
STATUTORY INSTRUMENTS

2017 No. 737

The Recreational Craft Regulations 2017

PART 5

MARKET SURVEILLANCE AND ENFORCEMENT

Designation of market surveillance authorities

- 65.** The market surveillance authority is—
- (a) within its area in Great Britain, the weights and measures authority; and
 - (b) in Northern Ireland, every district council.

Commencement Information

- I1** Reg. 65 in force at 3.8.2017, see [reg. 1](#)

Enforcement

66.—(1) The market surveillance authority must enforce these Regulations and RAMS (in its application to products covered by these Regulations).

(2) The Secretary of State, or a person appointed by the Secretary of State to act on behalf of the Secretary of State, may enforce these Regulations and RAMS (in its application to products covered by these Regulations).

(3) Before taking action under paragraph (2), the Secretary of State or the person appointed by the Secretary of State to act on the Secretary of State's behalf, must notify the relevant market surveillance authority.

(4) In Scotland, only the Lord Advocate may prosecute an offence under these Regulations.

Commencement Information

- I2** Reg. 66 in force at 3.8.2017, see [reg. 1](#)

Enforcement powers

67. Schedule 13 (enforcement and investigatory powers conferred on the market surveillance authority) and Schedule 14 (compliance, withdrawal and recall notices) of these Regulations have effect.

Commencement Information

- I3** Reg. 67 in force at 3.8.2017, see [reg. 1](#)

Status: Point in time view as at 03/08/2017.

Changes to legislation: There are currently no known outstanding effects for the The Recreational Craft Regulations 2017, PART 5. (See end of Document for details)

Evaluation of a product presenting a risk

68.—(1) Where the market surveillance authority has sufficient reason to believe that a product presents a risk, that authority must carry out an evaluation of that product in order to determine whether the product satisfies the requirements of Part 2 of these Regulations in respect of that product.

(2) Where an enforcing authority other than a market surveillance authority has sufficient reason to believe that a product presents a risk, that authority may carry out an evaluation of that product in order to determine whether the product satisfied the requirements of Part 2 of these Regulations in respect of that product.

Commencement Information

I4 Reg. 68 in force at 3.8.2017, see [reg. 1](#)

Enforcement action in respect of products that are not in conformity and which present a risk

69.—(1) Where in the course of the evaluation referred to in regulation 68 (evaluation of product presenting a risk), an enforcing authority finds that the product is not in conformity with Part 2 of these Regulations it must, without delay, require a relevant economic operator to—

- (a) take the appropriate corrective action to bring the product into conformity with those requirements within a prescribed period;
- (b) withdraw the product within a prescribed period; or
- (c) recall the product within a prescribed period.

(2) The enforcing authority must inform the notified body that carried out the conformity assessment in relation to the product of—

- (a) the respect in which the product is not in conformity with Part 2 ; and
- (b) the actions which the market surveillance authority requires the relevant economic operator to take to bring the product into conformity with Part 2.

(3) Where the enforcing authority is not the Secretary of State and it considers that the non-conformity referred to in paragraph (1) is not restricted to products that have been placed or made available on the market in the United Kingdom, it must notify the Secretary of State of—

- (a) the results of the evaluation; and
- (b) the actions which it has required the economic operator to take.

(4) Where the Secretary of State receives notice from an enforcing authority under paragraph (3), or otherwise considers that the lack of conformity referred to in paragraph (1) is not restricted to the United Kingdom, the Secretary of State must inform the European Commission and the other Member States of—

- (a) the results of the evaluation; and
- (b) the actions which the enforcing authority has required the economic operator to take.

(5) Where the relevant economic operator does not take adequate corrective action within the prescribed period, the enforcing authority must take appropriate measures to—

- (a) prohibit or restrict the product being made available on the market in the United Kingdom;
- (b) withdraw the product from the United Kingdom market; or
- (c) recall the product.

(6) Where the enforcing authority is not the Secretary of State and it takes measures under paragraph (5), it must notify the Secretary of State of those measures without delay.

(7) Where the Secretary of State receives a notice under paragraph (6), or takes measures under paragraph (5), the Secretary of State must notify the European Commission and the other Member States without delay.

(8) The notices referred to in paragraphs (6) and (7) must include details about the product and, in particular—

- (a) the information necessary to identify the product that is not in conformity;
- (b) the origin of the product;
- (c) the nature of the alleged lack of conformity and the risk involved;
- (d) the nature and duration of the measures taken;
- (e) the arguments put forward by the economic operator; and
- (f) whether the failure of the product to conform with the requirements of Part 2 is due to—
 - (i) the failure of the product to meet the requirements of that Part and Schedule 1 relating to risk; or
 - (ii) shortcomings in a harmonised standards referred to in regulation 41 (presumption of conformity) which confer a presumption of conformity.

(9) In this regulation, “prescribed period” means a period which is—

- (a) prescribed by the enforcing authority; and
- (b) reasonable and commensurate with the nature of the risk presented by the product.

Commencement Information

15 Reg. 69 in force at 3.8.2017, see [reg. 1](#)

EU Safeguard procedure

70.—(1) Where another Member State has initiated the procedure under Article 44 of the Directive (as amended from time to time), the market surveillance authority must, without delay, inform the Secretary of State of—

- (a) any measures taken by the market surveillance authority in respect of the product; and
- (b) any additional information which the market surveillance authority has at its disposal relating to the lack of conformity of the product.

(2) Where another Member State has initiated the procedure under Article 44 of the Directive (as amended from time to time), the Secretary of State must, without delay, inform the Commission and the other Member State of—

- (a) any measures taken by a market surveillance authority in respect of the product;
- (b) any additional information which a market surveillance authority has at its disposal relating to the lack of conformity with the product; and
- (c) any objections the Secretary of State may have to the measures taken by the Member State initiating the procedure.

(3) Where a measure taken by another Member State in respect of a product is considered justified under Article 45(2) of the Directive (as amended from time to time), the market surveillance authority must ensure that appropriate measures, such as withdrawal, are taken in respect of the product without delay.

Status: Point in time view as at 03/08/2017.

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(4) Where a measure taken by another Member State in respect of a product is considered justified by the Commission under Article 45(2) of the Directive (as amended from time to time), the market surveillance authority must take the necessary measures to ensure that the product is withdrawn from the market in the United Kingdom.

(5) Where the market surveillance authority has taken action under paragraphs (3) or (4), it must inform the Secretary of State.

(6) Where the Secretary of State receives a notice under paragraph (5), the Secretary of State must inform the Commission of the action taken.

(7) If a measure taken by the market surveillance authority pursuant to regulation 69 is considered unjustified by the Commission under Article 44(1) of the Directive (as amended from time to time), the market surveillance authority must withdraw that measure.

Commencement Information

I6 Reg. 70 in force at 3.8.2017, see [reg. 1](#)

Enforcement action in respect of formal non-compliance

71.—(1) Where an enforcing authority makes one of the following findings relating to a product, it must require a relevant economic operator to remedy the non-compliance concerned within such reasonable period as the enforcing authority specifies—

- (a) the CE marking—
 - (i) has not been affixed; or
 - (ii) has been affixed in violation of regulation 40 (prohibition on improper use of CE marking) or regulation 54 (CE marking);
- (b) the EU declaration of conformity or the declaration referred to in Schedule 3—
 - (i) has not been drawn up; or
 - (ii) has not been drawn up correctly;
- (c) the technical documentation is either not available or is incomplete;
- (d) the information set out in regulation 14 (duty to provide information) and regulation 21 (duty of importer to ensure products are labelled) is absent, false or incomplete;
- (e) that there has been non-compliance with any other requirement referred to—
 - (i) in the case of the manufacturer or their authorised representative in regulations 8 to 17;
 - (ii) in the case of the importer in regulations 18 to 26;
 - (iii) in the case of a distributor in regulations 27 to 32; and
 - (iv) in the case of a private importer in regulations 36 to 38.

(2) The enforcing authority must not commence proceedings under these Regulations, or take any other enforcement action under these Regulations, against the relevant economic operator in respect of the non-compliance concerned until the period referred to in paragraph (1) has elapsed.

(3) Where the non-compliance referred to in paragraph (1) persists, the enforcing authority must take appropriate measures to—

- (a) restrict or prohibit the product being made available on the market;
- (b) ensure that the product is recalled or withdrawn from the market; or

- (c) in the case of a product imported by a private importer for their own use, that that product is prohibited or restricted.
- (4) This regulation does not apply where the product presents a risk.

Commencement Information

I7 Reg. 71 in force at 3.8.2017, see [reg. 1](#)

Restrictive measures

72. When enforcing these Regulations, an enforcing authority must comply with the requirements of Article 21 of RAMS (as amended from time to time) in relation to any measure to—

- (a) prohibit or restrict a product from being made available on the market;
- (b) withdraw a product from the market; or
- (c) recall a product.

Commencement Information

I8 Reg. 72 in force at 3.8.2017, see [reg. 1](#)

Offences

73.—(1) It is an offence for a person to contravene or fail to comply with any requirement of—

- (a) regulation 6;
- (b) regulations 8 to 16;
- (c) regulation 17(3);
- (d) regulations 20 to 25;
- (e) regulation 26(3);
- (f) regulations 27 to 31;
- (g) regulation 32(3);
- (h) regulation 34;
- (i) regulation 36 to 38; or
- (j) regulation 40.

(2) It is an offence for any person to contravene or fail to comply with any requirement of a withdrawal or recall notice served on that person by an enforcing authority under these Regulations.

Commencement Information

I9 Reg. 73 in force at 3.8.2017, see [reg. 1](#)

Penalties

74. Any person who is guilty of an offence under regulation 73 (offences) is liable on summary conviction—

- (a) in England and Wales—

Status: Point in time view as at 03/08/2017.

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- (i) to imprisonment for a term not exceeding 3 months;
- (ii) to a fine; or
- (iii) to both.
- (b) in Scotland and Northern Ireland—
 - (i) to imprisonment for a term not exceeding 3 months; or
 - (ii) to a fine not exceeding level 5 on the standard scale; or
 - (iii) to both.

Commencement Information

I10 Reg. 74 in force at 3.8.2017, see [reg. 1](#)

Defence of due diligence

75.—(1) Subject to paragraphs (2) and (4), in proceedings for an offence under regulation 73 (offences) it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under paragraph (1) which involves a third party allegation unless P has—

- (a) served a notice in accordance with paragraph (3); or
- (b) obtained the leave of the court.

(3) The notice must—

- (a) give any information in P’s possession which identifies or assists in identifying the person who—
 - (i) committed the act or default; or
 - (ii) supplied the information on which P relied;
- (b) be served on the person bringing the proceedings not less than 7 clear days before—
 - (i) in England, Wales and Northern Ireland, the hearing of the proceedings;
 - (ii) in Scotland, the trial diet.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied upon the information, having regard in particular—

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

(5) In this regulation, “third party allegation” means an allegation that the commission of the offence was due—

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

Commencement Information

I11 Reg. 75 in force at 3.8.2017, see [reg. 1](#)

Liability of persons other than the principal offender

76.—(1) Where the commission by one person (“X”) of an offence under these Regulations is due to anything which another person (“Y”) did or failed to do in the course of business, Y is guilty of an offence and may be proceeded against and punished, whether or not proceedings are taken against X.

(2) Where a body corporate commits an offence, a relevant person is also guilty of the offence where the body corporate’s offence was committed—

- (a) with the consent or connivance of the relevant person; or
 - (b) as a result of the negligence of the relevant person.
- (3) In paragraph (2), “relevant person” means—
- (a) a director, manager, secretary or other similar officer of the body corporate;
 - (b) in relation to a body corporate managed by its members, a member of that body corporate performing managerial functions;
 - (c) in relation to a Scottish partnership, a partner; or
 - (d) a person purporting to act as a person described in sub-paragraphs (a), (b) or (c).

Commencement Information

I12 Reg. 76 in force at 3.8.2017, see [reg. 1](#)

Service of documents

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

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

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Commencement Information

I13 Reg. 77 in force at 3.8.2017, see [reg. 1](#)

Recovery of expenses of enforcement

78.—(1) This regulation applies where a person commits an offence under regulation 73 (offences).

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person to reimburse the enforcing authority for any expenditure which the authority has incurred in investigating the offence.

Commencement Information

I14 Reg. 78 in force at 3.8.2017, see [reg. 1](#)

Action by enforcing authority

79.—(1) An enforcing authority may take action which an economic operator could have been required to take by a notice served under these Regulations where the conditions for serving such a notice are met and either—

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

(2) If the enforcing authority takes action as a result of the condition in paragraph (1)(b) being met, the authority may recover from the economic operator, as a civil debt, any costs or expenses reasonably incurred by the authority in taking the action.

(3) A civil debt recoverable under paragraph (2) may be recovered summarily—

- (a) in England and Wales by way of a complaint pursuant to section 58 of the Magistrates' Courts Act 1980(1);
- (b) in Northern Ireland in proceedings under article 62 (debt proceedings) of the Magistrates Courts (Northern Ireland) Order 1981(2).

(4) In this regulation, “notice” means a notice served under Schedule 14.

Commencement Information

I15 Reg. 79 in force at 3.8.2017, see [reg. 1](#)

Appeals against notices

80.—(1) An application for an order to vary or set aside the terms of a notice served under these Regulations may be made—

- (a) by the economic operator on whom the notice has been served; and

(1) 1980 c.43; section 58 was amended by the Crime and Courts Act 2013 (c.22), Schedule 10 paragraph 40.

(2) S.I. 1981/1675 (NI 26).

- (b) by a person having an interest in the product in respect of which the notice has been served, unless the notice is a recall notice.
- (2) An application must be made before the end of the period of 21 days beginning with the day on which the notice was served.
- (3) The appropriate court may only make an order setting aside a notice served under these Regulations if satisfied that the product to which the notice relates is in conformity with Part 2 and does not present a risk.
- (4) On an application under paragraph (1) to vary the terms of a notice served under these Regulations, the appropriate court may vary the terms of the notice as it considers appropriate.
- (5) In this regulation—
 - (a) the “appropriate court” is to be determined in accordance with regulation 81 (appropriate court for appeals against notices); and
 - (b) “notice” means any notice served under Schedule 14.

Commencement Information

I16 Reg. 80 in force at 3.8.2017, see [reg. 1](#)

Appropriate court for appeals against notices

81.—(1) In England and Wales or Northern Ireland, the appropriate court for the purposes of regulation 80 (appeals against notices) is—

- (a) the court in which proceedings have been brought in relation to the product for an offence under regulation 73 (offences);
- (b) in any other case, a magistrates’ court.

(2) In Scotland, the appropriate court for the purposes of regulation 80 is the sheriff of the sheriffdom in which the person making the appeal resides or has a registered principal office.

(3) A person aggrieved by an order made by a magistrates’ court in England and Wales or Northern Ireland pursuant to an application under regulation 80 (appeals against notices), or by a decision of such a court not to make such an order, may appeal against that order or decision—

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

Commencement Information

I17 Reg. 81 in force at 3.8.2017, see [reg. 1](#)

Time limit for commencement of proceedings

82.—(1) Subject to paragraph (4), in England and Wales, an information relating to an offence under regulation 73 (offences) that is triable by a magistrates’ court may be so tried if it is laid within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(2) Subject to paragraph (4), in Scotland—

- (a) summary proceedings for an offence under regulation 73 may be commenced before the end of 12 months after the date on which evidence sufficient in the Lord Advocate’s opinion to justify the proceedings came to the Lord Advocate’s knowledge; and

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(b) section 136(3) of the Criminal Procedure (Scotland) Act 1995(3) (time limit for certain offences) applies for the purpose of this paragraph as it applies for the purpose of that section.

(3) Subject to paragraph (4), in Northern Ireland, summary proceedings for an offence under regulation 73 may be instituted within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the knowledge of the prosecutor.

(4) No proceedings may be brought more than 3 years after the commission of the offence.

(5) For the purposes of this regulation a certificate of the prosecutor (or in Scotland, the Lord Advocate) as to the date on which the evidence referred to paragraphs (1), (2) or (3) came to light, is conclusive evidence.

Commencement Information

I18 Reg. 82 in force at 3.8.2017, see [reg. 1](#)

Compensation

83.—(1) Where an enforcing authority serves a relevant notice in respect of a product, that authority is liable to pay compensation to a person having an interest in the product for any loss or damage suffered by reason of the notice if both of the conditions in paragraph (2) are met.

(2) The conditions are that—

(a) the product in respect of which the relevant notice was served neither—

(i) presents a risk; nor

(ii) contravenes any requirement of these Regulations; and

(b) the exercise of the power to serve the relevant notice was not attributable to neglect or default by a relevant economic operator.

(3) In this regulation, “relevant notice” means a notice served in accordance with Schedule 14.

Commencement Information

I19 Reg. 83 in force at 3.8.2017, see [reg. 1](#)

Status:

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Changes to legislation:

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