

SCHEDULE 4

Compliance, Withdrawal and Recall Notices

Recall notice

3.—(1) The enforcement authority may serve a recall notice on a relevant economic operator in respect of an appliance or fitting if the authority has reasonable grounds for believing that—

- (a) the appliance or fitting has been made available to end-users; and
- (b) either of the following conditions is met—
 - (i) the appliance or fitting presents a risk;
 - (ii) the appliance or fitting is not in conformity with the requirements of EU Regulation 2016/426 or RAMS (in its application to appliances or fittings).

(2) A recall notice must require the relevant economic operator to use reasonable endeavours to organise the return of the appliance or fitting from end-users to the relevant economic operator or another person specified in the notice.

(3) A recall notice may—

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

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

(5) A recall notice may only be issued by the enforcement authority where—

- (a) other action which it may require under these Regulations would not suffice to address the non-compliance;
- (b) the action being undertaken by the relevant economic operator in fulfilment of the requirements of EU Regulation 2016/426 is unsatisfactory or insufficient to address the non-compliance;
- (c) the enforcement authority has given not less than ten days' notice to the relevant economic operator of its intention to serve such a notice; and
- (d) the enforcement authority has taken account of any advice obtained under subparagraph (6).

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

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

Changes to legislation: There are currently no known outstanding effects for the The Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018, Paragraph 3. (See end of Document for details)

(7) Sub-paragraph (5)(b), (c) and (d) do not apply in the case of an appliance or fitting presenting a serious risk requiring, in the view of the enforcement authority, urgent action.

(8) Where a relevant economic operator requires the enforcement authority to seek advice under sub-paragraph (6), that relevant economic operator is to be responsible for the fees, costs and expenses of the Institute and of the person appointed by the Institute to advise the enforcement authority.

(9) A recall notice served by the enforcement authority may require the relevant economic operator to keep the authority informed of the whereabouts of an appliance or fitting to which the recall notice relates, so far as the relevant economic operator is able to do so.

(10) In this paragraph, “Institute” means the charitable organisation with registered number 803725 and known as the Chartered Institute of Arbitrators.

Changes to legislation:

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