

EXPLANATORY MEMORANDUM TO
THE GAS APPLIANCES (ENFORCEMENT) AND MISCELLANEOUS
AMENDMENTS REGULATIONS 2018

2018 No. 389

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Society (BEIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this statutory instrument (“SI”) is to provide for the enforcement of Regulation (EU) 2016/426 of the European Parliament and of the Council on appliances burning gaseous fuels (OJ No L81, 31.3.2016, p99) (“the EU Gas Appliances Regulation”), repealing Directive 2009/142/EC.
- 2.2 The EU Gas Appliances Regulation applies to appliances and fittings which are new to the Union market on or after 21st April 2018; which means either new appliances and fittings made by a manufacturer in the Union or appliances and fittings whether new or second hand imported from a third country.
- 2.3 This SI will enable enforcement authorities in the United Kingdom, (such as Trading Standards Authorities, the Health and Safety Executive, and the Office for Nuclear Regulation) to take action against “economic operators” (manufacturers, importers and distributors) if they do not comply with the obligations in the EU Gas Appliances Regulation. The EU Gas Appliances Regulation is aimed at ensuring that gas appliances and fittings entering the Union market fulfil a high level of protection for the health and safety of users.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 In its 5th report of 2017-2019 the Joint Committee on Statutory Instruments reported the Recreational Craft Regulations 2017 (S.I. 2017/737) for defective drafting. Paragraph 14 of Schedule 6 to these Regulations corrects the errors identified.
- 3.2 In its 11th report of 2017-2019 the Joint Committee on Statutory Instruments reported the Radio Equipment Regulations 2017 (S.I. 2017/1206) for defective drafting. Paragraph 15 of Schedule 6 to these Regulations corrects the errors identified by making penalties consistent for all economic operators..

Other matters of interest to the House of Commons

- 3.3 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This SI is made to provide an enforcement and penalty regime in the United Kingdom (“UK”) for contraventions by economic operators of the obligations contained in the EU Gas Appliances Regulation, as required by Article 43 of that Regulation. The EU Gas Appliances Regulation repeals and replaces Council Directive 2009/142/EC of the European Parliament and of the Council relating to appliances burning gaseous fuels (OJ L330, 16.12.2009, p10) which is implemented in the UK by the Gas Appliances (Safety) Regulations 1995 as amended (S.I. 1995/1629) (“the 1995 Gas Appliances Regulations”).
- 4.2 This instrument will revoke and replace the 1995 Gas Appliances Regulations subject to savings with respect to appliances and fittings which were placed on the market before the 21st April 2018, as provided for by Article 44 of the EU Gas Appliances Regulation.
- 4.3 Regulation 20 and Schedule 6 make minor amendments to the Lifts Regulations 2016 (S.I. 2016/1093) to clarify the references to provisions in Annex 1 to the Lifts Directive by referring to the corresponding provision in Schedule 1 to the Lifts Regulations. Regulation 20 and Schedule 6 also make minor amendments the Recreational Craft Regulations 2017 (S.I. 2017/737) and make penalties consistent for all economic operators in regulation 66 of the Radio Equipment Regulations 2017 (S.I. 2017/2016).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Minister for Small Business, Consumers and Corporate Responsibility, Andrew Griffiths MP, has made the following statement regarding Human Rights: “In my view the provisions of the Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The aim of the EU Gas Appliances Regulation is to
- lay down requirements for the design and manufacture of appliances burning gaseous fuels, and fittings
 - ensure the health and safety of users, domestic animals and property
 - allow the appliances to be sold and used throughout the European Union (EU).
- 7.2 The EU Gas Appliances Regulation replaces earlier legislation (Council Directive 2009/142/EC).
- 7.3 Appliances burning gaseous fuels will therefore only be permitted to be sold and used in the EU if it complies with the EU Gas Appliances Regulation, when properly maintained and used for its intended purpose, and when it does not endanger the health or safety of people, pets or property.

- 7.4 The scope of the EU Gas Appliances Regulation applies to appliances burning gaseous fuels used for cooking, refrigeration, air-conditioning, space heating, hot water production, lighting or washing, and also forced draught burners and heating bodies to be equipped with such burners. ‘Fittings’ means safety devices, controlling devices or regulating devices and sub-assemblies thereof, designed to be incorporated into an appliance or to be assembled to constitute an appliance.
- 7.5 The EU Gas Appliances Regulation creates a number of obligations on economic operators (manufacturers, importers and distributors). For example
- Manufacturers (in accordance with Article 7 of the EU PPE Regulation) must keep relevant technical documentation and the EU declaration of conformity for 10 years after the placing on the market of the appliance/fitting and inform national authorities of any appliance that might pose a risk.
 - Importers (in accordance with Article 9) must ensure that appliances and fittings that they place on the market comply with this regulation, including that conformity assessment procedures have been carried out and that the CE marking and documentation drawn up by manufacturers are available for inspection by the authorities. Their name and contact details should be indicated on the appliance or fitting, or where that is not possible, on the packaging or documentation accompanying the appliance or fitting.
 - Distributors (in accordance of Article 10) must ensure they act with due care to ensure that their handling of an appliance or fitting does not affect its compliance; verify that any appliance they make available on the market bears the CE marking and is accompanied by a declaration of conformity.
- 7.6 This instrument creates offences for contravening the requirements and obligations set out in Articles 7, 9 and 10. Additionally, offences are created in respect of
- Article 12 (relating to the identification of economic operators)
 - Article 16 (general principles of CE marking)
 - Article 17 (rules and conditions for affixing the CE marking)
 - Article 18 (inscriptions)
 - Article 37 (failure to cooperate with, provide information to and comply with a requirement made by a market surveillance authority)
 - Article 39 (failure by an economic operator to act where a compliant appliance of fitting presents a risk)
 - Article 40 (failure by an economic operator to act when an EU Member State has identified a formal non-compliance of a requirement).
- 7.7 The instrument therefore provides an enforcement regime for the EU Gas Appliances Regulation in regards to breaches of the obligations/requirements set down in that Regulation by economic operators (e.g. manufacturers, importers and distributors).
- 7.8 The policy intention is to maintain an effective regulatory regime in the UK for gas appliances and fittings and continue to ensure there are effective, proportionate and dissuasive sanctions to deal with any economic operators who do not comply with their requirements and obligations contained in the EU PPE Regulation.

- 7.9 The instrument seeks to align national legislation with the New Legislative Framework (NLF) principles.
- 7.10 The NLF consists of Decision 768/2008/EC of the European Parliament and of the Council on a common framework for the marketing of products (OJ No 218, 13.8.2008, p82) and Regulation (EC) No 765/2008 on requirements for accreditation and market surveillance relating to the marketing of products. It is a framework of general principles and rules which aims to make the legislation for goods in the Union market clearer, more consistent and more effective.
- 7.11 The NLF is designed to make it easier for economic operators from anywhere in the EU to comply with legislation by setting a consistent assessment and enforcement regime across a number of product areas. This instrument maintains consistency by mirroring the NLF approach to enforcement. The NLF makes explicit the specific contraventions on each of the economic operators which have been set out as obligations in these regulations.
- 7.12 This instrument replicates provisions in other recent product safety legislation for regulators to seek court orders for a fine and or imprisonment for non-compliance. BEIS is currently reviewing the penalty regimes for product safety legislation in general to assess whether a broader set of sanctions would give regulators more options to ensure proportionate use of criminal sanctions for serious or persistent offenders. BEIS will revisit this legislation, as part of the wider product safety framework, in the light of the conclusions of that review.
- 7.13 This SI also revokes and replaces the 1995 Gas Appliances Regulations subject to savings and makes a number of minor consequential amendments.
- 7.14 A Transposition Note is attached to this Memorandum.
- 7.15 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

8. Consultation outcome

- 8.1 This instrument provides an enforcement and penalty regime for non-compliance on the part of economic operators of the EU Gas Appliances Regulation. It was not considered necessary to undertake a formal public consultation on the specific enforcement and penalty provisions in these Regulations because they mirror existing NLF enforcement provisions, which were consulted on in 2012, and were already familiar to the industry. Please see - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31800/12-550-proposals-align-directives-with-new-legislative-framework-consultation.pdf. There has instead been informal consultation with the enforcement authorities and industry to explain the regime being introduced. Informal discussions have taken place with the Health and Safety Executive and BEIS has disseminated information via its Business Reference Panel to industry associations and through the knowledge hub to trading standards representatives. Responses have been generally favourable.

9. Guidance

- 9.1 BEIS will produce guidance on the instrument before the provisions enter into force. This will be made available on <https://www.gov.uk/government/collections/new-legislative-framework>.

10. Impact

- 10.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 10.2 There is no, or no significant, impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. The Government considers that the legislation is not expected to impose a disproportionate cost to small businesses.

12. Monitoring & review

- 12.1 The instrument provides for periodic review of the regulatory provision and sets out report requirements. The first review report must be published before the 5 year anniversary of the coming into force of the Regulations, with subsequent review reports being published at intervals not exceeding 5 years.

13. Contact

- 13.1 Mr Richard Harris at the Department for Business, Energy and Industrial Strategy (Richard.Harris@beis.gov.uk; telephone: 020 7215 1325) can answer any queries regarding the instrument