
STATUTORY INSTRUMENTS

1992 No. 3073

The Supply of Machinery (Safety) Regulations 1992

PART I

PRELIMINARY

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Supply of Machinery (Safety) Regulations 1992 and shall come into force on 1st January 1993.

(2) The Regulations specified in the first column of Schedule 1 hereto are hereby revoked with effect from the date specified in the second column of that Schedule provided that each of the Regulations so specified shall continue to apply in respect of the machinery to which they respectively apply and which was supplied for the first time in the Community in accordance with the applicable Regulations on or before 31st December 1995.

Interpretation

2.—(1) In these Regulations, the “Machinery Directive” means Council Directive [89/392/EEC](#) on the approximation of the laws of the Member States relating to machinery⁽¹⁾ as amended by Council Directive [91/368/EEC](#)⁽²⁾.

(2) In these Regulations, unless the context otherwise requires—

“approved body” shall be construed in accordance with regulation 17 below;

“business” includes a profession and an undertaking, and a supply in the course of a business includes any supply by a business;

“certificate of adequacy” shall be construed in accordance with regulation 20(1) below;

“the Commission” means the Commission of the European Communities;

“the Community” means the European Economic Community;

“declaration of incorporation” shall be construed in accordance with regulation 23(2) below;

“EC declaration of conformity” shall be construed in accordance with regulation 22 below;

“EC mark” means a mark consisting of the symbol “CE” set out in the form shown in Schedule 2 hereto, followed by the last two figures of the year in which it is affixed;

“EC type-examination” shall be construed in accordance with regulation 21(1) below;

“EC type-examination certificate” means a certificate issued by an approved body certifying that an example of relevant machinery satisfies those provisions of the Machinery Directive which apply to it;

“enforcement authority” means—

(1) OJ No. L183, 29.6.89, p.9; the second sub-paragraph of Article 8.4 was corrected in the Corrigendum to the Council Directive OJ No. L296, 14.10.89, p.40.

(2) OJ No. L198, 22.7.91, p.16.

- (a) in Great Britain, the Health and Safety Executive established under section 10 of the Health and Safety at Work etc. Act 1974⁽³⁾;
- (b) in Northern Ireland, subject to paragraph 2(1) of Schedule 6 hereto, the Department of Economic Development and the Department of Agriculture; and
- (c) save in paragraph 3(b) of Schedule 6 hereto, each of the authorities referred to in the said paragraph 3(b);

“essential health and safety requirements” means the requirements in Annex I of the Machinery Directive which is set out in Schedule 3 hereto;

“harmonised standard” means a technical specification adopted by the European Committee for Standardisation or the European Committee for Electrotechnical Standardisation or both, upon a mandate from the Commission in accordance with Council Directive 83/189/EEC of 28th March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽⁴⁾, and of which the reference number is published in the Official Journal of the European Communities;

“interchangeable equipment” shall be construed in accordance with regulation 4(c) below;

“machinery” has the meaning given by regulation 4 below;

“relevant essential health and safety requirements” in relation to relevant machinery means those provisions of the essential health and safety requirements which are applicable to that particular relevant machinery for the purposes of establishing that it satisfies the essential health and safety requirements of the Machinery Directive:

Provided that, subject to regulation 10(1)(a) below, in so far as such provisions relate to risks which are covered by other Community Directives and to the extent that any enactment implementing any such Directive applies to that machinery those provisions shall not be relevant essential health and safety requirements for the purposes of these Regulations;

“relevant machinery” shall be construed in accordance with regulation 3(2) below;

“responsible person” means, in relation to relevant machinery,

- (a) the manufacturer of that machinery;
- (b) the manufacturer’s authorised representative established in the Community; or
- (c) where the manufacturer is not established in the Community and either—
 - (i) he has not appointed an authorised representative established in the Community; or
 - (ii) his authorised representative established in the Community is not the supplier of that machinery,

the person who first supplies the relevant machinery in the Community;

and, in this definition and in regulation 11(2)(a) below, “the manufacturer” includes any person who assembles machinery or parts thereof to form relevant machinery;

“safe” in relation to relevant machinery means that, when the machinery is properly installed and maintained and used for the purposes for which it is intended, there is no risk (apart from one reduced to a minimum) of its being the cause or occasion of death or injury to persons or, where appropriate, to domestic animals or damage to property, and cognate expressions shall be construed accordingly:

For the purposes of this definition, when considering whether or not a risk has been reduced to a minimum, regard shall be had to the practicability of so reducing that risk at the time of the construction of the relevant machinery;

⁽³⁾ 1974 c. 37.

⁽⁴⁾ OJ No. L109, 26.4.83, p.8. Council Directive 83/189/EEC was amended by Council Directive 88/182/EEC (OJ No. L81, 26.3.88, p.75).

“Schedule 4 machinery” means machinery posing special hazards which is specified in Annex IV of the Machinery Directive and listed in Schedule 4 hereto;

“series manufacture” means the manufacture of more than one item of relevant machinery of the same type in accordance with a common design;

“standard” means a technical specification approved by a recognised standardising body for repeated or continuous application, with which compliance is not compulsory;

“supply” is to be read in accordance with section 46 of the Consumer Protection Act 1987(5) and includes offering to supply, agreeing to supply, exposing for supply and possessing for supply, and cognate expressions shall be construed accordingly:

Provided that “supply” does not include exhibition at trade fairs and exhibitions of relevant machinery in respect of which the provisions of these Regulations are not satisfied if a notice is displayed in relation to the machinery in question to the effect—

- (a) that it does not satisfy those provisions; and
- (b) that it may not lawfully be supplied until the responsible person has ensured that those provisions are satisfied;

“technical file” shall be construed, in respect of relevant machinery other than Schedule 4 machinery, in accordance with regulation 13(1) below and, in respect of relevant machinery which is Schedule 4 machinery, in accordance with regulation 14(2) below;

“technical specification” means a specification contained in a document which lays down the characteristics required of relevant machinery such as levels of quality, performance, safety or dimensions, including the requirements applicable to the relevant machinery as regards terminology, symbols, testing and test methods, packaging, marking or labelling; and

“transposed harmonised standard” means a national standard of a member State—

- (a) which transposes a harmonised standard; and
- (b) the reference number of which has been published by that member State in adoption thereof pursuant to Article 5.2 of the Machinery Directive.

PART II

APPLICATION

Relevant machinery

3.—(1) These Regulations apply to relevant machinery.

(2) Relevant machinery is all machinery within the meaning of regulation 4 below other than machinery which is excluded from the scope of these Regulations pursuant to regulations 5 to 10 below.

Definition of “machinery”

4. For the purposes of these Regulations, machinery is—

- (a) an assembly of linked parts or components, at least one of which moves including, without prejudice to the generality of the foregoing, the appropriate actuators, control and power circuits, joined together for a specific application, in particular for the processing, treatment, moving or packaging of a material;

- (b) an assembly of machines, that is to say, an assembly of items of machinery as referred to in paragraph (a) above which, in order to achieve the same end, are arranged and controlled so that they function as an integral whole notwithstanding that the items of machinery may themselves be relevant machinery and accordingly severally required to comply with these Regulations; or
- (c) interchangeable equipment modifying the function of a machine which is supplied for the purpose of being assembled with an item of machinery as referred to in paragraph (a) above or with a series of different items of machinery or with a tractor by the operator himself save for any such equipment which is a spare part or tool.

General exclusions

Excluded machinery

- 5. These Regulations do not apply to machinery specified in Schedule 5 hereto.

Machinery for export to a third country

6.—(1) These Regulations do not apply to machinery which the supplier believes (with reasonable cause) will not be put into service either in the United Kingdom or in another member State.

(2) Paragraph (1) above shall not apply if the EC mark, or any inscription liable to be confused therewith, is affixed to the machinery.

Transitional exclusions

Machinery first supplied or put into service before 1st January 1993

7. These Regulations do not apply to machinery first supplied or put into service in the Community before 1st January 1993.

Exclusion until 31st December 1994 of machinery which complies with health and safety provisions in force in a member State on 31st December 1992

8.—(1) Subject to paragraph (2) below, these Regulations do not apply to machinery first supplied or put into service in the Community on or before 31st December 1994 which—

- (a) complies with any health and safety provisions with which it would have been required to comply for it to be lawfully supplied in the United Kingdom on 31st December 1992; or
- (b) in the case of machinery supplied in the United Kingdom which the supplier believes (with reasonable cause) will be put into service in another member State, complies with the health and safety provisions in relation to the supply and putting into service of that machinery in force in that member State on 31st December 1992.

(2) The exceptions provided in paragraph (1) above do not apply in the case of machinery which—

- (a) in the case of machinery which is not required to bear the EC mark pursuant to any other Community obligation, bears the EC mark or an inscription liable to be confused therewith; or
- (b) bears or is accompanied by any other indication, howsoever expressed, that it complies with the Machinery Directive.

(3) In this regulation, “health and safety provisions” means any requirement imposed by an enactment which has the same, or substantially the same, effect as any of the essential health and

safety requirements which would, but for the provisions of this regulation, be applicable to that machinery for the purposes of complying with these Regulations.

Exclusion of machinery covered by other Directives

Exclusion of specific machinery

9.—(1) These Regulations do not apply to—

- (a) roll-over protective structures as referred to in Article 1 of Council Directive [86/295/EEC](#) on the approximation of the laws of the member States relating to roll-over protective structures (ROPS) for certain construction plant(6);
- (b) falling-object protective structures as referred to in Article 1 of Council Directive [86/296/EEC](#) on the approximation of the laws of the member States relating to falling-object protective structures (FOPS) for certain construction plant(7); or
- (c) industrial trucks as referred to in Article 1 of Council Directive [86/663/EEC](#) on the approximation of the laws of the member States relating to self-propelled industrial trucks(8),

which are supplied or put into service for the first time in the Community before 1st July 1995.

(2) On and after 1st July 1995, in respect of machinery mentioned in paragraph (1) above which is supplied or put into service for the first time in the Community on or before 31st December 1995, a supplier may comply with—

- (a) the requirements of these Regulations; or
- (b) the requirements of—
 - (i) in the case of roll-over protective structures, the Roll-over Protective Structures for Construction Plant (EEC Requirements) Regulations 1988(9);
 - (ii) in the case of falling-object protective structures, the Falling-object Protective Structures for Construction Plant (EEC Requirements) Regulations 1988(10); or
 - (iii) in the case of industrial trucks, in Great Britain, the Self-Propelled Industrial Trucks (EEC Requirements) Regulations 1988(11) as amended by the Self-Propelled Industrial Trucks (EEC Requirements) (Amendment) Regulations 1989(12), and in Northern Ireland, the Self-Propelled Industrial Trucks (EEC Requirements) Regulations (Northern Ireland) 1990(13).

Machinery where risks are wholly covered by other Directives

10.—(1) These Regulations do not apply to—

- (a) machinery where all the essential health and safety requirements which would have applied to it, but for the provisions of this sub-paragraph, relate to risks wholly covered by Community Directives other than the Machinery Directive to the extent that any enactment implementing any such Directive is applicable to that machinery; or

(6) OJ No. L186, 8.7.86, p.1.

(7) OJ No. L186, 8.7.86, p.10.

(8) OJ No. L384, 31.12.86, p.12. Council Directive [86/663/EEC](#) was adapted to technical progress by Commission Directive [89/240/EEC](#) (OJ No. L100, 12.4.89, p.1).

(9) [S.I. 1988/363](#).

(10) [S.I. 1988/362](#).

(11) [S.I. 1988/1736](#).

(12) [S.I. 1989/1035](#).

(13) [S.R. 1990 No. 172](#).

(b) machinery which is electrical equipment in so far as the risks as to the safety of such equipment are mainly of electrical origin.

(2) In paragraph (1)(b) above, “electrical equipment” has the meaning given by Article 1 of Council Directive [73/23/EEC](#) on the harmonization of the laws of member States relating to electrical equipment designed for use within certain voltage limits⁽¹⁴⁾.

PART III

GENERAL REQUIREMENTS

General duty

11.—(1) Subject to paragraph (3) below, no person shall supply relevant machinery unless the requirements of regulation 12 below are complied with in relation thereto.

(2) Where a person—

- (a) being the manufacturer of relevant machinery, himself puts that relevant machinery into service in the course of a business; or
- (b) having imported relevant machinery from a country or territory outside the Community, himself puts that relevant machinery into service in the course of a business,

for the purposes of these Regulations that person shall be deemed to have supplied that relevant machinery to himself.

(3) The requirements of paragraph (1) above do not apply in relation to supply by any person of relevant machinery which has previously been put into service in the Community.

Requirements for supply of relevant machinery

12.—(1) The requirements of this regulation are that—

- (a) the relevant machinery satisfies the relevant essential health and safety requirements;
- (b) the appropriate conformity assessment procedure in respect of the relevant machinery has been carried out by the responsible person in accordance with one of the procedures described in regulations 13, 14 and 15 below;
- (c) the responsible person, at his election, has issued either—
 - (i) an EC declaration of conformity in accordance with regulation 22 below; or
 - (ii) in the case of relevant machinery to which regulation 23 below applies, a declaration of incorporation in accordance with that regulation,in respect of the relevant machinery;
- (d) except in the case of relevant machinery to which regulation 23 below applies, the EC mark has been properly affixed by the responsible person to the relevant machinery in accordance with regulation 25 below; and
- (e) the relevant machinery is in fact safe.

(2) It is the responsibility of the manufacturer of relevant machinery to carry out the necessary research or tests on components, fittings or the completed machine to determine whether by its design or construction the machine is capable of being erected and put into service safely.

(14) OJ No. L77, 26.3.73, p.29.

Conformity assessment procedures

Relevant machinery other than Schedule 4 machinery

13.—(1) In the case of relevant machinery which is not Schedule 4 machinery the responsible person must draw up a technical file which comprises—

- (a) an overall drawing of the machinery together with drawings of the control circuits;
- (b) full detailed drawings, accompanied by any calculation notes, test results and such other data as may be required to check the conformity of the machinery with the essential health and safety requirements;
- (c) a list of:
 - (i) the essential health and safety requirements;
 - (ii) transposed harmonised standards;
 - (iii) standards; and
 - (iv) other technical specifications,which were used when the machinery was designed;
- (d) a description of methods adopted to eliminate hazards presented by the machinery;
- (e) if he so desires, any technical report or certificate obtained from a competent body or laboratory⁽¹⁵⁾;
- (f) if he declares conformity with a transposed harmonised standard which provides therefor, any technical report giving the results of tests carried out at his choice either by himself or by a competent body or laboratory; and
- (g) a copy of the instructions for the machinery drawn up in accordance with paragraph 1.7.4 of Schedule 3 hereto.

(2) For series manufacture, the responsible person must also have available documentation in respect of the internal measures that will be implemented to ensure that all the items of machinery so produced are in conformity with the provisions of the Machinery Directive.

(3) Where the file referred to in paragraph (1) above is drawn up in the United Kingdom it shall be in English always provided that the instructions for the machinery referred to in sub-paragraph (g) thereof shall be in such languages as are specified in paragraph 1.7.4(b) of Schedule 3 hereto.

Schedule 4 machinery manufactured in accordance with transposed harmonised standards

14.—(1) In the case of relevant machinery which is Schedule 4 machinery manufactured in accordance with transposed harmonised standards the responsible person must, at his election—

- (a) draw up and forward to an approved body for retention by that body a technical file;
- (b) submit the technical file referred to in paragraph (a) above to an approved body requesting—
 - (i) verification by that body that the transposed harmonised standards have been correctly applied; and
 - (ii) that the body draw up a certificate of adequacy for the file submitted in accordance with regulation 20 below; or
- (c) submit the technical file referred to in paragraph (a) above to an approved body together with an example of the relevant machinery for EC type-examination or, where appropriate,

(15) A body or laboratory meeting the assessment criteria laid down in the relevant harmonised standards is presumed to be competent for the purposes of this regulation.

a statement as to where such an example might be examined, in accordance with regulation 21 below.

- (2) The technical file referred to in this regulation and regulation 15 below must include—
- (a) an overall drawing of the machinery together with drawings of the control circuits;
 - (b) full detailed drawings, accompanied by any calculation notes, test results and such other data as may be required to check the conformity of the machinery with the essential health and safety requirements;
 - (c) a description of methods adopted to eliminate hazards presented by the machinery, a list of transposed harmonised standards used and, in the case of relevant machinery to which regulation 15 below applies, a list of standards used;
 - (d) a copy of the instructions for the machinery drawn up in accordance with paragraph 1.7.4 of Schedule 3 hereto; and
 - (e) for series manufacture, the internal measures that will be implemented to ensure that all the items of machinery so produced are in conformity with the provisions of the Machinery Directive.

(3) The technical file referred to in this regulation and regulations 15 and 21(2) below must be drawn up in an official language of the member State in which the approved body is established (in the United Kingdom, English) or in such other language as is acceptable to the approved body, always provided that the instructions for the machinery referred to in paragraph 2(d) above shall be in such languages as are specified in paragraph 1.7.4(b) of Schedule 3 hereto.

Schedule 4 machinery not manufactured in accordance with transposed harmonised standards

15. In the case of relevant machinery which is Schedule 4 machinery and—
- (a) which is not manufactured in accordance with transposed harmonised standards;
 - (b) which is only partly manufactured in accordance with transposed harmonised standards; or
 - (c) in respect of which there are no transposed harmonised standards,

the responsible person must submit a technical file, as described in regulation 14(2) above, to an approved body together with an example of the machinery for EC type examination or, where appropriate, a statement as to where such an example might be examined, in accordance with regulation 21 below.

Modifications to relevant machinery

16. Where the responsible person complies with one of the conformity assessment procedures referred to in regulation 14 or 15 above he must inform the approved body of any modifications, even of a minor nature, which he or, where the responsible person is not the manufacturer, the manufacturer has made or plans to make to the relevant machinery to which the technical file relates.

Approved bodies

17. For the purposes of these Regulations, an approved body is a body responsible for carrying out functions relating to the conformity assessment procedures set out in Article 8 of the Machinery Directive and described in regulations 14 and 15 above which has been—

- (a) appointed as a United Kingdom approved body pursuant to regulation 18 below; or
- (b) appointed by a member State other than the United Kingdom,

and in the case of either (a) or (b) above has been notified by the member State concerned to the Commission and the other member States pursuant to Article 9(1) of the Machinery Directive.

United Kingdom approved bodies

18.—(1) The Secretary of State may from time to time appoint such qualified persons as he thinks fit to be United Kingdom approved bodies for the purposes of these Regulations.

(2) An appointment—

- (a) may relate to all descriptions of Schedule 4 machinery or such descriptions (which may be framed by reference to any circumstances whatsoever) of Schedule 4 machinery as the Secretary of State may from time to time determine;
- (b) may be made subject to such conditions as the Secretary of State may from time to time determine, and such conditions may include conditions which are to apply upon or following termination of the appointment;
- (c) shall, without prejudice to the generality of sub-paragraph (b) above, require that body, subject to paragraph (4) below—
 - (i) to acknowledge receipt of technical files submitted to it for retention pursuant to regulation 14(1)(a) above;
 - (ii) to carry out the required procedures in respect of the provision of certificates of adequacy at the request of responsible persons in accordance with regulation 20 below; and
 - (iii) to carry out EC type-examinations of examples of Schedule 4 machinery submitted to it or, where appropriate, made available for examination, in accordance with regulation 21 below;
- (d) shall be terminated—
 - (i) if it appears to the Secretary of State that the approved body is no longer a qualified person; or
 - (ii) upon 90 days' notice in writing to the Secretary of State, at the request of the approved body; and
- (e) may be terminated if it appears to the Secretary of State that any of the conditions of the appointment are not complied with.

(3) Subject to paragraph (2)(d) and (e) above, an appointment under this regulation may be for the time being or for such period as may be specified in the appointment.

(4) A United Kingdom approved body shall not be required to carry out the functions referred to in paragraph (2)(c) above where—

- (a) the documents submitted to it (other than the instructions for the machinery) in relation to carrying out such functions are not in English or another language acceptable to that body;
- (b) the responsible person has not submitted with its application the amount of the fee which the body requires to be submitted with the application pursuant to regulation 19 below; or
- (c) the body reasonably believes that, having regard to the number of applications made to it in relation to its appointment under these Regulations which are outstanding, it will be unable to carry out the required work within 3 months of receiving the application.

(5) If for any reason the appointment of an approved body is terminated under this regulation, the Secretary of State may authorise another United Kingdom approved body to take over its functions in respect of such cases as he may specify.

(6) In this regulation—

“qualified person” means a person (which may include the Secretary of State) who meets the minimum criteria; and

“minimum criteria” means the criteria set out in Annex VII of the Machinery Directive (minimum criteria to be taken into account by member States for the notification of bodies)(**16**).

Fees

19.—(1) Without prejudice to the power of the Secretary of State, where he is a United Kingdom approved body, to charge fees pursuant to regulations made under section 56 of the Finance Act 1973(**17**) and subject to paragraph (2) below, a United Kingdom approved body other than the Secretary of State may charge such fees in connection with, or incidental to, carrying out its duties in relation to the functions referred to in regulation 18(2)(c) above as it may determine; provided that such fees shall not exceed the sum of the following—

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

(2) The power in paragraph (1) above includes the power to require the payment of fees or a reasonable estimate thereof in advance of carrying out the work requested by the responsible person.

Certificate of adequacy

20.—(1) A certificate of adequacy is a document drawn up by an approved body to which a technical file as described in regulation 14(2) above has been submitted in which that body certifies that—

- (a) the transposed harmonised standards have been correctly applied in respect of the design and construction of the relevant machinery to which the file relates; and
- (b) the file contains all the necessary information.

(2) A United Kingdom approved body to which such a file has been submitted by a responsible person as described in regulation 14(1)(b) above shall, if satisfied in respect of the matters referred to in paragraph (1)(a) and (b) above, draw up a certificate of adequacy in respect of the file, and send a copy thereof to the responsible person.

(3) If the United Kingdom approved body is not so satisfied, it shall—

- (a) give the responsible person the opportunity, within a reasonable period, of making representations as to why it should not refuse to draw up a certificate of adequacy for the file; and
- (b) if, after considering any representations made pursuant to sub-paragraph (a) above, it remains unsatisfied in respect of the matters referred to in paragraph (1)(a) and (b) above, it shall—
 - (i) refuse to draw up a certificate of adequacy for the file;

(16) Approved bodies meeting the assessment criteria laid down in the relevant harmonised standards are presumed to meet the minimum criteria.

(17) 1973 c. 51.

- (ii) notify its decision in writing to the responsible person who submitted the file stating the grounds on which such refusal is based; and
- (iii) at the same time inform all other approved bodies of such decision.

(4) Where the United Kingdom approved body which has drawn up a certificate of adequacy for a technical file is notified, pursuant to regulation 16 above, by the responsible person who submitted the file of a modification which he or, where the responsible person is not the manufacturer, the manufacturer has made, or plans to make, to the relevant machinery to which the file relates, the United Kingdom approved body shall examine such modification and—

- (a) if it is satisfied that the requirements of paragraph (1)(a) and (b) above are or, as the case may be, would be met in respect of the relevant machinery so modified, it shall notify the responsible person in writing that the certificate of adequacy remains valid; or
- (b) if it is not so satisfied it shall notify the responsible person in writing that the certificate of adequacy for the file does not or would not, as the case may be, remain valid in respect of the relevant machinery as modified stating the grounds on which such decision was based.

EC type-examination

21.—(1) EC type-examination is the procedure whereby an approved body ascertains and certifies that an example of relevant machinery satisfies those provisions of the Machinery Directive which apply to it.

(2) An application for EC type-examination by a responsible person (in this regulation referred to as the applicant) to a United Kingdom approved body shall—

- (a) specify—
 - (i) the name and address of the applicant; and
 - (ii) the place of manufacture of the machinery to which the application relates; and
- (b) be accompanied by—
 - (i) a technical file for the machinery as described in regulation 14(2) above; and
 - (ii) an example of the machinery or, where appropriate, a statement as to where such an example might be examined.

(3) The United Kingdom approved body to which such application is made shall satisfy itself that the technical file contains all the necessary information.

(4) The United Kingdom approved body shall also—

- (a) examine and perform such tests as it considers appropriate on the example; and
- (b) if satisfied that—
 - (i) the example has been manufactured in conformity with the technical file and may safely be used under its intended working conditions;
 - (ii) the standards or transposed harmonised standards, as the case may be, if used, have been properly applied; and
 - (iii) the example complies with the relevant essential health and safety requirements,draw up and forward to the applicant an EC type-examination certificate which shall state the conclusions of the EC type-examination, indicate any conditions to which the issue of the certificate is subject and shall be accompanied by the descriptions and drawings necessary to identify the example to which the certificate relates.

(5) The United Kingdom approved body shall, if so requested, taking the necessary measures to guarantee confidentiality, supply to the Secretary of State a copy of the EC type-examination

certificate, a copy of the technical file and copies of the reports on the examinations and tests that it has carried out in relation to that application.

(6) If the United Kingdom approved body is not satisfied that the requirements of paragraphs (3) and (4)(b) above are met and is minded to refuse to issue an EC typeexamination certificate, it shall—

- (a) inform the applicant in writing of the reasons why it proposes to refuse to issue an EC type-examination certificate;
- (b) give the applicant the opportunity, within a reasonable period, of making representations as to why it should not be refused; and
- (c) if, after considering any representations made pursuant to sub-paragraph (b) above, it remains unsatisfied in respect of the requirements of paragraphs (3) and (4)(b) above, it shall—
 - (i) notify its decision in writing to the applicant stating the grounds on which the refusal is based; and
 - (ii) at the same time inform all other approved bodies of such decision.

(7) Where the United Kingdom approved body which has issued an EC type-examination certificate in respect of an example of relevant machinery to an applicant is notified, pursuant to regulation 16 above, by that person of a modification which he or, where that person is not the manufacturer, the manufacturer has made, or plans to make, to the relevant machinery to which that example relates, the United Kingdom approved body shall examine such modification and—

- (a) if it is satisfied that the relevant machinery as modified does, or would, as the case may be, conform sufficiently with the example as to the matters referred to in paragraph (4)(b) above, it shall notify the applicant in writing that the EC type-examination certificate is or would be, as the case may be, valid in respect of the relevant machinery as modified for the purposes of issuing EC declarations of conformity in accordance with regulation 22(5) below; or
- (b) if it is not so satisfied it shall notify the applicant in writing that the EC typeexamination certificate is not, or would not be, as the case may be, a valid certificate in respect of the relevant machinery as modified for the abovementioned purposes stating the grounds on which such decision was based.

Declaration and marking procedures

EC declaration of conformity

22.—(1) Drawing up an EC declaration of conformity is the procedure whereby the responsible person declares in respect of each item of relevant machinery which he supplies in the Community that that particular item of relevant machinery complies with all the essential health and safety requirements applying to it.

(2) An EC declaration of conformity must—

- (a) state the business name and full address of—
 - (i) the responsible person; and
 - (ii) where that person is not the manufacturer, of the manufacturer;
- (b) contain a description of the machinery to which the declaration relates which, without prejudice to the generality of the foregoing, includes, in particular—
 - (i) its make;
 - (ii) type; and
 - (iii) serial number;

- (c) indicate all relevant provisions with which the machinery complies;
 - (d) state in the case of relevant machinery in relation to which an EC typeexamination certificate has been issued the name and address of the approved body which issued the certificate and the number of such certificate;
 - (e) state in the case of relevant machinery in respect of which a technical file as described in regulation 14(2) above has been drawn up the name and address of the approved body to which the file has been sent or which has drawn up a certificate of adequacy for the file, as the case may be;
 - (f) specify (as appropriate) the transposed harmonised standards used;
 - (g) specify (as appropriate) the national standards and any technical specifications used; and
 - (h) identify the person authorised to sign the declaration on behalf of the responsible person.
- (3) An EEC declaration of conformity must be—
- (a) drawn up in the same language as the instructions for the machinery are drawn up as specified in paragraph 1.7.4(b) of Schedule 3 hereto; and
 - (b) typed or written by hand in block capitals.
- (4) In the case of relevant machinery in respect of which the responsible person has carried out one of the conformity assessment procedures described in regulations 13, 14(1)(a) or 14(1)(b) above, the responsible person must state in the EC declaration of conformity that the item of machinery to which the declaration relates complies with the relevant essential health and safety requirements.
- (5) In the case of relevant machinery in respect of which the responsible person has carried out the conformity assessment procedure described in regulation 14(1)(c) or 15 above and an EC type-examination certificate has been issued in respect of an example of that machinery, and such certificate remains valid, the responsible person must state that the item of machinery in respect of which the declaration is made conforms with the example to which that certificate relates.
- (6) For the purposes of these Regulations, the requirement in paragraph (2)(c) above shall be satisfied where the EC declaration of conformity specifies the Machinery Directive and any other Community Directives with which the relevant machinery complies.

Declaration of incorporation

- 23.**—(1) This regulation applies in the case of relevant machinery which—
- (a) is intended for—
 - (i) incorporation into other machinery; or
 - (ii) assembly with other machinery,to constitute relevant machinery;
 - (b) cannot function independently; and
 - (c) is not interchangeable equipment.
- (2) A declaration of incorporation is a document whereby a responsible person declares the matters referred to in paragraph (1)(a) above and which includes the particulars set out in paragraph (3) below.
- (3) A declaration of incorporation must—
- (a) state the name and address of the responsible person;
 - (b) contain a description of the machinery or machinery parts;
 - (c) state in the case of relevant machinery in respect of which an EC typeexamination certificate has been issued the name and address of the approved body which issued the certificate and the number of such certificate;

- (d) state in the case of relevant machinery in respect of which a technical file as described in regulation 14(2) above has been drawn up the name and address of the approved body to which the file has been sent or which has drawn up a certificate of adequacy for the file, as the case may be;
- (e) specify the transposed harmonised standards (if any) used;
- (f) state that the machinery (to which the declaration of incorporation relates) must not be put into service until the relevant machinery into which it is to be incorporated has been declared in conformity with the provisions of the Machinery Directive; and
- (g) identify the person signing the declaration of incorporation.

Retention of documentation

24.—(1) A responsible person who issues EC declarations of conformity or declarations of incorporation, as the case may be, in the United Kingdom shall retain on his premises the technical file or a copy of the technical file submitted to an approved body, as the case may be, which relates to the relevant machinery in respect of which such declarations are made so that such file is available to the enforcement authorities for a period of 10 years beginning with the date on which the last unit of relevant machinery to which the file relates is produced.

(2) Nothing in paragraph (1) above shall require the responsible person to keep the documents comprising a technical file available as a permanent file provided that all the required documents are individually available and can be assembled into a technical file.

(3) For the avoidance of doubt, it is hereby declared that for the purposes of enforcing these Regulations a technical file is a document or record and shall be construed accordingly in any of the statutory provisions applied to these Regulations pursuant to Schedule 6 hereto.

The EC mark

25.—(1) For the purposes of these Regulations, the EC mark shall be regarded as properly affixed to relevant machinery if—

- (a) the responsible person who affixes the EC mark to the relevant machinery has issued an EC declaration of conformity in respect thereof;
- (b) the EC mark is affixed to the relevant machinery in a distinct, visible, legible and indelible manner; and
- (c) in the case of relevant machinery which is the subject of Community Directives other than the Machinery Directive, the requirements of those other Directives have also been complied with in respect of the relevant machinery.

(2) No person shall affix the EC mark to any relevant machinery unless that machinery—

- (a) satisfies the relevant essential health and safety requirements; and
- (b) is safe.

(3) No mark or inscription which is capable of being confused with the EC mark shall be affixed to relevant machinery.

(4) A person who supplies relevant machinery which does not bear the EC mark shall, at the request of an enforcement authority, or of an officer of such an authority, give any information which he has, or which is available to him, concerning the date when the relevant machinery was first supplied in the Community and explain (so far as he is able) why the machinery does not bear that mark.

Supplementary provisions

Conditions for relevant machinery being taken to comply with the relevant essential health and safety requirements

26.—(1) Subject to paragraph (2) below, relevant machinery which is accompanied by an EC declaration of conformity and to which the EC mark is affixed shall be taken to comply with the relevant essential health and safety requirements, unless there are reasonable grounds for suspecting that it does not so comply.

(2) Paragraph (1) above does not apply—

- (a) in relation to an enforcement authority where the responsible person fails or refuses to make available to the enforcement authority the technical file or a copy thereof pursuant to regulation 24(1) above; or
- (b) in the case of relevant machinery—
 - (i) which is resupplied in the circumstances described in regulation 11(3) above; and
 - (ii) to which the EC mark is indelibly affixed.

Judicial review of decisions of approved bodies

27.—(1) A person aggrieved by a decision of an approved body under regulation 20(3)(b), 20(4)(b), 21(6)(c) or 21(7)(b) shall, at the same time as he is notified of the decision, be given information about the judicial remedies available to him.

(2) That information shall include—

- (a) a brief statement of the procedure by which judicial review may be applied for in accordance with Rules of Court (or, in Northern Ireland, with rules of court made, or having effect as if made, under section 55 of the Judicature (Northern Ireland) Act 1978(18)); and
- (b) the information that in England and Wales or in Northern Ireland, an application for leave to apply to the Court for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the court considers that there is good reason for extending the period within which the application shall be made.

PART IV

ENFORCEMENT

Application of Schedule 6

28. Schedule 6 shall have effect for the purposes of providing for the enforcement of these Regulations and for matters incidental thereto.

Offences

29. Any person who—

- (a) contravenes or fails to comply with regulation 11 above;
- (b) affixes the EC mark to any relevant machinery in contravention of regulation 25(2) above;

- (c) affixes a mark or inscription to relevant machinery in contravention of regulation 25(3) above;
 - (d) contravenes the requirements of regulation 24 above; or
 - (e) fails or refuses to give information or an explanation as required by regulation 25(4) above,
- shall be guilty of an offence.

Penalties

30.—(1) A person guilty of an offence under regulation 29(a) or (b) above shall be liable on summary conviction—

- (a) to imprisonment for a term not exceeding 3 months; or
- (b) to a fine not exceeding—
 - (i) in Great Britain, level 5 on the standard scale; or
 - (ii) in Northern Ireland, £2,000,
 or to both.

(2) A person guilty of an offence under regulation 29(c), (d) or (e) above shall be liable on summary conviction to a fine not exceeding—

- (i) in Great Britain, level 5 on the standard scale; or
- (ii) in Northern Ireland, £2,000.

Defence of due diligence

31.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 29 above it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

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

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

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

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

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

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

Liability of persons other than the principal offender

32.—(1) Where the commission by any person of an offence under regulation 29 above is due to the act or default committed by some other person in the course of any business of his, the other

person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1) above) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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

Consequential disapplication of United Kingdom law

33.—(1) Subject to paragraph (3) below, any requirement which—

- (a) is imposed by or under any of the enactments (relating in various respects to the safety of machinery) specified in paragraph (2) below; and
- (b) but for the provisions of this paragraph, would have to be satisfied by or in respect of relevant machinery if it is to be lawfully supplied,

is hereby disapplied.

(2) The enactments referred to in paragraph (1) above are—

- (a) in the Factories Act 1961⁽¹⁹⁾—
 - (i) subsection (1) of section 26 but only to the extent that it imposes requirements in respect of the supply of chains, ropes and lifting tackle to be put into service for raising or lowering goods or materials; and
 - (ii) subsections (1) and (6) of section 27;
- (b) in the Factories Act (Northern Ireland) 1965⁽²⁰⁾—
 - (i) subsection (1) of section 27 but only to the extent that it imposes requirements in respect of the supply of chains, ropes and lifting tackle to be put into service for raising or lowering goods or materials; and
 - (ii) subsections (1) and (6) of section 28;
- (c) in the Construction (General Provisions) Regulations 1961⁽²¹⁾ (having effect as if made under the Factories Act 1961) and in the Construction (General Provisions) Regulations (Northern Ireland) 1963⁽²²⁾ (having effect as if made under the Factories Act (Northern Ireland) 1965) respectively, regulation 26, paragraphs (1) and (2) of regulation 29 and regulation 31(1);
- (d) in the Construction (Lifting Operations) Regulations 1961⁽²³⁾ (having effect as if made under the Factories Act 1961), and in the Construction (Lifting Operations) Regulations (Northern Ireland) 1963⁽²⁴⁾ (having effect as if made under the Factories Act (Northern

⁽¹⁹⁾ 1961 c. 34.

⁽²⁰⁾ 1965 c. 20 (N.I.).

⁽²¹⁾ S.I. 1961/1580, to which there are amendments not relevant to these Regulations.

⁽²²⁾ S.R. & O. (N.I.) 1963 No. 87.

⁽²³⁾ S.I. 1961/1581, amended by S.I. 1984/1593.

⁽²⁴⁾ S.R. & O. (N.I.) 1963 No. 86.

- Ireland) 1965) respectively, regulations 10(1)(a), 11(3), 13(1), 13(2), 14(1), 14(4), 15, 16, 20(2), 21, 22, 24, 30(1), the first sentence of 30(2) and 34(1);
- (e) in the Shipbuilding & Ship-repairing Regulations 1960**(25)** (having effect as if made under the Factories Act 1961), regulations 33, 34(1), 35 and 36(1);
- (f) in the Shipbuilding & Ship-repairing Regulations (Northern Ireland) 1971**(26)** (made under the Factories Act (Northern Ireland) 1965), regulations 32, 33(1), 34 and 35(1);
- (g) in the Mines and Quarries Act 1954**(27)** and the Mines Act (Northern Ireland) 1969**(28)** respectively, sections 83 and 85(1);
- (h) in the Coal and Other Mines (Locomotives) Regulations 1956**(29)**(having effect as if made under the Mines and Quarries Act 1954), paragraphs (1), (2)(a) to (c) and (3) of regulation 3, regulation 4 and paragraphs (1)(a) to (g), (2) and (3) of regulation 5;
- (i) in the Coal and Other Mines (Support) Regulations 1966**(30)** (made under the Mines and Quarries Act 1954), regulation 16(2);
- (j) in the Miscellaneous Mines (General) Regulations 1956**(31)** (having effect as if made under the Mines and Quarries Act 1954), regulation 52;
- (k) in the Quarries (General) Regulations 1956**(32)** (having effect as if made under the Mines and Quarries Act 1954), regulation 14;
- (l) in the Quarry Vehicles Regulations 1970**(33)** (made under the Mines and Quarries Act 1954), regulations 3(1) and 4(1);
- (m) in the Agriculture (Threshers and Balers) Regulations 1960**(34)** (made under the Agriculture (Safety, Health and Welfare Provisions) Act 1956**(35)**) paragraph 7 of Part II of the Schedule thereto;
- (n) in the Coal Mines (Firedamp Drainage) Regulations 1960**(36)** (made under the Mines and Quarries Act 1954), regulation 11.
- (o) in the Docks Regulations 1988**(37)** (made under the Health and Safety at Work etc. Act 1974**(38)**) and in the Docks Regulations (Northern Ireland) 1989**(39)** (made under the Health and Safety at Work (Northern Ireland) Order 1978**(40)**) respectively, regulation 13(1)(a), (b), and (c), the words “or assembled” in regulation 13(1)(d), regulations 13(2)(b), (c) and (d), 14(1)(a) and 16(7);
- (p) in the Electricity at Work Regulations 1989**(41)** (made under the Health and Safety at Work etc. Act 1974) and in the Electricity at Work Regulations (Northern Ireland) 1991**(42)** (made under the Health and Safety at Work (Northern Ireland) Order 1978) respectively, regulation 26; and

(25) S.I. 1960/1932.

(26) S.R. & O. (N.I.) 1971 No. 372.

(27) 1954 c. 70.

(28) 1969 c. 6 (N.I.).

(29) S.I. 1956/1771.

(30) S.I. 1966/881.

(31) S.I. 1956/1778.

(32) S.I. 1956/1780.

(33) S.I. 1970/168.

(34) S.I. 1960/1199; relevant amending instrument is S.I. 1981/1414.

(35) 1956 c. 49.

(36) S.I. 1960/1015.

(37) S.I. 1988/1655.

(38) 1974 c. 37.

(39) S.R. 1989 No. 320.

(40) S.I. 1978/1039 (N.I. 9).

(41) S.I. 1989/635.

(42) S.R. 1991 No. 13.

(q) in the Regulations specified in the first column of Schedule 7 hereto, the regulations respectively specified in the third column of that Schedule.

(3) For the avoidance of doubt, it is hereby declared that nothing in paragraph (2) above affects the application of the enactments so listed to the use in service of relevant machinery.

Relevant machinery which is electrical equipment

34.—(1) The Low Voltage Electrical Equipment (Safety) Regulations 1989⁽⁴³⁾ are hereby disapplied in respect of relevant machinery which is electrical equipment in so far as the risks as to the safety of such equipment are not mainly of electrical origin.

(2) In this regulation, “electrical equipment” has the meaning given by Article 1 of Council Directive 73/23 EEC on the harmonization of the laws of member States relating to electrical equipment designed for use within certain voltage limits⁽⁴⁴⁾.

(3) For the avoidance of doubt, it is hereby declared that paragraph (1) above does not affect the applicability of the above-mentioned Regulations to machinery which is electrical equipment for the purposes of regulation 8(1)(a) above.

E. Leigh
Parliamentary Under-Secretary of State for
Technology,
Department of Trade and Industry

30th November 1992

⁽⁴³⁾ S.I. 1989/728.

⁽⁴⁴⁾ OJ No. L77, 26.3.73, p.29.