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STATUTORY INSTRUMENTS

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**2016 No. 1105**

**The Pressure Equipment (Safety) Regulations 2016**

**PART 5**

**Market surveillance and enforcement**

**Designation of market surveillance authority**

**66.**—(1) The market surveillance authority is—

- (a) in the case of pressure equipment and assemblies for use in the workplace—
  - (i) subject to paragraph (2), in Great Britain, the Health and Safety Executive<sup>(1)</sup>; and
  - (ii) in Northern Ireland, the Health and Safety Executive for Northern Ireland<sup>(2)</sup>;
- (b) in the case of pressure equipment and assemblies for private use or consumption—
  - (i) in Great Britain, within its area, a weights and measures authority; and
  - (ii) in Northern Ireland, within its area, a district council.

(2) In so far as these Regulations apply to pressure equipment or assemblies intended exclusively or primarily for use on relevant nuclear sites, the market surveillance authority is the Office for Nuclear Regulation.

(3) In paragraph (2), “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<sup>(3)</sup>);
- (b) an authorised defence site (within the meaning given in regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998<sup>(4)</sup>); or
- (c) a new nuclear build site (within the meaning given in regulation 2A of those Regulations).

**Enforcement**

**67.**—(1) Subject to paragraph (2), these Regulations and RAMS (in its application to pressure equipment or assemblies) must be enforced by the market surveillance authority.

(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 pressure equipment or assemblies).

(3) Before taking enforcement action under paragraph (2), an enforcing authority which is not the market surveillance authority must notify the market surveillance authority of the proposed action.

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

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(1) Established under section 10 of the Health and Safety at Work etc Act 1974.

(2) Established under Article 12 of the Health and Safety at Work (Northern Ireland) Order 1978.

(3) 2013 c.32.

(4) S.I. 1998/494, amended by S.I. 2014/469; there are other amending instruments but none is relevant.

### **Enforcement powers**

**68.**—(1) Schedule 7 (enforcement powers of weights and measures authorities, district councils and the Secretary of State under the 1987 Act) has effect where the enforcing authority is—

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

(2) Schedule 8 (enforcement powers of the Health and Safety Executive and the Office for Nuclear Regulation under the 1974 Act) has effect where the enforcing authority is the Health and Safety Executive or the Office for Nuclear Regulation.

(3) Schedule 9 (Enforcement Powers of the Health and Safety Executive for Northern Ireland under the 1978 Order) has effect where the enforcing authority is the Health and Safety Executive for Northern Ireland.

(4) In addition to the powers available to an enforcement authority by virtue of, as appropriate, paragraph (1), (2) or (3), the authority may use the powers in Schedule 10 (compliance, withdrawal and recall notices)(5).

(5) This regulation does not prevent an enforcing authority from taking action in respect of pressure equipment or assemblies under the General Product Safety Regulations 2005(6).

### **Exercise of enforcement powers**

**69.** When enforcing these Regulations or RAMS (in its application to pressure equipment or assemblies) the enforcing authority must exercise its powers in a manner which is consistent with—

- (a) regulation 70 (evaluation of pressure equipment or assemblies presenting a risk);
- (b) regulation 71 (enforcement action in respect of pressure equipment or assemblies which are not in conformity and which present a risk);
- (c) regulation 72 (EU safeguard procedure);
- (d) regulation 73 (pressure equipment or assemblies which are in conformity, but present a risk);
- (e) regulation 74 (enforcement action in cases of formal non-compliance);
- (f) regulation 75 (restrictive measures).

### **Evaluation of pressure equipment or assemblies presenting a risk**

**70.**—(1) Where the market surveillance authority has sufficient reason to believe that pressure equipment or an assembly presents a risk, the market surveillance authority must carry out an evaluation to determine whether that pressure equipment or assembly is in conformity with the requirements of Part 2 applying in respect of that equipment or assembly.

(2) Where an enforcing authority other than the market surveillance authority has sufficient reason to believe that pressure equipment or an assembly presents a risk, that enforcing authority may carry out an evaluation to determine whether that pressure equipment or assembly is in conformity with the requirements of Part 2 applying in respect of that equipment or assembly.

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(5) For the investigatory powers available to an enforcing authority for the purposes of the duty imposed by regulation 67, see Schedule 5 to the Consumer Rights Act 2015 (c.15).

(6) S.I. 2005/1083.

**Enforcement action in respect of pressure equipment or assemblies which are not in conformity and which present a risk**

71.—(1) Where, in the course of an evaluation referred to in regulation 70, an enforcing authority finds that pressure equipment or an assembly is not in conformity with Part 2, it must, without delay, require a relevant economic operator to—

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

(2) The enforcing authority must inform the notified body which carried out the conformity assessment procedure in respect of the pressure equipment or assembly of—

- (a) the respect in which the pressure equipment or assembly is not in conformity with Part 2; and
- (b) the action which the enforcing authority has required the relevant economic operator to take.

(3) Where the enforcing authority is not the Secretary of State and it considers that the lack of conformity referred to in paragraph (1) is not restricted to 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 a notice 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 action 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 referred to in paragraph (1), the enforcing authority must take all appropriate measures to—

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

(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 of those measures without delay.

(8) The notices in paragraphs (6) and (7) must include all available details about the pressure equipment or assembly and, in particular—

- (a) the data necessary for the identification of the pressure equipment or assembly;
- (b) the origin of the pressure equipment or assembly;
- (c) the nature of the lack of conformity 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 lack of conformity is due to either of the following—
  - (i) failure of the pressure equipment or assembly to meet relevant requirements relating to a risk;
  - (ii) shortcomings in a harmonised standard referred to in regulation 40 conferring 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 pressure equipment or assembly.

### **EU safeguard procedure**

72.—(1) Where another member State has initiated the procedure under Article 40 of the Directive (as amended from time to time), each enforcing authority (other than the Secretary of State) must, without delay, inform the Secretary of State of—

- (a) any measures taken by the enforcing authority in respect of the pressure equipment or assembly which is the subject of the procedure;
- (b) any additional information which the enforcing authority has at its disposal relating to the lack of conformity of the pressure equipment or assembly.

(2) Where another member State has initiated the procedure under Article 40 of the Directive (as amended from time to time), the Secretary of State must, without delay, inform the European Commission and the other member States of—

- (a) any measures taken by an enforcing authority in respect of the pressure equipment or assembly which is the subject of the procedure;
- (b) any additional information which an enforcing authority has at its disposal relating to the lack of conformity of the pressure equipment or assembly; and
- (c) any objections that the Secretary of State may have to the measure taken by the member State initiating the procedure.

(3) Where a measure taken by another member State in respect of pressure equipment or an assembly is considered justified by the European Commission under Article 40(7) 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 pressure equipment or assembly without delay.

(4) Where a measure taken by another member State in respect of pressure equipment or an assembly is considered justified by the European Commission under Article 41(1) of the Directive (as amended from time to time), the market surveillance authority must take the necessary measures to ensure that the pressure equipment or assembly is withdrawn from the United Kingdom market.

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

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

(7) If a measure taken by an enforcing authority pursuant to regulation 71 is considered unjustified by the European Commission under Article 41(1) of the Directive (as amended from time to time), the enforcing authority must withdraw that measure.

### **Pressure equipment or assemblies which are in conformity, but present a risk**

73.—(1) Where, having carried out an evaluation under regulation 70, an enforcing authority finds that although pressure equipment is in conformity with Part 2, it presents a risk, the enforcing authority must require a relevant economic operator to take all appropriate measures to—

- (a) ensure that the pressure equipment or assembly, when placed on the market, no longer presents a risk;
- (b) withdraw the pressure equipment or assembly within a prescribed period;
- (c) recall the pressure equipment or assembly within a prescribed period.

(2) Where an enforcing authority is not the Secretary of State and it takes measures under paragraph (1), it must notify the Secretary of State immediately.

(3) Where the Secretary of State receives a notice under paragraph (2) or takes measures under paragraph (1), the Secretary of State must notify the European Commission and the other member States immediately.

(4) The notices referred to in paragraphs (2) and (3) must include all available details about the pressure equipment or assembly and, in particular—

- (a) the data necessary for the identification of the pressure equipment or assembly;
- (b) the origin and the supply chain of the pressure equipment or assembly;
- (c) the nature of the risk involved; and
- (d) the nature and duration of the measures taken by the enforcing authority.

(5) 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 pressure equipment or assembly.

### **Enforcement action in cases of formal non-compliance**

74.—(1) Where an enforcing authority makes one of the following findings in relation to pressure equipment or an assembly, it must require a relevant economic operator to remedy the non-compliance within a specified period—

- (a) the CE marking—
  - (i) has not been affixed; or
  - (ii) has been affixed otherwise than in accordance with regulations 39 (Prohibition on improper use of CE marking) and 49 (CE marking);
- (b) where a notified body is involved in the production control phase for the pressure equipment or assembly, the identification number of the notified body—
  - (i) has not been affixed; or
  - (ii) has been affixed otherwise than in accordance with regulation 49;
- (c) the EU declaration of conformity—
  - (i) has not been drawn up;
  - (ii) has been drawn up otherwise than in accordance with regulations 11 (EU declaration of conformity and CE marking) and 48 (EU declaration of conformity);
- (d) the technical documentation is either not available or not complete;
- (e) the following information is absent, false or incomplete—

- (i) the information specified in regulation 13 (labelling of pressure equipment and assemblies); or
  - (ii) the information specified in regulation 14 (instructions and safety information);
  - (f) any other administrative requirement imposed on the manufacturer or importer under Part 2 has not been fulfilled.
- (2) Until the specified period has elapsed, 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.
- (3) Where the non-compliance referred to in paragraph (1) persists, the enforcing authority must take appropriate measures to—
- (a) restrict or prohibit the pressure equipment or assembly being made available on the market;
  - (b) ensure that the pressure equipment or assembly is withdrawn; or
  - (c) ensure that the pressure equipment or assembly is recalled.
- (4) Nothing in this regulation is to prevent an enforcing authority from taking action under regulation 71 (enforcement action in respect of pressure equipment or assemblies which are not in conformity and which present a risk), 72 (EU safeguard procedure) or 73 (pressure equipment or assemblies which are in conformity but present a risk).

### **Restrictive measures**

- 75.** 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 pressure equipment or an assembly being made available on the market;
  - (b) withdraw pressure equipment or an assembly; or
  - (c) recall pressure equipment or an assembly.

### **Offences**

- 76.—**(1) It is an offence for a person to contravene or fail to comply with any requirement of regulations 9 to 17, 18(4), 20 to 28, 29(4), 30 to 34, 35(3), 38 or 39.
- (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.

### **Penalties**

- 77.—**(1) A person guilty of an offence under regulation 76 (other than an offence arising from a contravention of or failure to comply with a requirement of regulation 12 or regulation 28) 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, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding three months, or to both;
    - (iii) in 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 guilty of an offence arising from a contravention of or failure to comply with a requirement of regulation 12 or regulation 28 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.

### **Defence of due diligence**

**78.**—(1) In proceedings for an offence under regulation 76, 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 seven 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.

### **Liability of persons other than principal offender**

**79.**—(1) Where the commission of an offence under regulation 76 (offences) is due to anything which another person did or failed to do in the course of business, that other person is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person.

(2) Where a body corporate commits an offence, 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 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).

### **Time limit for prosecution of offences**

**80.**—(1) In England and Wales an information relating to an offence under regulation 76 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 under regulation 76 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
- (b) section 136(3) of the Criminal Procedure (Scotland) Act 1995<sup>(7)</sup> (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 under regulation 76 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 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 the evidence referred to paragraph (1), (2) or (3) came to light, is conclusive evidence.

(6) This regulation has effect subject to paragraph (1)(n) of Schedule 8 and paragraph (1)(n) of Schedule 9.

### **Service of documents**

**81.**—(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—

(7) 1995 c.46.



- (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 may be 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.

### **Recovery of expenses of enforcement**

**82.**—(1) This regulation applies where a person commits an offence under regulation 76.

(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 enforcing authority has incurred in investigating the offence.

### **Action by enforcing authority**

**83.**—(1) An enforcing authority may itself take action which an economic operator could have been required to take by a notice served under regulation 68 (enforcement powers) where the conditions for serving such a notice are met and either—

- (a) the enforcing 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 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 reasonably incurred by the enforcing 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<sup>(8)</sup>;
- (b) in Northern Ireland in proceedings under article 62 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(9)</sup>.

### **Appeals against notices**

**84.**—(1) An application for an order to vary or set aside the terms of a notice served under regulation 68 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 pressure equipment or assembly 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 68 (enforcement powers) if satisfied—

- (a) that the pressure equipment or assembly to which the notice relates is in conformity with Part 2; or

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<sup>(8)</sup> 1980 c.43; section 58 was amended by the Crime and Courts Act 2013 (c.22), Schedule 10 paragraph 40.

<sup>(9)</sup> S.I. 1981/1675 (N.I. 26).

- (b) that the enforcing authority failed to comply with regulation 69 (exercise of enforcement powers) when serving the notice.
- (4) On an application to vary the terms of a notice served under regulation 68, 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 85 (appropriate court for appeals against notices); and
  - (b) “notice” means any of the following—
    - (i) a prohibition notice served in accordance with Schedule 7;
    - (ii) a notice to warn served in accordance with Schedule 7;
    - (iii) a suspension notice served in accordance with Schedule 7;
    - (iv) a compliance notice served in accordance with Schedule 10;
    - (v) a withdrawal notice served in accordance with Schedule 10; or
    - (vi) a recall notice served in accordance with Schedule 10.

#### **Appropriate court for appeals against notices**

**85.**—(1) In England and Wales or Northern Ireland, the appropriate court for the purposes of regulation 84 is—

- (a) the court in which proceedings have been brought in relation to the pressure equipment or assembly for an offence under regulation 76 (offences);
- (b) an employment tribunal seized of appeal proceedings against a notice which relates to pressure equipment and which has been served under or by virtue of paragraph 1 of Schedule 8 (enforcement powers of the Health and Safety Executive under the 1974 Act); or
- (c) an industrial tribunal seized of appeal proceedings against a notice which relates to pressure equipment and which has been served under or by virtue of paragraph 1 of Schedule 9 (enforcement powers of the Health and Safety Executive for Northern Ireland under the 1978 Order); or
- (d) in any other case, a magistrates’ court.

(2) In Scotland, the appropriate court for the purposes of regulation 84 is—

- (a) the sheriff court within whose sheriffdom the appellant 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 pressure equipment and which has been served under or by virtue of paragraph 1 of Schedule 8.

(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 84, 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**

**86.**—(1) When an enforcing 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 pressure equipment or an assembly, that authority is liable to pay compensation to a person having an interest in the equipment or assembly 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 pressure equipment or assembly 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 relevant notice was not served because of neglect or default by a relevant economic operator.

(3) In this regulation, “relevant notice” means a suspension, withdrawal or recall notice as referred to in regulation 84(5)(b).