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STATUTORY INSTRUMENTS

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**2018 No. 389**

**The Gas Appliances (Enforcement) and  
Miscellaneous Amendments Regulations 2018**

**PART 1**

Preliminary

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018 and come into force on 21st April 2018.

(2) In these Regulations—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974 <sup>M1</sup>;

“the 1978 Order” means the Health and Safety at Work (Northern Ireland) Order 1978 <sup>M2</sup>;

“the 1987 Act” means the Consumer Protection Act 1987 <sup>M3</sup>;

“the 1995 Regulations” means the Gas Appliances (Safety) Regulations 1995 <sup>M4</sup>;

“district council” means a district council within the meaning of the Local Government Act (Northern Ireland) 1972 <sup>M5</sup>;

“EU Regulation 2016/426” means Regulation (EU) 2016/426 <sup>M6</sup> of the European Parliament and of the Council on appliances burning gaseous fuels, repealing Council Directive [2009/142/EC](#) <sup>M7</sup>, as amended from time to time;

[<sup>F1</sup>Regulation 2016/426 (pre-exit)” means Regulation (EU) 2016/426 of the European Parliament and of the Council on appliances burning gaseous fuels and repealing [Directive 2009/142/EC](#) as it had effect immediately before exit day;]

“RAMS” means Regulation [\(EC\) 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](#) <sup>M8</sup>, as amended from time to time;

“risk” means a risk which may result in harm to the health or safety of persons, domestic animals or property, if an appliance or fitting is used in a normal and predictable manner; and

“weights and measures authority” means a local weights and measures authority within the meaning set out in section 69 of the Weights and Measures Act 1985 <sup>M9</sup>.

(3) In these Regulations [<sup>F2</sup>(unless otherwise stated)] a reference to—

(a) a numbered regulation, paragraph or Schedule is a reference to the regulation, paragraph or Schedule as numbered in these Regulations [<sup>F3</sup>unless otherwise stated];

(b) an Article, paragraph of an Article [<sup>F4</sup>, Chapter ] or Annex is a reference to the Article, paragraph of an Article [<sup>F4</sup>, Chapter] or Annex as numbered in EU Regulation 2016/426;

- (c) a “relevant economic operator” in relation to an appliance or fitting means an economic operator with obligations in respect of that appliance or fitting under EU Regulation 2016/426; and
- (d) an “enforcement authority” is to be construed in accordance with regulation 4.
- (4) Expressions and words used in these Regulations which are used in EU Regulation 2016/426 have the same meaning as in EU Regulation 2016/426 [F5 unless otherwise stated] .

### Textual Amendments

- F1** Words in reg. 1(2) inserted (31.12.2020) by *The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019* (S.I. 2019/696), **Sch. 36 para. 1(2)(a)**; 2020 c. 1, **Sch. 5 para. 1(1)** (as amended by S.I. 2020/852, regs. 2(2), 4(2), **Sch. 1 para. 1(i)(v)**)
- F2** Words in reg. 1(3) inserted (E.W.S.) (31.12.2020) by *The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019* (S.I. 2019/696), reg. 1, **Sch. 36 para. 1(2)(b)(i)** (as amended by S.I. 2020/676, regs. 1(1), 2, 3); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in reg. 1(3)(a) omitted (E.W.S.) (31.12.2020) by virtue of *The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019* (S.I. 2019/696), reg. 1, **Sch. 36 para. 1(2)(b)(ii)** (as amended by S.I. 2020/676, regs. 1(1), 2, 3); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Word in reg. 1(3)(b) inserted (E.W.S.) (31.12.2020) by *The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019* (S.I. 2019/696), reg. 1, **Sch. 36 para. 1(2)(b)(iii)** (as amended by S.I. 2020/676, regs. 1(1), 2, 3); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in reg. 1(4) inserted (E.W.S.) (31.12.2020) by *The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019* (S.I. 2019/696), reg. 1, **Sch. 36 para. 1(2)(c)** (as amended by S.I. 2020/676, regs. 1(1), 2, 3); 2020 c. 1, Sch. 5 para. 1(1)

### Marginal Citations

- M1** 1974 c.37.
- M2** S.I. 1978/1039 (N.I. 9).
- M3** 1987 c.43.
- M4** S.I. 1995/1629 as amended by S.I. 2012/1815 and the Protection of Freedoms Act 2012, Schedule 2, Part 3 and Schedule 10, Part 2.
- M5** 1972 Chapter 9.
- M6** OJ No L81, 31.3.2016, p.99.
- M7** OJ No L330, 16.12.2009, p.10.
- M8** OJ No L 218, 13.8.2008, p.30.
- M9** 1985 c.72; section 69 was amended by the *Local Government (Wales) Act 1994* (c.19), **section 66** and Schedule 16, paragraph 75; the *Local Government etc. (Scotland) Act 1994* (c.39), **section 180** and Schedule 13, paragraph 144; and the *Statute Law (Repeals) Act 1989* (c.43) Schedule 1, Part 1.

### Application, transitional provisions, savings and revocation

2.—(1) These Regulations apply to appliances and fittings placed on the market on or after 21st April 2018.

- (2) These Regulations do not apply to—
- (a) appliances specifically designed for the uses and purposes specified in Article 1(3); or
- (b) appliances and fittings which fall within Article 1(4).

(3) Nothing in these Regulations prevents the showing of appliances or fittings at trade fairs, exhibitions, demonstrations or the like, which are not in compliance with the provisions of EU Regulation 2016/426, provided that a visible sign clearly indicates that such appliances or fittings do not comply with those provisions and that they are not for sale until they are made compliant.

(4) [F6The][F6Subject to the modifications made in paragraph (4A), the] 1995 Regulations continue to apply, as if they had not been revoked, to appliances and fittings placed on the market before 21st April 2018, and in any such case the consequential amendments made by Schedule 5 do not apply.

[F7(4A) The modifications referred to in paragraph (4) are as follows—

- (a) any reference to the “Community” is to be read as including the United Kingdom;
- (b) any reference to “member State” is to be read as though the United Kingdom were a member State;
- (c) regulation 10(6) is to be read as if the words from “and, on request made by it” to the end were omitted;
- (d) regulation 13(2) is to be read as if sub-paragraph (b) were omitted;
- (e) regulation 15(2) is to be read as if sub-paragraph (b) were omitted.]

(5) The 1995 Regulations are revoked save to the extent required to give effect to paragraph (4).

#### Textual Amendments

- F6** Words in [reg. 2\(4\)](#) substituted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), [reg. 1](#), [Sch. 36 para. 1\(3\)\(a\)](#) (as amended by [S.I. 2020/676](#), [regs. 1\(1\), 2, 3](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)
- F7** [Reg. 2\(4A\)](#) inserted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), [reg. 1](#), [Sch. 36 para. 1\(3\)\(b\)](#) (as amended by [S.I. 2020/676](#), [regs. 1\(1\), 2, 3](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

#### [F8Obligations which are met by complying with obligations in Regulation 2016/426 (pre-exit)

**2A.—**(1) In this regulation, “harmonised standard” has the meaning given in Article 2(23) of Regulation 2016/426 (pre-exit).

(2) Paragraph (3) applies where before placing an appliance or fitting on the market, or using an appliance for their own purposes, the manufacturer—

- (a) ensures that the appliance or fitting has been designed and manufactured in accordance with the essential requirements set out in Annex I to Regulation 2016/426 (pre-exit);
- (b) carries out the applicable conformity assessment procedure referred to in Article 14 of Regulation 2016/426 (pre-exit), or has it carried out;
- (c) draws up the technical documentation referred to in Annex III to Regulation 2016/426 (pre-exit);
- (d) ensures that the technical documentation and other records and correspondence relating to the conformity assessment procedures are prepared in or translated into English;
- (e) affixes a CE marking and the inscriptions provided for in Annex IV of Regulation 2016/426 (pre-exit), in accordance with Articles 16, 17(1) to (4) and 18 of Regulation 2016/426 (pre-exit);
- (f) draws up an EU declaration of conformity, in accordance with Article 15 of Regulation 2016/426 (pre-exit); and
- (g) ensures that the EU declaration of conformity is prepared in or translated into English.

(3) Where this paragraph applies—

- (a) the requirements of Articles 7(1) and (2) and 14 to 18 are to be treated as being satisfied;

- (b) the requirement in Article 7(5) to ensure that appliances and fittings bear inscriptions, is to be treated as being satisfied;
  - (c) Articles 7(3), (4) and (7), 8(2) and point 1.7 of Annex I (referred to in Article 7(7)) and regulations 7(1) and 8(3)(a) apply subject to the modifications in paragraph (8); and
  - (d) Article 40 does not apply.
- (4) Paragraph (5) applies where before placing an appliance or fitting on the market, the importer ensures that—
- (a) the applicable conformity assessment procedure referred to in Article 14 of Regulation 2016/426 (pre-exit) has been carried out;
  - (b) the manufacturer has drawn up the technical documentation referred to in Annex III of Regulation 2016/426 (pre-exit); and
  - (c) the appliance or fitting bears the CE marking in accordance with Articles 16 and 17(1) to (4) of Regulation 2016/426 (pre-exit).
- (5) Where this paragraph applies—
- (a) the requirements in the first or second subparagraph of Article 9(2), as applicable, to ensure that—
    - (i) the appropriate conformity assessment procedure referred to in Article 14 has been carried out;
    - (ii) the manufacturer has drawn up the technical documentation; and
    - (iii) the appliance or fitting bears the UK marking,
 are to be treated as being satisfied;
  - (b) the third subparagraph of Article 9(2), Article 9(5) and (8), and regulations 7(1) and 8(3) apply subject to the modifications in paragraph (8); and
  - (c) in relation to fittings, the second subparagraph of Article 9(2) (other than those requirements treated as being satisfied), point 1.7 of Annex I (referred to in that subparagraph) and the second subparagraph of Article 9(4) also apply subject to the modifications in paragraph (8).
- (6) Paragraph (7) applies where, before placing an appliance or fitting on the market, a distributor ensures that the appliance or fitting bears the CE marking in accordance with Articles 16 and 17(1) to (4) of Regulation 2016/426 (pre-exit).
- (7) Where this paragraph applies—
- (a) the requirement in the first or second subparagraph of Article 10(2), as applicable, for the distributor to verify that the appliance or fitting bears the UK marking, is to be treated as being satisfied;
  - (b) the third subparagraph of Article 10(2), Article 10(3) and regulation 7(1) apply subject to the modifications in paragraph (8); and
  - (c) in relation to fittings, the second subparagraph of Article 10(2) (other than that requirement treated as being satisfied) and point 1.7 of Annex I (referred to in that subparagraph) also apply subject to the modifications in paragraph (8).
- (8) The modifications referred to in paragraphs (3)(c), (5)(b) and (c), and (7)(b) and (c) are that—
- (a) any reference to a “declaration of conformity” is to be read as a reference to an EU declaration of conformity, referred to in Article 15 of Regulation 2016/426 (pre-exit);
  - (b) any reference to “essential requirements” is to be read as a reference to the essential requirements set out in Annex I of Regulation 2016/426 (pre-exit);

- (c) any reference to “designated standard” is to be read as a reference to a harmonised standard;
- (d) any reference to “technical documentation” is a reference to the technical documentation referred to in Annex III to Regulation 2016/426 (pre-exit);
- (e) in regulations 7(1) and 8(3), any reference to a numbered Article is to be read as a reference to the equivalent Article of Regulation 2016/426 (pre-exit).

#### Textual Amendments

**F8** Regs. 2A-2D inserted (E.W.S.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 36 para. 1(4)** (as amended by S.I. 2020/676, regs. 1(1), 2, 3 and by S.I. 2020/1460, reg. 1(4), **Sch. 3 para. 25(2)**); 2020 c. 1, **Sch. 5 para. 1(1)**

#### Conformity assessment procedure obligation which is met by complying with Regulation 2016/426 (pre-exit)

**2B.**—(1) Paragraph (2) applies where, before placing an appliance or fitting on the market the manufacturer ensures that its conformity with Regulation 2016/426 (pre-exit) has been assessed by means of the conformity assessment procedure set out in point 1 of Annex III to Regulation 2016/426 (pre-exit) and referred to in Article 14(2) of Regulation 2016/426 (pre-exit) as EU type-examination, in accordance with that Article.

(2) Where this paragraph applies—

- (a) the requirement in Article 14(2) that the conformity of appliances and fittings with Regulation EU 2016/426 be assessed by means of the type-examination set out in point 1 of Annex III is to be treated as being satisfied;
- (b) any reference to “conformity assessment procedure” in Articles 7(2) and 9(2) (first and second subparagraphs) is to be read as including the conformity assessment procedure referred to in Article 14(2) of Regulation 2016/426 (pre-exit) as EU type-examination;
- (c) any reference to “technical documentation” in Articles 7(2), 7(3), 9(2) (first and second subparagraphs) and 9(8) is to be read as including the technical documentation relating to the design of the appliance or fitting as referred to in point 1 of Annex III to Regulation 2016/426 (pre-exit).

#### Textual Amendments

**F8** Regs. 2A-2D inserted (E.W.S.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 36 para. 1(4)** (as amended by S.I. 2020/676, regs. 1(1), 2, 3 and by S.I. 2020/1460, reg. 1(4), **Sch. 3 para. 25(2)**); 2020 c. 1, **Sch. 5 para. 1(1)**

#### Expiry of regulations 2A and 2B

**2C.**—(1) Subject to paragraph (2), regulation 2A ceases to have effect at the end of the period of [<sup>F9</sup>four years] beginning with IP completion day.

(2) Notwithstanding the expiry of regulation 2A—

- (a) any appliance or fitting which was placed on the market pursuant to regulation 2A may continue to be made available on the market on or after the expiry of regulation 2A;

- (b) any obligation to which a person was subject under regulation 2A in respect of any appliance or fitting placed on the market pursuant to regulation 2A continues to have effect after the expiry of regulation 2A, in respect of that appliance or fitting.
- (3) Subject to paragraph (4), regulation 2B ceases to have effect at the end of the period of [<sup>F10</sup>four years] beginning with IP completion day.
- (4) Where a conformity assessment procedure has been completed pursuant to regulation 2B in relation to a product prior to the expiry of regulation 2B, regulation 2B continues to apply in respect of that product where—
- the manufacturer arranges for the EU-Type examination certificate and any annexes to be transferred to an approved body;
  - the approved body referred to in sub-paragraph (a) accepts responsibility for the EU-Type examination certificate; and
  - the approved body issues a Type-examination certificate relying, or relying in part, on any examinations or tests undertaken prior to the issue of the EU-Type examination certificate.
- (5) In paragraph (4) “EU-Type examination certificate” means a certificate issued after the conformity assessment procedure referred to in regulation 2B(1) has been carried out in relation to that appliance or fitting, in accordance with Article 14(2) of Regulation 2019/426 (pre-exit).

#### Textual Amendments

- F8** Regs. 2A-2D inserted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/696), reg. 1, [Sch. 36 para. 1\(4\)](#) (as amended by S.I. 2020/676, regs. 1(1), 2, 3 and by S.I. 2020/1460, reg. 1(4), [Sch. 3 para. 25\(2\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F9** Words in [reg. 2C\(1\)](#) substituted (31.12.2022) by [The Product Safety and Metrology \(Amendment and Transitional Provisions\) Regulations 2022](#) (S.I. 2022/1393), regs. 1(1), 2, [Sch. 1 para. \(u\)](#)
- F10** Words in [reg. 2C\(3\)](#) substituted (31.12.2022) by [The Product Safety and Metrology \(Amendment and Transitional Provisions\) Regulations 2022](#) (S.I. 2022/1393), regs. 1(1), 2, [Sch. 1 para. \(u\)](#)

#### Qualifying Northern Ireland Goods

**2D.**—(1) In this regulation—

“EU Regulation 2016/426 (Northern Ireland)” means Regulation (EU) No. 2016/426 of the European Parliament and of the Council on appliances burning gaseous fuels, repealing Council Directive [2009/142/EC](#), as it has effect by virtue of the Protocol on Ireland/ Northern Ireland in the EU withdrawal agreement;

“applicable conformity assessment procedure” means the conformity assessment procedure applicable to the appliance or fitting in accordance with Article 14 of EU Regulation 2016/426 (Northern Ireland);

“CE marking” has the meaning given to it in Article 2(31) of EU Regulation 2016/426 (Northern Ireland);

“qualifying Northern Ireland goods” has the meaning given to it in regulations made under section 8C(6) of the European Union (Withdrawal) Act 2018;

“technical documentation” means the documentation referred to in Annex III of Regulation 2016/426 (Northern Ireland).

(2) Where paragraph (3) applies—

- an appliance or fitting is to be treated as being in conformity with the essential safety requirements within the meaning given in EU Regulation 2016/426; and

- (b) each relevant economic operator is to be treated as having complied or as complying with the obligations imposed on them under Chapter II of EU Regulation 2016/426.
- (3) This paragraph applies where—
  - (a) the appliance or fitting is—
    - (i) in conformity with the essential requirements within the meaning given in EU Regulation 2016/246 (Northern Ireland); and
    - (ii) qualifying Northern Ireland goods; and
  - (b) each relevant economic operator has complied or is complying with the obligations imposed on them under Chapter II of EU Regulation 2016/426 (Northern Ireland); and
  - (c) an importer has complied with the obligations set out in paragraph (4).
- (4) The obligations referred to in paragraph (4)(c) are that, before placing the appliance or fitting on the market, the importer—
  - (a) complies with Article 9(3) of EU Regulation 2016/426;
  - (b) ensures that—
    - (i) the applicable conformity assessment procedure has been carried out in relation to the appliance or fitting;
    - (ii) the manufacturer has drawn up the technical documentation; and
    - (iii) the appliance or fitting bears the CE marking.]

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**Textual Amendments**

- F8** Regs. 2A-2D inserted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), reg. 1, **Sch. 36 para. 1(4)** (as amended by S.I. 2020/676, regs. 1(1), 2, 3 and by S.I. 2020/1460, reg. 1(4), **Sch. 3 para. 25(2)**); 2020 c. 1, **Sch. 5 para. 1(1)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018, PART 1.