
STATUTORY INSTRUMENTS

2018 No. 389

**The Gas Appliances (Enforcement) and
Miscellaneous Amendments Regulations 2018**

PART 1 U.K.

Preliminary

Citation, commencement and interpretation U.K.

1.—(1) These Regulations may be cited as the Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018 and come into force on 21st April 2018.

(2) In these Regulations—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974 ^{M1};

“the 1978 Order” means the Health and Safety at Work (Northern Ireland) Order 1978 ^{M2};

“the 1987 Act” means the Consumer Protection Act 1987 ^{M3};

“the 1995 Regulations” means the Gas Appliances (Safety) Regulations 1995 ^{M4};

“district council” means a district council within the meaning of the Local Government Act (Northern Ireland) 1972 ^{M5};

“EU Regulation 2016/426” means Regulation (EU) 2016/426 ^{M6} of the European Parliament and of the Council on appliances burning gaseous fuels, repealing Council Directive [2009/142/EC](#) ^{M7}, as amended from time to time;

[^{F1}Regulation 2016/426 (pre-exit)” means Regulation (EU) 2016/426 of the European Parliament and of the Council on appliances burning gaseous fuels and repealing [Directive 2009/142/EC](#) as it had effect immediately before exit day;]

“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](#) ^{M8}, as amended from time to time;

“risk” means a risk which may result in harm to the health or safety of persons, domestic animals or property, if an appliance or fitting is used in a normal and predictable manner; and

“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 ^{M9}.

(3) In these Regulations [^{F2}(unless otherwise stated)] a reference to—

(a) a numbered regulation, paragraph or Schedule is a reference to the regulation, paragraph or Schedule as numbered in these Regulations [^{F3}unless otherwise stated];

(b) an Article, paragraph of an Article [^{F4}, Chapter] or Annex is a reference to the Article, paragraph of an Article [^{F4}, Chapter] or Annex as numbered in EU Regulation 2016/426;

- (c) a “relevant economic operator” in relation to an appliance or fitting means an economic operator with obligations in respect of that appliance or fitting under EU Regulation 2016/426; and
- (d) an “enforcement authority” is to be construed in accordance with regulation 4.
- (4) Expressions and words used in these Regulations which are used in EU Regulation 2016/426 have the same meaning as in EU Regulation 2016/426 [F5unless otherwise stated] .

Textual Amendments

- F1** Words in reg. 1(2) inserted (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), **Sch. 36 para. 1(2)(a)**; 2020 c. 1, **Sch. 5 para. 1(1)** (as amended by [S.I. 2020/852](#), regs. 2(2), 4(2), **Sch. 1 para. 1(i)(v)**)
- F2** Words in reg. 1(3) inserted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), reg. 1, **Sch. 36 para. 1(2)(b)(i)** (as amended by [S.I. 2020/676](#), regs. 1(1), 2, 3); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in reg. 1(3)(a) omitted (E.W.S.) (31.12.2020) by virtue of [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), reg. 1, **Sch. 36 para. 1(2)(b)(ii)** (as amended by [S.I. 2020/676](#), regs. 1(1), 2, 3); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Word in reg. 1(3)(b) inserted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), reg. 1, **Sch. 36 para. 1(2)(b)(iii)** (as amended by [S.I. 2020/676](#), regs. 1(1), 2, 3); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in reg. 1(4) inserted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), reg. 1, **Sch. 36 para. 1(2)(c)** (as amended by [S.I. 2020/676](#), regs. 1(1), 2, 3); 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

- M1** 1974 c.37.
- M2** [S.I. 1978/1039 \(N.I. 9\)](#).
- M3** 1987 c.43.
- M4** [S.I. 1995/1629](#) as amended by [S.I. 2012/1815](#) and the Protection of Freedoms Act 2012, Schedule 2, Part 3 and Schedule 10, Part 2.
- M5** 1972 Chapter 9.
- M6** OJ No L81, 31.3.2016, p.99.
- M7** OJ No L330, 16.12.2009, p.10.
- M8** OJ No L 218, 13.8.2008, p.30.
- M9** [1985 c.72](#); [section 69](#) was amended by the [Local Government \(Wales\) Act 1994 \(c.19\)](#), [section 66](#) and Schedule 16, paragraph 75; the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), [section 180](#) and Schedule 13, paragraph 144; and the [Statute Law \(Repeals\) Act 1989 \(c.43\)](#) Schedule 1, Part 1.

Application, transitional provisions, savings and revocation **U.K.**

2.—(1) These Regulations apply to appliances and fittings placed on the market on or after 21st April 2018.

(2) These Regulations do not apply to—

- (a) appliances specifically designed for the uses and purposes specified in Article 1(3); or
- (b) appliances and fittings which fall within Article 1(4).

(3) Nothing in these Regulations prevents the showing of appliances or fittings at trade fairs, exhibitions, demonstrations or the like, which are not in compliance with the provisions of EU Regulation 2016/426, provided that a visible sign clearly indicates that such appliances or fittings do not comply with those provisions and that they are not for sale until they are made compliant.

(4) ^{F6}The^{F6}Subject to the modifications made in paragraph (4A), the] 1995 Regulations continue to apply, as if they had not been revoked, to appliances and fittings placed on the market before 21st April 2018, and in any such case the consequential amendments made by Schedule 5 do not apply.

^{F7}(4A) The modifications referred to in paragraph (4) are as follows—

- (a) any reference to the “Community” is to be read as including the United Kingdom;
- (b) any reference to “member State” is to be read as though the United Kingdom were a member State;
- (c) regulation 10(6) is to be read as if the words from “and, on request made by it” to the end were omitted;
- (d) regulation 13(2) is to be read as if sub-paragraph (b) were omitted;
- (e) regulation 15(2) is to be read as if sub-paragraph (b) were omitted.]

(5) The 1995 Regulations are revoked save to the extent required to give effect to paragraph (4).

Textual Amendments

- F6** Words in [reg. 2\(4\)](#) substituted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), [reg. 1](#), [Sch. 36 para. 1\(3\)\(a\)](#) (as amended by [S.I. 2020/676](#), [regs. 1\(1\), 2, 3](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)
- F7** [Reg. 2\(4A\)](#) inserted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), [reg. 1](#), [Sch. 36 para. 1\(3\)\(b\)](#) (as amended by [S.I. 2020/676](#), [regs. 1\(1\), 2, 3](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

^{F8}Obligations which are met by complying with obligations in Regulation 2016/426 (pre-exit) **E+W+S**

2A.—(1) In this regulation, “harmonised standard” has the meaning given in Article 2(23) of Regulation 2016/426 (pre-exit).

(2) Paragraph (3) applies where before placing an appliance or fitting on the market, or using an appliance for their own purposes, the manufacturer—

- (a) ensures that the appliance or fitting has been designed and manufactured in accordance with the essential requirements set out in Annex I to Regulation 2016/426 (pre-exit);
- (b) carries out the applicable conformity assessment procedure referred to in Article 14 of Regulation 2016/426 (pre-exit), or has it carried out;
- (c) draws up the technical documentation referred to in Annex III to Regulation 2016/426 (pre-exit);
- (d) ensures that the technical documentation and other records and correspondence relating to the conformity assessment procedures are prepared in or translated into English;
- (e) affixes a CE marking and the inscriptions provided for in Annex IV of Regulation 2016/426 (pre-exit), in accordance with Articles 16, 17(1) to (4) and 18 of Regulation 2016/426 (pre-exit);
- (f) draws up an EU declaration of conformity, in accordance with Article 15 of Regulation 2016/426 (pre-exit); and
- (g) ensures that the EU declaration of conformity is prepared in or translated into English.

(3) Where this paragraph applies—

- (a) the requirements of Articles 7(1) and (2) and 14 to 18 are to be treated as being satisfied;

- (b) the requirement in Article 7(5) to ensure that appliances and fittings bear inscriptions, is to be treated as being satisfied;
 - (c) Articles 7(3), (4) and (7), 8(2) and point 1.7 of Annex I (referred to in Article 7(7)) and regulations 7(1) and 8(3)(a) apply subject to the modifications in paragraph (8); and
 - (d) Article 40 does not apply.
- (4) Paragraph (5) applies where before placing an appliance or fitting on the market, the importer ensures that—
- (a) the applicable conformity assessment procedure referred to in Article 14 of Regulation 2016/426 (pre-exit) has been carried out;
 - (b) the manufacturer has drawn up the technical documentation referred to in Annex III of Regulation 2016/426 (pre-exit); and
 - (c) the appliance or fitting bears the CE marking in accordance with Articles 16 and 17(1) to (4) of Regulation 2016/426 (pre-exit).
- (5) Where this paragraph applies—
- (a) the requirements in the first or second subparagraph of Article 9(2), as applicable, to ensure that—
 - (i) the appropriate conformity assessment procedure referred to in Article 14 has been carried out;
 - (ii) the manufacturer has drawn up the technical documentation; and
 - (iii) the appliance or fitting bears the UK marking,
 are to be treated as being satisfied;
 - (b) the third subparagraph of Article 9(2), Article 9(5) and (8), and regulations 7(1) and 8(3) apply subject to the modifications in paragraph (8); and
 - (c) in relation to fittings, the second subparagraph of Article 9(2) (other than those requirements treated as being satisfied), point 1.7 of Annex I (referred to in that subparagraph) and the second subparagraph of Article 9(4) also apply subject to the modifications in paragraph (8).
- (6) Paragraph (7) applies where, before placing an appliance or fitting on the market, a distributor ensures that the appliance or fitting bears the CE marking in accordance with Articles 16 and 17(1) to (4) of Regulation 2016/426 (pre-exit).
- (7) Where this paragraph applies—
- (a) the requirement in the first or second subparagraph of Article 10(2), as applicable, for the distributor to verify that the appliance or fitting bears the UK marking, is to be treated as being satisfied;
 - (b) the third subparagraph of Article 10(2), Article 10(3) and regulation 7(1) apply subject to the modifications in paragraph (8); and
 - (c) in relation to fittings, the second subparagraph of Article 10(2) (other than that requirement treated as being satisfied) and point 1.7 of Annex I (referred to in that subparagraph) also apply subject to the modifications in paragraph (8).
- (8) The modifications referred to in paragraphs (3)(c), (5)(b) and (c), and (7)(b) and (c) are that—
- (a) any reference to a “declaration of conformity” is to be read as a reference to an EU declaration of conformity, referred to in Article 15 of Regulation 2016/426 (pre-exit);
 - (b) any reference to “essential requirements” is to be read as a reference to the essential requirements set out in Annex I of Regulation 2016/426 (pre-exit);

- (c) any reference to “designated standard” is to be read as a reference to a harmonised standard;
- (d) any reference to “technical documentation” is a reference to the technical documentation referred to in Annex III to Regulation 2016/426 (pre-exit);
- (e) in regulations 7(1) and 8(3), any reference to a numbered Article is to be read as a reference to the equivalent Article of Regulation 2016/426 (pre-exit).

Textual Amendments

F8 Regs. 2A-2D inserted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), reg. 1, **Sch. 36 para. 1(4)** (as amended by [S.I. 2020/676](#), regs. 1(1), 2, 3 and by [S.I. 2020/1460](#), reg. 1(4), **Sch. 3 para. 25(2)**); 2020 c. 1, **Sch. 5 para. 1(1)**

Conformity assessment procedure obligation which is met by complying with Regulation 2016/426 (pre-exit) **E+W+S**

2B.—(1) Paragraph (2) applies where, before placing an appliance or fitting on the market the manufacturer ensures that its conformity with Regulation 2016/426 (pre-exit) has been assessed by means of the conformity assessment procedure set out in point 1 of Annex III to Regulation 2016/426 (pre-exit) and referred to in Article 14(2) of Regulation 2016/426 (pre-exit) as EU type-examination, in accordance with that Article.

(2) Where this paragraph applies—

- (a) the requirement in Article 14(2) that the conformity of appliances and fittings with Regulation EU 2016/426 be assessed by means of the type-examination set out in point 1 of Annex III is to be treated as being satisfied;
- (b) any reference to “conformity assessment procedure” in Articles 7(2) and 9(2) (first and second subparagraphs) is to be read as including the conformity assessment procedure referred to in Article 14(2) of Regulation 2016/426 (pre-exit) as EU type-examination;
- (c) any reference to “technical documentation” in Articles 7(2), 7(3), 9(2) (first and second subparagraphs) and 9(8) is to be read as including the technical documentation relating to the design of the appliance or fitting as referred to in point 1 of Annex III to Regulation 2016/426 (pre-exit).

Textual Amendments

F8 Regs. 2A-2D inserted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), reg. 1, **Sch. 36 para. 1(4)** (as amended by [S.I. 2020/676](#), regs. 1(1), 2, 3 and by [S.I. 2020/1460](#), reg. 1(4), **Sch. 3 para. 25(2)**); 2020 c. 1, **Sch. 5 para. 1(1)**

Expiry of regulations 2A and 2B **U.K.**

2C.—(1) Subject to paragraph (2), regulation 2A ceases to have effect at the end of the period of [^{F9}four years] beginning with IP completion day.

(2) Notwithstanding the expiry of regulation 2A—

- (a) any appliance or fitting which was placed on the market pursuant to regulation 2A may continue to be made available on the market on or after the expiry of regulation 2A;

- (b) any obligation to which a person was subject under regulation 2A in respect of any appliance or fitting placed on the market pursuant to regulation 2A continues to have effect after the expiry of regulation 2A, in respect of that appliance or fitting.
- (3) Subject to paragraph (4), regulation 2B ceases to have effect at the end of the period of [^{F10}four years] beginning with IP completion day.
- (4) Where a conformity assessment procedure has been completed pursuant to regulation 2B in relation to a product prior to the expiry of regulation 2B, regulation 2B continues to apply in respect of that product where—
- the manufacturer arranges for the EU-Type examination certificate and any annexes to be transferred to an approved body;
 - the approved body referred to in sub-paragraph (a) accepts responsibility for the EU-Type examination certificate; and
 - the approved body issues a Type-examination certificate relying, or relying in part, on any examinations or tests undertaken prior to the issue of the EU-Type examination certificate.
- (5) In paragraph (4) “EU-Type examination certificate” means a certificate issued after the conformity assessment procedure referred to in regulation 2B(1) has been carried out in relation to that appliance or fitting, in accordance with Article 14(2) of Regulation 2019/426 (pre-exit).

Textual Amendments

- F8** Regs. 2A-2D inserted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/696), reg. 1, [Sch. 36 para. 1\(4\)](#) (as amended by S.I. 2020/676, regs. 1(1), 2, 3 and by S.I. 2020/1460, reg. 1(4), [Sch. 3 para. 25\(2\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F9** Words in [reg. 2C\(1\)](#) substituted (31.12.2022) by [The Product Safety and Metrology \(Amendment and Transitional Provisions\) Regulations 2022](#) (S.I. 2022/1393), regs. 1(1), 2, [Sch. 1 para. \(u\)](#)
- F10** Words in [reg. 2C\(3\)](#) substituted (31.12.2022) by [The Product Safety and Metrology \(Amendment and Transitional Provisions\) Regulations 2022](#) (S.I. 2022/1393), regs. 1(1), 2, [Sch. 1 para. \(u\)](#)

Qualifying Northern Ireland Goods **U.K.**

2D.—(1) In this regulation—

“EU Regulation 2016/426 (Northern Ireland)” means Regulation (EU) No. 2016/426 of the European Parliament and of the Council on appliances burning gaseous fuels, repealing Council Directive [2009/142/EC](#), as it has effect by virtue of the Protocol on Ireland/ Northern Ireland in the EU withdrawal agreement;

“applicable conformity assessment procedure” means the conformity assessment procedure applicable to the appliance or fitting in accordance with Article 14 of EU Regulation 2016/426 (Northern Ireland);

“CE marking” has the meaning given to it in Article 2(31) of EU Regulation 2016/426 (Northern Ireland);

“qualifying Northern Ireland goods” has the meaning given to it in regulations made under section 8C(6) of the European Union (Withdrawal) Act 2018;

“technical documentation” means the documentation referred to in Annex III of Regulation 2016/426 (Northern Ireland).

(2) Where paragraph (3) applies—

- an appliance or fitting is to be treated as being in conformity with the essential safety requirements within the meaning given in EU Regulation 2016/426; and

- (b) each relevant economic operator is to be treated as having complied or as complying with the obligations imposed on them under Chapter II of EU Regulation 2016/426.
- (3) This paragraph applies where—
 - (a) the appliance or fitting is—
 - (i) in conformity with the essential requirements within the meaning given in EU Regulation 2016/246 (Northern Ireland); and
 - (ii) qualifying Northern Ireland goods; and
 - (b) each relevant economic operator has complied or is complying with the obligations imposed on them under Chapter II of EU Regulation 2016/426 (Northern Ireland); and
 - (c) an importer has complied with the obligations set out in paragraph (4).
- (4) The obligations referred to in paragraph (4)(c) are that, before placing the appliance or fitting on the market, the importer—
 - (a) complies with Article 9(3) of EU Regulation 2016/426;
 - (b) ensures that—
 - (i) the applicable conformity assessment procedure has been carried out in relation to the appliance or fitting;
 - (ii) the manufacturer has drawn up the technical documentation; and
 - (iii) the appliance or fitting bears the CE marking.]

Textual Amendments

- F8** Regs. 2A-2D inserted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/696), reg. 1, **Sch. 36 para. 1(4)** (as amended by S.I. 2020/676, regs. 1(1), 2, 3 and by S.I. 2020/1460, reg. 1(4), **Sch. 3 para. 25(2)**); 2020 c. 1, **Sch. 5 para. 1(1)**

PART 2 **U.K.**

Market Surveillance and Enforcement

Designation of market surveillance authorities **U.K.**

- 3.—(1) The market surveillance authority is—
- (a) in the case of appliances or fittings for private use or consumption (other than that referred to in paragraph (2)(b))—
 - (i) in Great Britain, within its area, a weights and measures authority; and
 - (ii) in Northern Ireland, within its area, a district council;
 - (b) in the case of appliances or fittings for use or operation in the circumstances set out in paragraph (2)—
 - (i) subject to paragraph (3), in Great Britain, the Health and Safety Executive; and
 - (ii) in Northern Ireland, the Health and Safety Executive for Northern Ireland.
- (2) The circumstances referred to in paragraphs (1)(b) are where the appliances or fittings are designed—
- (a) for use or operation, whether exclusively or not, by persons at work; or

(b) for use, otherwise than at work, in non-domestic premises made available to persons at a place where they may use the appliances or fittings provided for their own use there.

(3) In so far as these Regulations apply to appliances and fittings intended exclusively or primarily for use on relevant nuclear sites, the market surveillance authority is the Office for Nuclear Regulation.

(4) In paragraph (3) “relevant nuclear site” means a site which is—

- (a) a GB nuclear site (within the meaning given in section 68 of the Energy Act 2013 ^{M10});
- (b) an authorised defence site (within the meaning given in regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998 ^{M11}); or
- (c) a new nuclear build site (within the meaning given in regulation 2A of those Regulations ^{M12}).

Marginal Citations

M10 2013 c.32.

M11 S.I. 1998/494 amended by S.I. 2014/469. There are other amendments not relevant to these Regulations.

M12 Regulation 2A was inserted by S.I. 2014/469 and amended by S.I. 2015/51 (regulation 38, Schedule 5).

Enforcement Authorities **U.K.**

4.—(1) Subject to paragraph (2), EU Regulation 2016/426, these Regulations and RAMS (in its application to appliances and fittings) must be enforced by the market surveillance authority.

(2) Notwithstanding paragraph (1), the Secretary of State may enforce EU Regulation 2016/426, these Regulations and RAMS (in its application to appliances and fittings).

(3) In Scotland only the Lord Advocate may commence proceedings for an offence under these Regulations.

Enforcement Powers **U.K.**

5.—(1) Schedule 1 makes provision for enforcement powers under the 1987 Act where the enforcement authority is—

- (a) a weights and measures authority;
- (b) a district council; or
- (c) the Secretary of State.

(2) Schedule 2 makes provision for enforcement powers under the 1974 Act where the enforcement authority is the Health and Safety Executive or the Office for Nuclear Regulation.

(3) Schedule 3 makes provision for enforcement powers under the 1978 Order where the enforcement authority is the Health and Safety Executive for Northern Ireland.

(4) In addition to the powers available to an enforcement authority by virtue of paragraph (1), (2) or (3), as appropriate, the enforcement authority may use the powers in Schedule 4 (compliance, withdrawal and recall notices).

Notification to the Secretary of State of enforcement action etc **U.K.**

6. A market surveillance authority must immediately notify the Secretary of State of any action taken by it, evaluation made or other opinion formed by it, ^{F11}or other matter within its knowledge

which is required by Article 37(4) to be communicated to the Commission or the [F12other] member States][F11in accordance with Chapter 5] .

Textual Amendments

- F11** Words in [reg. 6](#) substituted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), [reg. 1](#), [Sch. 36 para. 1\(5\)](#) (as amended by [S.I. 2020/676](#), [regs. 1\(1\), 2, 3](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)
- F12** Word in [reg. 6](#) omitted (N.I.) (31.12.2020) by virtue of [The Product Safety and Metrology etc. \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1112\)](#), [reg. 1\(b\)](#), [Sch. 18 para. 1\(2\)](#)

[F13Information obligations **N.I.**

6A.—(1) Nothing in EU Regulation 2016/426 requires any market surveillance authority or the Secretary of State to inform the Commission or member States of any matter in relation to appliances or fittings on the market of Great Britain only.]

Textual Amendments

- F13** [Reg. 6A](#) inserted (N.I.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1112\)](#), [reg. 1\(b\)](#), [Sch. 18 para. 1\(3\)](#)

Offences **U.K.**

7.—(1) It is an offence for an economic operator to contravene the requirements and obligations set out in—

- (a) Article 7 (obligations of manufacturers);
 - (b) Article 9 (obligations of importers);
 - (c) Article 10 (obligations of distributors);
 - (d) Article 12 (identification of economic operators);
 - (e) Article 17 (rules and conditions for affixing the [F14CE][F14UK] marking); and
 - (f) Article 18 (inscriptions).
- (2) It is an offence for an economic operator to fail to—
- (a) cooperate with;
 - (b) provide information to; and
 - (c) comply with any of the requirements of, the market surveillance authority acting under Article 37.
- (3) It is an offence for an economic operator to fail to take the action required under—
- (a) Article 39 (compliant appliance or fitting which presents a risk); or
 - (b) Article 40 (formal non-compliance).
- (4) It is an offence for a person—
- (a) to intentionally obstruct an enforcement authority acting in the execution or enforcement of EU Regulation 2016/426;
 - (b) without reasonable cause, to fail to give such an enforcement authority any assistance or information which that authority may reasonably require for those purposes;

- (c) to knowingly or recklessly furnish to such an enforcement authority any information knowing it to be false or misleading in a material particular; or
 - (d) to fail to produce a document or record for such an enforcement authority when required to do so.
- (5) Proceedings must not be commenced against an economic operator under paragraph (1), (2) or (3) if the economic operator has been given a time period within which to comply or take action, and that time period has not expired.

Textual Amendments

F14 Word in [reg. 7\(1\)\(e\)](#) substituted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), [reg. 1](#), [Sch. 36 para. 1\(6\)](#) (as amended by [S.I. 2020/676](#), [regs. 1\(1\), 2, 3](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

Penalties **U.K.**

8.—(1) Except for a person who falls within paragraph (3), a person guilty of an offence under these Regulations is liable—

- (a) on summary conviction—
 - (i) in England and Wales, to a fine or imprisonment for a term not exceeding three months, or to both;
 - (ii) in Scotland and Northern Ireland, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding three months, or to both;
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or to both.
- (2) A person who falls within paragraph (3) is liable on summary conviction—
- (a) in England and Wales, to a fine or imprisonment for a term not exceeding three months, or to both;
 - (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding three months or to both.
- (3) A person falls within this paragraph, if that person is guilty of an offence under—
- (a) [regulation 7\(1\)\(a\)](#) by contravening the requirement in [Article 7\(3\)](#) (failing to keep the technical documentation and the [^{F15}EU] declaration of conformity for 10 years); or
 - (b) [regulation 7\(1\)\(b\)](#) by contravening the requirement in [Article 9\(8\)](#) (failing to keep a copy of the [^{F15}EU] declaration of conformity for 10 years and failing to make that document and the technical documentation available to the market surveillance authority on request).

Textual Amendments

F15 Word in [reg. 8\(3\)](#) omitted (E.W.S.) (31.12.2020) by virtue of [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), [reg. 1](#), [Sch. 36 para. 1\(7\)](#) (as amended by [S.I. 2020/676](#), [regs. 1\(1\), 2, 3](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

Defence of due diligence **U.K.**

9.—(1) In proceedings for an offence under these Regulations, 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 notice in accordance with paragraph (3); or
- (b) obtained leave of the court.

(3) The notice must—

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

(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 in all the circumstances to have relied on the information, having regard in particular to—

- (a) the steps that P took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) 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 to—

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

Liability of persons other than the principal offender **U.K.**

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

(2) Where a body corporate commits an offence under these Regulations, a relevant person is also guilty of the offence where the offence was committed by the body corporate—

- (a) with the consent or connivance of a relevant person; or
- (b) as a result of the negligence of a relevant person.

(3) In paragraph (2) a “relevant person” means —

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

Time limit for prosecution of offences **U.K.**

11.—(1) In England and Wales an information relating to an offence under these Regulations 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) In Scotland—

- (a) summary proceedings for an offence may only be commenced within 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
- (b) section 136(3) of the Criminal Procedure (Scotland) Act 1995 ^{M13} (time limit for certain offences) applies for the purpose of this paragraph as it applies for the purpose of that section.

(3) In Northern Ireland summary proceedings for an offence may be instituted within 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 are to be brought more than three 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 such evidence as is referred to above came to their notice is conclusive evidence of that fact.

(6) This regulation has effect subject to paragraph (1)(n) of Schedule 2 (enforcement powers of the Health and Safety Executive and the Office for Nuclear Regulation under the 1974 Act) and to paragraph (1)(n) of Schedule 3 (enforcement powers of the Health and Safety Executive for Northern Ireland under the 1978 Order).

Marginal Citations

M13 1995 c.46.

Written notice under Article 37 and service of documents **U.K.**

12.—(1) In a case falling within Article 37 (procedure [^{F16}at national level] for dealing with appliances or fittings presenting a risk), a market surveillance authority must provide notice when requiring the relevant economic operator to, within a reasonable period—

- (a) take appropriate corrective action;
- (b) withdraw the appliance or fitting from the market [^{F17}in Northern Ireland] ; or
- (c) recall the appliance or fitting.

(2) The notice given under paragraph (1) must—

- (a) give reasons for the action required;
- (b) provide a time limit for compliance; and
- (c) be served in accordance with paragraphs (3) to (6).

(3) Any document required or authorised by EU Regulation 2016/426 or these Regulations to be served on a person may be served by—

- (i) delivering it to that person in person;
- (ii) leaving it at the person's proper address; or
- (iii) sending it by post or electronic means to that person's proper address.

(4) In the case of a body corporate, a document may be served on a director of that body.

(5) In the case of a partnership, a document may be served on a partner or person having control or management of the partnership business.

(6) If a person 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.

(7) For the purposes of this regulation “proper address” means—

(a) in the case of a body corporate or its director—

(i) the registered or principal office of that body; or

(ii) the email address of the secretary or clerk of that body;

(b) in the case of a partnership, a partner or person having control or management of the partnership business—

(i) the principal office of the partnership; or

(ii) the email address of a partner or a person having that control or management;

(c) in any other case, a person's last known address, which includes an email address.

(8) In this regulation, “partnership” includes a Scottish partnership.

Textual Amendments

F16 Words in [reg. 12\(1\)](#) omitted (E.W.S.) (31.12.2020) by virtue of [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), [reg. 1](#), [Sch. 36 para. 1\(8\)](#) (as amended by [S.I. 2020/676](#), [regs. 1\(1\), 2, 3](#); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#))

F17 Words in [reg. 12\(1\)\(b\)](#) inserted (N.I.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1112\)](#), [reg. 1\(b\)](#), [Sch. 18 para. 1\(4\)](#)

Appeals against notices **U.K.**

13.—(1) An application for an order to vary or set aside the terms of a notice served under regulation 5 (enforcement powers) or 12 (Article 37 notices) may be made—

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

(b) in the case of a notice other than a recall notice, by a person having an interest in the appliance or fitting in respect of which the notice has been served.

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

(3) The appropriate court may only make an order setting aside a notice served under regulation 5 or 12 if satisfied that—

(a) no contravention of EU Regulation 2016/426 or these Regulations has occurred; or

(b) the enforcement authority failed to comply with Article 13 (presumption of conformity of appliances and fittings) when serving the notice.

(4) On an application to vary the terms of a notice, 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 14; and

(b) “notice” means—

(i) a notice served under regulation 12.

(ii) a prohibition notice, a notice to warn or a suspension notice served in accordance with Schedule 1; or

- (iii) a compliance notice, a withdrawal notice, or a recall notice served in accordance with Schedule 4.

Appropriate court for appeals against notices etc and further appeals **U.K.**

14.—(1) In England and Wales or Northern Ireland the appropriate court for the purposes of regulation 13 is—

- (a) the court in which proceedings have been brought for an offence under regulation 7 (offences);
- (b) an employment tribunal seized of appeal proceedings against a notice which relates to appliances or fittings and which has been served under or by virtue of paragraph 1 of Schedule 2;
- (c) an industrial tribunal seized of appeal proceedings against a notice which relates to an appliances or fitting and which has been served under or by virtue of paragraph 1 of Schedule 3 (enforcement powers of the Health and Safety Executive for Northern Ireland under the 1978 Order); or
- (d) in any other case, a magistrates' court in England and Wales or Northern Ireland.

(2) In Scotland the appropriate court for the purposes of regulation 13 is—

- (a) the sheriff of a sheriffdom in which the person making the appeal resides or, as the case may be, has a registered or principal office; or
- (b) an employment tribunal seized of appeal proceedings against a notice which relates to an appliance or fitting an which has been served under or by virtue of paragraph 1 of Schedule 2.

(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 13, 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.

Compensation **U.K.**

15.—(1) When an enforcement authority other than the Health and Safety Executive, the Health and Safety Executive for Northern Ireland or the Office for Nuclear Regulation, serves a relevant notice in respect of an appliance or fitting, that authority is liable to pay compensation to a person having an interest in the appliance or fitting for any loss or damage caused by reason of the notice if both conditions mentioned in paragraph (2) are met.

(2) The conditions are that—

- (a) the appliance or fitting in respect of which the relevant notice was served neither—
 - (i) presents a risk; nor
 - (ii) contravenes any requirement of EU Regulation 2016/426; and
- (b) any neglect or default on the part of the economic operator was not the reason for service of the relevant notice.

(3) In this regulation, “relevant notice” means a suspension, withdrawal or recall notice as referred to in regulation 13(5)(b).

Recovery of expenses of enforcement **U.K.**

16.—(1) This regulation applies where a person commits an offence under regulation 7 (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 enforcement authority for any expenditure which the authority has reasonably incurred in investigating the offence.

Action by enforcement authority **U.K.**

17.—(1) An enforcement authority may itself take any action which an economic operator could have been required to take by a notice served under regulation 5 (enforcement powers) where the conditions for serving such a notice are met and either—

- (a) the enforcement 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 enforcement authority has taken action under paragraph (1) following the failure of an economic operator to comply with a notice, the authority may recover from that person as a civil debt any costs or expenses incurred by the enforcement 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 ^{M14};
- (b) in Northern Ireland, in proceedings under Article 62 of the Magistrates' Court (Northern Ireland) Order 1981 ^{M15}.

Marginal Citations

M14 1980 c.43. Section 58 was amended by the [Crime and Courts Act 2013 \(c.22\)](#), [Schedule 10 paragraph 40](#).

M15 S.I. 1981/1675 (N.I. 26).

PART 3 **U.K.**

Review and Consequential and Miscellaneous Amendments

Review **U.K.**

18.—(1) The Secretary of State must—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of that review.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how EU Regulation 2016/426 (which is enforced and supplemented by means of these Regulations) is executed and enforced in ^{F18}other^{F18}any member States.

(3) The first report must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(4) Subsequent reports under this regulation are to be published at intervals not exceeding five years.

(5) Section 30(4) of Small Business, Enterprise and Employment Act 2015^{M16} requires that the reports published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the 2015 Act (see section 32 of that Act).

Textual Amendments

F18 Word in [reg. 18\(2\)](#) substituted (N.I.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1112\)](#), [reg. 1\(b\)](#), [Sch. 18 para. 1\(5\)](#)

Marginal Citations

M16 [2015 c.26](#).

Consequential amendments **U.K.**

19. Schedule 5 (consequential amendments) makes amendments to legislation which are consequential to these Regulations (subject to regulation 2(4)).

Miscellaneous amendments **U.K.**

20. Schedule 6 (miscellaneous amendments) makes amendments to the Lifts Regulations 2016^{M17}; the Recreational Craft Regulations 2017^{M18} and the Radio Equipment Regulations 2017^{M19}.

Marginal Citations

M17 [S.I. 2016/1093](#) as amended by [S.I. 2016/1186](#).

M18 [S.I. 2017/737](#).

M19 [S.I. 2017/1206](#).

[^{F19}PART 4 N.I.

Provisions in respect of the UK(NI) indication

Textual Amendments

F19 [Pt. 4](#) inserted (N.I.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(UK\(NI\) Indication\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1460\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 16\(2\)](#)

Interpretation **N.I.**

21. In this Part “UK(NI) indication” means the marking in the form set out in Schedule 1 to the Product Safety and Metrology etc. (Amendment etc.) (UK(NI) Indication) (EU Exit) Regulations 2020.

UK(NI) indication **N.I.**

22.—(1) Where the CE marking is affixed on the basis of an assessment or a certificate issued by a notified body established in the United Kingdom, a UK(NI) indication must be affixed in relation to the appliance or fitting, in accordance with this regulation.

(2) The UK(NI) indication must be affixed—

(a) visibly, legibly and indelibly; and

(b) before the appliance or fitting is placed on the market in Northern Ireland.

(3) The UK(NI) indication must accompany the CE marking, wherever that is affixed in accordance with Article 17.

(4) The UK(NI) indication must be affixed by—

(a) the manufacturer; or

(b) the manufacturer's authorised representative.

(5) Before placing an appliance or fitting on the market in Northern Ireland, an importer must ensure that the manufacturer has complied with their obligations under this regulation.

United Kingdom notified bodies **N.I.**

23.—(1) The reference in Article 27(5) to “objections” does not include objections on the grounds that—

(a) the conformity assessment body is established in the United Kingdom; or

(b) the accreditation certificate was issued by the United Kingdom's national accreditation body.

(2) Where a notified body established in the United Kingdom is involved in a conformity assessment procedure pursuant to Article 14, the notified body identification number referred to in Article 17(3) is the notified body identification number assigned to the notified body pursuant to regulation 24.

Register of notified bodies established in the United Kingdom **N.I.**

24.—(1) The Secretary of State must ensure that—

(a) each notified body established in the United Kingdom is assigned an identification number; and

(b) there is a register of—

(i) notified bodies established in the United Kingdom;

(ii) their notified body identification number;

(iii) the activities for which they have been notified;

(iv) any restrictions on those activities.

(2) The Secretary of State must ensure that the register referred to in paragraph (1) is maintained and made publicly available.

(3) The Secretary of State may authorise the United Kingdom Accreditation Service to compile and maintain the register in accordance with paragraph (1)(b).”.

Offence in relation to the UK(NI) indication N.I.

25.—(1) Where an enforcement authority finds that the UK(NI) indication—

- (a) has not been affixed, in contravention of regulation 22; or
- (b) has been affixed otherwise in accordance with regulation 22

it must require a manufacturer to put an end to the non-compliance within such reasonable period as the authority specifies.

(2) Until the specified period has elapsed, the enforcement authority must not commence proceedings under these Regulations, or take any other enforcement action under these Regulations, against the manufacturer in respect of the non-compliance referred to in paragraph (1).

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

- (a) restrict or prohibit the appliance or fitting being available on the market;
- (b) ensure that the appliance or fitting is withdrawn;
- (c) ensure that the appliance or fitting is recalled.

(4) It is an offence for any person to contravene or fail to comply with any requirement of a withdrawal or recall notice that relates to the UK(NI) indication served on that person under these Regulations.

(5) A person guilty of an offence under paragraph (4) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) This regulation does not apply where an appliance or fitting presents a risk.]

Department for Business, Energy and Industrial
Strategy

Andrew Griffiths
Minister for Small Business, Consumer and
Corporate Responsibility

Changes to legislation:

There are currently no known outstanding effects for the The Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018.