

SCHEDULE 5

Regulation 53(2)

Compliance, withdrawal and recall notices

Compliance notice

1.—(1) The market surveillance authority may serve a compliance notice on a relevant economic operator in respect of a product if the authority has reasonable grounds for believing that there is non-compliance.

(2) A compliance notice must—

(a) require the relevant economic operator on which it is served to—

(i) end the non-compliance within such period as may be specified in the notice; or

(ii) provide evidence, within such period as may be specified in the notice, demonstrating to the satisfaction of the market surveillance authority that the non-compliance has not in fact occurred; and

(b) warn the economic operator that, if the non-compliance persists or if satisfactory evidence has not been produced under sub-paragraph (a) within the period specified in the notice, further action may be taken in respect of the product or any product of the same type made available on the market by the relevant economic operator.

(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) Subject to sub-paragraph (5), the market surveillance authority may revoke or vary a compliance notice by serving a notification on the economic operator.

(5) The market surveillance authority may not vary a compliance notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

Withdrawal notice

2.—(1) The market surveillance authority may serve a withdrawal notice on a relevant economic operator in respect of a product if the authority has reasonable grounds for believing that—

(a) the product has been made available on the market; and

(b) there is non-compliance.

(2) A withdrawal notice must prohibit the relevant economic operator from making the product available on the market without the consent of the market surveillance authority.

(3) A withdrawal notice may require the relevant economic operator to take action to alert end-users to any risk presented by the product.

(4) A withdrawal notice may require the relevant economic operator to keep the market surveillance authority informed of the whereabouts of any product referred to in the notice.

(5) A consent given by the market surveillance authority pursuant to a withdrawal notice, may impose such conditions on the making available on the market as the market surveillance authority considers appropriate.

(6) Subject to sub-paragraph (7), the market surveillance authority may revoke or vary a withdrawal notice by serving a notification on the economic operator.

(7) The market surveillance authority may not vary a withdrawal notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

(8) A withdrawal notice has effect throughout Great Britain.

Recall notice

3.—(1) The market surveillance authority may serve a recall notice on a relevant economic operator in respect of a product if the authority has reasonable grounds for believing that—

- (a) the product has been made available to end-users; and
- (b) there is non-compliance.

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

(3) A recall notice may—

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

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

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

- (a) other action which it may require under these Regulations would not suffice to address the non-compliance;
- (b) the action being undertaken by the relevant economic operator is unsatisfactory or insufficient to address the non-compliance;
- (c) the market surveillance authority has given not less than 10 days' notice to the relevant economic operator of its intention to serve such a notice; and
- (d) the market surveillance authority has taken account of any advice obtained under sub-paragraph (6).

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

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

(7) Sub-paragraphs (5)(b), (c) and (d) do not apply in the case of a product presenting a serious risk requiring, in the view of the market surveillance authority, urgent action.

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

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

(10) A recall notice served by the market surveillance authority may require the relevant economic operator to keep the authority informed of the whereabouts of a product to which the recall notice relates, so far as the relevant economic operator is able to do so.

(11) Subject to sub-paragraph (12), the market surveillance authority may revoke or vary a recall notice by serving a notification on the economic operator.

(12) The market surveillance authority may not vary a recall notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

(13) A recall notice has effect throughout Great Britain.

Interpretation

4. In this Schedule, “non-compliance” means that the product—

- (a) presents a risk; or
- (b) is not in conformity with Part 2 or RAMS in its application to a product.