

SCHEDULE 1

Regulation 3(2)

Declaration of Conformity

1. A person who makes a declaration of conformity declares that an energy-related product to which the declaration relates complies with the applicable implementing measure.
2. A declaration of conformity—
  - (a) must be in writing; and
  - (b) may be in respect of more than one energy-related product.
3. A declaration of conformity must include—
  - (a) the name and address of the person making it;
  - (b) a description of the product sufficient for unambiguous identification;
  - (c) where appropriate—
    - (i) the references of the [F1designated] standards applied;
    - (ii) the other technical standards and specifications used;
    - [F2(iii) the reference to other legislation, not referred to in paragraph 4, providing for the affixing of the UK marking; and]
  - (d) the identification and signature of the individual empowered to bind the person making the declaration.
4. A declaration of conformity must include the title of the applicable implementing measure as shown in the table.

	<i>Energy- related product</i>	<i>Implementing measure and title</i>
1	An external power supply	[F3Commission Regulation (EU) No 2019/1782 laying down ecodesign requirements for external power supplies pursuant to Directive 2009/125/EC of the European Parliament and of the Council and repealing Commission Regulation (EC) No 278/2009]
2	Electrical and electronic household and office equipment	[F4Commission Regulation (EC) No 1275/2008 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for standby and off mode, and networked standby, electric power consumption of electrical and electronic household and office equipment]
3	A simple set-top box	Commission Regulation (EC) No 107/2009 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for simple set-top boxes(1)
4	A fluorescent lamp without integrated ballast, a high intensity discharge lamp or a ballast or luminaire able to operate such lamps	Commission Regulation (EC) No 245/2009 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for fluorescent lamps without integrated ballast, high intensity discharge lamps and for ballasts and luminaires able to operate such lamps, and

(1) OJ No L 36, 5.2.2009, p8.

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	<i>Energy- related product</i>	<i>Implementing measure and title</i>
		repealing Directive <a href="#">2000/55/EC</a> of the European Parliament and of the Council(2)
5	A non-directional household lamp	Commission Regulation (EC) No <a href="#">244/2009</a> implementing Directive <a href="#">2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for non-directional household lamps(3)
[ <sup>F5</sup> 6	An electronic display	The Ecodesign for Energy-Related Products and Energy Information Regulations 2021]
7	A glandless standalone circulator or glandless circulator integrated in a product	Commission Regulation (EC) No <a href="#">641/2009</a> implementing Directive <a href="#">2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for glandless standalone circulators and glandless circulators integrated in products(4)
8	A motor	[ <sup>F6</sup> The Ecodesign for Energy-Related Products and Energy Information Regulations 2021]
9	A household refrigerating appliance	[ <sup>F7</sup> The Ecodesign for Energy-Related Products and Energy Information Regulations 2021]
10	A boiler or an appliance	Council Directive <a href="#">92/42/EEC</a> on efficiency requirements for new hot water boilers fired with liquid or gaseous fuels(5)
[ <sup>F8</sup> 11	A household dishwasher	[ <sup>F9</sup> The Ecodesign for Energy-Related Products and Energy Information Regulations 2021]]
[ <sup>F10</sup> 12	A household washing machine or a household washer-dryer	The Ecodesign for Energy-Related Products and Energy Information Regulations 2021 ]
[ <sup>F11</sup> 13	A water pump	Commission Regulation (EU) No <a href="#">547/2012</a> implementing Directive <a href="#">2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for water pumps]
[ <sup>F11</sup> 14	An air conditioner or a comfort fan	Commission Regulation (EU) No <a href="#">206/2012</a> implementing Directive <a href="#">2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for air conditioners and comfort fans]
[ <sup>F12</sup> 15	A fan driven by a motor with an electric input power between 125W and 500kW	Commission Regulation (EU) No <a href="#">327/2011</a> implementing Directive <a href="#">2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for fans driven by motors with an electric input power between 125W and 500kW]

(2) OJ No L 76, 24.3.2009, p17. as last amended by Regulation (EU) No [347/2010](#) of the European Parliament and of the Council (OJ No L 104, 24.4.2010, p20).

(3) OJ No L 76, 24.3.2009, p3. as last amended by Regulation (EC) No [859/2009](#) of the European Parliament and of the Council (OJ No L 247, 19.9.2009, p3).

(4) OJ No L 191, 23.7.2009, p35.

(5) OJ No L 167, 22.6.1992,p17 as last amended by Directive [2005/32/EC](#) of the European Parliament and of the Council (OJ No L191, 22.7.2005, p29).

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<i>Energy- related product</i>	<i>Implementing measure and title</i>
[ <sup>F12</sup> 16 A directional lamp, light emitting diode lamp and related equipment	Commission Regulation (EU) No 1194/2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for directional lamps, light emitting diode lamps and related equipment]
[ <sup>F13</sup> 17 A household tumble drier	Commission Regulation (EU) No 932/2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for household tumble driers]
[ <sup>F14</sup> 18 A computer <sup>F15</sup> ...	Commission Regulation (EU) No 617/2013 implementing <a href="#">Directive 2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for computers and computer servers]
[ <sup>F14</sup> 19 A vacuum cleaner	Commission Regulation (EU) No 666/2013 implementing <a href="#">Directive 2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for vacuum cleaners]
[ <sup>F14</sup> 20 A water heater or a hot water storage tank	Commission Regulation (EU) No 814/2013 implementing <a href="#">Directive 2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for water heaters and hot water storage tanks]
[ <sup>F14</sup> 21 A space heater or a combination heater	Commission Regulation (EU) No 813/2013 implementing <a href="#">Directive 2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for space heaters and combination heaters]
[ <sup>F14</sup> 22 A domestic oven, a hob or a range hood	Commission Regulation (EU) No 66/2014 implementing <a href="#">Directive 2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for domestic ovens, hobs and range hoods]
[ <sup>F16</sup> 23 A small, medium or large power transformer	Commission Regulation (EU) No 548/2014 implementing <a href="#">Directive 2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for small, medium and large power transformers]
[ <sup>F17</sup> 24 A ventilation unit	Commission Regulation (EU) No 1253/2014 implementing <a href="#">Directive 2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for ventilation units]
[ <sup>F18</sup> 25 A professional refrigerated storage cabinet, blast cabinet, condensing unit or process chiller	<a href="#">Commission Regulation (EU) No 2015/1095</a> implementing <a href="#">Directive 2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for professional refrigerated storage cabinets, blast cabinets, condensing units and process chillers]
[ <sup>F19</sup> 26 A local space heater	<a href="#">Commission Regulation (EU) No 2015/1188</a> implementing <a href="#">Directive 2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for local space heaters]
[ <sup>F20</sup> 27 An air heating product, a cooling product, a high temperature	<a href="#">Commission Regulation (EU) No 2016/2281</a> implementing <a href="#">Directive 2009/125/EC</a> of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy-related products, with regard to ecodesign requirements for air

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<i>Energy- related product</i>	<i>Implementing measure and title</i>
process chiller or a fan coil unit	heating products, cooling products, high temperature process chillers and fan coil units]
[ <sup>F21</sup> 28 A solid fuel boiler	<a href="#">Commission Regulation (EU) No 2015/1189</a> implementing <a href="#">Directive 2009/125/EC</a> of the European Parliament and of the Council with regard to ecodesign requirements for solid fuel boilers]
[ <sup>F22</sup> 30 A server or an online data storage product	Commission Regulation (EU) 2019/424 of 15 March 2019 laying down ecodesign requirements for servers and data storage products pursuant to <a href="#">Directive 2009/125/EC</a> of the European Parliament and of the Council and amending <a href="#">Commission Regulation (EU) No 617/2013</a> ]
[ <sup>F23</sup> 31 Welding equipment	The Ecodesign for Energy-Related Products and Energy Information Regulations 2021
32 A refrigerating appliance with a direct sales function	The Ecodesign for Energy-Related Products and Energy Information Regulations 2021]

## [<sup>F24</sup>SCHEDULE 1A

Regulation 3(3)

### Conformity Assessment Procedures

#### Textual Amendments

**F24** Sch. 1A inserted (E.W.S.) (31.12.2020) by [The Ecodesign for Energy-Related Products and Energy Information \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/539), reg. 1(3), **Sch. 1 para. 14** (as amended by [S.I. 2020/1528](#), regs. 1(2), **6(3)(4)(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**

## PART 1

### Internal design control

#### The internal design control procedure

- 1.—(1) The internal design control procedure is a procedure—
  - (a) whereby the manufacturer, or its authorised representative, ensures that a product is in conformity with the relevant requirements of the applicable implementing measure; and
  - (b) which complies with the requirements specified in sub-paragraph (2).
- (2) The following are specified as requirements of an internal design control procedure—
  - (a) the manufacturer, or its authorised representative, must compile a technical documentation file making possible an assessment of the conformity of the product with the requirements of the applicable implementing measure;
  - (b) the technical documentation file must contain, in particular—
    - (i) a general description of the product and of its intended use;

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- (ii) the results of relevant environmental assessment studies carried out by the manufacturer, or references to environmental assessment literature or case studies, which are used by the manufacturer in evaluating, documenting and determining product design solutions;
  - (iii) the ecological profile, where required by the implementing measure;
  - (iv) elements of the product design specification relating to environmental design aspects of the product;
  - (v) a list of the relevant designated standards, applied in full or in part, and a description of the solutions adopted to meet the requirements of the applicable implementing measure where the designated standards have not been applied or where those standards do not cover entirely the requirements of the applicable implementing measure;
  - (vi) a copy of the information concerning the environmental design aspects of the product provided in accordance with any requirements of the applicable measure relating to the supply of information that may influence the way the product is handled, used or recycled by parties other than the manufacturer; and
  - (vii) the results of measurements on the ecodesign requirements carried out, including details of the conformity of these measurements as compared with the ecodesign requirements set out in the applicable implementing measure; and
- (c) the manufacturer must take all measures necessary to ensure that the product is manufactured in compliance with the design specifications referred to in paragraph (b)(iv) and with the requirements of the implementing measure which applies to it.

## PART 2

### Management system

#### The management system procedure

- 2.—(1) The management system procedure is a procedure—
- (a) whereby the manufacturer ensures that a product is in conformity with the relevant requirements of the applicable implementing measure; and
  - (b) which complies with the requirements specified in sub-paragraph (2).
- (2) Paragraphs 3 to 6 specify the requirements of a management system procedure.

#### The environmental product performance policy

- 3.—(1) The manufacturer must, on request by the authorities of Great Britain—
- (a) demonstrate conformity with the requirements of the applicable implementing measure; and
  - (b) provide a framework for setting and reviewing environmental product performance objectives and indicators with a view to improving the overall environmental product performance.
- (2) All the measures adopted by the manufacturer to improve the overall environmental performance of, and to establish the ecological profile of, a product, if required by the implementing measure, through design and manufacturing, must be documented in a systematic and orderly manner in the form of written procedures and instructions.

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(3) The procedures and instructions referred to in sub-paragraph (2) must contain, in particular, an adequate description of—

- (a) the list of documents that must be prepared to demonstrate the product's conformity, and, if relevant, that have to be made available;
- (b) the environmental product performance objectives and indicators and the organisational structure, responsibilities, powers of the manufacturer's management and the allocation of resources with regard to their implementation and maintenance;
- (c) the checks and tests to be carried out after manufacture to verify product performance against environmental performance indicators;
- (d) the procedures for controlling the required documentation and ensuring that it is kept up-to-date; and
- (e) the method of verifying the implementation and effectiveness of the environmental elements of the management system.

## **Planning**

4. The manufacturer must establish and maintain—

- (a) procedures for establishing the ecological profile of the product;
- (b) environmental product performance objectives and indicators, which consider technological options, taking into account technical and economic requirements; and
- (c) a programme for achieving these objectives.

## **Implementation and documentation**

5.—(1) The manufacturer must ensure that the documentation concerning the management system complies, in particular, with the following—

- (a) responsibilities and authorities must be defined and documented for the purpose of ensuring effective environmental product performance and reporting on the management system's operation for review and improvement;
- (b) documents must be established indicating the design control and verification techniques implemented and processes and systematic measures used when designing the product; and
- (c) information must be established and maintained to describe the core environmental elements of the management system and the procedures for controlling all documents required.

(2) The manufacturer must ensure that the documentation concerning the product contains, in particular—

- (a) a general description of the product and of its intended use;
- (b) the results of relevant environmental assessment studies carried out by the manufacturer, or references to environmental assessment literature or case studies, which are used by the manufacturer in evaluating, documenting and determining product design solutions;
- (c) the ecological profile, where required by the implementing measure;
- (d) documents describing the results of measurements on the ecodesign requirements carried out including details of the conformity of these measurements as compared with the ecodesign requirements set out in the applicable implementing measure;
- (e) specifications established by the manufacturer indicating, in particular, the designated standards which have been applied; where designated standards are not applied or where

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they do not cover entirely the requirements of the relevant implementing measure, the means used to ensure compliance; and

- (f) a copy of the information concerning the environmental design aspects of the product provided in accordance with any requirements of the applicable measure relating to the supply of information that may influence the way the product is handled, used or recycled by parties other than the manufacturer.

### Checking and corrective action

6. The manufacturer must—

- (a) take all measures necessary to ensure that the product is manufactured in compliance with its design specification and with the requirements of the implementing measure which applies to it;
- (b) establish and maintain procedures to investigate and respond to non-conformity, and implement changes in the documented procedures resulting from corrective action; and
- (c) carry out at least every three years a full internal audit of the management system with regard to its environmental elements.]

## [<sup>F25</sup>SCHEDULE 1B

Regulation 3(4)

### Conformity Assessment Bodies

#### Textual Amendments

**F25** Sch. 1B inserted (E.W.S.) (31.12.2020) by [The Ecodesign for Energy-Related Products and Energy Information \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/539\)](#), reg. 1(3), **Sch. 1 para. 15** (as amended by [S.I. 2020/1528](#), regs. 1(2), 4, 6(3)(4)(a)); 2020 c. 1, **Sch. 5 para. 1(1)**

## PART 1

### Approval of Conformity Assessment Bodies

#### Approved bodies

1.—(1) An approved body is a conformity assessment body which—

- (a) has been approved by the Secretary of State pursuant to the procedure set out in paragraph 2; or
- (b) immediately before IP completion day was a notified body in respect of which no action has been taken by the Secretary of State to suspend or withdraw the body's status as a notified body.

(2) Sub-paragraph (1) has effect subject to paragraph 5.

(3) In this Schedule—

“accreditation certificate” means a certificate, issued by the UK national accreditation body, attesting that a conformity assessment body meets the approved body requirements;

“approved body requirements” means the requirements set out in Part 2;

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“notified body” means a body—

- (a) which the Secretary of State had before IP completion day notified to the European Commission and member States in accordance with Article 8(1) of Council Directive [92/42/EEC](#) of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels; and
- (b) in respect of which no action has been taken to suspend or withdraw the body's status as a notified body; and

“UK national accreditation body” means the body appointed by the Secretary of State in accordance with Article 4 of RAMS.

### **Approval of conformity assessment bodies**

**2.—**(1) The Secretary of State may approve only those conformity assessment bodies that qualify for approval.

(2) A conformity assessment body qualifies for approval if the first and second conditions below are met.

(3) The first condition is that the conformity assessment body has applied to the Secretary of State to become an approved body and that application is accompanied by—

- (a) a description of—
  - (i) the conformity assessment activities that the conformity assessment body intends to carry out;
  - (ii) the conformity assessment procedure in respect of which the conformity assessment body claims to be competent;
  - (iii) the category of products in respect of which the conformity assessment body claims to be competent; and
- (b) either—
  - (i) an accreditation certificate; or
  - (ii) the documentary evidence necessary for the Secretary of State to verify, recognise and regularly monitor the conformity assessment body's compliance with the approved body requirements.

(4) The second condition is that the Secretary of State is satisfied that the conformity assessment body meets the approved body requirements.

(5) For the purposes of sub-paragraph (4), the Secretary of State may accept an accreditation certificate, provided in accordance with sub-paragraph (3)(b)(i), as sufficient evidence that the conformity assessment body meets the approved body requirements.

(6) When deciding whether to approve a conformity assessment body, the Secretary of State may—

- (a) have regard to any other matter which appears to the Secretary of State to be relevant; and
- (b) set such conditions in relation to the approval as the Secretary of State considers appropriate.

### **Presumption of conformity of approved bodies**

**3.—**(1) Where a conformity assessment body demonstrates its conformity with the criteria laid down in a designated standard (or part of such standard), the Secretary of State is to presume that the conformity assessment body meets the approved body requirements covered by that standard (or that part of that standard).



- (2) The presumption in sub-paragraph (1) is rebuttable.

### **Monitoring**

4. The Secretary of State must monitor each approved body with a view to verifying that the body—

- (a) continues to meet the approved body requirements;
- (b) meets any conditions set—
  - (i) in accordance with paragraph 2(6)(b); or
  - (ii) in the case of an approved body which was a notified body immediately before IP completion day, by the Secretary of State immediately before IP completion day; and
- (c) carries out its functions in accordance with these Regulations.

### **Restriction, suspension or withdrawal of approval**

5.—(1) Where the Secretary of State determines that an approved body—

- (a) no longer meets an approved body requirement; or
- (b) is failing to fulfil its obligations under these Regulations, other than a condition referred to in paragraph 4(b),

the Secretary of State must restrict, suspend or withdraw the body's status as an approved body under paragraph 1.

(2) Where the Secretary of State determines that an approved body no longer meets a condition referred to in paragraph 4(b), the Secretary of State may restrict, suspend or withdraw the body's status as an approved body under paragraph 1.

(3) In deciding what action is required under sub-paragraph (1) or (2), the Secretary of State must have regard to the seriousness of the non-compliance.

(4) Before taking action under sub-paragraph (1) or (2), the Secretary of State must—

- (a) give notice in writing to the approved body of the proposed action and the reasons for it;
- (b) give the approved body an opportunity to make representations to the Secretary of State regarding the proposed action within a reasonable period from the date of the notice; and
- (c) consider any such representations made by the approved body.

(5) Where the Secretary of State has taken action in respect of an approved body under sub-paragraph (1) or (2), or where an approved body has ceased its activity, the approved body must, at the request of the Secretary of State—

- (a) transfer its files relating to the activities it has undertaken as an approved body to another approved body or to the Secretary of State; or
- (b) keep its files relating to the activities it has undertaken as an approved body available for the Secretary of State and market surveillance authorities for a period of 10 years from the date they were created.

(6) The activities undertaken as an approved body referred to in sub-paragraph (5) include any activities that the body has undertaken as a notified body.

### **Operational matters in relation to approved bodies**

6.—(1) Subject to the terms of its approval and to sub-paragraph (3), an approved body must carry out the conformity assessment activities and procedures—

- (a) in respect of which the body's approval was given under paragraph 2; or

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- (b) in respect of which the body's approval as an approved body was made.
- (2) Where an approved body carries out a conformity assessment procedure, it must do so in accordance with Part 3.
- (3) An approved body must make provision for a manufacturer to be able to make an appeal against a refusal by the approved body—
  - (a) to issue a type-examination certificate referred to in Annexes 3 and 4 to Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (the “1992 Directive”), read as if modified by Article 4(4) and (5) of Commission Regulation (EU) No 813/2013 of 2 August 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for space heaters and combination heaters (the “2013 Regulation”); or
  - (b) to affix, or cause to be affixed, the approved body's identification number pursuant to paragraph 1 of the Module D: Production quality assurance section or paragraph 1 of the Module E: Product quality assurance section of Annex 4 to the 1992 Directive read as if modified by Article 4(5) of the 2013 Regulation.

### **Subsidiaries and contractors**

- 7.—(1) An approved body may subcontract specific conformity assessment activities, or use a subsidiary to carry out such activities provided—
- (a) the body is satisfied that the subcontractor or subsidiary meets the approved body requirements;
  - (b) the body has informed the Secretary of State that it is satisfied that the subcontractor or subsidiary meets those requirements; and
  - (c) the economic operator for whom the activities are to be carried out has consented to the activities being carried out by that person.
- (2) The approved body which subcontracts specific conformity assessment activities or uses a subsidiary to carry out such activities remains responsible for the proper performance of those activities (irrespective of where the subcontractor or subsidiary is established).
- (3) Where an approved body subcontracts, or uses a subsidiary to carry out, a specific conformity assessment activity, the approved body must, for a period of 10 years beginning on the day on which the activity is first carried out, keep available for inspection by the Secretary of State all relevant documentation concerning—
- (a) the assessment of the qualifications of the subcontractor or the subsidiary; and
  - (b) the conformity assessment activity carried out by the subcontractor or subsidiary.
- (4) In this paragraph, “subsidiary” has the meaning given to it in section 1159 of the Companies Act 2006.

### **Register of approved bodies**

- 8.—(1) The Secretary of State must—
- (a) assign an approved body identification number to each approved body; and
  - (b) compile and maintain a register of—
    - (i) approved bodies;
    - (ii) their approved body identification numbers;
    - (iii) the activities for which they have been approved; and
    - (iv) any restrictions on those activities.

- (2) The register referred to in sub-paragraph (1) must be made publicly available.

### **UK national accreditation body**

9. The Secretary of State may authorise the UK national accreditation body to carry out the following activities on behalf of the Secretary of State—

- (a) assessing whether a conformity assessment body meets the approved body requirements;
- (b) monitoring approved bodies in accordance with paragraph 4; and
- (c) compiling and maintaining the register of approved bodies, in accordance with paragraph 8.

## **PART 2**

### **Approved body requirements**

10.—(1) A conformity assessment body must be established in Great Britain and have legal personality.

(2) A conformity assessment body must be a third party body independent of the organisation or the product it assesses. A body belonging to a business association or professional federation representing businesses involved in the design, manufacturing, provision, assembly, use or maintenance of products which it assesses, may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered such a body.

(3) A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities must not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the products that they assess, nor the representative of any of those parties.

(4) Sub-paragraph (3) does not preclude the use of assessed products that are necessary for the operations of the conformity assessment body or the use of such products for personal purposes.

(5) A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks must not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of those products, or represent the parties engaged in those activities. They must not engage in any activity (including consultancy services) that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are approved.

(6) A conformity assessment body must ensure that the activities of its subsidiaries or sub-contractors do not affect the confidentiality, objectivity or impartiality of its conformity assessment activities.

(7) A conformity assessment body and its personnel must carry out conformity assessment activities with the highest degree of professional integrity and the requisite competence in the specific field and must be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their conformity assessment activities, particularly with regard to persons or groups of persons who have an interest in the results of those activities.

(8) A conformity assessment body must be capable of carrying out all of the conformity assessment activities for which it has been approved, whether that assessment is carried out by the body itself or on its behalf and under its responsibility.

(9) A conformity assessment body must have at its disposal—

- (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment activities;

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- (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the transparency of and the ability to reproduce those procedures, and have appropriate policies and procedures in place that distinguish between tasks it carries out as an approved body and other activities; and
  - (c) procedures for the performance of conformity assessment activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.
- (10) A conformity assessment body must have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and must have access to the necessary equipment or facilities.
- (11) The personnel responsible for carrying out conformity assessment must have—
- (a) sound technical and vocational training, covering all conformity assessment activities in relation to which the conformity assessment body has been approved;
  - (b) satisfactory knowledge of the requirements of the assessments which the conformity assessment body carries out, and adequate authority to carry out those assessments;
  - (c) appropriate knowledge and understanding of the essential safety requirements, of the applicable designated standards and of the applicable provisions of these Regulations; and
  - (d) the ability to draw up certificates, records and reports demonstrating that the assessments have been carried out.
- (12) A conformity assessment body must be able to demonstrate the impartiality of its top level management and the personnel responsible for carrying out the conformity assessment activities.
- (13) The remuneration of the top level management and the personnel responsible for carrying out the conformity assessment activities must not depend on the number of assessments carried out or on the results of those assessments.
- (14) A conformity assessment body must have, and must satisfy the Secretary of State that it has, adequate civil liability insurance in respect of its activities.
- (15) A conformity assessment body must ensure that its personnel observe professional secrecy with regard to all information obtained in carrying out their tasks in accordance with these Regulations, and that proprietary rights are protected.
- (16) Sub-paragraph (15) does not prevent the personnel from providing the information to the Secretary of State.
- (17) A conformity assessment body must participate in, or ensure that its personnel who are responsible for carrying out the conformity assessment activities are informed of, the relevant standardisation activities and the activities of any approved body coordination group established by the Secretary of State and must apply as general guidance the administrative decisions and documents produced as a result of the work of that group.

## PART 3

### Operational obligations of approved bodies

**11.—(1)** An approved body must carry out conformity assessments in accordance with the conformity assessment procedures.

(2) An approved body must carry out conformity assessments in a proportionate manner, avoiding unnecessary burdens on economic operators.

**Status:** Point in time view as at 01/07/2021.

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(3) An approved body must perform its activities taking due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

(4) An approved body must respect the degree of rigour and the level of protection required to ensure that the product is in conformity with the requirements of these Regulations.

(5) Where an approved body finds that essential safety requirements or corresponding designated standards or other technical specifications have not been met by a manufacturer, it must require the manufacturer to take appropriate corrective measures and must not issue a certificate of conformity.

(6) Where, in the course of the monitoring of conformity following the issue of a certificate of conformity, an approved body finds that a product is no longer in conformity with the essential safety requirements, it must require the manufacturer to take appropriate corrective measures and must, if necessary, suspend or withdraw the certificate of conformity.

(7) Where the approved body has required a manufacturer to take corrective measures and the manufacturer has failed to take such measures, or those measures have not had the required effect, the approved body must restrict, suspend or withdraw any certificate of conformity.

(8) Sub-paragraph (9) applies where an approved body is minded to—

- (a) refuse to issue a certificate of conformity;
- (b) restrict, suspend or withdraw a certificate of conformity.

(9) Where this paragraph applies, the approved body must—

- (a) give the person applying for the certificate of conformity, or the person to whom the certificate of conformity has been given, a notice in writing giving reasons and specifying the date on which the refusal, restriction, suspension or withdrawal is intended to take effect;
- (b) give the person referred to in paragraph (a), an opportunity to make representations within a reasonable period from the date of the notice; and
- (c) take account of any representations made within the period referred to in paragraph (b) before taking its decision.

(10) An approved body must inform the Secretary of State of—

- (a) any refusal, restriction, suspension or withdrawal of a certificate of conformity;
- (b) any circumstances affecting the scope of or conditions for approval under paragraph 2;
- (c) any request for information which it has received from a market surveillance authority regarding conformity assessment activities;
- (d) on request, any conformity assessment activities performed within the scope of its approval under paragraph 2 and any other activity performed, including cross-border activities and subcontracting.

(11) An approved body must make provision in its contracts with its clients enabling such clients to appeal against a decision—

- (a) to refuse to issue a certificate of conformity or grant an approval;
- (b) to restrict, suspend or withdraw a certificate of conformity or approval.

(12) An approved body must provide other bodies approved under these Regulations carrying out similar conformity assessment activities covering the same products with relevant information on issues relating to negative and, on request, positive conformity assessment results.

(13) An approved body must participate in the work of any approved body coordination group established by the Secretary of State, directly or by means of its designated representatives.]

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## SCHEDULE 2

Regulation 4(3)

### CE marking: General requirements

1. A CE marking must be in the following form—



2. A CE marking must have a height of at least 5mm.
3. Subject to paragraph 2, if a CE marking is reduced or enlarged, the marking must maintain the proportions shown in paragraph 1.

## SCHEDULE 3

Regulation 11

### Appeals

1. This Schedule makes provision in respect of appeals against decisions of [<sup>F26</sup>approved] bodies.
2. An appeal must be made within two months of the date of the decision, but the parties to the appeal may agree a late appeal.
3. Where an appeal is brought, the operation of the decision is not suspended.
- 4.—(1) The appeal procedure [<sup>F27</sup>for the purposes of Article 4(7) of the Marketing Decision] is as follows.
  - (2) A person to whom a decision is given—
    - (a) may give notice of appeal against that decision; and
    - (b) must be informed of that right in the decision.

#### Textual Amendments

**F27** Words in Sch. 3 para. 4 omitted (E.W.S.) (31.12.2020) by virtue of [The Ecodesign for Energy-Related Products and Energy Information \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/539\)](#), reg. 1(3), [Sch. 1 para. 16\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)

5. An appeal must be heard by the appeal body.
6. Subject to paragraph 7, the appeal body is the body agreed by the parties to the appeal.
- 7.—(1) If no agreement is reached within a reasonable time, either party may apply in writing to the relevant person who must appoint the appeal body.
  - (2) For the purposes of sub-paragraph (1), the relevant person means—
    - (a) in England and Wales, the Secretary of State;

- (b) in Scotland, the Scottish Ministers;
  - (c) in Northern Ireland, the Department of Enterprise, Trade and Investment.
8. On the determination of an appeal, the appeal body may affirm the decision or withdraw it and may do so subject to such conditions as the appeal body sees fit.

## SCHEDULE 4

Regulation 13(a)

### Warrants and testing costs

## PART 1

### Warrants

1. If a justice of the peace, on sworn information in writing, is satisfied—
  - (a) that there are reasonable grounds to enter any premises; and
  - (b) that any of the conditions in paragraph 2 is met,a justice of the peace may by warrant signed by that justice of the peace authorise an authorised person and any other person in the performance of the powers and duties under Article 19 of RAMS to enter the premises, if need be by reasonable force.
2. The conditions referred to in paragraph 1 are that—
  - (a) admission to the premises has been refused, or a refusal is expected;
  - (b) asking for admission, or the giving of such a notice, would defeat the object of the entry;
  - (c) entry is required urgently;
  - (d) the premises are unoccupied or the occupier is temporarily absent.
3. A warrant continues in force for one month.
4. Reference to a justice of the peace—
  - (a) in Scotland includes a sheriff;
  - (b) in Northern Ireland is a reference to a lay magistrate.

## PART 2

### Testing costs

#### Costs recovery

- 5.—(1) If an article or substance tested under Article 19 of RAMS fails to comply with an applicable implementing measure, the market surveillance authority may recover its testing costs.
- (2) Costs include in particular—
    - (a) all the costs of purchasing and disposing of the articles or substances;
    - (b) all the administration and labour costs throughout the testing period.
  - (3) The market surveillance authority is not entitled to recover any costs proven to have been incurred unnecessarily.

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### **Notice of intent**

6.—(1) Where the market surveillance authority proposes to recover its testing costs it must serve a notice of what is proposed (a “notice of intent”) within 20 days of obtaining proof that the article or substance has failed to comply with an applicable implementing measure.

(2) The notice of intent must include—

- (a) a statement that the article or substance has been tested and has failed to comply with the applicable implementing measure;
- (b) details of the tests carried out;
- (c) the amount to be paid;
- (d) a detailed breakdown of the testing costs incurred; and
- (e) information as to—
  - (i) the right to make representations and objections within 28 days beginning on the day on which the notice of intent was received;
  - (ii) the circumstances in which the market surveillance authority may not recover its costs.

### **Making representations and objections**

7. A person upon whom a notice of intent has been served may, within 28 days beginning on the day on which the notice was received, make written representations and objections to the market surveillance authority in relation to the proposed recovery of costs.

### **Final notice**

8.—(1) Within 20 days following the end of the period for making representations and objections the market surveillance authority must decide whether to impose the requirements of the notice of intent with or without modifications.

(2) Where the market surveillance authority decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 9.

### **Contents of final notice**

9.—(1) A final notice must include—

- (a) a statement that the article or substance has been tested and has failed to comply with the applicable implementing measure;
- (b) details of the tests carried out;
- (c) the amount to be paid and the period within which the payment must be made which must not be less than 28 days;
- (d) a detailed breakdown of the testing costs incurred;
- (e) how payment must be made;
- (f) the consequences of failing to comply with the notice within the specified period;
- (g) rights of appeal.

### **Appeal**

10.—(1) Any appeal under this Part must be made to the First-tier Tribunal.

(2) The tribunal must determine the standard of proof.



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- (3) A notice under this Part is suspended pending appeal.
- (4) The Tribunal may, in relation to the imposition of a requirement or service of a notice—
  - (a) withdraw the notice;
  - (b) confirm the notice;
  - (c) vary the notice; and
  - (d) remit the decision whether to confirm the notice, or any matter relating to that decision, to the market surveillance authority.

### **Mode of recovery**

**11.** The market surveillance authority may recover the amount due under a final notice as if payable under a court order.

### **Guidance**

**12.—(1)** The market surveillance authority must publish guidance about the recovery of costs under this Part.

(2) The guidance must contain the relevant information and the market surveillance authority must update and revise the guidance where appropriate.

(3) The market surveillance authority must have regard to the guidance in exercising its functions.

(4) The relevant information in sub-paragraph (2) is information about—

- (a) the circumstances in which a final notice under this Part is likely to be imposed and when it is not likely to be imposed;
- (b) how the costs of the test will be calculated;
- (c) the matters likely to be taken into account by the market surveillance authority in determining the amount to be recovered; and
- (d) the rights to make representations and objections and the rights of appeal.

**13.** The market surveillance authority must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this Schedule.

## SCHEDULE 5

Regulation 13(b)

### Civil sanctions

## PART 1

### Power to impose civil sanctions

#### **Market surveillance authority**

**1.** The market surveillance authority may impose a requirement upon a person to comply with a compliance notice, a stop notice, an enforcement undertaking or to pay a variable monetary penalty or non-compliance penalty (a “civil sanction”) as set out in this Schedule.

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## PART 2

### Compliance notices and variable monetary penalties

#### Imposition of a compliance notice

2.—(1) The market surveillance authority may by notice (“a compliance notice”) impose on any person—

- (a) in relation to an offence committed under regulation 14(1) a requirement to take such steps as the market surveillance authority may specify, within such period as it may specify, to secure that the offence does not continue or recur;
- (b) where the market surveillance authority is of the opinion that a person is making available on the market an energy-related product which does not comply with an applicable implementing measure, a requirement to take such steps as the market surveillance authority may specify within such period as it may specify, to secure that the product is withdrawn from the market or that its being made available on the market is prohibited or restricted.

(2) Before imposing a requirement under sub-paragraph (1)(a) the market surveillance authority must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) Before imposing a requirement under sub-paragraph (1)(b) the market surveillance authority must be satisfied beyond reasonable doubt that the energy-related product does not comply with the applicable implementing measure.

(4) A compliance notice may not be imposed on more than one occasion in relation to the same act or omission.

#### Imposition of a variable monetary penalty

3.—(1) The market surveillance authority may by notice impose on any person in relation to an offence committed under regulation 14(1) a requirement to pay a monetary penalty to the market surveillance authority in such amount as it may determine (“a variable monetary penalty”).

(2) Before doing so the market surveillance authority must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) A variable monetary penalty may not be imposed on more than one occasion in relation to the same act or omission.

(4) There is no limit to the amount of a variable monetary penalty.

(5) Before serving a notice relating to a variable monetary penalty the market surveillance authority may require the person on whom it is to be served to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the offence.

(6) The market surveillance authority may recover any variable monetary penalty imposed under this Schedule as if payable under order of the court.

#### Notice of intent

4.—(1) Where the market surveillance authority proposes to serve a compliance notice or a variable monetary penalty under this Part, it must serve on that person a notice of what is proposed (a “notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposed notice or penalty;
- (b) the requirements of the notice and in the case of a penalty the amount to be paid;

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- (c) information as to—
  - (i) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
  - (ii) the circumstances in which the market surveillance authority may not impose the notice.

### **Making representations and objections**

5. A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice was received make written representations and objections to the market surveillance authority in relation to the proposed imposition of a compliance notice or variable monetary penalty.

### **Third party undertakings**

6.—(1) A person on whom a notice of intent is served may offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any third party affected by the offence or non-compliance with an applicable implementing measure (“a third party undertaking”).

(2) The market surveillance authority may accept or reject such a third party undertaking.

(3) The market surveillance authority must take into account any third party undertaking that it accepts in its decision whether or not to serve a final notice and, if it serves a notice imposing a variable monetary penalty, the amount of the penalty.

### **Final notice**

7.—(1) After the end of the period for making representations and objections, the market surveillance authority must decide whether to impose the requirements in the notice of intent, with or without modifications.

(2) Where the market surveillance authority decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 8 or 9.

(3) The market surveillance authority may not impose a final notice on a person where the market surveillance authority is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates.

### **Contents of final notice – compliance notice**

8. A final notice relating to a compliance notice must include information as to—
- (a) the grounds for imposing the notice;
  - (b) what compliance is required and the period within which it must be completed;
  - (c) rights of appeal; and
  - (d) the consequences of failing to comply with the notice.

### **Contents of final notice - variable monetary penalty**

9. A final notice relating to a variable monetary penalty must include information as to—
- (a) the grounds for imposing the penalty;
  - (b) the amount to be paid;
  - (c) how payment may be made;
  - (d) the period within which payment must be made which must be not less than 28 days;

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- (e) rights of appeal; and
- (f) the consequences of failing to comply with the notice.

### **Appeals against a final notice**

- 10.**—(1) The person receiving the final notice may appeal against it.
- (2) The grounds for appeal are—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
  - (d) in the case of a non-monetary requirement, that the nature of the requirement is unreasonable;
  - (e) that the decision was unreasonable for any other reason;
  - (f) that the decision was wrong for any other reason.

### **Criminal proceedings**

- 11.**—(1) If—
- (a) a compliance notice or variable monetary penalty is imposed on any person, or
  - (b) a third party undertaking is accepted from any person,
- that person may not at any time be convicted of the offence under regulation 14(1) in respect of the act or omission giving rise to the compliance notice, variable monetary penalty or third party undertaking except in a case referred to in sub-paragraph (2).
- (2) The case referred to in sub-paragraph (1) is a case where in relation to an offence under regulation 14(1)—
- (a) a compliance notice is imposed on a person or a third party undertaking is accepted from a person,
  - (b) no variable monetary penalty is imposed upon that person, and
  - (c) the person fails to comply with the compliance notice or third party undertaking.
- (3) Criminal proceedings for offences triable summarily to which a compliance notice or third party undertaking in sub-paragraph (2) relate may be instituted at any time up to six months from the date when the market surveillance authority notifies the person that they have failed to comply with that compliance notice or third party undertaking.

### **Other offences and penalties**

**12.** Where a person upon whom a compliance notice is served under paragraph 2(1)(b) does not comply with it within the time limit specified in the notice or fails to comply with a third party undertaking, the person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## PART 3

### Stop notices

#### Stop notices

- 13.**—(1) The market surveillance authority may serve a notice (a “stop notice”) on any person—
- (a) in relation to an offence committed under regulation 14(1), prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice;
  - (b) where the market surveillance authority is of the opinion that a person is likely to make available on the market an energy-related product which does not comply with an applicable implementing measure, a requirement to take such steps as the market surveillance authority may specify within such period as it may specify, to secure that its being made available on the market is prohibited or restricted.
- (2) A stop notice may only be served where the person is—
- (a) carrying on the activity, and
  - (b) the market surveillance authority reasonably believes that—
    - (i) the activity as carried on by that person involves or is likely to involve the commission of an offence under regulation 14(1); or
    - (ii) that person is likely to make available on the market an energy-related product which does not comply with an applicable implementing measure.
- (3) The steps referred to in sub-paragraph (1)(a) and (b) must be steps to eliminate the risk of the offence being committed, or of energy-related products which do not comply with an applicable implementing measure being made available on the market.

#### Contents of a stop notice

- 14.** A stop notice must include information as to—
- (a) the grounds for serving the stop notice and the activity which is prohibited;
  - (b) the steps the person must take to comply with the stop notice;
  - (c) the consequences of non-compliance;
  - (d) the period within which the activity must stop.

#### Appeals

- 15.**—(1) The person on whom a stop notice is served may appeal against the decision to serve it.
- (2) The grounds for appeal are—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable;
  - (d) that any step specified in the notice is unreasonable;
  - (e) that the person has not committed the offence and would not have committed it had the stop notice not been served;
  - (f) that the person was not likely to make an energy-related product available on the market and would not have made it available on the market if the stop notice had not been served;

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- (g) that the person would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been served;
- (h) that the decision was wrong for any other reason.

### **Completion certificates**

**16.**—(1) The market surveillance authority must issue a certificate (a “completion certificate”) if, after service of a stop notice, the market surveillance authority is satisfied that the person has taken the steps specified in the notice.

- (2) A stop notice ceases to have effect on the issue of a completion certificate.
- (3) A person on whom a stop notice is served may at any time apply for a completion certificate.
- (4) The market surveillance authority must decide whether to issue a completion certificate within 14 days of the application.
- (5) A person on whom the stop notice was served may appeal against a decision not to issue a completion certificate on the grounds that—
  - (a) the decision was based on an error of fact;
  - (b) the decision was wrong in law;
  - (c) the decision was unfair or unreasonable;
  - (d) the decision was wrong for any other reason.

### **Compensation**

**17.**—(1) The market surveillance authority must compensate a person for loss suffered as the result of the service of the stop notice or the refusal of a completion certificate if a person has suffered loss as a result of the notice or refusal and—

- (a) a stop notice is subsequently withdrawn or amended by the market surveillance authority because the decision to serve it was unreasonable or any step specified in the notice was unreasonable;
  - (b) a person successfully appeals against the stop notice and the First-tier Tribunal finds that the service of the notice was unreasonable; or
  - (c) a person successfully appeals against the refusal of a completion certificate and the Tribunal finds that the refusal was unreasonable.
- (2) A person may appeal against a decision not to award compensation or the amount of compensation on the grounds that—
- (a) the market surveillance authority’s decision was unreasonable;
  - (b) the amount offered was based on incorrect facts;
  - (c) the decision was wrong for any other reason.

### **Offences**

**18.** Where a person on whom a stop notice is served does not comply with it within the time limit specified in the notice, the person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## PART 4

### Enforcement undertakings

#### Enforcement undertakings

**19.** The market surveillance authority may accept a written undertaking (an “enforcement undertaking”) given by a person to the market surveillance authority to take such action as may be specified in the undertaking within such period as may be specified where the market surveillance authority has reasonable grounds to suspect that the person has committed an offence under regulation 14(1).

#### Contents of an enforcement undertaking

**20.—**(1) An enforcement undertaking must specify—

- (a) action to be taken by the person to secure that the offence does not continue or recur;
- (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed; or
- (c) action (including the payment of a sum of money) to be taken by the person to benefit any person affected by the offence.

(2) It must specify the period within which the action must be completed.

(3) It must include—

- (a) a statement that the undertaking is made in accordance with this Schedule;
- (b) the terms of the undertaking;
- (c) information as to how and when a person is considered to have discharged the undertaking.

(4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if both parties agree in writing.

#### Acceptance of an enforcement undertaking

**21.** If the market surveillance authority has accepted an enforcement undertaking then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—

- (a) that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates; and
- (b) the market surveillance authority may not impose on that person a compliance notice, stop notice or variable monetary penalty in respect of that act or omission.

#### Discharge of an enforcement undertaking

**22.—**(1) If the market surveillance authority is satisfied that an enforcement undertaking has been complied with it must issue a certificate to that effect.

(2) The market surveillance authority may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.

(3) The person who gave the undertaking may at any time apply for such a certificate.

(4) The market surveillance authority must decide whether to issue such a certificate, and give written notice of the decision to the applicant, within 14 days of such an application.

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(5) The person to whom the notice is given may appeal against a decision not to issue a certificate on the grounds that the decision—

- (a) was based on an error of fact;
- (b) was wrong in law;
- (c) was unfair or unreasonable;
- (d) was wrong for any other reason.

### **Inaccurate, incomplete or misleading information**

**23.**—(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is regarded as not having complied with it.

(2) The market surveillance authority may by notice in writing revoke a certificate issued under paragraph 22 if it was issued on the basis of inaccurate, incomplete or misleading information.

### **Non-compliance with an enforcement undertaking**

**24.**—(1) If a person does not comply with an enforcement undertaking the market surveillance authority may in the case of an offence committed under regulation 14(1)—

- (a) serve a compliance notice, non-compliance penalty, stop notice or variable monetary penalty; or
- (b) bring criminal proceedings.

(2) If a person has complied partly but not fully with an undertaking, that partial compliance must be taken into account in the imposition of any criminal or other sanction on the person.

(3) Criminal proceedings for offences to which an enforcement undertaking relates may be instituted at any time up to six months from the date when the market surveillance authority notifies the person that they have failed to comply with that undertaking.

## **PART 5**

### **Non-compliance Penalties**

#### **Non-compliance penalties**

**25.**—(1) If a person fails to comply with a compliance notice, stop notice, third party undertaking or enforcement undertaking, irrespective of whether a variable monetary penalty was also imposed, the market surveillance authority may serve a notice on that person imposing a monetary penalty (“a non-compliance penalty”).

(2) The amount of the non-compliance penalty must be determined by the market surveillance authority, and must be a percentage of the costs of fulfilling the remaining requirements of the notice, third party undertaking or enforcement undertaking.

(3) The percentage must be determined by the market surveillance authority having regard to all the circumstances of the case and may, if appropriate, be 100%.

(4) The notice must include information as to—

- (a) the grounds for imposing the non-compliance penalty;
- (b) the amount to be paid;
- (c) how payment must be made;
- (d) the period in which payment must be made, which must not be less than 28 days;



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- (e) rights of appeal;
  - (f) the consequences of failure to make payment in the specified period;
  - (g) any circumstances in which the market surveillance authority may reduce the amount of the penalty.
- (5) If the requirements of the compliance notice, stop notice, third party undertaking or enforcement undertaking are fulfilled before the time set for payment of the non-compliance penalty, the penalty is not payable.
- (6) The person on whom the notice imposing the non-compliance penalty is served may appeal against it.
- (7) The grounds of appeal are—
- (a) that the decision to serve the notice was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unfair or unreasonable for any reason;
  - (d) that the amount of the penalty was unreasonable;
  - (e) that the decision was wrong for any other reason.

## PART 6

### Withdrawing or amending a notice

26. The market surveillance authority may at any time in writing—
- (a) withdraw a notice imposing a variable monetary penalty or a notice imposing a non-compliance penalty notice or reduce the amount specified in the notice;
  - (b) withdraw a compliance notice or stop notice or amend the steps in order to reduce the amount of work necessary to comply with the notice.

## PART 7

### Appeals

#### Appeals

- 27.—(1) Any appeal under this Schedule must be made to the First-tier Tribunal.
- (2) An appeal must be brought within [<sup>F28</sup>28 days] of the date on which the notice or decision is received.
- (3) In any appeal (except in relation to a stop notice) where the commission of an offence is an issue requiring determination, the market surveillance authority must prove that offence according to the same burden and standard of proof as in a criminal prosecution.
- (4) In any other case the tribunal must determine the standard of proof.
- (5) All notices (other than stop notices) are suspended pending appeal.
- (6) The Tribunal may, in relation to the imposition of a requirement or service of a notice—
- (a) withdraw the requirement or notice;
  - (b) confirm the requirement or notice;
  - (c) vary the requirement or notice;

**Status:** Point in time view as at 01/07/2021.

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- (d) take such steps as the market surveillance authority could take in relation to the act or omission giving rise to the requirement or notice;
- (e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the market surveillance authority.

#### Textual Amendments

**F28** Words in Sch. 5 para. 27(2) substituted (1.12.2011) by [The Ecodesign for Energy-Related Products \(Amendment\) Regulations 2011 \(S.I. 2011/2677\)](#), regs. 1, **2(4)**

## PART 8

### Guidance and publicity

#### Guidance as to use of civil sanctions

- 28.**—(1) The market surveillance authority must publish guidance about its use of civil sanctions.
- (2) The market surveillance authority must revise and update the guidance where appropriate.
- (3) The market surveillance authority must have regard to the guidance or revised and updated guidance in exercising its functions.
- (4) In the case of guidance about compliance notices, stop notices, variable monetary penalties and non-compliance penalties the guidance must contain information as to—
- (a) the circumstances in which the civil sanction is likely to be imposed; and
  - (b) the circumstances in which it is not likely to be imposed.
- (5) In the case of guidance about variable monetary penalties and non-compliance penalties, the guidance must contain information about—
- (a) the matters likely to be taken into account by the market surveillance authority in determining the amount of the penalty (including voluntary reporting by a person of their own non-compliance); and
  - (b) rights to make representations and objections and rights of appeal.
- (6) In the case of guidance about enforcement undertakings the guidance must contain information as to—
- (a) the circumstances in which the market surveillance authority is likely to accept an enforcement undertaking;
  - (b) the circumstances in which the market surveillance authority is not likely to accept an enforcement undertaking.

#### Consultation on guidance

**29.** The market surveillance authority must consult such persons as it considers appropriate before publishing any guidance or revised guidance.

#### Publication of enforcement action

- 30.**—(1) The market surveillance authority must from time to time publish—
- (a) the cases in which civil sanctions have been imposed;

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- (b) where the civil sanction is a compliance notice, stop notice or variable monetary penalty, the cases in which a third party undertaking has been accepted;
  - (c) cases in which an enforcement undertaking has been entered into.
- (2) In paragraph (1)(a) the reference to cases in which civil sanctions have been imposed does not include cases where the sanction has been imposed but overturned on appeal.
- (3) This paragraph does not apply in cases where the market surveillance authority considers that publication would be inappropriate.

**Status:**

Point in time view as at 01/07/2021.

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