
STATUTORY INSTRUMENTS

2016 No. 1153

The Measuring Instruments Regulations 2016

PART 1

INTRODUCTORY

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Measuring Instruments Regulations 2016.
- (2) These Regulations come into force on 28th December 2016.
- (3) These Regulations extend to Northern Ireland except Part 6.

Interpretation

- 2.—(1) In these Regulations—

“the 1985 Act” means the Weights and Measures Act 1985;

“accreditation” bears the same meaning as in point 10 of Article 2 of RAMS;

“accreditation certificate” means a certificate, issued by the United Kingdom Accreditation Service or a national accreditation body in another EEA state, attesting that a conformity assessment body meets the notified body requirements;

“active electrical energy meter” means a device which measures the active electrical energy consumed in a circuit which is intended for residential, commercial or light industrial use;

“authorised representative” means any person established within the European Economic Area who has received a written mandate from a manufacturer to act on the manufacturer’s behalf in relation to specified tasks;

“automatic weighing instrument” means an instrument that—

- (a) determines the mass of a product without the intervention of an operator; and
- (b) follows a predetermined programme of automatic processes characteristic of the instrument intended to determine the mass of a body by using the action of gravity on that body;

“automatic gravimetric filling instrument” means an automatic weighing instrument that fills containers with a predetermined and virtually constant mass of product from bulk;

“automatic catchweigher” means an automatic weighing instrument that determines the mass of pre-assembled discrete loads (for example pre-packages) or single loads of loose material;

“automatic checkweigher” means an automatic catchweigher which sub-divides articles of different mass into two or more sub-groups according to the value of the difference between their mass and the nominal set point;

“automatic discontinuous totaliser” means an automatic weighing instrument that—

- (a) determines the mass of a bulk product by dividing the product into discrete loads;

- (b) determines in sequence and sums the mass of each discrete load; and
- (c) delivers each discrete load to bulk;

“automatic rail-weighbridge” means an automatic weighing instrument having a load receptor inclusive of rails for conveying railway vehicles;

“automatic weight grading instrument” means an instrument which sub-divides articles of different mass into several sub-groups, each characterised by a given mass range;

“beltweigher” means an automatic weighing instrument that continuously determines the mass of a bulk product on a conveyor belt without systematic subdivision of the product without interrupting the movement of the conveyor belt;

“capacity serving measure” means a capacity serving measure (such as a drinking glass, jug or thimble measure) designed to determine a specified volume of a liquid (other than a pharmaceutical product) which is sold for immediate consumption;

“CE marking” means a marking which takes the form set out in Annex II of RAMS;

“commencement date” means the date referred to in regulation 1(2);

“Commission” means the Commission of the European Union;

“competent authority” means any person who is pursuant to regulation 67 (enforcement of the Regulations), authorised to enforce these Regulations;

“compliance notice” means a notice served in accordance with regulation 68(2);

“conformity assessment” means the process demonstrating whether the essential requirements relating to a measuring instrument have been met;

“conformity assessment body” means a body that performs conformity assessment activities including calibration, testing, certification and inspection;

“dimensional measuring instrument” means—

- (a) a length measuring instrument that serves for the determination of the length of rope type materials (for example textiles, bands, cables) during feed motion of the product to be measured;
- (b) an area measuring instrument which serves for the determination of the area of irregular shaped objects, for example for leather; or
- (c) a multi-dimensional measuring instrument which serves for the determination of the edge length (length, height, width) of the smallest enclosing rectangular parallelepiped of a product;

“the Directive” means [Directive 2014/32/EU](#) of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of measuring instruments⁽¹⁾ and references to the Directive (or a specific provision of it) are references to the Directive (or that provision) as from time to time amended;

“disqualification mark” means a mark or sticker the design of which is published by the Secretary of State⁽²⁾ and which may be affixed to a regulated measuring instrument in accordance with regulation 72 (disqualification);

(1) OJ L 96, 29.3.2014, p.149.

(2) The design of the disqualification mark is published on page 26 of the guidance on the Measuring Instruments (Liquid Fuel and Lubricants) Regulations 2006 ([S.I. 2006 No. 1260](#)) (as amended by the Measuring Instruments (Amendment) Regulations 2010 ([S.I. 2010 No. 281](#))) and the Measuring Equipment (Liquid Fuel and Lubricants) Regulations 1995 ([S.I. 1995 No. 1014](#)) (as amended). This guidance was published by the Department for Business, Innovation and Skills in February 2012 and can be found at www.gov.uk/government/uploads/system/uploads/attachment_data/file/283210/liquid-fuel-lubricants-consolidated-guidance-version-1.pdf. Paper copies are available from the Regulatory Delivery Directorate, Department for Business, Energy and Industrial Strategy 1 Victoria Street, London SW1H 0ET.

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

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

“enforcement notice” means a notice served in accordance with regulation 69(2);

“enforcement officer” means—

- (a) an inspector; or
- (b) a person appointed by the Secretary of State to act on the Secretary of State’s behalf to enforce these Regulations;

“essential requirements” means, in relation to a measuring instrument (or a class of that measuring instrument), the requirements specified as being applicable in relation to that measuring instrument (or that class) in Schedule 1;

“EU declaration of conformity” means a declaration of conformity required to be drawn up in accordance with chapter 3 of Part 4;

“EU-design examination certificate” means an EU-design certificate issued by a notified body in accordance with Module H1 of Annex II to the Directive;

“EU-type examination certificate” means an EU-type examination certificate issued by a notified body in accordance with Module B of Annex II to the Directive;

“exhaust gas analyser” means a measuring instrument that serves, in relation to a motor vehicle engine with spark ignition, to determine at the moisture level of the sample analysed the volume fractions of the following exhaust gas components—

- (a) carbon monoxide;
- (b) carbon dioxide;
- (c) oxygen; and
- (d) hydrocarbons;

“gas meter” means an instrument designed to measure, memorise and display the quantity of fuel gas (volume or mass) that has passed it which is intended for residential, commercial or light industrial use;

“harmonised standard” has the meaning set out in point 1(c) of Article 2 of Regulation (EU) 1025/2012 of the European Parliament and of the Council on European standardisation⁽³⁾ (as amended from time to time);

“importer” means any person who—

- (a) is established within the European Economic Area; and
- (b) places a measuring instrument from a third country on the European Economic Area market;

“in writing” includes text that is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference;

“M marking” means a marking applied to a measuring instrument which consists of the capital letter ‘M’ and the last two digits of the year of its affixing surrounded by a rectangle, the height of which is equal to that of the CE marking applied to that instrument;

“measuring instrument” has the meaning in regulation 3(1);

(3) OJ L 316, 14.11.2012, p.12.

“make available on the market” means any supply of a measuring instrument for distribution, or use on the European Economic Area market in the course of a commercial activity, whether in return for payment or free of charge, and related expressions are to be construed accordingly;

“manufacturer” means a person who—

- (a) manufactures a measuring instrument, or has a measuring instrument designed or manufactured, and markets that measuring instrument under their name or trade mark; or
- (b) is to be treated as a manufacturer by virtue of regulation 6(2);

“market surveillance authority” means the Secretary of State acting in the capacity of the market surveillance authority pursuant to the designation made by regulation 62 (the market surveillance authority) and where the context requires includes a market surveillance authority in another EEA state;

“material measure” means—

- (a) a material measure of length; or
- (b) a capacity serving measure;

“material measure of length” means an instrument comprising scale marks whose distances are given in legal units of length;

“national accreditation body” means the national accreditation body as defined in point 11 of Article 2 of RAMS;

“non-prescribed measuring instrument” means a measuring instrument of a kind referred to in regulation 3(3);

“non-water liquid measuring system” means a measuring system for the continuous and dynamic measurement of quantities of liquids other than water where—

- (a) the system comprises a meter and all devices required to ensure correct measurement or intended to facilitate the measuring operations; and
- (b) the expression “meter” means an instrument designed to measure continuously, memorise and display the quantity at metering conditions of liquid flowing through the measurement transducer in a closed, fully charged conduit;

“normative document” means a document containing technical specifications adopted by the International Organisation of Legal Metrology;

“notified body” means a conformity assessment body that has been notified to the Commission in accordance with Part 5 and includes, where the context so requires, a notified body designated as such in another EEA state in accordance with the Directive;

“notified body requirements” means the requirements set out in Schedule 5 (notified body requirements);

“notifying authority” means the notifying authority within the meaning of regulation 54 (the notifying authority)

“place on the market” means the first making available of a measuring instrument on the market, in the European Economic Area and related expressions are to be construed accordingly;

“putting into use” means the first use of a measuring instrument intended for the end-user for the purposes for which it was intended and related expressions are to be construed accordingly;

“RAMS” means Regulation (EC) 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(4) (as from time to time amended);

(4) OJ L 218, 13.8.2008, p.30.

“recall” means any measure aimed at achieving the return of a regulated measuring instrument that has already been made available to the end-user and related expressions are to be construed accordingly;

“regulated measuring instrument” means an instrument of the kind referred to in regulation 3(2);

“relevant conformity assessment procedure” means, in relation to a particular measuring instrument, a conformity assessment procedure specified in Schedule 1 as being applicable to that instrument;

“relevant economic operator” means, in relation to a measuring instrument, an economic operator with obligations in respect of that measuring instrument under Part 2;

“re-qualification mark” means a mark or sticker, the design of which is published by the Secretary of State⁽⁵⁾ and which is affixed to a regulated measuring instrument in accordance with regulation 73 (re-qualification);

“sub-assembly” means a hardware device mentioned as such in the instrument-specific annexes to the Directive that functions independently and makes up a measuring instrument together with other sub-assemblies with which it is compatible, or with a measuring instrument with which it is compatible;

“taximeter” means a device that works together with a signal generator to make a measuring instrument with the device measuring duration, calculating distance on the basis of a signal delivered by the distance signal generator and calculating and displaying the fare to be paid for a trip on the basis of the calculated distance or the measured duration of the trip, or both;

“technical documentation” means documentation prepared in accordance with Chapter 2 of Part 4;

“technical specification” means a document that prescribes technical requirements to be fulfilled by a measuring instrument;

“thermal energy meter” means an instrument designed to measure the thermal energy which, in a thermal energy exchange circuit, is given up by a liquid called the thermal energy-conveying liquid which is intended for residential, commercial or light industrial use and includes the following sub-assemblies, flow sensors, temperature sensor pairs and calculators where these are manufactured separately;

“Union harmonisation legislation” means any European Union legislation harmonising the conditions for the marketing of products;

“United Kingdom Accreditation Service” means the company limited by guarantee incorporated in England and Wales under number 3076190;

“volume conversion device” means a device fitted to a gas meter that automatically converts the quantity measured at metering conditions into a quantity at the specified conditions to which the measured quantity of fluid is converted;

“water meter” means an instrument designed to measure, memorise and display, the volume at metering conditions of water passing through the measurement transducer for the measurement of volumes of clean, cold or heated water intended for residential, commercial or light industrial use

(5) The design of the requalification mark is published on page 25 of the guidance on the Measuring Instruments (Liquid Fuel and Lubricants) Regulations 2006 (S.I. 2006 No. 1260) (as amended by the Measuring Instruments (Amendment) Regulations 2010 (S.I. 2010 No. 281)) and the Measuring Equipment (Liquid Fuel and Lubricants) Regulations 1995 (S.I. 1995 No. 1014) (as amended). This guidance was published by the Department for Business, Innovation and Skills in February 2012 and can be found at www.gov.uk/government/uploads/system/uploads/attachment_data/file/283210/liquid-fuel-lubricants-consolidated-guidance-version-1.pdf. Paper copies are available from the Regulatory Delivery Directorate, Department for Business, Energy and Industrial Strategy 1 Victoria Street, London SW1H 0ET.

“weights and measures authority” means a local weights and measures authority within the meaning set out in section 69 of the Weights and Measures Act 1985⁽⁶⁾; and

“withdraw”, when used in relation to a measuring instrument, means taking any measure aimed at preventing a measuring instrument in the supply chain from being made available on the market and related expressions are to be construed accordingly.

(2) A regulated measuring instrument that meets the requirements of the Directive by virtue of the laws of another EEA state is to be treated as meeting the requirements of these Regulations (except any requirement of these Regulations for anything to be written in English) and references to a regulated measuring instrument being in conformity with these Regulations are to be construed accordingly.

(3) Other expressions used in these Regulations have in relation to the application of these Regulations to—

- (a) Great Britain, the same meanings as in the Weights and Measures Act 1985; and
- (b) Northern Ireland, the same meanings as in the Weights and Measures (Northern Ireland) Order 1981⁽⁷⁾.

Meaning of “measuring instrument” and related expressions and application of these Regulations

3.—(1) In these Regulations the expression “measuring instruments” comprises the following—

- (a) water meters;
- (b) gas meters and sub-assemblies for inclusion in, or attachment to, gas meters in the form of volume conversion devices;
- (c) active electrical energy meters;
- (d) thermal energy meters and any of the following sub-assemblies—
 - (i) flow sensors;
 - (ii) temperature sensor pairs; and
 - (iii) calculators;
- (e) non-water liquid measuring systems;
- (f) automatic weighing instruments of the following kinds—
 - (i) automatic catchweighers;
 - (ii) automatic gravimetric filling instruments;
 - (iii) discontinuous totalisers;
 - (iv) beltweighers; and
 - (v) automatic rail weighbridges;
- (g) taximeters;
- (h) material measures;
- (i) dimensional measuring instruments; and
- (j) exhaust gas analysers.

(2) In these Regulations a reference to a regulated measuring instrument means a measuring instrument of any of the following descriptions —

(6) 1985 c.72; section 69 was amended by the Statute Law (Repeals) Act 1989 (c.43), Schedule 1, the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 144 and the Local Government (Wales) Act 1994 (c.19), Schedule 16, paragraph 75.

(7) S.I. 1981/231 (N.I. 10).

- (a) water meters used for trade for the supply of potable water in the temperature range from 0.1°C to and including 30°C;
- (b) gas meters for use for trade except a gas meter which is used under an agreement providing for the supply of a quantity of gas at a rate of flow which, if measured at a temperature of 15°C and a pressure of 1013.25 millibars, would exceed 1600 cubic meters an hour (or the equivalent quantity in kilograms);
- (c) active electrical energy meters for use for trade other than an instrument which is used under an agreement providing for the supply of active electrical energy where—
 - (i) the maximum quantity supplied exceeds 100 kilowatts per hour; and
 - (ii) the instrument provides measurement on a half-hourly basis;
- (d) non-water liquid measuring systems for use for trade of the following descriptions—
 - (i) a measuring system which is used for the continuous and dynamic measurement in a quantity not exceeding 100 litres or 100 kilograms of a liquid fuel, lubricant or a mixture of fuel and lubricant other than—
 - (aa) liquefied petroleum gas; or
 - (bb) liquefied natural gas;
 - (ii) a measuring system (other than one used in connection with the refuelling of aircraft, ships or hovercraft) which is used for the continuous and dynamic measurement in a quantity exceeding 100 litres or 100 kilograms of liquid fuel delivered from a road tanker other than—
 - (aa) liquefied gases;
 - (bb) lubricating oils;
 - (cc) liquid fuels of a temperature below -153°C; or
 - (dd) liquid fuels of a dynamic viscosity exceeding 100 millipascal seconds at 15°C;
- (e) automatic weighing instruments of the following kinds which are for use for trade—
 - (i) automatic gravimetric filling instruments;
 - (ii) automatic catchweighers (other than automatic checkweighers and automatic weight grading instruments);
 - (iii) automatic rail-weighbridges;
 - (iv) beltweighers; and
 - (v) discontinuous totalisers;
- (f) taximeters intended for use for the protection of consumers;
- (g) material measures which are for use for trade of the following kinds—
 - (i) material measures of length (excluding dipping and strapping tapes);
 - (ii) capacity serving measures for the measurement of draft beer or cider of the following capacities: $\frac{1}{3}$ pint, $\frac{1}{2}$ pint, $\frac{2}{3}$ pint, 1 pint, 2 pints, 4 pints, 8 pints and 16 pints;
 - (iii) capacity serving measures for the measurement of liquids other than draft beer or cider **(8)** of the following capacities in millilitres (ml) and litres (l): 5 ml, 10 ml, 20 ml, 25 ml, 35 ml, 50 ml, 70 ml, 100 ml, 125 ml, 150 ml, 175 ml, 200 ml, 250 ml, 500 ml, 1 l, 2 l, 2.5 l, 5 l, 10 l and 20 l;

(8) The Weights and Measures (Intoxicating Liquor) Order 1988 (S.I. 1988/2039 amended by S.I. 1990/1550, 1994/1883, 2009/663 and S.I. 2011/2331) makes provision as to the units of measurement and capacities that may be used in relation to certain intoxicating liquors.

- (h) exhaust gas analysers intended for use for the protection of the environment and public health except where the exhaust gas analyser includes or is connected to a device which is not used for the protection of the environment and public health;
- (3) In these Regulations “non-prescribed measuring instruments” are measuring instruments that are neither regulated measuring instruments nor measuring instruments referred to in paragraph (4) and Schedule 2.
- (4) These Regulations do not apply to the putting into use of the instruments listed in Schedule 2.

Revocations and transitional and consequential provisions

- 4. Schedule 3 (revocations, and transitional and consequential provisions) has effect.

Exception for trade fairs, exhibitions and demonstration

5. Nothing in these Regulations prevents the showing and use of a regulated measuring instrument which is not in conformity with the requirements of these Regulations at a trade fair, exhibition or demonstration for the marketing of regulated measuring instruments, provided that a visible sign clearly indicates—

- (a) the name and date of the trade fair or exhibition;
- (b) that the instrument is not in conformity with these Regulations; and
- (c) that the instrument is not available for sale until brought into conformity with these Regulations.

PART 2

REGULATED MEASURING INSTRUMENTS – OBLIGATIONS OF ECONOMIC OPERATORS

CHAPTER 1

OBLIGATIONS OF MANUFACTURERS AND PERSONS TO BE TREATED AS MANUFACTURERS

Introductory

6.—(1) This Chapter applies in relation to the placing on the market or the putting into use of a regulated measuring instrument by a manufacturer.

- (2) The obligations in this Chapter also apply to an importer or distributor who—
 - (a) places a regulated measuring instrument on the market under the name or trade mark of that importer or distributor; or
 - (b) modifies a regulated measuring instrument already placed on the market in such a way that compliance with these Regulations may be affected,

and the expression “manufacturer” is to be construed accordingly.

Manufacturers’ responsibilities – design, conformity assessment and marking of regulated measuring instruments

7. A manufacturer must not place on the market or put into use a regulated measuring instrument unless the manufacturer has—

- (a) designed and manufactured the instrument in accordance with the essential requirements;

- (b) drawn up technical documentation in relation to the instrument;
- (c) carried out (or procured the carrying out of) the relevant conformity assessment procedure which has demonstrated compliance of the instrument with the applicable requirements;
- (d) drawn up an EU declaration of conformity; and
- (e) affixed to the instrument—
 - (i) the CE marking; and
 - (ii) the M marking.

Manufacturers – obligations in respect of records

8. A manufacturer must keep the technical documentation and the EU declaration of conformity for a period of 10 years beginning with the day after the day on which the regulated measuring instrument to which it relates has been placed on the market.

Manufacturers’ obligations to ensure continuing conformity with essential requirements

9.—(1) Manufacturers must have procedures in place for series production of regulated measuring instruments by them to ensure that instruments so manufactured continue to meet the essential requirements.

(2) The procedures mentioned in paragraph (1) must adequately take into account changes in—

- (a) measuring instrument design or characteristics; and
- (b) changes in the harmonised standards, normative documents or in other technical specifications by reference to which the conformity of the regulated measuring instrument is declared.

(3) When deemed appropriate with regard to the performance of a regulated measuring instrument, manufacturers must—

- (a) carry out sample testing of regulated measuring instruments manufactured by them made available on the market;
- (b) investigate complaints about regulated measuring instruments manufactured by them;
- (c) if necessary, keep a register of—
 - (i) such complaints;
 - (ii) non-conforming measuring instruments; and
 - (iii) measuring instrument recalls; and
- (d) keep distributors informed of any monitoring undertaken by them.

Manufacturers’ obligations in relation to the marking of regulated measuring instruments with serial numbers etc.

10.—(1) A manufacturer must ensure that a regulated measuring instrument, which that manufacturer has placed on the market, bears a type, batch or serial number or other element allowing identification of that instrument.

(2) Paragraph (1) does not apply where the dimensions of the regulated measuring instrument are too small or it is of too sensitive a composition to allow it to bear the information required by that paragraph and in such a case the information must be marked on the instrument’s packaging (if any) and the accompanying documents required by these Regulations.

Manufacturers to mark contact details on regulated measuring instruments where possible

11.—(1) A manufacturer must indicate on every regulated measuring instrument manufactured by that manufacturer, the manufacturer's name, registered trade name or registered trade mark and the postal address at which the manufacturer can be contacted.

(2) Paragraph (1) does not apply where the dimensions of the regulated measuring instrument are too small or it is of too sensitive a composition to allow it to bear the information required by that paragraph and in such a case the information must be marked on the instrument's packaging (if any) and the accompanying documents required by these Regulations.

(3) The address required by this regulation must indicate a single point at which the manufacturer can be contacted.

(4) The contact details required by this regulation must be in a language easily understood by end-users and market surveillance authorities and, in the case of regulated measuring instruments made available in the United Kingdom, they must be in English.

Documentation to accompany regulated measuring instruments

12.—(1) A manufacturer must ensure that regulated measuring instruments that the manufacturer has placed on the market are accompanied by—

- (a) a copy of the EU declaration of conformity relating to the instruments;
- (b) information on the operation of the instruments including, where relevant, the following—
 - (i) rated operating conditions;
 - (ii) mechanical and electromagnetic environment classes;
 - (iii) the upper and lower temperature limit, whether condensation is possible or not, open or closed location;
 - (iv) instructions for installation, maintenance, repairs, permissible adjustments;
 - (v) instructions for correct operation and any special conditions of use; and
 - (vi) conditions for compatibility with interfaces, sub-assemblies or measuring instruments.

(2) Paragraph (1)(b) does not apply where the simplicity of the regulated measuring instrument makes the supply of the information referred to in that paragraph unnecessary.

(3) Information supplied in accordance with this regulation must be in a language that can easily be understood by end-users and where the end users are in the United Kingdom, the information must be in English.

(4) Such instructions and information (and any labelling) relating to a regulated measuring instrument must be clear, understandable and intelligible.

Action to be taken where regulated measuring instruments placed on the market are not in conformity with the essential requirements

13.—(1) This regulation applies where a manufacturer considers or has reason to believe that a regulated measuring instrument placed on the market by that manufacturer is not in conformity with the requirements of these Regulations.

(2) The manufacturer must immediately take the corrective measures necessary to bring the regulated measuring instrument into conformity or withdraw or recall it, if appropriate.

(3) Where the regulated measuring instrument presents a risk, the manufacturer must immediately inform the competent national authorities of the EEA states in which the instrument has been made

available on the market to that effect giving details, in particular, of the non-compliance and of any corrective measures taken.

Provision of information to the competent authority

14.—(1) A manufacturer must, further to a reasoned request from a competent authority, provide the competent authority with all the information and documentation in paper or electronic form necessary to demonstrate the conformity of a regulated measuring instrument manufactured by it with the requirements of these Regulations.

(2) Information and documentation supplied to a competent authority pursuant to this regulation must be supplied in English.

(3) A manufacturer must co-operate with a competent authority, at the request of that authority, on any action to eliminate the risks posed by regulated measuring instruments that the manufacturer has placed on the market.

Use of authorised representatives by manufacturers

15.—(1) A manufacturer may, by a written mandate, appoint an authorised representative to discharge the responsibilities under these Regulations in relation to the placing on the market of a regulated measuring instrument.

(2) A representative appointed under paragraph (1) may not discharge the manufacturer's obligations under regulation 7(a) and 7(b).

(3) An authorised representative shall be treated as being authorised to—

- (a) keep the EU declaration of conformity and the technical documentation at the disposal of the market surveillance authority for 10 years beginning with the day after the day the regulated measuring instrument has been placed on the market;
- (b) provide a competent authority, further to a reasoned request from that authority, with all the information and documentation necessary to demonstrate the conformity of a regulated measuring instrument; and
- (c) cooperate with a competent authority, at its request on any action taken to eliminate the risks posed by regulated measuring instruments covered by its mandate.

CHAPTER 2

OBLIGATIONS OF IMPORTERS

Introductory

16. This Chapter applies to the placing on the market or the putting into use of a regulated measuring instrument from a country outside the European Economic Area that is imported into the United Kingdom.

Ensuring compliance of regulated measuring instruments

17.—(1) An importer must only place compliant regulated measuring instruments on the market.

(2) An importer must ensure that—

- (a) the appropriate conformity assessment procedure has been carried out by the manufacturer of the regulated measuring instrument (or by the importer where the importer is to be regarded as the manufacturer by virtue of regulation 6(2));
- (b) the manufacturer has drawn up the technical documentation (or that the importer has done so where the importer is treated as the manufacturer by virtue of regulation 6(2));

- (c) the regulated measuring instrument bears the CE marking and the M marking;
- (d) the regulated measuring instrument is accompanied by a copy of the EU declaration of conformity and the documents referred to in regulation 12 (documentation to accompany regulated measuring instruments); and
- (e) the manufacturer (or the importer where he is treated as the manufacturer) has complied with the requirements of regulations 10 (manufacturers' obligations in relation to the marking of regulated measuring instruments with serial numbers etc.) and 11 (manufacturers to mark contact details on regulated measuring instruments where possible).

Importers duty to notify manufacturer and market surveillance authorities of non-compliant regulated measuring instruments that present a risk

18. Where an importer considers or has reason to believe that the regulated measuring instrument is not in conformity with the essential requirements and presents a risk, the importer must inform the manufacturer and the market surveillance authority.

Requirements to mark importers' details on regulated measuring instruments

19.—(1) An importer must indicate on regulated measuring instruments imported by that importer, the importer's name, registered trade name or trademark and the postal address at which the importer can be contacted.

(2) Where a regulated measuring instrument is too small or of too sensitive a composition to allow it to bear the information required by paragraph (1), such information must be marked on any packaging in which the instrument is supplied and on any accompanying documents.

(3) Any contact details required by this regulation must be in a language easily understood by end-users and market surveillance authorities and, in the case of regulated measuring instruments made available in the United Kingdom, they must be in English.

Importers' duty to ensure that regulated measuring instruments are accompanied by relevant documentation

20.—(1) An importer must ensure that regulated measuring instruments imported by that importer are, where relevant, accompanied by the following instructions and information in a language easily understood by end-users—

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

(2) Where the end users are in the United Kingdom, the instructions and information referred to in paragraph (1) must be in English.

Duty of importers to ensure proper conditions of storage and transport

21. An importer must, in respect of regulated measuring instruments under the importer's responsibility ensure that the conditions of their storage or transport are not such as to jeopardise their continuing compliance with the essential requirements.

Duties of importers with regard to monitoring etc.

22.—(1) When deemed appropriate with regard to the performance of a regulated measuring instrument imported by an importer, the importer must—

- (a) carry out a sample testing of regulated measuring instruments made available on the market by the importer;
- (b) investigate complaints about regulated measuring instruments imported by the importer ;
and
- (c) if necessary, keep a register of—
 - (i) such complaints;
 - (ii) non-conforming regulated measuring instruments; and
 - (iii) regulated measuring instrument recalls; and
- (d) where the importer is not also the distributor of the regulated measuring instrument, keep distributors to whom the importer has supplied regulated measuring instruments informed of any monitoring undertaken by that importer.

Action to be taken by importers where regulated measuring instruments placed on the market by them are not in conformity with essential requirements

23.—(1) This regulation applies where an importer considers, or has reason to believe, that a regulated measuring instrument placed on the market by the importer is not in conformity with the requirements of these Regulations.

(2) The importer must immediately take the corrective measures necessary to bring the regulated measuring instrument into conformity or withdraw or recall it, if appropriate.

(3) Where the regulated measuring instrument presents a risk, the importer must immediately inform the competent authority to that effect, giving details, in particular, of the non-compliance of the instrument and of the corrective measures taken by that importer.

Requirement for importer to keep copy of EU declaration of conformity

24. An importer must, for a period of 10 years beginning with the day after the day on which the regulated measuring instrument is placed on the market, keep a copy of the EU declaration of conformity at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities upon request.

Provision of information to the competent authority

25.—(1) The importer must, further to a reasoned request from a competent authority, provide the competent authority with all the information and documentation in paper or electronic form necessary to demonstrate the conformity of the regulated measuring instrument with the requirements of these Regulations.

(2) Information and documentation supplied to a competent authority pursuant to this regulation must be supplied in English.

(3) An importer must co-operate with a competent authority, at its request, as regards any action to eliminate the risks posed by any regulated measuring instrument that the importer has placed on the market.

CHAPTER 3 OBLIGATIONS OF DISTRIBUTORS

Introductory

26. This Chapter applies in relation to the making available on the market or the putting into use of a regulated measuring instrument by a distributor.

Distributors – duty to act with due care

27. Before making the regulated measuring instrument available on the market or putting it into use, the distributor must act with due care in relation to the requirements of these Regulations.

Distributors – verification obligations

28.—(1) The distributor must verify that the regulated measuring instrument bears the CE marking and the M marking.

(2) The distributor must verify that the regulated measuring instrument is accompanied by—

- (a) a copy of the EU declaration of conformity relating to it; and
- (b) information on the operation of the instrument including where relevant the following—
 - (i) rated operating conditions;
 - (ii) mechanical and electromagnetic environment classes;
 - (iii) the upper and lower temperature limit, whether condensation is possible or not, open and closed location
 - (iv) instructions for installation, maintenance, repairs, permissible adjustments;
 - (v) instructions for correct operation and any special conditions of use; and
 - (vi) conditions for compatibility with interfaces, sub-assemblies or measuring instruments.

(3) Paragraph (2)(b) does not apply where the simplicity of the regulated measuring instrument makes the supply of the information referred to in that paragraph unnecessary.

(4) Instructions and information supplied in accordance with this regulation must be in a language that can be easily understood by end-users and where those end users are in the United Kingdom must be in English.

(5) The distributor must verify that the manufacturer and the importer have complied with the requirements set out in regulation 10 (manufacturers' obligations in relation to the marking of regulated measuring instruments with serial numbers etc.), regulation 11 (manufacturers to mark contact details on regulated measuring instruments where possible) and regulation 19 (requirements to mark importers' details on regulated measuring instruments).

Distributors not to make non-conforming regulated measuring instruments available on the market etc.

29.—(1) This regulation applies where a distributor considers, or has reason to believe, that a regulated measuring instrument is not in conformity with the essential requirements.

(2) Where this regulation applies, the distributor must not make the regulated measuring instrument available on the market or put it into use until it has been brought into conformity.

(3) Where the regulated measuring instrument presents a risk, the distributor must immediately inform—

- (a) the manufacturer;
- (b) the importer (where the distributor is not also the manufacturer or importer); and
- (c) the market surveillance authorities,

to that effect, giving details, in particular, of the non-compliance of the instrument and of the corrective measures taken by that distributor.

Duty of distributors to ensure proper conditions of storage and transport

30. A distributor must, in respect of regulated measuring instruments under that distributor's responsibility, ensure that the conditions of their storage or transport are not such as to jeopardise their continuing compliance with the essential requirements.

Action to be taken by distributors where regulated measuring instruments placed on the market by them are not in conformity with essential requirements

31.—(1) This regulation applies where a distributor considers, or has reason to believe, that a regulated measuring instrument placed on the market or put into use by that distributor is not in conformity with the requirements of these Regulations.

(2) The distributor must immediately take the corrective measures necessary to bring the regulated measuring instrument into conformity, or withdraw or recall it, if appropriate.

(3) Where the regulated measuring instrument presents a risk, the distributor must immediately inform the competent authority to that effect, giving details, in particular, of the non-compliance of the instrument and of the corrective measures taken by that distributor.

Provision of information to the competent authority

32.—(1) The distributor must, further to a reasoned request from a competent authority, provide that authority with all the information and documentation in paper or electronic form necessary to demonstrate the conformity of the regulated measuring instrument with the requirements of these Regulations.

(2) Information and documentation supplied to a competent authority pursuant to this regulation must be supplied in English.

(3) A distributor must co-operate with a competent authority, at its request, as regards any action to eliminate the risks posed by any regulated measuring instrument that the distributor has placed on the market.

CHAPTER 4

IDENTIFICATION OF ECONOMIC OPERATORS

33.—(1) Economic operators must, on request, identify to the market surveillance authorities—

- (a) any economic operator who has supplied them with a regulated measuring instrument; and
- (b) any economic operator to whom they have supplied a regulated measuring instrument.

(2) Economic operators must be able to present the information referred to in paragraph (1) for 10 years beginning with the day after the day on which they have been supplied with the regulated measuring instrument and for 10 years day beginning with the day after the day they have supplied the instrument.

(3) The Secretary of State may impose a monetary penalty on an economic operator who fails to comply with an obligation imposed on it under this regulation.

(4) Schedule 7 has effect in relation to a monetary penalty imposed under paragraph (3).

PART 3

NON-PRESCRIBED MEASURING INSTRUMENTS

Introductory

34. This Part applies where a manufacturer wishes to place on the market or put into use a non-prescribed measuring instrument in another EEA state where that measuring instrument must comply with the essential requirements under the law relating to legal metrological control of that EEA state.

Establishing compliance with the essential requirements – non-prescribed measuring instruments

35. A manufacturer may demonstrate compliance with the essential requirements in respect of a non-prescribed measuring instrument in the same manner as a regulated measuring instrument and the requirements of Part 4 accordingly apply.

PART 4

CONFORMITY OF MEASURING INSTRUMENTS

CHAPTER 1

ESTABLISHING COMPLIANCE WITH THE ESSENTIAL REQUIREMENTS

Introductory

36. This chapter applies for the purposes of establishing whether a measuring instrument (whether it is a regulated measuring instrument or a non-prescribed measuring instrument) complies with the essential requirements.

Methods of establishing conformity with the essential requirements

37. Conformity with the essential requirements may be established in relation to a measuring instrument—

- (a) through conformity with harmonised standards (or parts of those standards) covering the essential requirements where the harmonised standards have been published in the Official Journal of the European Union;
- (b) through conformity with parts of normative documents which cover the essential requirements where the parts of the normative documents have been included in a list published in the Official Journal of the European Union; or
- (c) through the use by the manufacturer of any other technical solution that complies with the essential requirements.

Presumptions of conformity of measuring instruments

38.—(1) Measuring instruments which are in conformity with harmonised standards (or parts of those standards) of a kind mentioned in regulation 37(a), are to be presumed to be in conformity with the essential requirements covered by those standards (or parts of those standards).

(2) Measuring instruments which are in conformity with parts of normative documents of a kind mentioned in regulation 37(b), are to be presumed to be in conformity with the essential requirements covered by those parts of normative documents.

(3) To benefit from a presumption of conformity under paragraphs (1) or (2), the manufacturer must correctly apply solutions mentioned in the relevant harmonised standards or in the normative documents.

(4) Compliance with the appropriate tests mentioned in regulation 45(1)(i) is to be presumed if the corresponding test programme has been performed in accordance with the documents mentioned in paragraphs (1) and (2) and if the test results ensure compliance with the essential requirements.

Conformity assessment procedures

39.—(1) Conformity assessment of a measuring instrument with the essential requirements must be established by the application at the choice of the manufacturer, of one of the conformity assessment procedures listed as applicable in relation to the measuring instrument in Schedule 1.

(2) A notified body must carry out the conformity assessment procedure selected by the manufacturer in accordance with the requirements of Schedule 4.

(3) The documents and correspondence relating to the conformity assessment procedures referred to in this regulation which are carried out in the United Kingdom must be drawn up in English.

Capacity serving measures - accredited in house bodies

40.—(1) This regulation applies to the conformity assessment of capacity serving measures.

(2) An accredited in-house body may be used to carry out conformity assessment activities for the undertaking of which it forms part for the purposes of implementing the procedures set out in Module A2 of Annex II to the Directive.

(3) The body must constitute a separate and distinct part of the undertaking and must not participate in the design, production, supply, installation, use or maintenance of the measuring instrument it assesses.

(4) An accredited in-house body must meet the following requirements—

- (a) it must be accredited in accordance with RAMS;
- (b) the body and its personnel must be organisationally identifiable and have reporting methods within the undertaking of which they form a part which ensure their impartiality and demonstrate it to the relevant national accreditation body;
- (c) neither the body, nor its personnel shall be responsible for the design, manufacture, supply, installation, operation or maintenance of the measuring instruments they assess nor shall they engage in any activity that might conflict with their independence of judgment or integrity in relation to their assessment activities; and
- (d) it must supply its services exclusively to the undertaking of which it forms a part.

(5) An accredited in-house body need not be notified to the notifying authority or the Commission, but information concerning its accreditation must be given by the undertaking of which it forms part to the notifying authority at the request of that authority.

Subsidiaries and contractors

41.—(1) Where a notified body subcontracts specific conformity assessment activities, or has such activities carried out by a subsidiary, the activities are only to be treated as having been carried out by a notified body for the purposes of regulation 39 (conformity assessment procedures) where the conditions in paragraphs (2) and (3) are met.

(2) The notified body must—

- (a) ensure that the subcontractor or subsidiary meets the notified body requirements; and
- (b) inform the Secretary of State accordingly.

(3) The notified body must have obtained the agreement of the client to the use of a subcontractor or subsidiary.

(4) Where a notified body subcontracts specific conformity assessment activities, or has such activities carried out by a subsidiary, the notified body must for a period of at least 10 years beginning on the day on which the activities are carried out, keep at the disposal of the Secretary of State the documentation concerning—

- (a) the assessment of the qualifications of the subcontractor or the subsidiary; and
- (b) the conformity assessment activities carried out by the subcontractor or subsidiary.

(5) When monitoring a notified body in accordance with regulation 58 (monitoring), the Secretary of State must treat the notified body as responsible for the tasks performed by a subcontractor or subsidiary, wherever the subcontractor or subsidiary is established.

Fees

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

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

- (a) the costs incurred or to be incurred by the United Kingdom notified body in performing the relevant function; and
- (b) an amount on account of profit which is reasonable in the circumstances having regard to—
 - (i) the character and extent of the work done or to be done by that notified body on behalf of the applicant; and
 - (ii) the commercial rate normally charged on account of profit for that work or similar work.

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

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

(5) This regulation does not apply to the Secretary of State.

CHAPTER 2

REQUIREMENTS AS TO THE TECHNICAL DOCUMENTATION REQUIRED FOR THE PURPOSES OF CONFORMITY ASSESSMENT

Application of this Chapter

43. The technical documentation required for the purposes of conformity assessment under these Regulations must satisfy the requirements of this Chapter.

General requirements to be met by technical documentation

44.—(1) The technical documentation must—

- (a) render the design, manufacture and operation of the measuring instrument intelligible; and

- (b) permit an assessment of its conformity with the applicable requirements of the Directive.
- (2) The technical documentation must be sufficiently detailed to ensure compliance with the following requirements—
 - (a) the definition of the metrological characteristics;
 - (b) the reproducibility of the metrological performances of produced measuring instruments when properly adjusted using appropriate intended means; and
 - (c) the integrity of the measuring instrument.

Specific information to be included in technical documentation

- 45.**—(1) The technical documentation must, insofar as relevant for assessment and identification of either the measuring instrument or its type (or both), include the following information—
- (a) a general description of the measuring instrument;
 - (b) the conceptual design and manufacturing drawings and plans of components, sub-assemblies, circuits etc.;
 - (c) manufacturing procedures to ensure consistent production;
 - (d) if applicable, a description of the electronic devices with drawings, diagrams, flow diagrams of the logic and general software information explaining their characteristics and operation;
 - (e) descriptions and explanations necessary for the understanding of the information referred to in sub-paragraphs (b) to (d);
 - (f) a list of any harmonised standards and normative documents which have been applied in full or in part, the references of which have been published in the Official Journal of the European Union;
 - (g) descriptions of the solutions adopted to meet the essential requirements where harmonised standards or normative documents have not been applied, including a list of other relevant technical specifications applied;
 - (h) results of design calculations, examinations etc.;
 - (i) the appropriate test results, where necessary to demonstrate that the type or measuring instruments or both comply with the following—
 - (i) the requirements of the Directive under declared rated operating conditions and under specified environmental disturbances; and
 - (ii) the durability specifications for gas, water and thermal-energy meters as well as for liquids other than water; and
 - (j) the EU-type examination certificates or EU design examinations certificates in respect of measuring instruments containing parts identical to those in the design.
- (2) The manufacturer must specify where seals and markings have been applied.
- (3) The manufacturer must indicate the conditions for compatibility with interfaces and sub-assemblies where relevant.

CHAPTER 3

REQUIREMENTS RELATING TO EU DECLARATIONS OF CONFORMITY

Application of Chapter

46. This Chapter applies in relation to EU declarations of conformity made in relation to a measuring instrument for the purposes of these Regulations.

Form and contents of EU declaration of conformity etc.

47.—(1) The EU declaration of conformity must—

- (a) state that the fulfilment of the essential requirements has been demonstrated in relation to the measuring instrument;
- (b) contain the elements specified in the relevant conformity assessment modules set out in Annex II to the Directive and be updated when appropriate;
- (c) have the model structure set out in Annex XIII to the Directive.

(2) Where a regulated measuring instrument is placed or made available on the market in the United Kingdom, the EU declaration of conformity in relation to the instrument must be in English.

Measuring instruments that require more than one declaration of conformity

48.—(1) This regulation applies where a measuring instrument is subject to a requirement of European Union legislation for an EU declaration of conformity otherwise than by virtue of these Regulations.

(2) Where this regulation applies, a single EU declaration of conformity must be drawn up covering all applicable requirements which identifies the Union acts concerned including their publication references.

Responsibility of manufacturer that draws up declaration of conformity

49. A manufacturer, who draws up an EU declaration of conformity in relation to a measuring instrument, is responsible for compliance of the measuring instrument with the requirements of these Regulations.

CHAPTER 4**CONFORMITY MARKING****Conformity with Directive requirements to be indicated by the CE marking**

50. The conformity of a measuring instrument with the requirements of these Regulations must be indicated by the presence on it of the CE marking and the M marking.

General principles relating to the M marking

51. The general principles set out in article 30 of RAMS apply to the M marking with such modifications as are necessary in the circumstances.

Rules and conditions for affixing the CE marking and the M marking

52.—(1) The CE marking and the M marking (“the markings”) must be affixed to a measuring instrument in accordance with the provisions of this regulation.

(2) The markings must be affixed visibly, legibly and indelibly to the measuring instrument or its data plate.

(3) Paragraph (2) does not apply where it is not possible or not warranted on account of the nature of the measuring instrument, in which case the markings must be affixed to the documents which accompany the measuring instrument and any packaging.

(4) When a measuring instrument consists of a series of devices, not being sub-assemblies, operating together, the markings must be affixed on the instrument’s main device.

(5) The markings must be affixed before the measuring instrument is placed on the market.

(6) The markings may be affixed to the measuring instrument during the fabrication process, if justified.

(7) The M marking must immediately follow the CE marking.

(8) The markings must immediately be followed by the identification number of the notified body where that body is involved in the production control phase as set out in Annex II to the Directive.

(9) The identification number of the notified body referred to in paragraph (8) must—

(a) be affixed by the body itself, or under its instructions by the manufacturer or his authorised representative; and

(b) be indelible or self-destructive upon removal.

(10) The markings and (where applicable) the identification number of the notified body may be followed by any other mark indicating a special risk or use.

PART 5

NOTIFICATION OF CONFORMITY ASSESSMENT BODIES

Introductory

53.—(1) This Part applies to the notification to the Commission and other EEA states of the bodies authorised to carry out conformity assessment procedures in the United Kingdom in relation to measuring instruments.

(2) For the purposes of this Part, a notified body is a conformity assessment body—

(a) which has been notified to the Commission and to other EEA states under regulation 55 (notification); and

(b) in respect of which no objections are raised by the Commission or other EEA states—

(i) within 2 weeks of a notification, where an accreditation certificate is used; or

(ii) within 2 months of a notification, where accreditation is not used.

(3) Paragraph (2) has effect subject to regulation 60 (changes to notifications).

The notifying authority

54.—(1) The notifying authority for the purposes of these Regulations is the Secretary of State.

(2) The functions of the notifying authority are—

(a) to assess whether applicants for recognition as conformity assessment bodies meet the requirements for recognition as such;

(b) where an assessment that a body is qualified to act as a conformity assessment body is made, to notify the Commission of that fact; and

(c) to carry out such monitoring of bodies notified to the Commission to ensure continuing compliance with the requirements of these Regulations.

(3) The notifying authority may delegate the performance of its functions to a body that meets the requirements of Articles 24(3) and 25 of the Directive but in the event of such a delegation the notifying authority remains fully responsible for the performance of those functions.

(4) The notifying authority must supply such information as the Commission may request in relation to a body notified by it.

Notification

55.—(1) The Secretary of State may notify to the Commission and the other EEA states only those conformity assessment bodies that qualify for notification.

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

(3) The first condition is that the conformity assessment body makes an application to the Secretary of State for notification 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 module for which the conformity assessment body claims to be competent; and
 - (iii) the measuring instrument for which the conformity assessment body claims to be competent; and either
- (b) an accreditation certificate; or
- (c) the documentary evidence necessary for the Secretary of State to verify, recognise and regularly monitor the conformity assessment body’s compliance with the notified body requirements.

(4) The second condition is that the Secretary of State is satisfied that the conformity assessment body meets the requirements of Schedule 5 (“the notified body requirements”).

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

(6) When deciding whether to notify a conformity assessment body that qualifies for notification to the Commission and the other EEA states, 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 conditions that the conformity assessment body must meet.

(7) The Secretary of State must inform the Commission of the United Kingdom’s procedures for the assessment and notification of conformity assessment bodies, and any changes to those procedures.

Presumption of conformity of notified bodies

56.—(1) Where a conformity assessment body demonstrates its conformity with the criteria laid down in a harmonised standard (or part of such a standard), the reference of which has been published in the Official Journal of the European Union, the Secretary of State is to presume that the conformity assessment body meets the notified body requirements covered by that standard (or part of that standard).

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

Contents of notification

57. A notification under regulation 55 (notification) must include—

- (a) details of—
 - (i) the conformity assessment activities in respect of which the conformity assessment body has made its application for notification;

- (ii) the conformity assessment module in respect of which the conformity assessment body has made its application for notification;
 - (iii) the measuring instrument in respect of which the conformity assessment body has made its application for notification; and either
- (b) an accreditation certificate; or
- (c) documentary evidence which attests to—
- (i) the conformity assessment body’s competence; and
 - (ii) the arrangements in place to ensure that the conformity assessment body will be monitored regularly and will continue to meet the notified body requirements.

Monitoring

58.—(1) The Secretary of State must monitor each notified body with a view to verifying that the notified body—

- (a) continues to meet the notified body requirements;
- (b) meets any conditions set in accordance with regulation 55(6)(b); and
- (c) carries out its functions in accordance with these Regulations.

(2) The Secretary of State must inform the Commission of the United Kingdom’s procedures for the monitoring of notified bodies, and any changes to those procedures.

Delegation to the United Kingdom Accreditation Service

59. The Secretary of State may authorise the United Kingdom Accreditation Service to carry out the following activities on behalf of the Secretary of State—

- (a) assessing whether a conformity assessment body meets the notified body requirements; and
- (b) monitoring notified bodies.

(2) Where the Secretary of State authorises the United Kingdom Accreditation Service pursuant to paragraph (1), the Secretary of State remains fully responsible for anything done pursuant to that authorisation.

Changes to notifications

60.—(1) Where the Secretary of State determines that a notified body no longer meets a notified body requirement, or that it is failing to fulfil any of its obligations under these Regulations other than conditions set in accordance with regulation 55(6)(b), the Secretary of State must restrict, suspend or withdraw the body’s status as a notified body under regulation 55 (notification).

(2) With the consent of a notified body, or where the Secretary of State determines that a notified body no longer meets a condition set in accordance with regulation 55(6)(b), the Secretary of State may restrict, suspend or withdraw the body’s status as a notified body under regulation 55.

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

- (4) Before taking action under paragraph (1) or (2), the Secretary of State must—
- (a) give notice in writing that the Secretary of State intends to take such action and the reasons for taking such action; and
 - (b) give the notified body an opportunity to make representations within a reasonable period from the date of that notice and consider any such representations.

- (5) Where the Secretary of State takes action under paragraph (1) or (2), the Secretary of State must immediately inform the Commission and the other EEA states.
- (6) Where the Secretary of State has taken action in respect of a notified body under paragraph (1) or (2), or where a notified body has ceased its activity, the body must—
- (a) on the request of the Secretary of State, transfer its files to another notified body or to the Secretary of State; or
 - (b) in the absence of a request under sub-paragraph (a), ensure that its files are kept available for the Secretary of State and each enforcing authority for such period as the Secretary of State may specify.
- (7) The Secretary of State may impose a monetary penalty on a United Kingdom notified body that fails to comply with any requirement imposed by or under paragraph (6).
- (8) Schedule 7 has effect in relation to a monetary penalty imposed under paragraph (7)

PART 6

USE FOR TRADE OF CERTAIN REGULATED MEASURING INSTRUMENTS

61. The use for trade of the following equipment must comply with the requirements of Schedule 6—

- (a) water meters for the supply of potable water in the temperature range from 0.1°C to and including 30°C;
- (b) measuring systems which are used for the continuous and dynamic measurement in a quantity not exceeding 100 litres or 100 kilograms of a liquid fuel, lubricant or a mixture of fuel and lubricant other than—
 - (i) liquefied petroleum gas; or
 - (ii) liquefied natural gas;
- (c) measuring systems (other than one used in connection with the refuelling of aircraft, ships or hovercraft) which are used for the continuous and dynamic measurement in a quantity exceeding 100 litres or 100 kilograms of liquid fuel delivered from a road tanker other than—
 - (i) liquefied gases;
 - (ii) lubricating oils;
 - (iii) liquid fuels of a temperature below -153°C; or
 - (iv) liquid fuels of a dynamic viscosity exceeding 100 millipascal seconds at 15°C;
- (d) automatic catchweighers;
- (e) automatic gravimetric filling instruments;;
- (f) automatic discontinuous totalisers;
- (g) automatic rail weighbridges;
- (h) beltweighers;
- (i) material measures of length; and
- (j) capacity serving measures.

PART 7
MARKET SURVEILLANCE AND ENFORCEMENT
CHAPTER 1
MARKET SURVEILLANCE

The market surveillance authority

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

Regulated measuring instruments presenting a risk

63.—(1) This regulation applies where the market surveillance authority has sufficient reason to believe that a regulated measuring instrument presents a risk on grounds of public interest, public health, public safety, public order, protection of the environment, protection of consumers, the levying of taxes and duties or fair trading.

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

(3) The relevant economic operators in relation to the regulated measuring instrument must cooperate 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 the regulated measuring 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 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 measuring instrument of—

- (a) the respect in which the 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.

(7) The economic operator must ensure that all appropriate corrective action is taken in respect of all the regulated measuring 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 measuring instrument being made available on the market, to withdraw the instrument from the 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;
 - (ii) shortcomings in the harmonised standards referred to in regulation 37(a).

EU safeguard procedure

64.—(1) Where another EEA State has initiated the procedure under Article 42 of the Directive, the Market surveillance authority must without delay, inform the Commission and the other EEA States of—

- (a) any measures taken by a competent authority in respect of the regulated measuring instrument;
- (b) any additional information which the market surveillance authority has at its disposal relating to the lack of conformity of the regulated measuring 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 measuring instrument is considered justified under Article 42 of the Directive, the market surveillance authority must ensure that appropriate measures to withdraw the instrument are taken in respect of the regulated measuring instrument without delay.

(3) If, pursuant to Article 43 of the Directive, the Commission considers a direction given pursuant to regulation 63(4) is unjustified, the market surveillance authority must forthwith withdraw it and notify other enforcement authorities and economic operators affected accordingly.

Compliant regulated measuring instruments which present a risk

65.—(1) This regulation applies where, having carried out an evaluation under regulation 63, the market surveillance authority finds that although a regulated measuring instrument is in compliance with the requirements of these Regulations, it presents a risk on grounds of public interest, public health, public safety, public order, protection of the environment, protection of consumers, the levying of taxes and duties or fair trading.

(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 regulated measuring instrument concerned, when placed on the market, no longer presents that risk;
- (b) withdraw the regulated measuring 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 measuring instrument concerned;
- (b) the origin and supply chain of the regulated measuring 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 63 and 65

- 66.**—(1) This regulation applies in relation to directions given under regulations 63 and 65.
- (2) A direction must—
- (a) be in writing;
 - (b) describe the regulated measuring instrument to which it relates in a manner sufficient to identify that instrument;
 - (c) specify the risk identified by the market surveillance authority;
 - (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 63 or 65.
- (4) Schedule 7 has effect in relation to a monetary penalty imposed under paragraph (3).

CHAPTER 2

ENFORCEMENT AUTHORITIES AND PROCEDURES

Enforcement of the Regulations

- 67.**—(1) The Secretary of State—
- (a) must enforce these regulations where required to do so in the capacity of the market surveillance authority; and
 - (b) may otherwise than in the capacity of market surveillance authority, enforce these Regulations in Great Britain,
- and for the purposes of this paragraph may appoint a person to act on his behalf.
- (2) In Great Britain it is the duty of every local weights and measures authority to enforce these Regulations within its area in relation to regulated measuring instruments other than—
- (a) gas meters;
 - (b) active electrical energy meters;
 - (c) taximeters; and
 - (d) exhaust gas analysers.
- (3) In Northern Ireland—
- (a) the Department for Infrastructure must enforce these Regulations in relation to regulated measuring instruments of the following kinds—
 - (i) taximeters; and
 - (ii) exhaust gas analysers.
 - (b) the Utility Regulator (or the Secretary of State pursuant to arrangements made under paragraph (7)) must enforce the Regulations) in relation to regulated measuring instruments of the following kinds—
 - (i) gas meters; and

- (ii) active electrical energy meters.
- (c) the Department for the Economy must enforce these Regulations (other than Part 6) insofar as they relate to regulated measuring instruments of the following kinds—
 - (i) cold water meters;
 - (ii) automatic weighing instruments;
 - (iii) material measures; and
 - (iv) non-water liquid measuring systems.
- (4) No proceedings for an offence under these Regulations may be instituted in England and Wales except by or on behalf of a competent authority.
- (5) Nothing in these Regulations shall authorise a competent authority to bring proceedings in Scotland for an offence.
- (6) No proceedings shall be instituted in Northern Ireland for an offence under these Regulations in respect of a regulated measuring instrument except—
 - (a) by or on behalf of a competent authority which has responsibility for enforcing these Regulations in respect of that regulated measuring instrument; or
 - (b) the Director of Public Prosecutions for Northern Ireland.
- (7) The Secretary of State and the Utility Regulator may, in relation to the enforcement of these Regulations in Northern Ireland, enter into arrangements for the Secretary of State to act on behalf of the Utility Regulator for, or in connection with, the carrying out of some or all of the functions conferred on the Utility Regulator by these Regulations.

Compliance notice procedure

- 68.**—(1) This regulation applies where a competent authority has reasonable grounds for considering that one or more of the following breaches applies in relation to a regulated measuring instrument that has been placed on the market or put into use—
- (a) the CE marking or the M marking has been affixed in violation of Article 30 of the RAMS regulation or the requirements of these Regulations;
 - (b) the CE marking or the M marking has not been affixed;
 - (c) the identification number of the notified body, where the notified body is involved in the production control phase has—
 - (i) been affixed otherwise than in accordance with the requirements of these Regulations; or
 - (ii) not been affixed;
 - (d) the EU declaration of conformity has not been drawn up correctly;
 - (e) the technical documentation is either not available or is not complete;
 - (f) the information referred to in regulation 11 or regulation 20 is false or incomplete; or
 - (g) any other failure—
 - (i) by a manufacturer to comply with the requirements of Chapter 1 of Part 2; or
 - (ii) by an importer to comply with the requirements of Chapter 2 of Part 2.
- (2) The competent authority may serve a notice in writing (“a compliance notice”) on the economic operator it considers is the responsible for the breach which must—
- (a) describe the regulated measuring instrument to which it relates in a manner sufficient to identify that instrument;

- (b) specify which of the circumstances in paragraph (1) applies in relation to the regulated measuring instrument;
 - (c) require the economic operator on whom the notice is served to take steps to remedy the matters referred to in paragraph (b);
 - (d) specify the date, being not less than 21 days from the date of the notice, by which the steps specified in it must be taken; and
 - (e) warn the economic operator that, where the non-conformity continues beyond the date specified in sub-paragraph (d), the competent authority may take further action under regulation 69 (enforcement notices) in respect of that regulated measuring instrument.
- (3) Where a compliance notice is served by a competent authority other than the Secretary of State, it must at the same time as it serves that notice, send a copy to the Secretary of State.

Enforcement notices

69.—(1) This regulation applies where a competent authority has reasonable grounds for considering that an economic operator on whom a compliance notice has been served by the competent authority has failed to comply with that notice.

(2) The competent authority may serve a notice (“an enforcement notice”) on the economic operator which must—

- (a) be in writing;
 - (b) describe the regulated measuring instrument to which it relates in a manner sufficient to identify that instrument;
 - (c) specify, with reasons, the respects in which, in the opinion of the competent authority, the compliance notice has not been complied with; and
 - (d) specify the steps that the economic operator must take to comply with the compliance notice; and
 - (e) specify the date, being not less than 21 days from the date of the notice, by which the economic operator to whom the notice is given is required to comply with it.
- (3) An enforcement notice may impose either or both of the following requirements—
- (a) that the regulated measuring instrument is to be withdrawn from the market unless the steps referred to in paragraph (2)(d) are taken; or
 - (b) that the placing on the market or putting into use of the regulated measuring instrument is to be prohibited or restricted unless the steps referred to in paragraph (2)(d) are taken.

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

(5) If the Secretary of State is of the opinion that consideration ought to be given as to whether a certificate or notification which is granted by a United Kingdom notified body should be withdrawn, the Secretary of State must inform that notified body of that fact.

(6) If the Secretary of State is of the opinion that consideration ought to be given as to whether a certificate or notification which is granted by a notified body in another EEA state should be withdrawn, the Secretary of State must inform the market surveillance authority in that state of that fact.

Review of enforcement decisions of a competent authority

70.—(1) Where a notice is served under regulation 68 (compliance notice procedure) or 69 (enforcement notices) is by a competent authority other than the Secretary of State, an economic

operator who is aggrieved by the decision to serve the notice may, in accordance with paragraphs (2) and (3) apply to the Secretary of State to review the decision; and on such application the Secretary of State may—

- (a) hold an inquiry in connection with the decision; and
- (b) appoint an assessor for the purposes of assisting him with his review or any such inquiry.

(2) An application under paragraph (1) must be made by notice in writing to the Secretary of State, and must be sent to the Secretary of State not later than 21 days after the date of the notice of the decision in respect of which the application for review is sent to the economic operator.

(3) A notice of application for review under this regulation must state the grounds on which the application is made.

(4) The Secretary of State must, within a reasonable time, inform the economic operator and the authority referred to in paragraph (1) in writing of the Secretary of State's decision whether to uphold the decision of that authority and—

- (a) in a case where the Secretary of State upholds that decision, must also state the grounds for the Secretary of State's decision; and
- (b) in a case where the Secretary of State does not uphold that decision, may—
 - (i) where the review relates to regulation 68 give instructions for the withdrawal of the notice given under paragraph (2) of that regulation; or
 - (ii) where the review relates to regulation 69, give instructions for the withdrawal of the notice given under paragraph (1) of that regulation.

Offence of failure to comply with an enforcement notice

71.—(1) This paragraph applies where an enforcement notice has, pursuant regulation 69 (enforcement notices), been served on an economic operator by a competent authority other than the Secretary of State and either—

- (a) the time for making an application by the economic operator for a review pursuant to regulation 70 (review of enforcement decisions of a competent authority) has expired without such application having been made; or
- (b) an application for review has been made by the economic operator and determined without an instruction for the withdrawal of the notice being given and a period of 21 days has elapsed beginning with the day after notice of the outcome of the review has been served on the economic operator.

(2) Where paragraph (1) applies, if the economic operator on whom the compliance notice has been served fails to comply with the requirements of that notice, that economic operator is guilty of an offence.

(3) An economic operator that fails to comply with an enforcement notice served on the economic operator by the Secretary of State is guilty of an offence.

Disqualification

72.—(1) This regulation and regulation 73 (re-qualification) apply only in relation to a regulated measuring instruments of the following kinds—

- (a) cold water meters;
- (b) automatic weighing instruments;
- (c) material measures; and
- (d) non-water liquid measuring systems.

(2) Where the circumstances in paragraph (3) apply, an inspector may affix a disqualification mark to a regulated measuring instrument which bears the—

- (a) CE marking;
- (b) M marking; and
- (c) identification number of the notified body which carried out the conformity assessment procedure in respect of the instrument.

(3) The circumstances referred to in paragraph (2) are that the instrument is used for trade in circumstances where—

- (a) the instrument does not conform to the essential requirements (other than the requirements relating to maximum permissible errors);
- (b) the instrument is not in conformity with any EU-type examination certificate or EU-design examination certificate which applies to it;
- (c) by reason of any adjustment, alteration, addition, repair or replacement, it is likely that the instrument has ceased to conform with the essential requirements (other than the requirements relating to maximum permissible errors); or
- (d) any requirements applicable to the instrument by virtue of Part 6 are not met.

(4) Where one or more of the markings and identification requirements referred to in paragraph (2) is not affixed to a regulated measuring instrument, the inspector may affix a disqualification mark to the instrument.

(5) Where it appears to the inspector that the nature or degree of non-compliance of the regulated measuring instrument under paragraph (2) is not such that a disqualification mark should be immediately affixed to it or to any sealing device on it, the inspector may give to any person in possession of the instrument a notice requiring the person to ensure that the instrument is made to comply with the essential requirements before the expiry of 21 days from the date of the notice or such longer period as may be specified in the notice.

(6) If a notice given under paragraph (5) is not complied with, the inspector must affix a disqualification mark to the regulated measuring instrument or to any sealing device on it.

(7) Any disqualification mark which is affixed to a regulated measuring instrument under this regulation must be affixed in such a position that it is clearly visible when the instrument is in its regular operating position or where it is affixed to any sealing device on the instrument, it must be affixed in such a position that it obliterates as far as possible any inscription on that sealing device.

(8) A person is guilty of an offence if that person uses for trade a regulated measuring instrument to which there is affixed a disqualification mark, unless a re-qualification mark has been affixed to it in accordance with regulation 73 (requalification).

Re-qualification

73.—(1) This regulation applies where—

- (a) a disqualification mark has been affixed to a regulated measuring instrument in accordance with regulation 72 (disqualification);
- (b) a notice has been served under regulation 72(5); or
- (c) a regulated measuring instrument is intended to be used for trade in the circumstances referred to in regulation 72(3)(a) to (iv) or (3) but a disqualification mark has not been affixed to the instrument or to any sealing device on it.

(2) A person requiring a re-qualification mark to be affixed to a regulated measuring instrument must submit it, in such manner as may be directed, to an inspector or approved verifier and provide such assistance as the inspector or approved verifier may reasonably require.

(3) An inspector or approved verifier may affix a re-qualification mark to that regulated measuring instrument or to any sealing device if satisfied that the instrument is compliant with

- (a) the essential requirements;
- (b) any EU-type examination certificate or EU-design examination certificate which applies to it; and
- (c) any requirements applicable to that instrument by virtue of Schedule 6 other than the provisions relating to maximum permissible errors are met.

(4) For the purposes of being satisfied that a re-qualification mark may be affixed to a regulated measuring instrument or any sealing device on it under this regulation, an inspector or approved verifier may take such steps as the inspector or approved verifier considers appropriate, including testing the instrument by means of such test equipment as the inspector or approved verifier considers appropriate and suitable for the purpose.

(5) There may be charged in respect of any steps taken under paragraph (4) such fees as are reasonable in the circumstances.

(6) The inspector or approved verifier must keep a record of any test carried out under paragraph (4).

(7) Where a re-qualification mark is affixed to a regulated measuring instrument pursuant to paragraph (3), it must be affixed in such a position that it obliterates as far as possible any disqualification mark.

Testing of regulated measuring instruments

74.—(1) Where an inspector considers that a test of a regulated measuring instrument is necessary, otherwise than for the purposes of regulation 73, the inspector may require the controller of the instrument to provide to the inspector such equipment, test liquid, materials, qualified personnel or other assistance as the inspector may reasonably require.

(2) Every regulated measuring instrument submitted for testing by its controller must be in a clean condition.

(3) Paragraphs (4) to (9) of this regulation only apply to regulated measuring instruments that are non-water liquid measuring systems.

(4) No regulated measuring instrument shall be tested until it is installed ready for use and complete with all its parts.

(5) A regulated measuring instrument must be tested by an inspector under practical working conditions with a test liquid which must be—

- (a) the liquid fuel that the instrument is intended to deliver; or
- (b) a liquid having properties which replicate in all respects relevant to testing those of the liquid fuel that the instrument is intended to deliver.

(6) An inspector may open a locked or sealed tank or container for the purpose of testing a regulated measuring instrument or returning any liquid withdrawn during testing.

(7) Any liquid withdrawn during testing must be—

- (a) returned to the tank or container from which it was withdrawn if the inspector is of the opinion that it is reasonable and practicable to do so and the controller agrees; or
- (b) placed in another suitable receptacle reasonably convenient for the purpose that is provided by the controller.

(8) An inspector, if requested to do so by the controller, must give to the controller a signed and dated statement of the quantity of liquid withdrawn during testing.

(9) An inspector must—

- (a) securely re-fasten any tank or container opened under paragraph (6) immediately after the conclusion of any test or after returning any liquid withdrawn during testing; and
- (b) replace any sealing device broken by the inspector.

(10) In this regulation references to the “controller” of a regulated measuring instrument are to the person who has control of the instrument or whom the inspector has reasonable cause to believe has control of the instrument.

PART 8 OFFENCES

Unauthorised application of authorised marks

- 75.—(1) Subject to paragraph (2), a person is guilty of an offence, if that person—
- (a) affixes an authorised mark to a regulated measuring instrument otherwise than in accordance with these Regulations;
 - (b) alters or defaces an authorised mark affixed to a regulated measuring instrument;
 - (c) removes an authorised mark affixed to a regulated measuring instrument; or
 - (d) affixes any other form of marking to a regulated measuring instrument which is likely to deceive any person as to the meaning or form, or both, of an authorised mark.
- (2) Where the alteration, defacement or removal of an authorised mark is occasioned solely—
- (a) in the course of the adjustment or repair of a regulated measuring instrument by a person engaged in the business of repair of such instruments or by that person’s duly authorised agent; or
 - (b) by an enforcement officer or approved verifier in the carrying out of any of their functions under these Regulations,

that person (or that person’s authorised agent), enforcement officer or approved verifier is not guilty of an offence under paragraph (1)(b) or (1)(c).

- (3) A person is guilty of an offence if that person places on the market or puts into use or uses for trade a regulated measuring instrument—
- (a) from which, to that person’s knowledge, an authorised mark has been removed; or
 - (b) which to that person’s knowledge bears—
 - (i) an authorised mark affixed otherwise than in accordance with these Regulations;
 - (ii) an authorised mark that has been altered or defaced otherwise than in the circumstances referred to in paragraph (2); or
 - (iii) any mark which is likely to deceive any person as to the meaning or form, or both, of an authorised mark.
- (4) A regulated measuring instrument in respect of which an offence under this regulation has been committed and any implement used in the commissioning of the offence is liable to be forfeited.
- (5) In this regulation “authorised mark” means—
- (a) the CE marking;
 - (b) the M marking;
 - (c) the identification number of the notified body which carried out the conformity assessment procedure in respect of the relevant regulated measuring instrument;
 - (d) a disqualification mark; or

- (e) a re-qualification mark.

Offences by economic operators etc.

76.—(1) In this regulation “event of default” means—

- (a) the placing on the market or putting into use of a regulated measuring instrument which—
 - (i) does not meet the essential requirements applicable to it;
 - (ii) has not been the subject of an applicable conformity assessment procedure;
 - (iii) does not bear the markings or inscriptions required by these Regulations; or
 - (iv) is not accompanied by the documents and information required by these Regulations;
 or
- (b) any failure to—
 - (i) create or maintain any records required to be created or maintained under these Regulations; or
 - (ii) provide to a competent authority documents or information pursuant to a requirement imposed by or under these Regulations; or
- (c) any failure to comply with an obligation under regulation 74(1) or 74(2)

(2) Where an event of default mentioned in paragraph (1)(a) or 1(b) occurs as a result of the failure of an economic operator to comply with an obligation imposed on the economic operator by any provision of these Regulations, the economic operator is guilty of an offence.

(3) Where there is an event of default of a kind referred to in paragraph (1)(c), the person on whom the obligation is imposed under section 74(1) or 74(2) is guilty of an offence.

Penalties for offences

77. A person guilty of an offence under any provision of these Regulations is liable, on summary conviction—

- (a) in England and Wales to a fine; and
- (b) in Scotland or Northern Ireland to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

78.—(1) In proceedings against a person for an offence under these Regulations (other than regulation 75(3)), it is a defence for that person to show that that person took all reasonable steps and exercised all due diligence to avoid committing the offence.

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

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

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

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

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

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

Liability of persons other than the principal offender

79.—(1) Where the commission by a person (“A”) of an offence under these Regulations is due to the act or default of another person (“B”) in the course of any business of A, B is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against A.

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

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

the officer as well as the body corporate is guilty of the offence.

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

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

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

PART 9

MISCELLANEOUS AND SUPPLEMENTAL

Service of documents etc.

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

- (a) by delivering it to that person or by leaving it at that person’s proper address or by sending it by post to that person at that address;
- (b) if the person is a body corporate, by serving it in accordance with sub-paragraph (a) on the secretary or clerk of that body; or
- (c) if the person is a partnership, by serving it in accordance with that sub-paragraph on a partner or on a person having control or management of the partnership business.

(2) For the purposes of paragraph (1), and for the purposes of [section 7](#) of the Interpretation Act 1978(9) (which relates to the service of documents by post) in its application to that paragraph, the proper address of any person on whom a document is to be served in accordance with these Regulations is that person’s last known address except that—

- (a) in the case of service on a body corporate or its secretary or clerk, it is the address of the registered or principal office of the body corporate; and

(9) 1978 c.30.

(b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it is the principal office of the partnership, and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

Review

- 81.**—(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 EEA 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 by a system that imposes less regulation.
- (4) The first report under this regulation must be published no later than 5 years after the date of the coming into force of these Regulations.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding 5 years.

Margot James
Parliamentary Under Secretary of State Minister
for Small Business, Consumers and Corporate
Responsibility
Department for Business, Energy and Industrial
Strategy

29th November 2016