

SCHEDULES

SCHEDULE 7

Enforcement and investigatory powers conferred on the enforcing authority and the market surveillance authority

PART 2

COMPLIANCE NOTICES, WITHDRAWAL NOTICES AND RECALL NOTICES

Compliance notice

4. An enforcing authority may serve a compliance notice on a relevant economic operator in respect of apparatus if the authority has reasonable grounds for believing that there is non-compliance.

5. A compliance notice must—

(a) require the relevant economic operator on which it is served to—

(i) end the non-compliance within such period as may be specified in the notice; or

(ii) provide evidence, within such period as may be specified in the notice, demonstrating to the satisfaction of the enforcing authority that the non-compliance has not in fact occurred; and

(b) warn the economic operator that, if the non-compliance persists or if satisfactory evidence has not been produced under sub-paragraph (a) within the period specified in the notice, further action may be taken in respect of the apparatus or any apparatus of the same type made available on the market by that relevant economic operator.

6. A compliance notice may include directions as to the measures to be taken by the economic operator to secure compliance, including different ways of securing compliance.

7. Subject to paragraph 8, an enforcing authority may revoke or vary a compliance notice by serving a notification on the economic operator.

8. An enforcing authority may not vary a compliance notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

Withdrawal notice

9. An enforcing authority may serve a withdrawal notice on a relevant economic operator in respect of apparatus if the authority has reasonable grounds for believing that—

(a) the apparatus has been made available on the market; and

(b) there is non-compliance.

10. A withdrawal notice must prohibit the relevant economic operator from making the apparatus available on the market without the consent of the enforcing authority.

Status: This is the original version (as it was originally made).

11. A withdrawal notice may require the relevant economic operator to take action to alert end-users to any risk presented by the apparatus.

12. A withdrawal notice may require the relevant economic operator to keep the enforcing authority informed of the whereabouts of any apparatus referred to in the notice.

13. A consent given by the enforcing authority pursuant to a withdrawal notice, may impose such conditions on the making available on the market as the enforcing authority considers appropriate.

14. Subject to paragraph 15, an enforcing authority may revoke or vary a withdrawal notice by serving a notification on the economic operator.

15. An enforcing authority may not vary a withdrawal notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

16. A withdrawal notice has effect throughout the United Kingdom.

Recall notice

17. The enforcing authority may serve a recall notice on a relevant economic operator in respect of apparatus if the authority has reasonable grounds for believing that—

- (a) the apparatus has been made available to end-users; and
- (b) there is non-compliance.

18. A recall notice must require the relevant economic operator to use reasonable endeavours to organise the return of the apparatus from end-users to the relevant economic operator or another person specified in the notice.

19. A recall notice may—

- (a) require the recall to be effected in accordance with a code of practice;
- (b) require the relevant economic operator to—
 - (i) contact end-users in order to inform them of the recall, to the extent that it is practicable to do so;
 - (ii) publish a notice in such form and such manner as is likely to bring to the attention of end-users any risk the apparatus poses and the fact of the recall; or
 - (iii) make arrangements for the collection or return of the apparatus from end-users or its disposal; or
- (c) impose such additional requirements on the relevant economic operator as are reasonable and practicable with a view to achieving the return of the apparatus.

20. In determining what requirements to include in a recall notice, the enforcing authority must take into consideration the need to encourage distributors and end-users to contribute to its implementation.

21. A recall notice may only be issued by the enforcing authority where—

- (a) other action which it may require under these Regulations would not suffice to address the non-compliance;
- (b) the action being undertaken by the relevant economic operator is unsatisfactory or insufficient to address the non-compliance;
- (c) the enforcing authority has given not less than 10 days' notice to the relevant economic operator of its intention to serve such a notice; and
- (d) the enforcing authority has taken account of any advice obtained under paragraph 22.

22. A relevant economic operator which has received notice from the enforcing authority of an intention to serve a recall notice may at any time prior to the service of the recall notice require the authority to seek the advice of such person as the Institute determines on the questions of—

- (a) whether there is non-compliance; and
- (b) whether the issue of a recall notice would be proportionate.

23. Paragraphs 21(b), (c) and (d) do not apply in the case of apparatus presenting a serious risk requiring, in the view of the enforcing authority, urgent action.

24. Where a relevant economic operator requires the enforcing authority to seek advice under paragraph 22, that relevant economic operator is to be responsible for the fees, costs and expenses of the Institute and of the person appointed by the Institute to advise the enforcing authority.

25. In this Schedule, “Institute” means the charitable organisation with registered number 803725 and known as the Chartered Institute of Arbitrators.

26. A recall notice served by the enforcing authority may require the relevant economic operator to keep the authority informed of the whereabouts of apparatus to which the recall notice relates, so far as the relevant economic operator is able to do so.

27. Subject to paragraph 28, an enforcing authority may revoke or vary a recall notice by serving a notification on the economic operator.

28. An enforcing authority may not vary a recall notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

29. A recall notice has effect throughout the United Kingdom.

Interpretation

30. In this Schedule, “non-compliance” means that the apparatus—

- (a) presents a risk; or
- (b) is not in conformity with Part 2 or RAMS (in its application to apparatus).