
Status: Point in time view as at 17/09/2018.

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STATUTORY INSTRUMENTS

2012 No. 3032

ENVIRONMENTAL PROTECTION

**The Restriction of the Use of Certain Hazardous Substances
in Electrical and Electronic Equipment Regulations 2012**

Made - - - - 4th December 2012
Laid before Parliament 7th December 2012
Coming into force - - 2nd January 2013

The Secretary of State is a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in respect of measures relating to the restriction of the use of hazardous substances in electrical and electronic equipment.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for certain references to provisions of an EU instrument to be construed as a reference to those provisions as amended from time to time.

The Secretary of State, in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 makes the following Regulations.

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 and come into force on 2nd January 2013.

Interpretation

2. In these Regulations—

(1) [S.I. 2004/706](#).

(2) [1972 c.68](#), as amended by numerous subsequent Acts; however, the only amendments relevant for the purposes of these Regulations are those introduced by Part 3 of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#).

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“2008 Regulations” means the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008⁽³⁾;

“authorised person” means a person authorised by the market surveillance authority in accordance with regulation 35⁽²⁾;

“authorised representative” means a person appointed in accordance with regulation 22⁽¹⁾;

“cables” means all cables with a rated voltage of less than 250 volts that serve as a connection or an extension to connect EEE to the electrical outlet or to connect two or more items of EEE to each other;

“CE marking” means a marking by which a manufacturer indicates that a product complies with the applicable requirements set out in these Regulations and which takes the form set out in Annex II of RAMS;

“compliance notice” means a notice given under paragraph 1 of Schedule 3;

“conformity assessment” means the process demonstrating whether the requirements of these Regulations are met in relation to EEE;

“the Directive” means Directive 2011/65/EU of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment⁽⁴⁾^{F1}, as last amended by Commission Delegated Directive (EU) 2017/1011;

“distributor” means a person in the supply chain, other than the manufacturer or the importer, who makes EEE available on the market;

“economic operator” means a manufacturer, authorised representative, importer or distributor;

“EEE” means electrical and electronic equipment as defined in regulation 4;

“enforcement notice” means a notice given under paragraph 2 of Schedule 3;

“harmonised standard” means a standard adopted by one of the European standardisation bodies listed in ^{F2}Annex 1 to Regulation (EU) No 1025/2012 of the European Parliament and of the Council on European standardisation] on the basis of a request made by the European Commission in accordance with ^{F3}Article 10 of that Regulation], the reference of which standard has been published in the Official Journal of the European Union;

“importer” means a person established within the EU who places EEE from a third country on the EU market;

“industrial monitoring and control instruments” means monitoring and control instruments designed for exclusively industrial or professional use;

“infringing EEE” means EEE that does not comply with the requirements of these Regulations;

“make available on the market” means to supply in the course of a commercial activity (whether in return for payment or free of charge) for distribution, consumption or use on the EU market, and related expressions are to be construed accordingly;

“manufacturer” means a person who manufactures EEE or who has EEE designed or manufactured, and markets it under that person’s name or trademark;

“market surveillance authority” has the meaning given in regulation 35⁽¹⁾;

“medical device”, “active implantable medical device”, and “in vitro diagnostic medical device” have the meanings given in regulation 2(1) of the Medical Devices Regulations 2002⁽⁵⁾;

“notice” means a notice in writing;

(3) S.I. 2008/37, as amended by S.I. 2009/581.

(4) OJ No L 174, 1.7.11, p 88.

(5) S.I. 2002/618, amended by 2008/2936; there are other amending instruments but none are relevant.

“place on the market” means to make EEE available on the EU market for the first time, and related expressions are to be construed accordingly;

“RAMS” means Regulation (EC) No 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93(6);

“recall” means to take any measure aimed at achieving the return of EEE that has already been made available to the end user;

“recall notice” means a notice given under paragraph 4 of Schedule 3;

“spare part” means a separate part of an item of EEE that can replace a part of an item of EEE and—

- (a) the item of EEE cannot function as intended without that part; and
- (b) the functionality of the item of EEE is restored or upgraded when the part is replaced by the spare part;

“technical documentation” has the meaning given in Module A of Annex II to Decision 768/2008/EC of the European Parliament and of the Council on a common framework for the marketing of products(7);

“withdraw” means to take any measure aimed at preventing an item of EEE in the supply chain from being made available on the market.

Textual Amendments

- F1** Words in reg. 2 inserted (17.9.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018 (S.I. 2018/942), regs. 1(2), **22(a)**
- F2** Words in reg. 2 substituted (17.9.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018 (S.I. 2018/942), regs. 1(2), **22(b)(i)**
- F3** Words in reg. 2 substituted (17.9.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018 (S.I. 2018/942), regs. 1(2), **22(b)(ii)**

Restriction on the use of certain hazardous substances in EEE

3.—(1) Subject to paragraph (2) and (4) EEE placed on the market must not contain the substances listed in Annex II to the Directive, as amended from time to time.

(2) The presence of those substances in quantities no greater than the maximum concentration value by weight in homogeneous materials as specified in that Annex, as so amended, is allowed.

(3) In paragraph (2) “homogeneous material” means one material of uniform composition throughout or a material, consisting of a combination of materials, that cannot be disjointed or separated into different materials by mechanical actions such as unscrewing, cutting, crushing, grinding and abrasive processes.

(4) Paragraph (1) shall not apply to the applications listed in Annex III and IV to the Directive, as amended from time to time.

Definition of EEE

4.—(1) “EEE” means electrical and electronic equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and

(6) OJ No L 218, 13.8.08 p 30.

(7) OJ No L 218, 13.8.08, p 82.

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measurement of such currents and fields and designed for use with a voltage rating not exceeding 1000 volts for alternating current and 1500 volts for direct current.

(2) In paragraph (1) “dependent” means needing electric currents or electromagnetic fields to fulfil at least one intended function.

(3) References to EEE include references to cables and spare parts for its repair, its reuse, updating of its functionalities or upgrading of its capacity.

EEE to which these Regulations apply

5.—(1) Subject to paragraphs (2) and (3) and regulation 6, these Regulations apply to EEE which falls within the categories set out in Part 1 of Schedule 1 and—

- (a) is placed on the market on or after 2nd January 2013; or
- (b) was placed on the market before 2nd January 2013 as set out in paragraph (2) of regulation 7.

(2) These Regulations do not apply to EEE which falls within the categories set out in Part 2 of Schedule 1.

(3) These Regulations apply to EEE which falls within the categories set out in Part 3 of Schedule 1 as set out in that Part.

Exclusion until 22nd July 2019 for EEE outside the scope of the 2008 Regulations

6. Without prejudice to paragraphs 22 and 23 of Schedule 1, any EEE to which these Regulations apply but which was outside the scope of the 2008 Regulations may be made available on the market until 22nd July 2019 even if the EEE does not comply with the provisions of these Regulations.

Revocation and transitional arrangements

7.—(1) The following are revoked—

- (a) the 2008 Regulations; and
- (b) the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2009⁽⁸⁾.

(2) Where EEE was placed on the market before 2nd January 2013—

- (a) any obligations that arose under the 2008 Regulations may be enforced under Schedules 2 and 3 of these Regulations;
- (b) obligations under these Regulations which arise after the placing on the market of the EEE apply.

(3) This regulation does not affect liability under the 2008 Regulations for any offences committed before 2nd January 2013.

Existing legislation

8. Nothing in these Regulations affects the application of existing EU legislation or legislation giving effect to EU legislation as regards requirements in relation to—

- (a) safety and health;

⁽⁸⁾ S.I. 2009/581.

- (b) chemicals, in particular as set out in Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals⁽⁹⁾; and
- (c) specific EU waste management legislation.

Presumption of conformity for EEE

9.—(1) Any EEE which bears the CE marking is presumed to comply with the provisions of these Regulations.

(2) Materials, components and EEE on which tests and measurements demonstrating compliance with the requirements of regulation 3 have been performed, or which have been assessed, in accordance with harmonised standards, shall be presumed to comply with the requirements of these Regulations.

(3) The presumptions of conformity in paragraphs (1) and (2) are rebuttable.

PART 2

Prohibitions and Obligations on Economic Operators

Manufacturers and their authorised representatives

Prohibitions on placing EEE on the market

10.—(1) A manufacturer must not place EEE on the market unless the EEE complies with the requirements of regulation 3 (restriction on the use of certain hazardous substances in EEE).

(2) A manufacturer must not place EEE on the market without having complied with—

- (a) regulation 11 (design and manufacture of EEE);
- (b) regulation 12 (conformity assessment procedure and drawing up of technical documentation);
- (c) regulation 13 (EU declaration of conformity and CE marking);
- (d) regulation 17 (compliance procedures for series production); and
- (e) regulation 18 (information identifying EEE and manufacturer).

Design and manufacture of EEE

11. A manufacturer must ensure that the EEE has been designed and manufactured to comply with the requirements of regulation 3.

Conformity assessment procedure and drawing up of technical documentation

12.—(1) A manufacturer must—

- (a) draw up technical documentation; and
- (b) carry out, and comply with their obligations under, the internal production control procedure,

(9) OJ No L 396/1 30.12.06, p 1.

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in relation to the EEE, in line with Module A of Annex II to Decision [768/2008/EC](#) of the European Parliament and of the Council on a common framework for the marketing of products and repealing Council Decision [93/465/EEC](#)(10).

(2) Where other applicable EU legislation or legislation giving effect to EU legislation requires the EEE to be subject to a conformity assessment procedure which is at least as stringent as that required under paragraph (1), compliance with the requirements of regulation 3 may be demonstrated within the context of that procedure and a single set of technical documentation may be drawn up.

EU declaration of conformity and CE marking

13. Where the compliance of the EEE with the requirements of regulation 3 has been demonstrated by the procedure referred to in regulation 12, a manufacturer must—

- (a) draw up an EU declaration of conformity in accordance with regulation 14; and
- (b) affix the CE marking in relation to the EEE in accordance with regulation 16.

14.—(1) The EU declaration of conformity must state that it has been demonstrated that the requirements specified in Article 4 of the Directive have been met in relation to the EEE.

(2) The EU declaration of conformity must also follow the structure, and include the information, specified in Annex VI to the Directive.

(3) The manufacturer must keep up to date the EU declaration of conformity drawn up in relation to EEE.

(4) The manufacturer must translate the EU declaration of conformity into the language required by each member State on the market of which they make the EEE available.

(5) An EU declaration of conformity in relation to EEE which is made available on the market in the United Kingdom must be drawn up in or translated into English.

(6) By drawing up the EU declaration of conformity, the manufacturer assumes responsibility for the compliance of the EEE.

Duty to keep technical documentation and EU declaration of conformity

15. A manufacturer must keep the technical documentation and the EU declaration of conformity for EEE available for inspection by the market surveillance authority for a period of ten years from the day on which the EEE was placed on the market.

EEE to bear CE marking

16.—(1) The CE marking which a manufacturer must affix under regulation 13 must be affixed visibly, legibly and indelibly.

(2) The CE marking must be affixed to—

- (a) the EEE; or
- (b) a data plate affixed to the EEE.

(3) Where due to the nature of the EEE it is not possible or not warranted for the CE marking to be affixed in accordance with paragraph (2), the manufacturer must instead affix the CE marking to—

- (a) the packaging of the EEE; and
- (b) any documents that accompany the EEE.

(10) OJ L218, 13.8.08, p 82.

Compliance procedures for series production

17.—(1) A manufacturer of EEE which is manufactured by means of series production must ensure that procedures are in place to ensure that any EEE so manufactured complies with the requirements of regulation 3.

(2) In doing so, the manufacturer must take adequate account of—

- (a) any changes in the design or characteristics of the EEE; and
- (b) any changes to any harmonised standards or technical specifications referred to in the EU declaration of conformity drawn up in relation to the EEE.

(3) In this regulation “technical specification” means a document that prescribes technical requirements to be fulfilled by a product, process or service.

Information identifying EEE and manufacturer

18.—(1) A manufacturer must ensure that a type, batch or serial number or other element allowing the EEE to be identified is marked—

- (a) on the EEE; or
- (b) where the size or nature of the EEE does not allow this, on the packaging of the EEE or in a document accompanying the EEE.

(2) A manufacturer must indicate the manufacturer’s name, registered trade name or registered trade mark and a single address at which they can be contacted—

- (a) on the EEE; or
- (b) where that is not possible, on the packaging of the EEE or in a document accompanying the EEE.

(3) Where other applicable EU legislation or legislation giving effect to EU legislation contains provisions for the affixing of the manufacturer’s name and address to the EEE which are at least as stringent as those set out in this regulation, the provisions of this regulation may be met by satisfying the provisions of that other legislation.

Register of EEE

19. A manufacturer must keep a register of any EEE placed on the market that the manufacturer has manufactured, or had designed and manufactured,—

- (a) in relation to which any provision of these Regulations has not been complied with; or
- (b) which has been recalled,

and keep distributors informed of these matters.

Non-compliant EEE

20. Where a manufacturer has placed EEE on the market and has reason to believe that any provision of these Regulations has not been complied with by the manufacturer in relation to the EEE, the manufacturer must immediately—

- (a) take the corrective measures which are necessary to ensure that the provision is complied with in relation to the EEE, withdraw the EEE or recall it, if appropriate; and
- (b) provide the market surveillance authority and the competent national authorities of any other member States in which they made the EEE available with information about the non-compliance and any such corrective measures taken.

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Co-operation with the authorities

21.—(1) The market surveillance authority may, during the period of 10 years from the day on which EEE was placed on the market, request the manufacturer who placed EEE on the market to—

- (a) provide it within such period as the authority may specify with all the information and documentation necessary to demonstrate that the provisions of these Regulations have been complied with in relation to the EEE; and
- (b) co-operate with that authority on any action taken or to be taken to ensure that the provisions of these Regulations are complied with in relation to the EEE.

(2) A request under paragraph (1)(a) must be accompanied by the reasons for making the request.

(3) The manufacturer must comply with a request made under paragraph (1).

(4) The information and documentation supplied pursuant to a request under paragraph (1)(a) must be drawn up in or translated into English.

Manufacturers' authorised representatives

22.—(1) A manufacturer may, by written mandate, appoint a person established within the EU as their authorised representative to act on the manufacturer's behalf in relation to specified tasks.

(2) The mandate must allow the authorised representative to do at least the following in relation to EEE covered by the mandate—

- (a) perform the manufacturer's obligations under regulation 15 (duty to keep technical documentation and EU declaration of conformity); and
- (b) perform the manufacturer's obligations under paragraph (4) of regulation 21 (cooperation with the authorities).

(3) An authorised representative may not be appointed to perform the manufacturer's obligations under regulation 11 (design and manufacture of EEE) or paragraph (1)(a) of regulation 12 (conformity assessment procedure and drawing up of technical documentation).

(4) An authorised representative must comply with all the duties imposed on the manufacturer in relation to each obligation under these Regulations that the representative is appointed by the mandate to perform and, accordingly—

- (a) as far as those duties are concerned, references in these Regulations to the manufacturer are to be taken as including a reference to the authorised representative; and
- (b) if the authorised representative contravenes or fails to comply with any of those duties, the authorised representative may be proceeded against as though the authorised representative were the manufacturer.

(5) A manufacturer who has appointed an authorised representative to perform on the manufacturer's behalf an obligation under these Regulations remains responsible for the proper performance of that obligation.

Importers

Prohibition on placing EEE on the market

23. An importer must not place EEE on the market unless—

- (a) the EEE complies with the requirements of regulation 3;
- (b) the importer has ensured that the manufacturer has done all of the following in relation to the EEE—

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- (i) carried out the conformity assessment procedure and drawn up the technical documentation in accordance with paragraph (1) of regulation 12 (conformity assessment procedure and drawing up of technical documentation);
- (ii) affixed the CE marking in accordance with regulation 16 (EEE to bear CE marking);
- [^{F4}(iii) complied with regulation 18 (information identifying EEE and manufacturer).]
- ^{F5}(iv)
- (c) the EEE is accompanied by the required documents; and
- (d) the importer has complied with regulation 24 (information identifying importers).

Textual Amendments

F4 Reg. 23(b)(iii) substituted (25.7.2014) by The Waste Electrical and Electronic Equipment and Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2014 (S.I. 2014/1771), regs. 1(b), 4(2)

F5 Reg. 23(b)(iv) repealed (25.7.2014) by The Waste Electrical and Electronic Equipment and Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2014 (S.I. 2014/1771), regs. 1(b), 4(3)

Information identifying importers

- 24.—(1) An importer must ensure that the following information is marked on the EEE—
- (a) the importer’s name, registered trade name or registered trade mark; and
 - (b) an address at which the importer can be contacted.
- (2) Where it is not possible to mark the information on the EEE the information may instead be marked on the packaging of the EEE or in a document accompanying the EEE.
- (3) Where the importer complies with other applicable EU legislation, or legislation giving effect to EU legislation, containing provisions for the affixing of the importer’s name and address which are at least as stringent as those set out in this regulation, it is sufficient to satisfy this regulation.

Monitoring of EEE

25. An importer must keep a register of any EEE which they have placed on the market—
- (a) in relation to which any provision of these Regulations has not been complied with; or
 - (b) any EEE which has been recalled,
- and keep distributors informed of these matters.

Non-compliant EEE

- 26.—(1) If an importer has reason to believe that EEE which the importer was intending to place on the market does not comply with the requirements of regulation 3, the importer must inform the manufacturer and the market surveillance authority of the non-compliance.
- (2) An importer who has placed EEE on the market and has reason to believe that any provision of these Regulations has not been complied with in relation to the EEE must immediately—
- (a) take the corrective measures which are necessary to ensure that the provision is complied with in relation to the EEE, withdraw the EEE or recall it, if appropriate; and

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- (b) provide the market surveillance authority and the competent national authorities of any other member States in which they made the EEE available with information about the non-compliance and any corrective measures taken in accordance with sub-paragraph (a).

Retention of documentation and co-operation with the authorities

27.—(1) An importer must for a period of ten years from the day on which they placed an item of EEE on the market—

- (a) keep a copy of the EU declaration of conformity for the EEE; and
- (b) ensure that the technical documentation is available for inspection by the market surveillance authority on request by the authority.

(2) The market surveillance authority may during the ten year period mentioned in paragraph (1) request an importer who has placed EEE on the market to—

- (a) provide it within such period as the authority may specify with all the information and documentation necessary to demonstrate that the provisions of these Regulations have been complied with in relation to the EEE; and
- (b) co-operate with that authority on any action taken or to be taken to ensure that the provisions of these Regulations are complied with in relation to the EEE.

(3) A request under paragraph (2)(a) must be accompanied by the reasons for making the request.

(4) The importer must comply with a request under paragraph (2).

(5) The information and documentation supplied pursuant to a request under paragraph (2)(a) must be drawn up in or translated into English.

Duty in certain circumstances to comply with manufacturers' duties in place of importers' duties

28.—(1) An importer who places EEE on the market under the importer's name or trademark must comply with all of the duties imposed by these Regulations on manufacturers, and in such a case, a reference to the manufacturer in these Regulations is to be taken as being a reference to the importer.

(2) Such an importer is not required to comply with the duties imposed by these Regulations on importers.

Distributors

Duty to act with due care and prohibition on making EEE available on the market

29.—(1) When making EEE available on the market, a distributor must act with due care in relation to the requirements applicable, in particular by verifying that—

- (a) the EEE bears the CE marking;
- (b) the EEE is accompanied by the required documents in a language which can be easily understood by consumers and other end-users in the Member State in which the EEE is to be made available on the market;
- (c) the manufacturer has complied with regulation 18 (information identifying EEE and manufacturer);
- (d) the importer has complied with regulation 24 (information identifying importers).

(2) A distributor must not make EEE available on the market if the distributor has reason to believe that the EEE does not comply with the requirements of regulation 3.

Non-compliant EEE

30.—(1) If a distributor has reason to believe that EEE which the distributor was intending to make available on the market does not comply with the requirements of regulation 3, the distributor must inform the following to that effect—

- (a) the importer (if there is one);
- (b) the manufacturer (if there is no importer); and
- (c) the market surveillance authority.

(2) A distributor who has reason to believe that EEE which the distributor has made available on the market is not in conformity with these Regulations must—

- (a) take the corrective measures which are necessary to ensure that the provision is complied with in relation to the EEE, withdraw the EEE or recall it, if appropriate; and
- (b) immediately provide the market surveillance authority and the competent national authorities of any other member States in which they made the EEE available with information about the non-compliance and any corrective measures taken under subparagraph (a).

Co-operation with the authorities

31.—(1) The market surveillance authority may request a distributor who has made EEE available on the market to—

- (a) provide it within such period as the authority may specify with all the information and documentation within the distributor's knowledge or possession which demonstrate that the provisions of these Regulations have been complied with in relation to the EEE; and
- (b) co-operate with that authority on any action taken or to be taken to ensure that the provisions of these Regulations are complied with in relation to the EEE.

(2) A request under paragraph (1)(a) must be accompanied by the reasons for making the request.

(3) The distributor must comply with a request under paragraph (1).

(4) A request for information or documents may not be made more than 10 years after the day on which the EEE is placed on the market.

Duty in certain circumstances to comply with manufacturers' duties in place of distributors' duties

32. A distributor who modifies EEE already placed on the market in such a way that compliance with the requirements of regulation 3 may be affected must comply with all of the duties imposed by these Regulations on manufacturers, and in such a case, a reference to the manufacturer in these Regulations is to be taken as being a reference to the distributor.

All economic operators

Identification of economic operators to the market surveillance authority

33.—(1) The market surveillance authority may, for ten years following the placing on the market of the EEE, request an economic operator to identify to the authority, within such period as the authority may specify—

- (a) any economic operator who has supplied it with EEE; and
- (b) any economic operator to whom it has supplied EEE.

(2) The economic operator must comply with the request.

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Protection of CE marking

- 34.**—(1) A person must not affix a CE marking in relation to EEE unless—
- (a) the person is—
 - (i) the manufacturer; or
 - (ii) an authorised representative of the manufacturer who has been appointed by the manufacturer in accordance with regulation 22(1) to affix the CE marking on the manufacturer’s behalf; and
 - (b) it has been demonstrated by performance of the conformity assessment procedure referred to in regulation 12 (conformity assessment procedure and drawing up of technical documentation) that the EEE complies with the requirements of regulation 3.
- (2) A person must not affix any marking in relation to EEE which—
- (a) is not a CE marking; but
 - (b) purports to attest that the EEE satisfies the requirements of regulation 3.
- (3) A person must not affix in relation to EEE any marking, sign or inscription which is likely to mislead any other person as to the meaning or form of the CE marking affixed in relation to the EEE.
- (4) Any other marking may be affixed in relation to EEE provided that the visibility, legibility and meaning of the CE marking is not thereby impaired.

PART 3

Enforcement

Market surveillance authority

- 35.**—(1) It is the duty of the Secretary of State to enforce these Regulations and the Secretary of State is the market surveillance authority for the purposes of these Regulations and RAMS in its application to EEE.
- (2) The market surveillance authority may authorise in writing any person who appears suitable to act on its behalf to carry out any of its functions and to exercise any of the powers and duties conferred on it by these Regulations or RAMS.
- (3) The market surveillance authority must not commence proceedings for an offence in Scotland.

Market surveillance powers

- 36.** Where the market surveillance authority considers that there may be a breach of these Regulations it may—
- (a) exercise the powers set out in Schedule 2 (test purchases, powers of entry etc and warrants); and
 - (b) take the actions set out in Schedule 3 (compliance, enforcement and recall notices).

Offences

- 37.**—(1) It is an offence for a manufacturer to contravene or fail to comply with any of the requirements of—
- (a) regulation 10 (prohibitions on placing EEE on the market);
 - (b) regulation 15 (duty to keep technical documentation and EU declaration of conformity);

- (c) regulation 19 (register of EEE);
 - (d) regulation 20 (non-compliant EEE); or
 - (e) regulation 21 (co-operation with the authorities).
- (2) It is an offence for an importer to contravene or fail to comply with any of the requirements of—
- (a) regulation 23 (prohibition on placing EEE on the market);
 - (b) regulation 25 (monitoring of EEE);
 - (c) regulation 26 (non-compliant EEE); or
 - (d) regulation 27 (retention of documents and co-operation with authorities).
- (3) It is an offence for a distributor to contravene or fail to comply with any of the requirements of—
- (a) regulation 29 (duty to act with due care and prohibition on making EEE available on the market);
 - (b) regulation 30 (non-compliant EEE); or
 - (c) regulation 31 (co-operation with authorities).
- (4) It is an offence for an economic operator to contravene or fail to comply with regulation 33(2) (identification of economic operators to the market surveillance authority).
- (5) It is an offence for any person to contravene or fail to comply with any of the requirements of regulation 34 (protection of CE marking).
- (6) In any proceedings for an offence under paragraph (1)(a) in respect of a failure to affix the CE marking in accordance with regulation 16 (EEE to bear CE marking), where the accused seeks to rely on regulation 16(3), it is for the accused to show that it was not possible, or (as the case may be) not warranted, for the CE marking to be affixed in accordance with regulation 16(2).

Obstruction, etc.

- 38.** It is an offence for any person—
- (a) intentionally to obstruct an authorised person acting in pursuance of their powers and duties under these Regulations or Article 19 (which provides for market surveillance measures) of RAMS; or
 - (b) knowingly or recklessly to—
 - (i) make a statement; or
 - (ii) provide any information, document or record,which is false or misleading in a material respect, in purported compliance with any requirement imposed under these Regulations or Article 19 of RAMS.

Penalties

- 39.**—(1) A person who is guilty of an offence under—
- (a) regulation 37(1)(a);
 - (b) regulation 37(2)(a); or
 - (c) regulation 37(3)(a),
- is liable on summary conviction, to a fine not exceeding the statutory maximum and on conviction on indictment, to a fine.
- (2) A person who is guilty of—

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- (a) any other offence under regulation 37; or
- (b) an offence under regulation 38,

is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Remediation orders

40.—(1) This regulation applies where a person commits an offence under these Regulations in respect of a matter which appears to the court to be a matter which it is in the person’s power to remedy.

(2) The court may specify in an order (“a remediation order”)—

- (a) the steps that the person must take to remedy any of the matters for which that person has been convicted; and
- (b) the period within which those steps must be taken.

(3) A period specified in a remediation order may be extended if an application is made to the court within that period.

(4) If a person is ordered to remedy a matter, that person is not liable under regulation 37 (offences) in respect of that matter during the period or the extended period.

(5) A remediation order may be made in addition to, or instead of, any other penalty.

Recovery of expenses of enforcement

41.—(1) This regulation applies where a person commits an offence under regulation 37(1) (a), (2)(a) or (3)(a) or paragraph 9 of Schedule 3.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person to reimburse the market surveillance authority for any expenditure which the authority has reasonably incurred in investigating the offence, including in purchasing or in testing or examining any EEE, or any part of it, in respect of which the offence was committed.

Time limit for prosecution of offences

42.—(1) In England and Wales an information relating to an offence that is triable by a magistrates’ court may be so tried if it is laid within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(2) In Scotland

- (a) summary proceedings for an offence may be commenced before the end of twelve months from the date on which evidence sufficient in the Lord Advocate’s opinion to justify the proceedings came to the Lord Advocate’s knowledge, and
- (b) section 136(3) of the Criminal Procedure (Scotland) Act 1995 (time limit for certain offences)(**11**) applies for the purpose of this paragraph as it applies for the purpose of that section.

(3) In Northern Ireland summary proceedings for an offence may be instituted within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the knowledge of the prosecutor.

(4) No proceedings are to be brought more than three years after the commission of the offence.

(11) 1995 c. 46.

(5) For the purposes of this regulation a certificate of the prosecutor (or in Scotland, the Lord Advocate) as to the date on which such evidence as is referred to above came to their knowledge is conclusive evidence.

Defence of due diligence

43.—(1) In proceedings for an offence under these Regulations, it is a defence for a person to show that they took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) A person is not, without the leave of the court, entitled to rely on the defence if it involves an allegation that the commission of the offence was due—

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

unless, not less than seven clear days before the hearing of the proceedings (in England, Wales and Northern Ireland), or the trial diet (in Scotland), the person has served a notice on the person bringing the proceedings.

(3) The notice must give the information in the possession of the person (“A”) serving the notice which identifies or assists in identifying the person (“B”) who—

- (a) committed the act or default; or
- (b) supplied the information which was relied on.

(4) A may not rely on the defence by reason of reliance on information supplied by B, unless A shows that it was reasonable in all the circumstances to have relied on the information, having regard in particular—

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

Liability of persons other than the principal offender

44.—(1) Where the commission by a person of an offence under these Regulations is due to anything which another person did or failed to do in the course of a business, that other person is 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 a relevant person; or
- (b) as a result of the negligence of a relevant person,

that person, as well as the body corporate, is guilty of the offence.

(3) A “relevant person” means—

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b) in relation to a body corporate managed by its members, a member of that body performing managerial functions;
- (c) in relation to a Scottish partnership, a partner;
- (d) a person purporting to act as a person described in (a), (b) or (c).

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Service of documents

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

- (a) delivering it to that person in person;
 - (b) leaving it at that person’s proper address; or
 - (c) sending it by post or electronic means to that person’s proper address.
- (2) In the case of a body corporate, a document may be served on a director of that body.
- (3) In the case of a partnership, a document may be served on a partner or a person having control or management of the partnership business.
- (4) For the purposes of this regulation, “proper address” means—
- (a) in the case of a body corporate or its director—
 - (i) the registered or principal office of that body; or
 - (ii) the email address of the secretary or clerk of that body;
 - (b) in the case of a partnership, a partner or person having control or management of the partnership business—
 - (i) the principal office of the partnership; or
 - (ii) the email address of a partner or a person having that control or management;
 - (c) in any other case, a person’s last known address, which includes an email address.
- (5) If a person to be served with a document has specified an address in the United Kingdom (other than that person’s proper address) at which that person or someone on that person’s behalf will accept service, that address must also be treated as that person’s proper address.
- (6) In this regulation “partnership” includes a Scottish partnership.

PART 4

Miscellaneous

Review

- 46.—(1) The Secretary of State must from time to time—
- (a) carry out a review of these Regulations;
 - (b) set out the conclusions of the review in a report; and
 - (c) publish the report.
- (2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive is implemented in other member States.
- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

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(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Consequential amendments

47.—(1) In Schedule 1 to the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004(**12**) for the words “The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008” substitute “The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012”.

(2) In Part 2 of the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007(**13**) under the heading “Weights and measures” omit the entry “Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008” and after the last entry insert “The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012”.

Michael Fallon

Minister of State for Business and Enterprise
Department for Business, Innovation and Skills

(12) S.I. 2004/693, amended by S.I. 2008/37; there are other amending instruments but none is relevant.

(13) S.I. 2007/3544, amended by S.I. 2009/2981; there are other amending instruments but none is relevant.

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SCHEDULE 1

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

PART 1

Categories of EEE to which these Regulations apply

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

PART 2

EEE to which these Regulations do not apply

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

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

19. Active implantable medical devices.

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

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

PART 3

Categories of EEE with special rules of application

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

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

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

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

(2) In this paragraph “previous Directive” means Directive [2002/95/EC](#) of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment⁽¹⁴⁾.

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

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

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

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

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SCHEDULE 2

Regulation 36(a)

Test purchases, powers of entry etc and warrants

Test purchases

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

(2) If—

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

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

Power to enter premises

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

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

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

(4) An authorised person may—

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

Power to inspect, seize and detain EEE etc

3.—(1) An authorised person may—

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

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

Warrants

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

- (a) that there are reasonable grounds to enter those premises for the purposes of enforcing these Regulations; and
- (b) that any of the conditions in sub-paragraph (3) is met.

(2) Reference to a justice of the peace—

- (a) in Scotland includes a sheriff;
- (b) in Northern Ireland is a reference to a lay magistrate.

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

SCHEDULE 3

Regulation 36(b)

Compliance, enforcement and recall notices

Compliance notice

1.—(1) The market surveillance authority may serve a notice under this paragraph on an economic operator who makes EEE available on the market if the authority has reasonable grounds for believing—

- (a) the EEE is an infringing product; or
- (b) the economic operator has failed to comply with its obligations under regulation 15, 19, 25 or 27(1).

(2) A compliance notice must—

- (a) describe the alleged infringing EEE (the “specified EEE”) or alleged failure to comply with the obligations set out in sub-paragraph 1(b) (the “alleged breach”) in a manner sufficient to identify it; and
- (b) state the exact grounds on which the notice is based.

(3) A compliance notice may—

- (a) require the economic operator in an appropriate case, and having regard to the economic operator’s ability to take the measures in light of that person’s position in the supply chain, to remedy the situation or matters which gave rise to the authority’s belief that the specified EEE was an infringing EEE or an alleged breach had occurred; or
- (b) where it is not possible for the specified EEE to cease to be an infringing EEE, require the economic operator to secure that the specified EEE is withdrawn or that its being made available on the market is prohibited or restricted.

(4) A compliance notice must tell the economic operator—

- (a) what compliance is required and the period within which it must be completed;
- (b) to give the authority evidence that the economic operator has complied with the notice;
- (c) the consequences of failing to comply with the notice; and
- (d) the rights of appeal against the notice under these Regulations and any time limits for their exercise.

(5) Proceedings must not be commenced against a person under regulation 37 in respect of an alleged contravention of a requirement of these Regulations where—

- (a) a compliance notice has been served on that person in respect of the alleged contravention; and

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- (b) the specified compliance period in that notice has not come to an end.

Enforcement notice

2.—(1) Where the market surveillance authority serves a compliance notice on an economic operator and, at the end of the compliance period specified in the notice—

- (a) it appears to the authority that that person has failed to comply with the notice; and
- (b) the authority has reasonable grounds for considering that the specified EEE is an infringing EEE or that an alleged breach has occurred,

the authority may serve an enforcement notice on that person.

(2) An enforcement notice must—

- (a) describe the specified EEE or alleged breach in a manner sufficient to identify it; and
- (b) state the exact grounds on which the notice is based.

(3) An enforcement notice may—

- (a) require the economic operator in an appropriate case, and having regard to the economic operator's ability to take the measures in light of that person's position in the supply chain, to remedy the situation or matters which gave rise to the authority's belief that the specified EEE was an infringing EEE or that an alleged breach has occurred; or
- (b) require the economic operator to secure that the specified EEE is withdrawn or that its being made available on the market is prohibited or restricted.

(4) An enforcement notice must tell the economic operator—

- (a) what compliance is required and the period within which it must be completed;
- (b) to give the authority evidence that the economic operator has complied with the notice;
- (c) the consequences of failing to comply with the notice; and
- (d) the rights of appeal against the notice under these Regulations and any time limits for their exercise.

(5) Proceedings must not be commenced against a person under regulation 37 (Offences) in connection with any specified EEE which it is alleged is an infringing EEE where—

- (a) an enforcement notice has been served on that person in respect of the specified EEE; and
- (b) the compliance period specified in that notice has not come to an end.

(6) In this paragraph "specified EEE" means the alleged infringing EEE that has been identified in a compliance notice in accordance with paragraph 1(2)(a).

Supplementary provisions in relation to compliance and enforcement notices

3.—(1) The market surveillance authority must comply with the provisions of Article 21 of RAMS in relation to the serving of a compliance or enforcement notice which imposes any requirements to secure that EEE is withdrawn from the market or that its being made available on the market is prohibited or restricted.

(2) Where the market surveillance authority has served a compliance notice or enforcement notice under this Schedule, the authority—

- (a) must keep the notice under review and may withdraw or revoke it at any time;
- (b) may vary the notice, provided it is not made more restrictive for the economic operator or more onerous for that person to comply with.

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Recall notices

4.—(1) The market surveillance authority may serve a recall notice on an economic operator if the authority has reasonable grounds for believing that EEE is—

- (a) an infringing EEE presenting a serious risk by reason of that infringement; and
- (b) that it has already been supplied or made available to end users.

(2) A recall notice is a notice which requires the economic operator to use reasonable endeavours to organise the return of the EEE from end users to the economic operator or another person specified in the notice.

(3) The provisions of—

- (a) regulation 15 of the General Product Safety Regulations 2005(15) (“GPSR”); and
- (b) Article 21 of RAMS,

apply in relation to the serving of a recall notice under these Regulations.

(4) For the purposes of serving a recall notice under this paragraph, regulation 15 of the GPSR applies as if—

- (a) references to the provisions of the GPSR were references to those provisions as modified by this paragraph and to these Regulations;
 - (b) references to an “enforcement authority” were references to the market surveillance authority;
 - (c) references to the product being “a dangerous product” were references to the EEE being an infringing EEE presenting a serious risk by reason of that infringement;
 - (d) references to risks to the health and safety of persons were references to the serious risk presented by the EEE;
 - (e) paragraphs (9) and (10) were omitted.
- (5) In this paragraph—
- (a) “serious risk” means a serious risk to health, safety, the environment, consumers, or security, requiring rapid intervention, including a serious risk the effects of which are not immediate;
 - (b) The decision whether or not an EEE presents a serious risk shall be based on an appropriate risk assessment which takes account of the nature of the hazard and the likelihood of an occurrence;
 - (c) The feasibility of obtaining higher levels of safety or the availability of other EEEs presenting a lesser degree of risk shall not constitute grounds for considering that an EEE presents a serious risk.

Action by the market surveillance authority

5.—(1) The market surveillance authority may itself take action which an economic operator could have been required to take by a compliance, an enforcement or recall notice where the conditions for serving such a notice are met and either—

- (a) the authority has been unable to identify any economic operator on whom to serve such a notice; or
- (b) the person on whom such a notice has been served has failed to comply with it.

(2) If the market surveillance authority has taken action under paragraph (1) following the failure of an economic operator to comply with a compliance, enforcement or recall notice, the authority

(15) S.I. 2005/1803, as amended by S.I. 2012/1848.

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may recover from that person as a civil debt any costs or expenses reasonably incurred by the authority in taking the action.

- (3) A civil debt recoverable under the preceding paragraph may be recovered summarily—
- (a) in England and Wales by way of complaint pursuant to section 58 of the Magistrates' Courts Act 1980⁽¹⁶⁾;
 - (b) in Northern Ireland in proceedings under article 62 of the Magistrates' Court (Northern Ireland) Order 1981⁽¹⁷⁾.

Compensation provisions relating to compliance, enforcement and recall notices

6. Where the market surveillance authority serves a compliance, enforcement or recall notice, the authority is liable to pay compensation to a person in respect of any loss or damage suffered by that person by reason of the notice if—

- (a) the EEE is not an infringing EEE or the alleged breach is not a breach; and
- (b) the exercise by the authority of the power to serve the notice was not attributable to neglect or default by the person.

Appeals against compliance, enforcement and recall notices

7.—(1) An application for an order to vary or set aside the terms of a compliance, enforcement or recall notice may be made—

- (a) in the case of a compliance, enforcement or recall notice, by the economic operator on whom the notice has been served; and
- (b) in the case of a compliance or enforcement notice, by a person having an interest in the product in respect of which that notice has been served.

(2) An application must be made before the end of the period of 21 days beginning with the day on which the notice was served.

(3) The appropriate court (as determined in accordance with paragraph 8) may only make an order setting aside a compliance, enforcement or recall notice if satisfied—

- (a) that the EEE is not an infringing EEE;
- (b) that the alleged breach is not a breach; or
- (c) that the serving of the notice was not proportionate.

(4) On an application to vary the terms of a compliance, enforcement or recall notice, the appropriate court may vary the terms of the notice as it considers appropriate.

Appropriate court for appeals against notices etc and further appeals

8.—(1) In England and Wales or Northern Ireland the appropriate court for the purposes of paragraph 7 is—

- (a) the court in which proceedings have been brought for an offence under regulation 37(1)(a), (2)(a) or (3)(a) or paragraph 9 of this Schedule; or
- (b) in any other case a magistrates' court in England and Wales or Northern Ireland.

(2) In Scotland the appropriate court for the purposes of paragraph 7 is the sheriff for a sheriff court district in which a compliance, enforcement or recall notice has been served on an economic operator.

⁽¹⁶⁾ 1980 c.43.

⁽¹⁷⁾ S.I. 1981/1675 (N.I.26).

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(3) A person aggrieved by an order made by a magistrates' court in England, Wales or Northern Ireland⁽¹⁸⁾ pursuant to an application under paragraph 7(1), or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, to the county court.

Offences and penalties

9.—(1) It is an offence for any person to contravene or fail to comply with any of the requirements of—

- (a) an enforcement notice; or
 - (b) a recall notice.
- (2) A person convicted of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast) (OJ No L174, 01.07.2011, p88). The Directive imposes harmonised restrictions on the use of certain listed hazardous substances in 11 categories of electrical and electronic equipment. It also requires the use of EU declarations of conformity and CE marking, and provides for market surveillance. The Directive seeks to reduce the risks posed by hazardous substances to health and the environment.

The Directive repeals and replaces Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ No L37, 13.02.2003, p19) (as amended) which was implemented in the United Kingdom by the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008 (S.I. 2008/37) (as amended). These Regulations revoke and replace S.I. 2008/37 (regulation 7).

Regulation 3 sets out the restrictions on the use of certain hazardous substances in electrical and electronic equipment ('EEE'). Regulation 5 and Schedule 1 set out the EEE to which these Regulations apply. Regulation 6 sets out a time-limited exclusion from the scope of these Regulations.

Part 2 of the Regulations sets out the prohibitions and obligations that apply to economic operators. They are divided into prohibitions and obligations applying to manufacturers and their authorised representatives (regulations 10 to 22), importers (regulations 23 to 28), distributors (regulations 29 to 32), and all economic operators (regulations 33 and 34). The various categories of

⁽¹⁸⁾ In Scotland the making of, or refusal to make, an order by a sheriff is subject to appeal in accordance with sections 27 and 28 of the Sheriff Courts (Scotland) Act 1907 (c.51), as amended.

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economic operator are defined in regulation 2. In certain circumstances importers and distributors are required to comply with the duties of manufacturers in place of, or in addition to, the duties that apply to importers and distributors (regulations 28 and 32).

Part 3 deals with the enforcement of these Regulations. Regulation 35 appoints the Secretary of State as the market surveillance authority, both for the purposes of these Regulations and for the purposes of Regulation (EC) No 765/2008 of the European Parliament of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ No L218, 13.08.2008 p30). The powers under Regulation No 765/2008 are available to supplement the enforcement provisions in these Regulations.

Part 4 of the Regulations requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

Schedule 1 sets out what EEE are inside and outside the scope of these Regulations. Schedule 2 contains the powers that the market surveillance authority can exercise, such as test purchases, powers of entry and warrants. Schedule 3 sets out the actions the market surveillance authority can take, and includes provision for compliance, enforcement and recall notices.

A transposition note and a full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector are available from the BIS website (www.bis.gov.uk). They are also annexed to the Explanatory Memorandum published alongside the instrument on www.legislation.gov.uk.

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