaced otherwise than in the circumstances referred to in paragraph (2); or
 - (iii) any marking which is likely to deceive any person as to the meaning or form, or both, of an authorised mark; or
- (b) from which, to his knowledge, an authorised mark has been removed.

(4) An exhaust gas analyser in respect of which an offence under this regulation has been committed and any implement used in the commissioning of the offence shall be liable to be forfeited.

(5) A reference in this regulation to other provisions of these Regulations includes a reference to corresponding provisions under the laws of other member States.

(6) In this regulation, “authorised mark” means the CE marking, the M marking or the identification number of the notified body which carried out the conformity assessment procedure in respect of the exhaust gas analyser.

Powers of entry and inspection

19.—(1) Subject to the production if so requested of his credentials, an enforcement officer may for the purposes of these Regulations, at all reasonable times—

- (a) inspect and test any exhaust gas analyser in such manner as he considers appropriate;
- (b) inspect and take copies of any document relating to an exhaust gas analyser; and
- (c) enter any premises at which he has reasonable cause to believe there to be an exhaust gas analyser, not being premises used only as a private dwelling house.

(2) Subject to the production if so requested of his credentials, an enforcement officer may, at any time, seize and detain—

- (a) an exhaust gas analyser which he has reasonable cause to believe is liable to be forfeited under these Regulations; and
- (b) any document or goods which he has reason to believe may be required as evidence in proceedings for an offence under these Regulations.

(3) If a justice of the peace, on written information on oath—

- (a) is satisfied that there are reasonable grounds to believe that any exhaust gas analyser or document as is mentioned in paragraph (1) or (2) is on any premises, or that an offence under these Regulations has been, is being or is about to be committed on any premises; and
- (b) is also satisfied either that—
 - (i) admission to the premises has been or is likely to be refused, and that notice of intention to apply for a warrant has been given to the occupier; or
 - (ii) an application for admission, or the giving of such a notice would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise the enforcement officer to enter the premises, if need be by force.

(4) In the application of paragraph (3) to Scotland, “justice of the peace” includes a sheriff and references to written information on oath shall be construed as references to evidence on oath.

(5) An enforcement officer entering any premises by virtue of this regulation may take such other persons and such equipment as may appear to him necessary, and on leaving such premises which he has entered by virtue of a warrant under paragraph (3), being premises which are unoccupied or the occupier of which is temporarily absent, he shall leave them as effectively secured against a trespasser as he found them.

(6) If an enforcement officer or other person who enters any work-place by virtue of this regulation discloses to any person any information obtained by him in the work-place with regard to any secret manufacturing process or trade secret, he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.

(7) It shall not be an offence under paragraph (6) for a person to disclose information in circumstances where—

- (a) the person from whom the information was received has consented to its disclosure; or
- (b) the information is disclosed more than 50 years after it was received.

(8) Nothing in this regulation shall authorise any person to stop any vehicle on a highway.

(9) In this regulation, “credentials” means evidence of appointment or designation as an enforcement officer.

Obstruction of enforcement officer

20.—(1) A person shall be guilty of an offence if he—

- (a) wilfully obstructs an enforcement officer in the execution of any of his functions under these Regulations; or
- (b) without reasonable cause fails to give that officer any assistance or information which the officer has reasonably required of him for the purpose of the performance by the enforcement authority of its functions under these Regulations.

(2) A person shall be guilty of an offence if, in giving an enforcement officer such information as is mentioned in paragraph (1)(b), that person gives any information which he knows to be false.

Penalties for offences

21. A person guilty of an offence under Part 2 or Part 3 shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

22.—(1) Subject to the following provisions of this regulation, in proceedings against a person for an offence under these Regulations, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where, in proceedings against a person for such an offence, the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence, unless, not less than 7 clear days before the hearing of the proceedings (or, in Scotland, the trial diet), he has served a notice in accordance with paragraph (3) on the person bringing the proceedings.

(3) A notice under this regulation shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows it was reasonable in all the circumstances for him to have relied on the information, having regard in particular to—

- (a) the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) whether he had any reason to disbelieve the information.

Liability of persons other than the principal offender

23.—(1) Where the commission by a person of an offence under these Regulations is due to the act or default of another person in the course of any business of his, that other person shall be guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person.

(2) Where a body corporate commits an offence and it is proved that the offence was committed—

- (a) with the consent or connivance of an officer of the body corporate; or
- (b) as a result of the negligence of an officer of the body corporate,

the officer, as well as the body corporate, shall be guilty of the offence.

(3) In paragraph (2), a reference to an officer of a body corporate includes a reference to—

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b) a person purporting to act as a director, manager, secretary or other similar officer; and
- (c) if the affairs of the body corporate are managed by its members, a member.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland, and in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

PART 4

MISCELLANEOUS AND SUPPLEMENTAL

Service of documents

24.—(1) Any document required or authorised by these Regulations to be served on a person may be so served—

- (a) 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) if the person is a body corporate, by serving it in accordance with sub-paragraph (a) on the secretary or clerk of that body corporate; or
- (c) if the person is a partnership, by serving it in accordance with sub-paragraph (a) on a partner or on a person having control or management of the partnership business.

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

- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate; and
- (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership,

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

Savings for certain privileges

25.—(1) Nothing in these Regulations shall be taken as requiring a person to produce any documents or records if he would be entitled to refuse to produce those documents or 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 documents or 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.

(3) Section 14(1) of the Civil Evidence Act 1968(b) (which relates to the privilege against self-incrimination) shall apply to the right conferred by paragraph (2) as it applies to the right described in sub-section (1) of that section; but this paragraph does not extend to Scotland.

(a) 1978 c.30.
(b) 1968 c. 64.

Adaptation for Northern Ireland

26. In their application to Northern Ireland, these Regulations shall have effect subject to Schedule 5.

Signed by authority of the Secretary of State

4th August 2006

S. J. Ladyman
Minister of State
Department for Transport

SCHEDULE 1

Regulation 2(1)

ESSENTIAL REQUIREMENTS

1. The essential requirements are the relevant requirements relating to exhaust gas analysers contained in Annex I and Annex MI-010 set out in this Schedule.

Definitions

2. In these Regulations—

“climatic environments” means the conditions in which exhaust gas analysers may be used;

“critical change value” means the value at which the change in the measurement result is considered undesirable;

“disturbance” means an influence quantity having a value within the limits specified in the appropriate requirement but outside the specified rating conditions of the exhaust gas analyser. An influence quantity is a disturbance if for that influence quantity the rated operating conditions are not specified.

“exhaust gas components” means the components determined by an exhaust gas analyser, namely—

- (a) carbon monoxide (CO);
- (b) carbon dioxide (CO₂);
- (c) oxygen (O₂); and
- (d) hydrocarbons (HC) of which the content has to be expressed as concentration of n-hexane (C₆H₁₄), measured with near-infrared absorption techniques, and

the volume fractions of the gas components are expressed as a percentage (%vol) for CO, CO₂ and O₂ and in parts per million (ppm vol);

“influence quantity” means a quantity that is not the measurand but that affects the result of measurement;

“lambda” means a dimensionless value representative of the burning efficiency of an engine in terms of air/fuel ratio in the exhaust gases;

“measurand” means the particular quantity subject to measurement; and

“rated operating conditions” mean the values for the measurand and influence quantities making up the normal working conditions of an exhaust gas analyser.

Allowable Errors

3.—(1) Under rated operating conditions and in the absence of a disturbance, the error of measurement shall not exceed the maximum permissible error (MPE) value as set out in paragraph 17.

(2) Unless stated otherwise, MPE is expressed as a bilateral value of the deviation from the true measurement value.

(3) Under rated operating conditions and in the presence of a disturbance, the performance requirement shall be as set out in paragraph 18(2).

(4) Where the exhaust gas analyser is intended to be used in a specified permanent continuous electromagnetic field the permitted performance during the radiated electromagnetic field-amplitude modulated test shall be within MPE.

(5) The manufacturer shall specify the climatic, mechanical and electromagnetic environments in which the exhaust gas analyser is intended to be used, power supply and other influence quantities likely to affect its accuracy, taking account of the requirements in this Schedule.

(a) Climatic environments—

The manufacturer shall the temperature range. The minimum temperature range is 30°C and shall be within the upper temperature limit of 70°C and the lower temperature limit of -40°C. The manufacturer shall indicate whether the exhaust gas analyser is designed for condensing or non-condensing humidity as well as the intended location for the instrument, that is open or closed.

(b) Mechanical environments—

(i) M1: This class applies to exhaust gas analysers used in locations with vibration and shocks of low significance, for example for instruments fastened to light supporting structures subject to negligible vibrations and shocks transmitted from local blasting or pile-driving activities and slamming doors.

(ii) The following influence quantities shall be considered in relation with mechanical environments—

(aa) vibration;

(bb) mechanical shock.

(c) Electromagnetic environments—

(i) Electromagnetic environments are classified into classes E1 and E2, as follows—

E1: This class applies to exhaust gas analysers used in locations with electromagnetic disturbances corresponding to those likely to be found in residential, commercial and light industrial buildings.

E2: This class applies to exhaust gas analysers used in locations with electromagnetic disturbances corresponding to those likely to be found in other industrial buildings.

(ii) The following influence quantities shall be considered in relation with electromagnetic environments—

(aa) voltage interruptions;

(bb) short voltage reductions;

(cc) voltage transients on supply lines and/or signal lines;

(dd) electrostatic discharges;

- (ee) radio frequency electromagnetic fields;
 - (ff) conducted radio frequency electromagnetic fields on supply lines and/or signal lines;
 - (gg) surges on supply lines or signal lines or both.
- (6) Other influence quantities to be considered, where appropriate, are—
- (a) voltage variation;
 - (b) mains frequency variation;
 - (c) power frequency magnetic fields;
 - (d) any other quantity likely to influence in a significant way the accuracy of the exhaust gas analyser.
- (7) When carrying out the tests as envisaged in these Regulations, the following paragraphs apply—
- (a) The basic rules for testing and the determination of errors are—
 - (i) the essential requirements specified in sub-paragraphs (1) to (4) shall be verified for each relevant influence quantity. These essential requirements apply when each influence quantity is applied and its effect evaluated separately, all other influence quantities being kept relatively constant at their reference value; and
 - (ii) the metrological tests shall be carried out during or after the application of the influence quantity, whichever condition corresponds to the normal operational status of the exhaust gas analyser when that influence quantity is likely to occur.
 - (b) In relation to ambient humidity—
 - (i) according to the climatic operating environment in which the exhaust gas analyser is intended to be used either the damp heat-steady state (non-condensing) or damp heat cyclic (condensing) test may be appropriate; and
 - (ii) the damp heat cyclic test is appropriate where condensation is important or when penetration of vapour will be accelerated by the effect of breathing. In conditions where non-condensing humidity is a factor the damp-heat steady state is appropriate.

Reproducibility

4. The application of the same measurand in a different location or by a different user, all other conditions being the same, shall result in the close agreement of successive measurements. The difference between the measurement results shall be small when compared with the MPE.

Repeatability

5. The application of the same measurand under the same conditions of measurement shall result in the close agreement of successive measurements. The difference between the measurement results shall be small when compared with the MPE.

Discrimination and Sensitivity

6. An exhaust gas analyser shall be sufficiently sensitive and the discrimination threshold shall be sufficiently low for the intended measurement task.

Durability

7. An exhaust gas analyser shall be designed to maintain an adequate stability of its metrological characteristics over a period of time estimated by the manufacturer, provided that it is properly installed, maintained and used according to the manufacturer's instruction when in the environmental conditions for which it is intended.

Reliability

8. An exhaust gas analyser shall be designed to reduce as far as possible the effect of a defect that would lead to an inaccurate measurement result, unless the presence of such a defect is obvious.

Suitability

9.—(1) An exhaust gas analyser shall have no feature likely to facilitate fraudulent use, whereas possibilities for unintentional misuse shall be minimal.

(2) An exhaust gas analyser shall be suitable for its intended use taking account of the practical working conditions and shall not require unreasonable demands of the user in order to obtain a correct measurement result.

(3) Where an exhaust gas analyser is designed for the measurement of values of the measurand that are constant over time, the instrument shall be insensitive to small fluctuations of the value of the measurand, or shall take appropriate action.

(4) An exhaust gas analyser shall be robust and its materials of construction shall be suitable for the conditions in which it is intended to be used.

(5) An exhaust gas analyser shall be designed so as to allow the control of the measuring tasks after the instrument has been placed on the market and put into use. If necessary, special equipment or software for this control shall be part of the instrument. The test procedure shall be described in the operation manual.

(6) When an exhaust gas analyser has associated software which provides other functions besides the measuring function, the software that is critical for the metrological characteristics shall be identifiable and shall not be inadmissibly influenced by the associated software.

Protection against corruption

10.—(1) The metrological characteristics of an exhaust gas analyser shall not be influenced in any inadmissible way by the connection to it of another device, by any feature of the connected device itself or by any remote device that communicates with the instrument.

(2) A hardware component that is critical for metrological characteristics shall be designed so that it can be secured. Security measures foreseen shall provide for evidence of an intervention.

(3) Software that is critical for metrological characteristics shall be identified as such and shall be secured.

(4) Software identification shall be easily provided by the exhaust gas analyser.

(5) Evidence of a software intervention shall be available for a reasonable period of time.

(6) Measurement data, software that is critical for measurement characteristics and metrologically important parameters stored or transmitted shall be adequately protected against accidental or intentional corruption.

Information to be borne by and to accompany the exhaust gas analyser

11.—(1) An exhaust gas analyser shall bear the following inscriptions—

- (a) manufacturer's mark or name;
- (b) information in respect of its accuracy,

plus, when applicable:

- (c) information in respect of the conditions of use;
- (d) measuring capacity;
- (e) measuring range;
- (f) identity marking;
- (g) number of the EC-type examination certificate or the EC design examination certificate;

(h) information whether or not additional devices providing metrological results comply with these Regulations.

(2) The exhaust gas analyser shall be accompanied by information on its operation, unless the simplicity of the instrument makes this unnecessary. Information shall be easily understandable and shall include where relevant—

- (a) rated operating conditions;
- (b) mechanical and electromagnetic environment classes;
- (c) the upper and lower temperature limit, whether condensation is possible or not, open or closed location;
- (d) instructions by installation, maintenance, repairs, permissible adjustments;
- (e) instructions for correct operation and any special conditions of use;
- (f) conditions for compatibility with interfaces or other measuring instrument.

(3) Groups of identical exhaust gas analysers used in the same location do not necessarily require individual instruction manuals.

(4) The scale interval for a measured value shall be in the form 1×10^n , 2×10^n or 5×10^n , where n is any integer or zero. The unit of measurement or its symbol shall be shown close to the numerical value.

(5) The units of measurement used and their symbols shall be in accordance with the provisions of Community legislation on units of measurement and their symbols.

(6) All marks and inscriptions required under any requirement shall be clear, non-erasable, unambiguous and non-transferable.

Indication of result

12.—(1) Indication of the result shall be by means of a display or hard copy.

(2) The indication of any result shall be clear and unambiguous and accompanied by such marks and inscriptions necessary to inform the user of the significance of the result. Easy reading of the presented result shall be permitted under normal conditions of use. Additional indications may be shown provided they cannot be confused with the metrologically controlled indications.

(3) In the case of hard copy the print or record shall also be easily legible and non-erasable.

Further processing of data to conclude the trading transaction

13.—(1) An exhaust gas analyser shall record by a durable means the measurement result accompanied by information to identify the particular transaction, when—

- (a) the measurement is non-repeatable; and
- (b) the exhaust gas analyser is normally intended for use in the absence of one of the trading parties.

(2) Additionally, a durable proof of the measurement result and the information to identify the transaction shall be available on request at the time the measurement is concluded.

Conformity evaluation

14. An exhaust gas analyser shall be designed so as to allow ready evaluation of its conformity with the appropriate requirements of these Regulations.

Instrument Classes

15. There are two classes (0 and 1) being defined for exhaust gas analysers and the relevant minimum measuring ranges for these classes are shown in Table 1.

Table 1

Classes and measuring ranges

Parameter	Classes 0 and 1
CO fraction	from 0 to 5 % vol
CO ₂ fraction	from 0 to 16 % vol
HC fraction	from 0 to 2 000 ppm vol
O ₂ fraction	from 0 to 21 % vol
λ	From 0.8 to 1.2

Rated operating conditions

16.—(1) The values of the operating conditions shall be specified by the manufacturer, as follows.

(2) For the electrical power influence quantities, the limits of the DC voltage supply.

(3) For the ambient pressure, the minimum and the maximum values of the ambient pressure are for both classes: $p_{\min} \leq 860$ hPa, $p_{\max} \geq 1\,060$ hPa.

MPE

17. The MPEs are defined as follows—

- (a) for each of the fractions measured, the maximum error value permitted under rated operating conditions according to paragraph 3(1) and (2) of this Schedule is the greater of the two values for the relevant class shown in Table 2, with absolute values being expressed in % vol or ppm vol, percentage values are percent of the true value;

Table 2

MPEs

Parameter	Class 0	Class 1
CO fraction	± 0.03 % vol ± 5 %	± 0.06 % vol ± 5 %
CO ₂ fraction	± 0.05 % vol ± 5 %	± 0.5 % vol ± 5 %
HC fraction	± 10 ppm vol ± 5 %	± 12 ppm vol ± 5 %
O ₂ fraction	± 0.1 % vol ± 5 %	± 0.1 % vol ± 5 %

- (b) the MPE on lambda calculation is 0.3 %. The conventional true value is calculated according to the formula defined in point 5.3.7.3 of Annex 1 of 98/69/EC of the European Parliament and the Council relating to measures to be taken against air pollution by emissions from motor vehicles and amending Council Directive 70/220/EEC(a); and

(c) for this purpose, the values displayed by the instrument are used for calculation.

Permissible effect of disturbance

18.—(1) For each of the volume fractions measured by the instrument, the critical change value is equal to the MPE for the parameter concerned.

(2) The effect of an electromagnetic disturbance shall be such that either—

- (a) the change in the measurement result is not greater than the critical change value laid down in sub-paragraph (1); or

(a) OJ No. L350, 28.12.1998, p.17.

- (b) the presentation of the measurement result is such that it cannot be taken for a valid result.

Other requirements

19.—(1) The resolution shall be equal to or of one order of magnitude higher than the values shown in Table 3.

Table 3

Resolution

	CO	CO ₂	O ₂	HC
Class 0 and class 1	0.01 % vol	0.1 % vol	(¹)	1 ppm vol
⁽¹⁾ 0.01 % vol for measurand values below or equal to 4 % vol, otherwise 0.1 % vol.				

The lambda value shall be displayed with a resolution of 0.001.

(2) The standard deviation of 20 measurements shall not be greater than one third of the modulus of the MPE for each applicable gas volume fraction.

(3) For measuring CO, CO₂ and HC, the instrument, including the specified gas handling system, must indicate 95 % of the final value as determined with calibration gases within 15 seconds after changing from a gas with zero content, such as fresh air. For measuring O₂, the instrument under similar conditions must indicate a value differing less than 0.1 % vol from zero within 60 seconds after changing from fresh air to an oxygen-free gas.

(4) The components in the exhaust gas, other than the components whose values are subject to the measurement, shall not affect the measurement results by more than the half of the modulus of the MPEs when those components are present in the following maximum volume fractions—

- (a) 6 % vol CO;
- (b) 16 % vol CO₂;
- (c) 10 % vol O₂;
- (d) 5 % vol H₂;
- (e) 0.3 % NO;
- (f) 2 000 ppm vol HC (as n-hexane);
- (g) water vapor up to saturation.

(5) An exhaust gas analyser shall have an adjustment facility that provides operations for zero-setting, gas calibration and internal adjustment. The adjustment facility for zero-setting and internal adjustment shall be automatic.

(6) For automatic or semi-automatic adjustment facilities, the instrument shall be unable to make a measurement as long as the adjustments have not been made.

(7) An exhaust gas analyser shall detect hydrocarbon residues in the gas handling system. It shall not be possible to carry out a measurement if the hydrocarbon residues, present before any measurement, exceeds 20 ppm vol.

(8) An exhaust gas analyser shall have a device for automatically recognising any malfunctioning of the sensor of the oxygen channel due to wear or a break in the connecting line.

(9) If the exhaust gas analyser is capable of operating with different fuels (such as petrol or liquefied gas), it shall be possible to select the suitable coefficients for the lambda calculation without ambiguity concerning the appropriate formula.

NOTIFIED BODIES

PART 1

NOTIFIED BODY CRITERIA

1. The body, its director and staff involved in conformity assessment tasks shall not be the designer, manufacturer, supplier, installer or user of the exhaust gas analyser that they inspect, nor the authorised representative of any of them. In addition, they may not be directly involved in the design, manufacture, marketing or maintenance of the exhaust gas analyser, nor represent the parties engaged in these activities. The preceding criterion does not, however, preclude in any way the possibility of exchanges of technical information between the manufacturer and the body for the purposes of conformity assessment.

2. The body, its director and staff involved in conformity assessment tasks shall be free from all pressures and inducements, in particular financial inducements, that might influence their judgement or the results of their conformity assessment, especially from persons or groups of persons with an interest in the results of the assessments.

3. The conformity assessment shall be carried out with the highest degree of professional integrity and requisite competence in the field of metrology. Should the body sub-contract specific tasks, it shall first ensure that the sub-contractor meets the requirements of these Regulations, and in particular of this Schedule. The body shall keep the relevant documents assessing the sub-contractor's qualifications and the work carried out by him under these Regulations at the disposal of the Secretary of State.

4. The body shall be capable of carrying out all the conformity assessment tasks for which it has been designated, whether those tasks are carried out by the body itself or on its behalf and under its responsibility. It shall have at its disposal the necessary staff and shall have access to the necessary facilities for carrying out in a proper manner the technical and administrative tasks entailed in conformity assessment.

5. The body's staff shall have—

- (a) sound technical and vocational training, covering all conformity assessment tasks for which the body was designated;
- (b) satisfactory knowledge of the rules governing the tasks which it carries out, and adequate experience of such tasks; and
- (c) the requisite ability to draw up the certificates, records and reports demonstrating that the tasks have been carried out.

6. The impartiality of the body, its director and staff shall be guaranteed. The remuneration of the body shall not depend on the results of the tasks it carries out. The remuneration of the body's director and staff shall not depend on the number of tasks carried out or on the results of such tasks.

7. The body shall satisfy the Secretary of State that it has adequate civil liability insurance.

8. The body's director and staff shall be bound to observe professional secrecy with regard to all information obtained in the performance of their duties pursuant to these Regulations, except vis-à-vis the Secretary of State.

PART 2

FUNCTIONS

Assessment of applications for certificates or notifications

9.—(1) Subject to paragraph 10, a notified body shall assess an application made by a manufacturer for the issue of—

- (a) a certificate of conformity;
- (b) a design or type examination certificate; or
- (c) a notification of approval of the manufacturer's quality system,

in accordance with the Annex applicable to the relevant conformity assessment procedure in respect of an exhaust gas analyser.

(2) In determining such an application, the notified body—

- (a) shall have regard to the actual or usual environment of the exhaust gas analyser; and
- (b) may have regard to any other standard or other technical criteria appearing to it to be relevant.

(3) Where, in the opinion of the notified body, the exhaust gas analyser to which an application relates is compliant with the essential requirements, it shall issue a certificate or notification in accordance with paragraph 12.

(4) Where, in the opinion of the notified body, the exhaust gas analyser to which an application relates is not compliant with the essential requirements, it shall issue a notice to the applicant in accordance with paragraph 15.

(5) Where a certificate or notification under sub-paragraph (3) is issued by a United Kingdom notified body, it shall send a copy to the Secretary of State.

Limitations on duties to exercise functions

10.—(1) A notified body shall not accept an application for a certificate or notification in respect of an exhaust gas analyser unless the application—

- (a) is in writing, in English or another language acceptable to that notified body;
- (b) is accompanied by all relevant documentation, in which all writing is in English or another language acceptable to that notified body; and
- (c) includes particulars of which applicable standards the manufacturer has applied or proposes to apply in respect of the instrument.

(2) A notified body shall not be required to determine an application for a certificate or notification where the manufacturer has not—

- (a) granted the notified body access to an exhaust gas analyser to which the application relates or the production facilities for the instrument (including, where applicable, the production facilities envisaged in relation to a representative instrument) to the extent that the notified body reasonably requests; and
- (b) made available to the notified body such information as it may reasonably require to determine the application.

(3) A notified body shall not be required to carry out the functions referred to in regulation 7(4)(d) if—

- (a) the person making the application has not submitted with the application the amount of the fee which the notified body requires to be submitted with the application pursuant to regulation 11; or
- (b) the notified body reasonably believes that, having regard to the number of applications made to it pursuant to its designation which are outstanding, it will be unable to commence the required work within three months of receiving the application.

Contractors

11.—(1) A notified body may, in exercising its functions—

- (a) arrange for some other person to carry out any test, assessment or inspection on its behalf; or
- (b) require the applicant to satisfy another person with respect to any matter at the applicant's expense.

(2) But nothing in sub-paragraph (1) authorises a notified body to rely on the opinion of another person with regard to whether an exhaust gas analyser is compliant with any of the essential requirements.

(3) Nothing in these Regulations shall preclude a person referred to in sub-paragraph (1)(a) or (1)(b) from charging any fee in respect of any work undertaken by him in pursuance of those sub-paragraphs.

Form of certificates and notifications

12. A certificate or notification issued by a notified body shall be in writing and, in addition to the requirements provided for in the relevant conformity assessment procedure, shall—

- (a) be in English;
- (b) give the name and address—
 - (i) of the applicant;
 - (ii) where the applicant is not the manufacturer, of the manufacturer;
- (c) be signed by or on behalf of the notified body and give the identification number of the notified body;
- (d) bear—
 - (i) the date of issue; and
 - (ii) the number of the certificate or notification;
- (e) give particulars of the relevant exhaust gas analyser (where applicable, in relation to each variant) to which it relates sufficient to identify it, and shall state whether the instrument to which it relates is a single item or a representative, or if it covers a number of variants of that instrument; and
- (f) certify that the exhaust gas analyser to which it relates is compliant with the essential requirements.

Conditions in certificates or notifications

13.—(1) A certificate or notification may be unconditional or may be subject to such conditions as the notified body considers appropriate.

(2) Such conditions may include—

- (a) a limitation on the environment for which the exhaust gas analyser is stated to be suitable; or
- (b) a requirement that the exhaust gas analyser is only to be installed at a specific site.

(3) The conditions imposed pursuant to sub-paragraph (1) may be varied in accordance with paragraph 15 by the notified body which issued the certificate or notification and such variation may include the imposition of new conditions or the removal of conditions.

Withdrawal of certificates or notifications

14. The notified body which issued the certificate or notification shall withdraw that certificate or notification in accordance with paragraph 15, if it appears that the exhaust gas analyser to which it relates is not compliant with the essential requirements.

Procedure where a notified body is minded to refuse to give, or to vary or withdraw a certificate or notification

15.—(1) Where a notified body is minded to—

- (a) refuse to issue a certificate or notification;
- (b) vary a certificate or notification (other than at the request of the person to whom it was given); or
- (c) withdraw a certificate or notification,

it shall give to the applicant, or the person to whom the certificate or notification was given, a notice in writing—

- (i) giving reasons for the refusal, variation or withdrawal;
- (ii) specifying the date on which the refusal, variation or withdrawal is to take effect; and
- (iii) giving the applicant or person the opportunity to make representations within 21 days from the date of the notice and stating that the notified body shall consider any representations made to it within that period by that applicant or person.

(2) Where a notified body, having considered representations made to it under sub-paragraph (1), remains of the opinion that—

- (a) an application for a certificate or notification should be refused; or
- (b) a certificate or notification should be varied or withdrawn,

it shall inform the applicant, or the person to whom the certificate or notification was given, of that decision in writing and give that applicant or person information about the judicial remedies available to him.

(3) Where a notice is given under sub-paragraph (1) by a United Kingdom notified body, it shall send a copy to the Secretary of State.

SCHEDULE 3

Regulation 6(2)

TECHNICAL DOCUMENTATION

1. The technical documentation shall render the design, manufacture and operation of the exhaust gas analyser intelligible and shall permit an assessment of its conformity with the appropriate requirements of these Regulations.

2. The technical documentation shall be sufficiently detailed to ensure—

- (a) the definition of the metrological characteristics;
- (b) the reproducibility of the metrological performances of produced exhaust gas analysers when properly adjusted using appropriate intended means; and
- (c) the integrity of the exhaust gas analyser.

3. The technical documentation shall include insofar as relevant for assessment and identification of the type and/or exhaust gas analyser—

- (a) a general description of the instrument;
- (b) conceptual design and manufacturing drawings and plans of components and circuits;
- (c) manufacturing procedures to ensure consistent production;
- (d) if applicable, a description of the electronic devices with drawings, diagrams, flow diagrams of the logic and general software information explaining their characteristics and operation;
- (e) descriptions and explanations necessary for the understanding of sub-paragraphs (b), (c) and (d), including the operation of the instrument;

- (f) a list of the relevant national standards and/or relevant normative documents, applied in full or in part;
- (g) descriptions of the solutions adopted to meet the essential requirements where the relevant national standards and/or relevant normative documents have not been applied;
- (h) results of design calculations and examinations;
- (i) the appropriate test results, where necessary, to demonstrate that the type and/or instrument is compliant with the requirements of these Regulations under declared rated operating conditions and under specified environmental disturbances; and
- (j) the EC-type examination certificates or EC design examination certificates in respect of instruments containing parts identical to those in the design.

4. The manufacturer shall specify where seals and markings have been applied.

5. The manufacturer shall indicate the conditions for compatibility with interfaces and sub-assemblies, where relevant.

SCHEDULE 4

Regulation 12(3)

MARKING AND INSCRIPTIONS

1. The CE marking consists of the symbol “CE” according to the design laid down in paragraph I.B(d) of the Annex to Decision 93/465/EEC(a). The CE marking shall be at least 5 mm high.

2. The M marking consists of the capital letter “M” and the last two digits of the year of its affixing, surrounded by a rectangle. The height of the rectangle shall be equal to the height of the CE marking. The M marking shall immediately follow the CE marking.

3. The identification number of the notified body concerned shall follow the CE marking and the M marking.

4. When an exhaust gas analyser consists of a set of devices operating together, the markings shall be affixed on the instrument’s main device.

5. The CE marking and the M marking shall be indelible. The identification number of the notified body concerned shall be indelible or self destructive upon removal. All markings shall be clearly visible or easily accessible.

SCHEDULE 5

Regulation 26

ADAPTATIONS FOR NORTHERN IRELAND

1. In regulation 2(1), for the definition of “exhaust gas analyser” substitute the following definition—

“exhaust gas analyser” means a measuring instrument—

- (a) designed to determine the volume fractions of specified components of the exhaust gas of a motor vehicle engine with spark ignition at the moisture level of the sample analysed; and
- (b) which is used or is to be used by a person authorised by the Department of the Environment for Northern Ireland to carry out the testing or inspection of vehicles under Part 3 of the Road Traffic (Northern Ireland) Order 1995(b);”.

(a) OJ No. L220, 30.8.1998, p.23.

(b) S.I. 1995/2994 (N.I.18).

2. In regulation 14—

- (a) for paragraph (1), substitute the following paragraph—

“(1) The Department of the Environment for Northern Ireland shall enforce these Regulations in Northern Ireland.”.

- (b) for paragraph (2), substitute the following paragraph—

“(2) No proceedings for an offence under these Regulations shall be instituted in Northern Ireland except by or on behalf of the Department of the Environment for Northern Ireland or the Director of Public Prosecutions for Northern Ireland.”.

3. In regulation 19—

- (a) the reference in paragraph (3) to written information on oath shall be construed as a reference to a complaint on oath; and

- (b) for paragraph (9), substitute the following paragraph—

“(9) In this regulation, “credentials” in relation to an enforcement officer, means an authenticated document showing that he is authorised to act to exercise the powers conferred on him by this regulation.”.

4. In regulation 25(3), the reference to section 14(1) of the Civil Evidence Act 1968 shall be construed as a reference to section 10(1) of the Civil Evidence Act (Northern Ireland) 1971(a).

(a) 1971 c. 36.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2004/22/EC of the European Parliament and of the Council on measuring instruments (OJ No. L135, 30.4.2004, p.1) (“the Directive”) in relation to exhaust gas analysers, which are measuring instruments covered by the Directive.

Part 1 provides that these Regulations apply, with certain exceptions, to exhaust gas analysers intended for use for the protection of the environment and public health which are first placed on the market or put into use on or after the 30th October 2006.

Part 2 deals with the requirements for placing on the market and putting into use. These are that exhaust gas analysers are compliant with the essential requirements, that the manufacturer has demonstrated such compliance with the essential requirements and that the instrument has the CE marking, the M marking and the identification number of the relevant notified body affixed to them (*regulation 4(1)*). It is an offence under *regulation 4(2)* to place on the market and put into use an exhaust gas analyser without complying with the requirements of *regulation 4(1)*. The essential requirements are set out in *Schedule 1*. Compliance with the essential requirements can be demonstrated in accordance with the provisions in *regulation 5*. *Regulation 6* sets out the different conformity assessment procedures available to a manufacturer to demonstrate compliance. The technical documentation required is set out in *Schedule 3*.

Regulations 7 to 11 and *Schedule 2* contain provisions relating to the eligibility and designation of persons as notified bodies and with the administrative procedures relating to their appointment, functions and fees. Requirements relating to the marking of exhaust gas analysers are set out in *regulation 12* and *Schedule 4*. *Regulation 13* provides for a presumption of conformity of an exhaust gas analyser with other applicable directives conferred by the CE marking.

Part 3 deals with enforcement of these Regulations. *Regulation 14* provides that the Secretary of State may act as an enforcement authority in relation to Part 2 and for that purpose may appoint any person to act on his behalf. *Regulations 15* (compliance notice procedure) and *regulation 16* (immediate enforcement action) confer powers on the enforcement authorities to take action in respect of non-compliant exhaust gas analysers. *Regulation 17* permits a review by the Secretary of State of notices issued by other enforcement authorities under *regulations 15* and *16*.

Regulation 18 details the offences relating to the unauthorised application of authorised marks. *Regulation 19* provides a power of entry and inspection for enforcement officers. *Regulation 20* provides for offences relating to the obstruction of an enforcement officer. A person guilty of an offence under Part 2 or Part 3 is liable on summary conviction to a fine not exceeding level 5 on the standard scale (which is currently £5,000) (*regulation 21*). A defence of due diligence in relation to any offence under these Regulations is provided for in *regulation 22* and the liability of persons other than the principal offender is set out in *regulation 23*.

Part 4 (*regulations 24 to 26*) deals with miscellaneous matters including the application of the Regulations to Northern Ireland to the extent set out in *Schedule 5* (*regulation 26*).

A full regulatory impact assessment of the effect that these Regulations will have on the costs of business is available from the Department for Transport, 5th floor, Southside, 105 Victoria Street, London SW1E 6DT (telephone number: 020 7944 2455). As these Regulations transpose the Directive in relation to exhaust gas analysers, a transposition note setting out how the Directive has been transposed into UK law has been prepared and can be obtained from the above address. Copies of these documents have been placed in the library of each House of Parliament. These documents may also be accessed on the OPSI website www.opsi.gov.uk.

Copies of the EC Directives referred to in these Regulations can be obtained from the Stationery Office.

Copies of the OIML R99/ISO 3930 may be obtained on-line at www.iso.org on payment of the appropriate charge.

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