
STATUTORY INSTRUMENTS

2011 No. 1881

The Toys (Safety) Regulations 2011

PART 5

Enforcement

Enforcement action in cases of formal non-compliance

52.—(1) An enforcement authority may serve a compliance notice on an economic operator if it finds that a non-compliance of any of the following types has occurred in relation to a toy—

- (a) no CE marking has been affixed;
- (b) a CE marking has been affixed but any provision of regulation 18 or regulation 39 has not been complied with or has been contravened;
- (c) the manufacturer has not drawn up an EC declaration of conformity;
- (d) the manufacturer has drawn up an EC declaration of conformity but the declaration does not comply with any provision of regulation 16(1) to (4); or
- (e) the technical documentation is unavailable or incomplete.

(2) A compliance notice must—

- (a) require the economic operator—
 - (i) to put an end to the non-compliance within such period as may be specified in the notice; or
 - (ii) to provide evidence within that period to the satisfaction of the enforcement authority that the non-compliance has not in fact occurred; and
- (b) warn the economic operator that, if the non-compliance continues, or if satisfactory evidence has not been produced under sub-paragraph (a) within the period specified in the notice, further action may be taken by an enforcement authority in respect of that toy or any toy of the same type supplied by that person.

(3) A compliance notice may include directions as to the measures to be taken by the economic operator to secure compliance, including different ways of securing compliance.

(4) A compliance notice has effect throughout the United Kingdom.

(5) Where an economic operator fails to comply with the requirements of a compliance notice, the enforcement authority may—

- (a) serve a withdrawal notice under regulation 14(1) GPSR;
- (b) serve a recall notice under regulation 15(1) GPSR;.

(6) For the purposes of taking an action referred to in paragraph (5), regulations 14, 15, 16, and 17 of the GPSR are applicable

(7) Where a notice is served under paragraph (5), the grounds for serving the notice that would otherwise apply under the GPSR are satisfied by complying with this regulation.

Enforcement action in cases of toys presenting a risk

53.—(1) This regulation applies where—

- (a) an enforcement authority or other person has taken any action under the 1987 Act or the GPSR to ensure that a toy which presents a serious risk requiring rapid intervention is recalled, withdrawn or prohibited from being made available on the market; or
- (b) an enforcement authority has sufficient reason to believe that a toy presents a risk to the health or safety of persons.

(2) An enforcement authority—

- (a) must carry out an evaluation in relation to the toy covering all the requirements of these Regulations;
- (b) may require the relevant economic operator to take appropriate corrective action to bring the toy into compliance with these Regulations;
- (c) may serve a withdrawal notice under regulation 14(1) GPSR;
- (d) may serve a recall notice under regulation 15(1) GPSR.

(3) For the purposes of taking an action referred to in paragraph (2)(c) or (d), regulations 14, 15, 16 and 17 of the GPSR are applicable.

(4) Where a notice is served under paragraph 2(c) or (d) the grounds for serving the notice that would otherwise apply under the GPSR are satisfied by complying with this regulation.

(5) This regulation does not apply where any provisional measure taken by another Member State in relation to a toy pursuant to Article 42(4) of the Directive is deemed under Article 42(7) of the Directive to be justified or is decided by the European Commission to be justified pursuant to Article 43(1) of the Directive (and that decision is communicated to the United Kingdom).

Notification of enforcement action taken in cases of toys presenting a risk

54.—(1) An enforcement authority, or other person who has taken action under the 1987 Act or the GPSR, must give immediate notice to the Secretary of State of any action taken by it, finding made or other opinion formed by it, or other matter within its knowledge, which is required to be notified to the European Commission or the other Member States under Articles 42, 43 or 44 of the Directive.

(2) An enforcement authority which has taken action under regulation 53 must inform the relevant notified body accordingly.

Requirements relating to certain measures taken by enforcement authorities or other persons

55.—(1) Paragraph (2) applies in relation to a measure taken by an enforcement authority or other person to—

- (a) prohibit or restrict a toy from being made available on the market;
- (b) withdraw a toy; or
- (c) recall a toy.

(2) The following requirements must be complied with in relation to the measure—

- (a) the measure must state the exact grounds on which it is based;
- (b) the measure must be notified without delay to the party concerned; and
- (c) at the same time as the measure is notified to the party concerned that party must also be informed of—

- (i) any remedy available to that party in relation to the measure; and
- (ii) any time limit to which that remedy is subject.

(3) Where an enforcement authority takes a measure in relation to a toy, the authority must take due account of the precautionary principle.

(4) Where an enforcement authority takes a measure in relation to a toy which is considered unjustified in accordance with Article 43(2) of the Directive (Community safeguard procedure), the enforcement authority must withdraw the measure or apply to the court to withdraw the measure as may be required.

Commencement of proceedings

56.—(1) In England and Wales a magistrates’ court may try an information, and in Northern Ireland a magistrates’ court may try a complaint, in respect of an offence committed under section 12 of the 1987 Act in relation to a contravention of or a failure to comply with these Regulations if the information is laid or the complaint is made within twelve months from the discovery of the offence by the prosecutor.

(2) In Scotland summary proceedings in relation to an offence committed under section 12 of the 1987 Act in relation to a contravention of or a failure to comply with these Regulations may be begun at any time within twelve months from the discovery of the offence by the prosecutor.

(3) No such proceedings shall be brought more than three years after the commission of the offence.

Amendment to the General Product Safety Regulations 2005

57. The General Product Safety Regulations 2005(1) are amended as follows—

- (a) In regulation 2 (Interpretation) insert the following at the end of the definition of “Community law” –

“and does not include Regulation (EC) No 765/2008 of the European Parliament and the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93(2).”.

(1) [S.I. 2005/1803](#).

(2) [OJ No L218, 13.8.2008, p30](#).