

2010 No. 2617

ENERGY CONSERVATION

The Ecodesign for Energy-Related Products Regulations 2010

Made - - - - *27th October 2010*

Laid before Parliament *29th October 2010*

Coming into force - - *20th November 2010*

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the environmental aspects of product design and makes these Regulations under the powers conferred by that section.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Ecodesign for Energy-Related Products Regulations 2010 and come into force on 20th November 2010.

Interpretation

2.—(1) In these Regulations—

“applicable implementing measure” means in relation to an energy-related product mentioned in the left hand column of the table in paragraph 4 of Schedule 1, the implementing measure referred to in the right hand column of that table;

“authorised person” means a person authorised by the market surveillance authority in accordance with regulation 12;

“the Marketing Decision” means Decision No 768/2008/EC of the European Parliament and of the Council on a common framework for the marketing of products and repealing Council Decision 93/465/EEC(c); and

“RAMS” means Regulation (EC) No 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 of the European Parliament and of the Council(d).

(2) Expressions not defined in paragraph (1) which are used in these Regulations and—

(a) S.I.2010/1552.

(b) 1972 c.68.

(c) OJ No L 218, 13.8.2008, p82.

(d) OJ No L 218, 13.8.2008, p30.

- (a) in an implementing measure;
- (b) in Directive 2009/125/EC of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy-related products^(a);
- (c) in RAMS; or
- (d) in the Marketing Decision,

have the meaning they bear in that implementing measure, Directive, RAMS or the Marketing Decision.

PART 2

Restrictions on energy-related products, conformity assessments, declarations of conformity and the CE marking

Restrictions on energy-related products

3.—(1) A manufacturer must not place on the market or put into service an energy-related product unless that product complies with the applicable implementing measure and bears the CE marking.

(2) Schedule 1 (declaration of conformity) has effect.

Conformity assessments, declarations of conformity and the CE marking

4.—(1) A manufacturer must not place on the market or put into service an energy-related product unless that manufacturer complies with—

- (a) paragraph (2); or
- (b) equivalent provisions under the laws of another member State or EEA State.

(2) Compliance with this paragraph means that the manufacturer—

- (a) has assessed whether an energy-related product complies with the applicable implementing measure; and
- (b) if the assessment is that the product complies, has—
 - (i) made a declaration of conformity; and
 - (ii) affixed the CE marking visibly, legibly and indelibly to the product, the packaging or documentation that accompanies that product.

(3) Schedule 2 (CE marking) has effect.

Authorised representatives and importers

5.—(1) An authorised representative or importer of an energy-related product must not place on the market or put into service an energy-related product unless—

- (a) the manufacturer of the product has complied with regulation 4(1); or
- (b) the authorised representative or importer complies with regulation 4(2) to the extent that the manufacturer has not complied with it.

Displays of energy related products not restricted

6.—(1) Regulations 3, 4 and 5 do not prevent the display of an energy-related product if—

- (a) that product; or
- (b) the packaging or documentation that accompanies it,

(a) OJ No L 285, 31.10.2009, p10.

bears a visible indication that the product must not be placed on the market unless it complies with the applicable implementing measure.

(2) For the purposes of paragraph (1), the display of an energy-related product includes its display at trade fairs, exhibitions and demonstrations.

PART 3

Presumption of conformity, misleading markings and documentation

Presumption of conformity

7.—(1) Unless the contrary is proved, where—

- (a) an energy-related product; or
- (b) the packaging or documentation that accompanies that product,

bears the CE marking, the product is presumed to comply with the applicable implementing measure.

(2) Unless the contrary is proved, where—

- (a) harmonised standards have been applied to an energy-related product; and
- (b) the reference numbers of those standards have been published in the Official Journal of the European Union,

the product is presumed to comply with the applicable implementing measure to the extent that the harmonised standards relate to the requirements of that measure.

(3) Unless the contrary is proved, where an energy-related product has been awarded a community eco-label, the product is presumed to comply with the applicable implementing measure to the extent that the Community eco-label relates to the requirements of that measure.

(4) For the purposes of paragraph (3) “Community eco-label” means a label that meets the requirements of Regulation (EC) No 1980/2000 of the European Parliament and of the Council on a revised Community eco-label award scheme^(a).

Misleading markings

8.—(1) A person must not affix or cause to be affixed any marking to—

- (a) an energy-related product; or
- (b) the packaging or documentation that accompanies that product,

which is likely to mislead a user of the product as to the meaning or form of the CE marking.

Documentation for inspection

9.—(1) A manufacturer, an authorised representative or importer who has placed on the market or put in to service an energy-related product must keep the following available for inspection by the market surveillance authority—

- (a) any documentation relevant to the applicable conformity assessment procedure; and
- (b) every declaration of conformity.

(2) All documentation and declarations must be kept available for inspection for a period of at least 10 years from the date the product was last manufactured.

(3) Any documentation or declaration must be made available within 10 days of receipt of a request by the market surveillance authority.

(a) OJ No L 237, 21.9.2000, p. 1.

PART 4

Authorities and appeals

Notifying authority, competent authority and market surveillance authority

10.—(1) For the purposes of Article R 2(8) and R 2(9) of Annex I to the Marketing Decision the competent national authority is the Secretary of State.

(2) For the purposes of Article R(14) to R(28) of Annex I to the Marketing Decision the notifying authority is the Secretary of State.

(3) For the purposes of Article 2(18) of RAMS the market surveillance authority is the Secretary of State.

Appeals

11. Schedule 3 (appeals) has effect.

PART 5

Enforcement

12. The market surveillance authority may authorise in writing such persons who appear suitable to act on its behalf to carry out any functions and to exercise any power conferred by RAMS, subject to any limitations or conditions as it sees fit.

13. The following have effect—

- (a) Schedule 4 (warrants and testing costs); and
- (b) Schedule 5 (civil sanctions).

PART 6

Offences and Penalties

Offences and penalties

14.—(1) It is an offence for any person to contravene, or cause or permit another person to contravene, any of regulations 3 to 5, 8 or 9.

(2) Any person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

Obstruction etc.

15.—(1) It is an offence for any person—

- (a) intentionally to obstruct an authorised person acting in the pursuance of their powers or duties under RAMS;
- (b) knowingly or recklessly to make a statement which is false or misleading in purported compliance with any requirement imposed by Article 19 of RAMS.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) In this regulation, “powers or duties” includes powers or duties exercisable by virtue of a warrant under Schedule 4.

Time limit for prosecution of offences

16.—(1) An offence under these Regulations may be tried by summary proceedings if—

- (a) in England and Wales, the information is laid;
- (b) in Northern Ireland, the complaint is made; or
- (c) in Scotland, the proceedings are begun,

before the end of the period of 12 months beginning on the day after the date on which evidence which the market surveillance authority thinks is sufficient to justify the proceedings comes to the market surveillance authority's knowledge.

(2) For the purposes of paragraph (1)—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the market surveillance authority's knowledge is to be conclusive evidence of that fact; and
- (b) a certificate stating that matter and purporting to be so signed is to be treated as so signed unless the contrary is proved.

Bodies corporate

17.—(1) Where a body corporate commits an offence under these Regulations and it is proved that the offence—

- (a) is committed with the consent or connivance of a relevant person, or
- (b) is attributable to any neglect on the part of that person,

that person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), "relevant person" means—

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

Remediation orders

18.—(1) This regulation applies to a person convicted of an offence under these Regulations.

(2) The court may specify in an order ("a remediation order")—

- (a) the steps that the convicted person must take to remedy any of the matters for which that person has been convicted; and
- (b) the period within which those steps must be taken.

(3) A period specified in a remediation order may be extended if an application is made to the court within that period.

(4) A convicted person does not continue to be liable under regulation 14 or 15 in respect of the matters covered by a remediation order.

(5) A remediation order may be made in addition to, or instead of, any other punishment.

Recovery of expenses of enforcement

19.—(1) This regulation applies where a court convicts a person of an offence under regulation 14 or 15.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted to reimburse the market surveillance authority for any expenditure which it or

any authorised person has reasonably incurred in investigating the offence, including in purchasing or in testing or examining any energy-related product, or any part of it, in respect of which the offence was committed.

PART 7

Revocations

Revocations

20. The following are revoked—
- (a) the Ecodesign for Energy-Using Products Regulations 2007(a); and
 - (b) the Ecodesign for Energy-Using Products (Amendment) Regulations 2009(b).

27th October 2010

Henley
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 3(2)

Declaration of Conformity

1. A person who makes a declaration of conformity declares that an energy-related product to which the declaration relates complies with the applicable implementing measure.
2. A declaration of conformity—
 - (a) must be in writing; and
 - (b) may be in respect of more than one energy-related product.
3. A declaration of conformity must include—
 - (a) the name and address of the person making it;
 - (b) a description of the product sufficient for unambiguous identification;
 - (c) where appropriate—
 - (i) the references of the harmonised standards applied;
 - (ii) the other technical standards and specifications used;
 - (iii) the reference to other Community legislation, not referred to in paragraph 4, providing for the affixing of the CE mark that is applied; and
 - (d) the identification and signature of the individual empowered to bind the person making the declaration.
4. A declaration of conformity must include the title of the applicable implementing measure as shown in the table.

(a) S.I. 2007/2037, amended by S.I. 2009/2560.
(b) S.I. 2009/2560.

	<i>Energy- related product</i>	<i>Implementing measure and title</i>
1	An external power supply	Commission Regulation (EC) No 278/2009 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for no-load condition electric power consumption and average active efficiency of external power supplies(a)
2	Electrical and electronic household and office equipment	Commission Regulation (EC) No 1275/2008 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for standby and off mode electric power consumption of electrical and electronic household and office equipment(b)
3	A simple set-top box	Commission Regulation (EC) No 107/2009 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for simple set-top boxes(c)
4	A fluorescent lamp without integrated ballast, a high intensity discharge lamp or a ballast or luminaire able to operate such lamps	Commission Regulation (EC) No 245/2009 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for fluorescent lamps without integrated ballast, high intensity discharge lamps and for ballasts and luminaires able to operate such lamps, and repealing Directive 2000/55/EC of the European Parliament and of the Council(d)
5	A non-directional household lamp	Commission Regulation (EC) No 244/2009 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for non-directional household lamps(e)
6	A television	Commission Regulation (EC) No 642/2009 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for televisions(f)
7	A glandless standalone circulator or glandless circulator integrated in a product	Commission Regulation (EC) No 641/2009 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for glandless standalone circulators and glandless circulators integrated in products(g)
8	A motor	Commission Regulation (EC) No 640/2009 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for electric motors(h)
9	A household refrigerating appliance	Commission Regulation (EC) No 643/2009 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for household refrigerating appliances(i)

(a) OJ No L 93, 7.4.2009, p3.

(b) OJ No L 339, 18.12.2008, p45.

(c) OJ No L 36, 5.2.2009, p8.

(d) OJ No L 76, 24.3.2009, p17. as last amended by Regulation (EU) No 347/2010 of the European Parliament and of the Council (OJ No L 104, 24.4.2010, p20).

(e) OJ No L 76, 24.3.2009, p3. as last amended by Regulation (EC) No 859/2009 of the European Parliament and of the Council (OJ No L 247, 19.9.2009, p3).

(f) OJ No L 191, 23.7.2009, p42.

(g) OJ No L 191, 23.7.2009, p35.

(h) OJ No L 191, 23.7.2009, p26.

(i) OJ No L 191, 23.7.2009, p53.

10	A boiler or an appliance	Council Directive 92/42/EEC on efficiency requirements for new hot water boilers fired with liquid or gaseous fuels(a)
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SCHEDULE 2

Regulation 4(3)

CE marking: General requirements

1. A CE marking must be in the following form—



2. A CE marking must have a height of at least 5mm.
3. Subject to paragraph 2, if a CE marking is reduced or enlarged, the marking must maintain the proportions shown in paragraph 1.

SCHEDULE 3

Regulation 11

Appeals

1. This Schedule makes provision in respect of appeals against decisions of notified bodies.
2. An appeal must be made within two months of the date of the decision, but the parties to the appeal may agree a late appeal.
3. Where an appeal is brought, the operation of the decision is not suspended.
- 4.—(1) The appeal procedure for the purposes of Article 4(7) of the Marketing Decision is as follows.
- (2) A person to whom a decision is given—
- (a) may give notice of appeal against that decision; and
- (b) must be informed of that right in the decision.
5. An appeal must be heard by the appeal body.
6. Subject to paragraph 7, the appeal body is the body agreed by the parties to the appeal.
- 7.—(1) If no agreement is reached within a reasonable time, either party may apply in writing to the relevant person who must appoint the appeal body.
- (2) For the purposes of sub-paragraph (1), the relevant person means—
- (a) in England and Wales, the Secretary of State;

(a) OJ No L 167, 22.6.1992,p17 as last amended by Directive 2005/32/EC of the European Parliament and of the Council (OJ No L191, 22.7.2005, p29).

- (b) in Scotland, the Scottish Ministers;
- (c) in Northern Ireland, the Department of Enterprise, Trade and Investment.

8. On the determination of an appeal, the appeal body may affirm the decision or withdraw it and may do so subject to such conditions as the appeal body sees fit.

SCHEDULE 4

Regulation 13(a)

Warrants and testing costs

PART 1

Warrants

1. If a justice of the peace, on sworn information in writing, is satisfied—

- (a) that there are reasonable grounds to enter any premises; and
- (b) that any of the conditions in paragraph 2 is met,

a justice of the peace may by warrant signed by that justice of the peace authorise an authorised person and any other person in the performance of the powers and duties under Article 19 of RAMS to enter the premises, if need be by reasonable force.

2. The conditions referred to in paragraph 1 are that—

- (a) admission to the premises has been refused, or a refusal is expected;
- (b) asking for admission, or the giving of such a notice, would defeat the object of the entry;
- (c) entry is required urgently;
- (d) the premises are unoccupied or the occupier is temporarily absent.

3. A warrant continues in force for one month.

4. Reference to a justice of the peace—

- (a) in Scotland includes a sheriff;
- (b) in Northern Ireland is a reference to a lay magistrate.

PART 2

Testing costs

Costs recovery

5.—(1) If an article or substance tested under Article 19 of RAMS fails to comply with an applicable implementing measure, the market surveillance authority may recover its testing costs.

(2) Costs include in particular—

- (a) all the costs of purchasing and disposing of the articles or substances;
- (b) all the administration and labour costs throughout the testing period.

(3) The market surveillance authority is not entitled to recover any costs proven to have been incurred unnecessarily.

Notice of intent

6.—(1) Where the market surveillance authority proposes to recover its testing costs it must serve a notice of what is proposed (a “notice of intent”) within 20 days of obtaining proof that the article or substance has failed to comply with an applicable implementing measure.

(2) The notice of intent must include—

- (a) a statement that the article or substance has been tested and has failed to comply with the applicable implementing measure;
- (b) details of the tests carried out;
- (c) the amount to be paid;
- (d) a detailed breakdown of the testing costs incurred; and
- (e) information as to—
 - (i) the right to make representations and objections within 28 days beginning on the day on which the notice of intent was received;
 - (ii) the circumstances in which the market surveillance authority may not recover its costs.

Making representations and objections

7. A person upon whom a notice of intent has been served may, within 28 days beginning on the day on which the notice was received, make written representations and objections to the market surveillance authority in relation to the proposed recovery of costs.

Final notice

8.—(1) Within 20 days following the end of the period for making representations and objections the market surveillance authority must decide whether to impose the requirements of the notice of intent with or without modifications.

(2) Where the market surveillance authority decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 9.

Contents of final notice

9.—(1) A final notice must include—

- (a) a statement that the article or substance has been tested and has failed to comply with the applicable implementing measure;
- (b) details of the tests carried out;
- (c) the amount to be paid and the period within which the payment must be made which must not be less than 28 days;
- (d) a detailed breakdown of the testing costs incurred;
- (e) how payment must be made;
- (f) the consequences of failing to comply with the notice within the specified period;
- (g) rights of appeal.

Appeal

10.—(1) Any appeal under this Part must be made to the First-tier Tribunal.

- (2) The tribunal must determine the standard of proof.
- (3) A notice under this Part is suspended pending appeal.
- (4) The Tribunal may, in relation to the imposition of a requirement or service of a notice—
 - (a) withdraw the notice;

- (b) confirm the notice;
- (c) vary the notice; and
- (d) remit the decision whether to confirm the notice, or any matter relating to that decision, to the market surveillance authority.

Mode of recovery

11. The market surveillance authority may recover the amount due under a final notice as if payable under a court order.

Guidance

12.—(1) The market surveillance authority must publish guidance about the recovery of costs under this Part.

(2) The guidance must contain the relevant information and the market surveillance authority must update and revise the guidance where appropriate.

(3) The market surveillance authority must have regard to the guidance in exercising its functions.

(4) The relevant information in sub-paragraph (2) is information about—

- (a) the circumstances in which a final notice under this Part is likely to be imposed and when it is not likely to be imposed;
- (b) how the costs of the test will be calculated;
- (c) the matters likely to be taken into account by the market surveillance authority in determining the amount to be recovered; and
- (d) the rights to make representations and objections and the rights of appeal.

13. The market surveillance authority must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this Schedule.

SCHEDULE 5

Regulation 13(b)

Civil sanctions

PART 1

Power to impose civil sanctions

Market surveillance authority

1. The market surveillance authority may impose a requirement upon a person to comply with a compliance notice, a stop notice, an enforcement undertaking or to pay a variable monetary penalty or non-compliance penalty (a “civil sanction”) as set out in this Schedule.

PART 2

Compliance notices and variable monetary penalties

Imposition of a compliance notice

2.—(1) The market surveillance authority may by notice (“a compliance notice”) impose on any person—

- (a) in relation to an offence committed under regulation 14(1) a requirement to take such steps as the market surveillance authority may specify, within such period as it may specify, to secure that the offence does not continue or recur;
 - (b) where the market surveillance authority is of the opinion that a person is making available on the market an energy-related product which does not comply with an applicable implementing measure, a requirement to take such steps as the market surveillance authority may specify within such period as it may specify, to secure that the product is withdrawn from the market or that its being made available on the market is prohibited or restricted.
- (2) Before imposing a requirement under sub-paragraph (1)(a) the market surveillance authority must be satisfied beyond reasonable doubt that the person has committed the offence.
- (3) Before imposing a requirement under sub-paragraph (1)(b) the market surveillance authority must be satisfied beyond reasonable doubt that the energy-related product does not comply with the applicable implementing measure.
- (4) A compliance notice may not be imposed on more than one occasion in relation to the same act or omission.

Imposition of a variable monetary penalty

3.—(1) The market surveillance authority may by notice impose on any person in relation to an offence committed under regulation 14(1) a requirement to pay a monetary penalty to the market surveillance authority in such amount as it may determine (“a variable monetary penalty”).

(2) Before doing so the market surveillance authority must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) A variable monetary penalty may not be imposed on more than one occasion in relation to the same act or omission.

(4) There is no limit to the amount of a variable monetary penalty.

(5) Before serving a notice relating to a variable monetary penalty the market surveillance authority may require the person on whom it is to be served to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the offence.

(6) The market surveillance authority may recover any variable monetary penalty imposed under this Schedule as if payable under order of the court.

Notice of intent

4.—(1) Where the market surveillance authority proposes to serve a compliance notice or a variable monetary penalty under this Part, it must serve on that person a notice of what is proposed (a “notice of intent”).

(2) The notice of intent must include—

(a) the grounds for the proposed notice or penalty;

(b) the requirements of the notice and in the case of a penalty the amount to be paid;

(c) information as to—

(i) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;

(ii) the circumstances in which the market surveillance authority may not impose the notice.

Making representations and objections

5. A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice was received make written representations and objections to the market

surveillance authority in relation to the proposed imposition of a compliance notice or variable monetary penalty.

Third party undertakings

6.—(1) A person on whom a notice of intent is served may offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any third party affected by the offence or non-compliance with an applicable implementing measure (“a third party undertaking”).

(2) The market surveillance authority may accept or reject such a third party undertaking.

(3) The market surveillance authority must take into account any third party undertaking that it accepts in its decision whether or not to serve a final notice and, if it serves a notice imposing a variable monetary penalty, the amount of the penalty.

Final notice

7.—(1) After the end of the period for making representations and objections, the market surveillance authority must decide whether to impose the requirements in the notice of intent, with or without modifications.

(2) Where the market surveillance authority decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 8 or 9.

(3) The market surveillance authority may not impose a final notice on a person where the market surveillance authority is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates.

Contents of final notice – compliance notice

8. A final notice relating to a compliance notice must include information as to—

- (a) the grounds for imposing the notice;
- (b) what compliance is required and the period within which it must be completed;
- (c) rights of appeal; and
- (d) the consequences of failing to comply with the notice.

Contents of final notice - variable monetary penalty

9. A final notice relating to a variable monetary penalty must include information as to—

- (a) the grounds for imposing the penalty;
- (b) the amount to be paid;
- (c) how payment may be made;
- (d) the period within which payment must be made which must be not less than 28 days;
- (e) rights of appeal; and
- (f) the consequences of failing to comply with the notice.

Appeals against a final notice

10.—(1) The person receiving the final notice may appeal against it.

(2) The grounds for appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;

- (d) in the case of a non-monetary requirement, that the nature of the requirement is unreasonable;
- (e) that the decision was unreasonable for any other reason;
- (f) that the decision was wrong for any other reason.

Criminal proceedings

11.—(1) If—

- (a) a compliance notice or variable monetary penalty is imposed on any person, or
- (b) a third party undertaking is accepted from any person,

that person may not at any time be convicted of the offence under regulation 14(1) in respect of the act or omission giving rise to the compliance notice, variable monetary penalty or third party undertaking except in a case referred to in sub-paragraph (2).

(2) The case referred to in sub-paragraph (1) is a case where in relation to an offence under regulation 14(1)—

- (a) a compliance notice is imposed on a person or a third party undertaking is accepted from a person,
- (b) no variable monetary penalty is imposed upon that person, and
- (c) the person fails to comply with the compliance notice or third party undertaking.

(3) Criminal proceedings for offences triable summarily to which a compliance notice or third party undertaking in sub-paragraph (2) relate may be instituted at any time up to six months from the date when the market surveillance authority notifies the person that they have failed to comply with that compliance notice or third party undertaking.

Other offences and penalties

12. Where a person upon whom a compliance notice is served under paragraph 2(1)(b) does not comply with it within the time limit specified in the notice or fails to comply with a third party undertaking, the person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART 3

Stop notices

Stop notices

13.—(1) The market surveillance authority may serve a notice (a “stop notice”) on any person—

- (a) in relation to an offence committed under regulation 14(1), prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice;
- (b) where the market surveillance authority is of the opinion that a person is likely to make available on the market an energy-related product which does not comply with an applicable implementing measure, a requirement to take such steps as the market surveillance authority may specify within such period as it may specify, to secure that its being made available on the market is prohibited or restricted.

(2) A stop notice may only be served where the person is—

- (a) carrying on the activity, and
- (b) the market surveillance authority reasonably believes that—
 - (i) the activity as carried on by that person involves or is likely to involve the commission of an offence under regulation 14(1); or

- (ii) that person is likely to make available on the market an energy-related product which does not comply with an applicable implementing measure.

(3) The steps referred to in sub-paragraph (1)(a) and (b) must be steps to eliminate the risk of the offence being committed, or of energy-related products which do not comply with an applicable implementing measure being made available on the market.

Contents of a stop notice

14. A stop notice must include information as to—

- (a) the grounds for serving the stop notice and the activity which is prohibited;
- (b) the steps the person must take to comply with the stop notice;
- (c) the consequences of non-compliance;
- (d) the period within which the activity must stop.

Appeals

15.—(1) The person on whom a stop notice is served may appeal against the decision to serve it.

(2) The grounds for appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable;
- (d) that any step specified in the notice is unreasonable;
- (e) that the person has not committed the offence and would not have committed it had the stop notice not been served;
- (f) that the person was not likely to make an energy-related product available on the market and would not have made it available on the market if the stop notice had not been served;
- (g) that the person would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been served;
- (h) that the decision was wrong for any other reason.

Completion certificates

16.—(1) The market surveillance authority must issue a certificate (a “completion certificate”) if, after service of a stop notice, the market surveillance authority is satisfied that the person has taken the steps specified in the notice.

(2) A stop notice ceases to have effect on the issue of a completion certificate.

(3) A person on whom a stop notice is served may at any time apply for a completion certificate.

(4) The market surveillance authority must decide whether to issue a completion certificate within 14 days of the application.

(5) A person on whom the stop notice was served may appeal against a decision not to issue a completion certificate on the grounds that—

- (a) the decision was based on an error of fact;
- (b) the decision was wrong in law;
- (c) the decision was unfair or unreasonable;
- (d) the decision was wrong for any other reason.

Compensation

17.—(1) The market surveillance authority must compensate a person for loss suffered as the result of the service of the stop notice or the refusal of a completion certificate if a person has suffered loss as a result of the notice or refusal and—

- (a) a stop notice is subsequently withdrawn or amended by the market surveillance authority because the decision to serve it was unreasonable or any step specified in the notice was unreasonable;
- (b) a person successfully appeals against the stop notice and the First-tier Tribunal finds that the service of the notice was unreasonable; or
- (c) a person successfully appeals against the refusal of a completion certificate and the Tribunal finds that the refusal was unreasonable.

(2) A person may appeal against a decision not to award compensation or the amount of compensation on the grounds that—

- (a) the market surveillance authority's decision was unreasonable;
- (b) the amount offered was based on incorrect facts;
- (c) the decision was wrong for any other reason.

Offences

18. Where a person on whom a stop notice is served does not comply with it within the time limit specified in the notice, the person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART 4

Enforcement undertakings

Enforcement undertakings

19. The market surveillance authority may accept a written undertaking (an “enforcement undertaking”) given by a person to the market surveillance authority to take such action as may be specified in the undertaking within such period as may be specified where the market surveillance authority has reasonable grounds to suspect that the person has committed an offence under regulation 14(1).

Contents of an enforcement undertaking

20.—(1) An enforcement undertaking must specify—

- (a) action to be taken by the person to secure that the offence does not continue or recur;
- (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed; or
- (c) action (including the payment of a sum of money) to be taken by the person to benefit any person affected by the offence.

(2) It must specify the period within which the action must be completed.

(3) It must include—

- (a) a statement that the undertaking is made in accordance with this Schedule;
- (b) the terms of the undertaking;
- (c) information as to how and when a person is considered to have discharged the undertaking.

(4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if both parties agree in writing.

Acceptance of an enforcement undertaking

21. If the market surveillance authority has accepted an enforcement undertaking then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—

- (a) that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates; and
- (b) the market surveillance authority may not impose on that person a compliance notice, stop notice or variable monetary penalty in respect of that act or omission.

Discharge of an enforcement undertaking

22.—(1) If the market surveillance authority is satisfied that an enforcement undertaking has been complied with it must issue a certificate to that effect.

(2) The market surveillance authority may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.

(3) The person who gave the undertaking may at any time apply for such a certificate.

(4) The market surveillance authority must decide whether to issue such a certificate, and give written notice of the decision to the applicant, within 14 days of such an application.

(5) The person to whom the notice is given may appeal against a decision not to issue a certificate on the grounds that the decision—

- (a) was based on an error of fact;
- (b) was wrong in law;
- (c) was unfair or unreasonable;
- (d) was wrong for any other reason.

Inaccurate, incomplete or misleading information

23.—(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is regarded as not having complied with it.

(2) The market surveillance authority may by notice in writing revoke a certificate issued under paragraph 22 if it was issued on the basis of inaccurate, incomplete or misleading information.

Non-compliance with an enforcement undertaking

24.—(1) If a person does not comply with an enforcement undertaking the market surveillance authority may in the case of an offence committed under regulation 14(1)—

- (a) serve a compliance notice, non-compliance penalty, stop notice or variable monetary penalty; or
- (b) bring criminal proceedings.

(2) If a person has complied partly but not fully with an undertaking, that partial compliance must be taken into account in the imposition of any criminal or other sanction on the person.

(3) Criminal proceedings for offences to which an enforcement undertaking relates may be instituted at any time up to six months from the date when the market surveillance authority notifies the person that they have failed to comply with that undertaking.

PART 5

Non-compliance Penalties

Non-compliance penalties

25.—(1) If a person fails to comply with a compliance notice, stop notice, third party undertaking or enforcement undertaking, irrespective of whether a variable monetary penalty was also imposed, the market surveillance authority may serve a notice on that person imposing a monetary penalty (“a non-compliance penalty”).

(2) The amount of the non-compliance penalty must be determined by the market surveillance authority, and must be a percentage of the costs of fulfilling the remaining requirements of the notice, third party undertaking or enforcement undertaking.

(3) The percentage must be determined by the market surveillance authority having regard to all the circumstances of the case and may, if appropriate, be 100%.

(4) The notice must include information as to—

- (a) the grounds for imposing the non-compliance penalty;
- (b) the amount to be paid;
- (c) how payment must be made;
- (d) the period in which payment must be made, which must not be less than 28 days;
- (e) rights of appeal;
- (f) the consequences of failure to make payment in the specified period;
- (g) any circumstances in which the market surveillance authority may reduce the amount of the penalty.

(5) If the requirements of the compliance notice, stop notice, third party undertaking or enforcement undertaking are fulfilled before the time set for payment of the non-compliance penalty, the penalty is not payable.

(6) The person on whom the notice imposing the non-compliance penalty is served may appeal against it.

(7) The grounds of appeal are—

- (a) that the decision to serve the notice was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unfair or unreasonable for any reason;
- (d) that the amount of the penalty was unreasonable;
- (e) that the decision was wrong for any other reason.

PART 6

Withdrawing or amending a notice

26. The market surveillance authority may at any time in writing—

- (a) withdraw a notice imposing a variable monetary penalty or a notice imposing a non-compliance penalty notice or reduce the amount specified in the notice;
- (b) withdraw a compliance notice or stop notice or amend the steps in order to reduce the amount of work necessary to comply with the notice.

PART 7

Appeals

Appeals

- 27.**—(1) Any appeal under this Schedule must be made to the First-tier Tribunal.
- (2) An appeal must be brought within two months of the date on which the notice or decision is received.
- (3) In any appeal (except in relation to a stop notice) where the commission of an offence is an issue requiring determination, the market surveillance authority must prove that offence according to the same burden and standard of proof as in a criminal prosecution.
- (4) In any other case the tribunal must determine the standard of proof.
- (5) All notices (other than stop notices) are suspended pending appeal.
- (6) The Tribunal may, in relation to the imposition of a requirement or service of a notice—
- (a) withdraw the requirement or notice;
 - (b) confirm the requirement or notice;
 - (c) vary the requirement or notice;
 - (d) take such steps as the market surveillance authority could take in relation to the act or omission giving rise to the requirement or notice;
 - (e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the market surveillance authority.

PART 8

Guidance and publicity

Guidance as to use of civil sanctions

- 28.**—(1) The market surveillance authority must publish guidance about its use of civil sanctions.
- (2) The market surveillance authority must revise and update the guidance where appropriate.
- (3) The market surveillance authority must have regard to the guidance or revised and updated guidance in exercising its functions.
- (4) In the case of guidance about compliance notices, stop notices, variable monetary penalties and non-compliance penalties the guidance must contain information as to—
- (a) the circumstances in which the civil sanction is likely to be imposed; and
 - (b) the circumstances in which it is not likely to be imposed.
- (5) In the case of guidance about variable monetary penalties and non-compliance penalties, the guidance must contain information about—
- (a) the matters likely to be taken into account by the market surveillance authority in determining the amount of the penalty (including voluntary reporting by a person of their own non-compliance); and
 - (b) rights to make representations and objections and rights of appeal.
- (6) In the case of guidance about enforcement undertakings the guidance must contain information as to—
- (a) the circumstances in which the market surveillance authority is likely to accept an enforcement undertaking;

- (b) the circumstances in which the market surveillance authority is not likely to accept an enforcement undertaking.

Consultation on guidance

29. The market surveillance authority must consult such persons as it considers appropriate before publishing any guidance or revised guidance.

Publication of enforcement action

30.—(1) The market surveillance authority must from time to time publish—

- (a) the cases in which civil sanctions have been imposed;
- (b) where the civil sanction is a compliance notice, stop notice or variable monetary penalty, the cases in which a third party undertaking has been accepted;
- (c) cases in which an enforcement undertaking has been entered into.

(2) In paragraph (1)(a) the reference to cases in which civil sanctions have been imposed does not include cases where the sanction has been imposed but overturned on appeal.

(3) This paragraph does not apply in cases where the market surveillance authority considers that publication would be inappropriate.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the requirements of Directive 2009/125/EC of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy-related products (OJ No L285,31.10.2009, p10) and implements elements of the market surveillance Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (“RAMS”) (OJ No L128 13.8.2008, p30). It also gives effect to any applicable implementing measures which are made pursuant to the Directive. These Regulations also give effect to Decision No 768/2008 of the European Parliament and of the Council on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (OJ No L 218, 13,8.2008, p82).

Regulation 3 requires that an energy-related product must not be placed on the market or put into service unless it complies with an applicable implementing measure. Schedule 1 sets out the requirements for a declaration of conformity and lists energy-related products and their applicable implementing measures.

Regulation 4 requires that a manufacturer of an energy-related product and components sub-assemblies must not place it on the market or put it into service unless it has assessed whether it complies with an applicable implementing measure and if it does comply it must make a declaration of conformity and affix the CE marking which is shown in Schedule 2.

Regulation 5 imposes similar requirements on authorised representatives and importers of energy-related products.

Regulation 6 provides that regulation 3 does not apply to displays of energy-related products.

Regulation 7 sets out presumptions in relation to an energy-related product.

Regulation 8 prohibits the affixing of a CE marking to an energy-related product which may mislead a person to believe that an energy-related product complies with an applicable implementing measure.

Regulation 9 requires documents relating to conformity assessments of energy-related products to be kept for 10 years.

Regulation 10 designates the Secretary of State as the competent national authority and the notifying authority for the purposes of Decision No 768/2008 of the European Parliament and of the Council and designates the Secretary of State as the market surveillance authority for the purposes of RAMS.

Schedule 3 sets out the appeals procedure in relation to decisions of notified bodies.

Regulation 12 provides that the market surveillance authority may authorise any suitable person to act for it.

Schedules 4 and 5 deal with warrants in relation to powers of entry exercised under RAMS, testing costs which the market surveillance authority may recover from manufactures and civil sanctions which the market surveillance authority may impose. Regulations 14 to 17 set out offences, penalties and related matters. Regulation 18 allows a court to make a remediation order in respect of a person convicted of an offence under these Regulations. Regulation 19 provides for the recovery of expenses of enforcement.

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