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STATUTORY INSTRUMENTS

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**2016 No. 1152**

The Non-automatic Weighing Instruments Regulations 2016

**PART 8**

MARKET SURVEILLANCE AND ENFORCEMENT

CHAPTER 1

MARKET SURVEILLANCE

**The market surveillance authority**

57. The Secretary of State is the market surveillance authority for the purposes of these Regulations and RAMS.

**Regulated non-automatic weighing instruments presenting a risk**

58.—(1) This regulation applies where the market surveillance authority has sufficient reason to believe that a regulated non-automatic weighing instrument presents a risk in relation to any of the purposes set out in regulation 3(2).

(2) Where this regulation applies the market surveillance authority must carry out an evaluation of the regulated non-automatic weighing instrument covering all relevant requirements of these Regulations which apply to that instrument.

(3) The relevant economic operators in relation to the non-automatic weighing instrument must co-operate as necessary with the market surveillance authority for that purpose.

(4) Where, in the course of the evaluation referred to in paragraph (2), the market surveillance authority finds that that the regulated non-automatic weighing instrument does not comply with the essential requirements applicable to it, it must without delay issue a direction which requires the relevant economic operator to—

- (a) take all appropriate corrective actions;
- (b) withdraw the regulated non-automatic weighing instrument from the market; or
- (c) recall it within a reasonable period commensurate with the nature of the risk.

(5) Where the market surveillance authority acts under paragraph (4) it must without delay inform the notified body that carried out the conformity assessment procedure in respect of the regulated non-automatic weighing instrument of—

- (a) the respect in which the regulated non-automatic weighing instrument is not in conformity with the requirements of these Regulations; and
- (b) the actions that the authority is requiring the relevant economic operator to take.

(6) Where the market surveillance authority considers that non-compliance is not restricted to the United Kingdom, it must inform the Commission and the other EEA states of the results of the evaluation and of the actions which they have required the economic operator to take.

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(7) The economic operator must ensure that all appropriate corrective action is taken in respect of all the regulated non-automatic weighing instruments concerned that it has made available on the market throughout the European Economic Area.

(8) Where the relevant economic operator does not take adequate corrective action within a reasonable period, the market surveillance authority must take all provisional measures to prohibit or restrict the regulated non-automatic weighing instrument being made available on the market, to withdraw the instrument from that market or to recall it.

(9) Where the market surveillance authority takes measures under paragraph (8), the market surveillance authority must notify the Commission and the other EEA states of those measures without delay.

(10) A notification under paragraph (9) must include all available details, in particular—

- (a) the data necessary for the identification of the non-compliant regulated measuring instrument;
- (b) the origin of the instrument;
- (c) the nature of the non-compliance alleged and the risk involved;
- (d) the nature and duration of the measures taken;
- (e) the arguments put forward by the relevant economic operator; and
- (f) whether the non-compliance is due to either of the following—
  - (i) failure of the regulated measuring instrument to meet the requirements relating to a risk; or
  - (ii) shortcomings in the harmonised standards referred to in regulation 34(a).

### **EU safeguard procedure**

**59.**—(1) Where another EEA state has initiated the procedure under Article 37 of the Directive, the market surveillance authority must without delay, inform the Commission and the other EEA states of—

- (a) any measures taken by competent authority in respect of the regulated non-automatic weighing instrument;
- (b) any additional information which the market surveillance authority has at its disposal relating to the lack of conformity of the regulated non-automatic weighing instrument; and
- (c) any objections that the market surveillance authority may have to the measure taken by the EEA state initiating the procedure;

(2) Where a measure taken by another EEA state in respect of a regulated non-automatic weighing instrument is considered justified under Article 37(7) of the Directive, the market surveillance authority must ensure that appropriate measures to withdraw the instrument are taken in respect of the regulated non-automatic weighing instrument without delay.

(3) If, pursuant to Article 38 of the Directive, the Commission considers a direction given pursuant to regulation 58(4) is unjustified, the market surveillance authority must forthwith withdraw it and notify other competent authorities and economic operators affected accordingly.

### **Compliant regulated non-automatic weighing instruments which present a risk**

**60.**—(1) This regulation applies where, having carried out an evaluation under regulation 58 (regulated non-automatic weighing instruments presenting a risk), the market surveillance authority finds that although a regulated non-automatic weighing instrument is in compliance with the requirements of these Regulations, it presents a risk in relation to its use in relation to any activity referred to in regulation 3(2).

(2) Where this regulation applies, the market surveillance authority must issue a direction requiring the economic operator to—

- (a) take all appropriate measures to ensure that the non-automatic weighing instrument concerned, when placed on the market, no longer presents that risk;
- (b) withdraw the non-automatic weighing instrument from the market; or
- (c) recall it within a reasonable period, commensurate with the nature of the risk as it may prescribe.

(3) Where this regulation applies, the market surveillance authority must immediately inform the Commission and the other EEA states of all available details including—

- (a) the data necessary for the identification of the regulated non-automatic weighing instrument concerned;
- (b) the origin and supply chain of the regulated non-automatic weighing instrument;
- (c) the nature of the risk involved; and
- (d) the nature and duration of the national measures taken.

#### **Provisions as to directions under regulations 58 and 60**

**61.**—(1) This regulation applies in relation to directions given under regulations 58 (regulated non-automatic weighing instruments presenting a risk) and 60 (compliant regulated non-automatic weighing instruments which present a risk).

(2) A direction must—

- (a) be in writing;
- (b) describe the regulated non-automatic weighing instrument to which it relates in a manner sufficient to identify that instrument;
- (c) specify the risk identified by the market surveillance authority; and
- (d) specify the steps that the economic operator must take (including the time period within which they must be taken).

(3) The Secretary of State may impose a monetary penalty on an economic operator who fails to comply with a direction given under regulation 58 or 60.

(4) Schedule 5 has effect in relation to monetary penalties imposed under paragraph (3).

**Status:**

Point in time view as at 28/12/2016.

**Changes to legislation:**

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