SCHEDULE 1 Regulation 3

AMENDMENTS TO THE ECODESIGN FOR ENERGY-RELATED PRODUCTS REGULATIONS 2010

The Ecodesign for Energy-Related Products Regulations 2010

1. The Ecodesign for Energy-Related Products Regulations 2010 are amended as follows.

Amendment to regulation 2

2.—(1) Regulation 2 (interpretation) is amended as follows.

(2) For paragraph (1), substitute—

"(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 corresponding implementing measure referred to in the right hand column of that table;

"approved body" has the meaning given to it in paragraph 1(1) of Schedule 1B;

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

"authorised representative" means—

(a) a person who—

(i) immediately before exit day was established in the United Kingdom or an EEA state and was appointed by a manufacturer by written mandate to act on its behalf in relation to such tasks as are specified in the mandate with regard to the manufacturer's obligations under these Regulations, an implementing measure, or RAMS; and

(ii) on or after exit day continues to be so established and appointed by the manufacturer to perform those tasks; or

(b) a person who, on or after exit day, is established in the United Kingdom and is appointed by a manufacturer by written mandate to act on its behalf in relation to such tasks as are specified in the mandate with regard to the manufacturer's obligations under these Regulations, an implementing measure, or RAMS;

"companies qualifying as small or medium-sized" means a company that qualifies as small under section 382 of the Companies Act 2006(**1**) or as medium-sized under section 465 of that Act;

"components and sub-assemblies" means parts which are intended to be incorporated into products and—

(a) which are not placed on the market or put into service as individual parts for end-users; or

(b) the environmental performance of which cannot be assessed independently;

"conformity assessment activities" means any activities connected with conformity assessment, including calibration, testing, certification and inspection;

"conformity assessment body" means a body that performs conformity assessment activities;

(**1**) 2006 c. 46 as amended by S.I. 2013/3008 and S.I. 2015/980.

"designated standard" has the meaning given to it by regulation 2A;

"the Decision" means Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products(**2**), as it had effect immediately before exit day;

"the Directive" means Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products(**3**) as it had effect immediately before exit day;

"ecodesign requirement" means any requirement in relation to a product, or the design of a product, intended to improve its environmental performance, or any requirement for the supply of information with regard to the environmental aspects of a product;

"ecological profile" means a description, in accordance with the implementing measure applicable to the product, of the inputs and outputs (such as materials, emissions and waste) associated with a product throughout its life cycle which are significant from the point of view of its environmental impact, expressed in physical quantities that can be measured;

"energy-related product" means—

(a) any good that has an impact on energy consumption during use which is placed on the market or put into service; and

(b) parts—

  (i) which are intended to be incorporated into any good that has an impact on energy consumption during use which is placed on the market or put into service;

  (ii) which are placed on the market or put into service as individual parts for end-users; and

  (iii) of which the environmental performance can be assessed independently;

"environmental aspect" means an element or function of a product that can interact with the environment during its life cycle;

"environmental impact" means any change to the environment wholly or partially resulting from a product during its life cycle;

"environmental performance" of a product means the results of the manufacturer's management of the environmental aspects of the product, as reflected in its technical documentation file where a technical documentation file is required for that product;

"identification number" means the number which identifies an approved body and follows a UK marking(**4**) affixed to a product pursuant to regulation 4, which is affixed—

(a) by the approved body; or

(b) where instructed to do so by the approved body, by the manufacturer or the manufacturer's authorised representative;

"implementing measure" means a measure made under the Directive before exit day, or regulations made under regulation 22 on or after exit day;

"importer" means a person established in the United Kingdom who places a product from outside the United Kingdom on the United Kingdom market;

(**2**) OJ L 218, 13.8.2008, p. 82–128.
(**3**) OJ L 285 31.10.2009, p. 10, as amended by Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency (OJ L 315, 14.11.2012, p. 1).
(**4**) For the purpose of any enactment, the UK marking is defined as the marking in the form published in accordance with RAMS.

"life cycle" means the consecutive and interlinked stages of a product from raw material use to final disposal;

"manufacturer" means a person who—

(a) manufactures a product; or

(b) has a product designed or manufactured;

and markets that product under its name or trademark;

"place on the market" except in regulation 20A, means the first making available of a product on the United Kingdom market, and related expressions must be construed accordingly;

"product" means an energy-related product;

"product design" means the set of processes that transform legal, technical, safety, functional, market or other requirements to be met by a product into the technical specification for that product;

"put into service" except in regulation 20A, means the first use of a product for its intended purpose on the United Kingdom market, and related expressions must be construed accordingly;

"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;

"self-regulation" includes voluntary agreements; and

"technical specification" means, except in regulation 2A, a document that prescribes technical requirements to be fulfilled by a product, process, service or system.".

(3) For paragraph (2), substitute—

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

(a) in an implementing measure;

(b) in the Directive; or

(c) in RAMS;

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

Insertion of regulation 2A

3. After regulation 2 (interpretation) insert—

"**Designated standards**

2A.—(1) Subject to paragraphs (6) and (7), in these Regulations a "designated standard" is a reference to a technical specification which is—

(a) adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory; and

(b) designated by the Secretary of State by publishing the reference to the standard and maintaining that publication in a manner the Secretary of State considers appropriate.

(2) For the purposes of paragraph (1), a "technical specification" means a document that prescribes technical requirements to be fulfilled by a product, process, service or system and which lays down one or more of the following—

(a) the characteristics required of a product, including—

(i) levels of quality, performance, interoperability, environmental protection, health, safety or dimensions;

(ii) the requirements applicable to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking or labelling and conformity assessment procedures;

(b) the characteristics required of a service including levels of quality, performance, interoperability, environmental protection, health or safety; and

(c) production methods and processes relating to the product, where these have an effect on the characteristics of the product.

(3) For the purposes of this regulation a "recognised standardisation body" means any one of the following organisations—

(a) the European Committee for Standardization (CEN);

(b) the European Committee for Electrotechnical Standardization (CENELEC);

(c) the European Telecommunications Standards Institute (ETSI);

(d) the International Organization for Standardization (ISO);

(e) the International Electrotechnical Commission (IEC);

(f) the International Telecommunication Union (ITU);

(g) the British Standards Institution (BSI).

(4) When considering whether the manner of publication of a reference is appropriate in accordance with paragraph (1)(b), the Secretary of State must have regard to whether the publication will draw sufficient attention to the standard to all persons who may have an interest in the standard.

(5) Before publishing the reference to a standard adopted by the British Standards Institution, the Secretary of State must have regard to whether the standard is consistent with standards adopted by the other recognised standardisation bodies.

(6) The Secretary of State may remove from publication the reference to a standard which has been published in accordance with paragraph (1)(b).

(7) Where the Secretary of State removes the reference to a standard from publication, that standard is no longer a designated standard.

(8) The Secretary of State may by regulations amend paragraph (3) to reflect any changes in the name or structure of a recognised standardisation body.

(9) Regulations made under paragraph (8) are to be made by statutory instrument.

(10) A statutory instrument containing regulations made under paragraph (8) is subject to annulment in pursuance of a resolution of either House of Parliament.".

Amendment to Part 2

4. In the heading of Part 2, for "CE", substitute "UK".

Amendment to regulation 3

5.—(1) Regulation 3 (restrictions on energy-related products) is amended as follows.

(2) In paragraph (1), for "CE", substitute "UK"

(3) After paragraph (2), insert—

"(3) Schedule 1A (conformity assessment procedures) has effect and reproduces provisions of Annexes 4 and 5 to the Directive (as it has effect immediately before exit day), with amendments, to correct deficiencies in retained EU law.

(4) Schedule 1B (conformity assessment bodies) has effect.".

Amendment to regulation 4

6.—(1) Regulation 4 (conformity assessments, declarations of conformity and the CE marking) is amended as follows.

(2) In the heading, for "CE", substitute "UK".

(3) In paragraph (1), for the words from "with" to "EEA State", substitute "with paragraph (2)".

(4) In paragraph (2)(b)(ii), for "CE", substitute "UK".

(5) In paragraph (3), for "(CE marking)", substitute "(UK marking)".

Amendment to regulation 7

7.—(1) Regulation 7 (presumption of conformity) is amended as follows.

(2) In paragraph (1), for "CE", substitute "UK".

(3) For paragraph (2), substitute—

"(2) Unless the contrary is proved, where designated standards have been applied to an energy-related product, the product is presumed to comply with the applicable implementing measure to the extent that the designated standards relate to the requirements of that measure.".

(4) In paragraph (3), after "awarded a community eco-label" insert "before exit day".

Amendment to regulation 8

8. In regulation 8 (misleading markings), for "CE", substitute "UK".

Amendment to regulation 10

9. Omit regulation 10(1) and (2).

Amendment to Part 7

10. For the heading of Part 7 substitute—

"Revocations, review, transitional provision and obligations which are met by complying with obligations in the Directive".

Insertion of regulations 20A and 20B

11. After regulation 20 (revocations) insert—

"**Transitional provisions in relation to EU Exit**

20A.—(1) Part 2 does not apply to a product which—

(a) was placed on the market or put into service during the pre-exit period; and

(b) is in conformity with the legislation of an EEA state that implements the Directive.

(2) Subject to paragraph (3), where a product was placed on the market or put into service during the pre-exit period, despite the amendments made by Schedule 1 to the Ecodesign for Energy-Related Products and Energy Information (Amendment) (EU Exit) Regulations 2019, any obligation to which a person was subject under these Regulations as they had effect immediately before exit day, continues to have effect as it did immediately before exit day, in relation to that product.

(3) Paragraph (2) does not apply to any obligation to take action outside the United Kingdom in respect of that product.

(4) Where during the pre-exit period—

(a) a product has not been placed on the market or put into service; and

(b) a manufacturer, authorised representative or importer has taken any action in compliance with regulations 4 or 5 as they had effect immediately before exit day in relation to that product,

that action has effect as if it had been done in compliance with regulations 4 or 5 as they have effect on and after exit day.

(5) In this regulation—

"placed on the market" has the same meaning it had in these Regulations as they had effect immediately before exit day;

"pre-exit period" means the period beginning with 20th November 2010 and ending immediately before exit day;

"put into service" has the same meaning it had in these Regulations as they had effect immediately before exit day.

Obligations met by complying with the Directive

20B.—(1) In this regulation—

(a) any reference to an Article or an Annex is a reference to an Article of, or an Annex to, the Directive;

(b) "CE marking" has the meaning given in Article 5(2);

(c) "EC declaration of conformity" has the same meaning as in Article 5(3); and

(d) "harmonised standard" has the meaning given to it in Article 2(27).

(2) Subject to paragraph (8), paragraph (3) applies where—

(a) before placing a product on the market or putting a product into service, the manufacturer complies with legislation in an EEA state that implements—

(i) Article 5 (marking and the EC declaration of conformity); and

(ii) Article 8 (conformity assessment); and

(b) the EC declaration of conformity is translated into English.

(3) Where this paragraph applies—

(a) the requirements in regulation 4 are deemed to be met;

(b) Schedules 1 and 1A are disapplied;

(c) regulation 3 applies subject to the modification that references to the "UK marking" are to be read as references to the "CE marking";

(d) regulation 7 applies subject to the modifications that—

(i) the reference to the "UK marking" is to be read as a reference to the "CE marking"; and

(ii) references to "designated standards" are to be read as references to "harmonised standards";

(e) regulation 8 applies subject to the modification that the reference to the "UK marking" is to be read as a reference to the "CE marking"; and

(f) regulation 9 applies subject to the modification that references to a "declaration of conformity" or a "declaration" are to be read as references to an "EC declaration of conformity".

(4) Subject to paragraph (8), paragraph (5) applies where—

(a) before placing a product on the market or putting a product into service, the importer complies with legislation in an EEA state implementing Article 4 (responsibilities of the importer); and

(b) the EC declaration of conformity is translated into English.

(5) Where this paragraph applies—

(a) the requirements imposed on the importer in regulation 5 are deemed to be met;

(b) Schedules 1 and 1A are disapplied;

(c) regulation 7 applies subject to the modification that references to "designated standards" are to be read as references to "harmonised standards";

(d) regulation 8 applies subject to the modification that the reference to the "UK marking" is to be read as a reference to the "CE marking"; and

(e) regulation 9 applies subject to the modification that references to a "declaration of conformity" or a "declaration" are to be read as references to an "EC declaration of conformity".

(6) Subject to paragraph (8), paragraph (7) applies where—

(a) before placing a product on the market or putting a product into service, the authorised representative complies with legislation in an EEA state that implements—

(i) Article 5 (marking and the EC declaration of conformity); and

(ii) Article 8 (conformity assessment); and

(b) the EC declaration of conformity is translated into English.

(7) Where this paragraph applies—

(a) the requirements imposed on the authorised representative in regulation 5 are deemed to be met;

(b) Schedules 1 and 1A are disapplied;

(c) regulation 7 applies subject to the modification that references to "designated standards" are to be read as references to "harmonised standards";

(d) regulation 8 applies subject to the modification that the reference to the "UK marking" is to be read as a reference to the "CE marking"; and

(e) regulation 9 applies subject to the modification that references to a "declaration of conformity" or a "declaration" are to be read as references to an "EC declaration of conformity".

(8) Where there is no designated standard or part of a designated standard which corresponds exactly to a harmonised standard or part of a harmonised standard referred to in Article 10, paragraphs (2)(a)(ii), (4) and (6)(a)(ii) are to be treated as requiring the manufacturer to have carried out the conformity assessment procedure set out in Article 8.".

Insertion of regulation 22

12. After regulation 21, insert—

"PART 8

Implementing measures

Power of the Secretary of State to make implementing measures

22.—(1) Subject to paragraphs (3) and (6), where the Secretary of State is satisfied that a product meets the criteria listed in paragraph (2), the Secretary of State must, by regulations, make an implementing measure in respect of that product.

(2) The criteria referred to in paragraph (1) are that—

(a) the product, according to the most recently available figures and considering the quantities placed on the market or put into service, has a significant environmental impact within the United Kingdom; and

(b) the product presents significant potential for improvement in terms of its environmental impact without entailing excessive costs, taking into account in particular—

(i) the absence of other relevant legislation or failure of market forces to address the issue properly; and

(ii) the existence of a wide disparity in the environmental performance of products available on the United Kingdom market with equivalent functionality.

(3) The Secretary of State must not make an implementing measure in respect of a product that is the subject of self-regulation where such self-regulation—

(a) meets at least the criteria in Annex 8 to the Directive, read subject to the modifications in regulation 23(1)(a) and (d); and

(b) is expected to achieve the Secretary of State's ecodesign policy objectives more quickly or at lesser expense than an implementing measure.

(4) Before exercising the power in paragraph (1), the Secretary of State must—

(a) consider the life cycle of the product and all its significant environmental aspects, including its energy efficiency, and the feasibility of their improvement;

(b) consider any relevant legislation;

(c) consider any self-regulation which meets the criteria in Annex 8 to the Directive read subject to the modifications in regulation 23(1)(a) and (d);

(d) prepare a draft implementing measure;

(e) carry out an assessment of the draft implementing measure, which must consider its impact on the environment, consumers and manufacturers, including companies qualifying as small or medium-sized, in terms of competitiveness, innovation, market access and costs and benefits;

(f) consult on the draft implementing measure;

(g) prepare an explanatory memorandum of the draft implementing measure based on the assessment referred to in sub-paragraph (e); and

(h) set an implementation date, and any staged or transitional measures or periods, taking into account, in particular, possible impacts on companies qualifying as

small or medium-sized, or on specific product groups manufactured primarily by companies qualifying as small or medium-sized.

(5) For the purposes of paragraph (4)(a)—

(a) the depth of analysis to be carried out by the Secretary of State on the environmental aspects and on the feasibility of their improvement must be proportionate to their significance; and

(b) the Secretary of State must take into account that the adoption of ecodesign requirements on the significant environmental aspects of a product must not be unduly delayed by uncertainties regarding the other aspects.

(6) The Secretary of State must not make an implementing measure in respect of a product unless the Secretary of State is satisfied that the implementing measure—

(a) has no significant negative impact on the functionality of the product, from the perspective of the user;

(b) has no adverse effects on health, safety and the environment;

(c) has no significant negative impact on consumers in particular as regards the affordability and the life cycle cost of the product;

(d) has no significant negative impact on industry's competitiveness;

(e) does not have the consequence of imposing proprietary technology on manufacturers; and

(f) does not impose an excessive administrative burden on manufacturers.

(7) An implementing measure made under paragraph (1)—

(a) must lay down ecodesign requirements in accordance with Annex 1 and Annex 2 to the Directive, read subject to the modifications in regulation 23(1)(a) to (c);

(b) must introduce specific ecodesign requirements for selected environmental aspects which have a significant environmental impact;

(c) must specify, in particular:

(i) the exact definition of the type of product covered;

(ii) the ecodesign requirements for the product covered, implementation dates, and any staged or transitional measures or periods and—

(aa) in the case of generic ecodesign requirements, the relevant phases and aspects selected from those mentioned in paragraph 1.1 and 1.2 of Annex 1, read subject to the modifications in regulation 23(1)(a) and (b), accompanied by examples of parameters selected from those mentioned in paragraph 1.3 of Annex 1, read subject to the modifications in regulation 23(1)(a) and (b), as guidance when evaluating improvements regarding identified environmental aspects; and

(bb) in the case of specific ecodesign requirements, the level of the requirements that apply;

(iii) the ecodesign parameters referred to in Part 1 of Annex 1, read subject to the modifications in regulation 23(1)(a) and (b), relating to which no ecodesign requirement is necessary;

(iv) the installation requirements of the product where it has direct relevance to the product's environmental performance;

(v) where available, the designated standards that apply and if no designated standards apply, the measurement standards and measurement methods to be used;

(vi) requirements on information to be provided by manufacturers notably on the elements of the technical documentation which are needed to facilitate the checking of the compliance of the product with the implementing measure;

(vii) the duration of the transitional period during which it is permitted to place on the market or put into service products which comply with legislation in force in the United Kingdom before the coming into force of the implementing measure;

(viii) the date for the evaluation and possible revision of the implementing measure, taking into account the speed of technological progress;

(d) must specify the procedures for assessing the product's conformity with the implementing measure, including—

(i) the choice open to the manufacturer between the internal design control procedure set out in Part 1 of Schedule 1A and the management system procedure set out in Part 2 of that Schedule;

(ii) where duly justified and proportionate to the risks involved, in addition to the choice in paragraph (i), one or more of the Modules described in Annex 2 to the Decision, as it had effect immediately before exit day, read subject to the modifications in regulation 23(2); and

(iii) where relevant, the criteria relating to approved bodies;

(e) must contain requirements formulated so as to ensure that market surveillance authorities can verify the conformity of the product with the requirements of the implementing measure;

(f) must specify whether verification can be achieved directly on the product or on the basis of the technical documentation;

(g) may provide that no ecodesign requirement is necessary for certain specified ecodesign parameters referred to in Part 1 of Annex 1 to the Directive read subject to the modifications in regulation 23(1)(a) and (b);

(h) where appropriate, must include provisions on the balancing of various environmental aspects;

(i) may, subject to being proportionate and taking into account legitimate confidentiality of commercially sensitive information—

(i) require information to be supplied by the manufacturer that may influence the way the product is handled, used or recycled by parties other than the manufacturer; and

(ii) require a manufacturer or its authorised representative placing components and sub-assemblies on the market or putting them into service to provide the manufacturer of a product covered by an implementing measure with—

(aa) relevant information on the material composition of the components and sub-assemblies; and

(bb) relevant information on the consumption of energy, materials and resources of the components and sub-assemblies; and

(j) must not apply to means of transport for persons or goods.

(8) Where, for the purposes of paragraph (7)(d)(ii), the procedure for assessing a product's conformity with the implementing measure includes one or more Modules, the implementing measure may—

(a) regarding technical documentation, require information additional to that which is already stipulated in the Modules;

(b) regarding the time for which the manufacturer and approved body are obliged to keep any kind of documentation, alter the period stipulated in the Modules;

(c) specify the manufacturer's choice as to whether the tests are carried out either by an accredited in-house body or under the responsibility of an approved body chosen by the manufacturer;

(d) where product verification is performed, specify the manufacturer's choice as to whether the examinations and tests to check the conformity of the products with the appropriate requirements will be carried out by examination and testing of every product, or by examination and testing of the products on a statistical basis;

(e) provide for the type examination certificate to have a period of validity;

(f) regarding the type examination certificate, specify relevant information relating to conformity assessment and in-service control to be included in it or its annexes;

(g) provide for different arrangements regarding the obligations the approved body has to report to the Secretary of State; and

(h) if the approved body carries out periodic audits, specify their frequency.

(9) Where an implementing measure made under paragraph (1) requires information to be supplied by the manufacturer that may influence the way the product is handled, used or recycled by parties other than the manufacturer—

(a) the implementing measure may require that information to include, as applicable—

(i) information from the designer relating to the manufacturing process;

(ii) information for consumers on the significant environmental characteristics and performance of a product, to allow consumers to compare these aspects of the products;

(iii) information for consumers on how to install, use and maintain the product in order to minimise its impact on the environment and to ensure optimal life expectancy, as well as on how to return the product at end-of-life, and, where appropriate, information on the period of availability of spare parts and the possibilities of upgrading products; and

(iv) information for treatment facilities concerning disassembly, recycling, or disposal at end-of-life; and

(b) the implementing measure must require that information—

(i) to be given on the product itself wherever possible; and

(ii) to take into account obligations under other relevant legislation, such as the Waste Electrical and Electronic Equipment Regulations 2013(**5**).

Modifications to Annexes 1, 2 and 8 of the Directive

23.—(1) The modifications referred to in paragraphs (3)(a), (4)(c), (7)(a), (c) and (g) of regulation 22 are as follows—

(**5**) S.I. 2013/3113, amended by S.I. 2014/1771, S.I. 2015/1968, S.I. 2016/738, S.I. 2016/1154, S.I. 2018/102.

(a) Annexes 1, 2 and 8 to the Directive are to be read as if the definitions in regulation 2 of these Regulations apply and prevail over any conflicting definitions in the Directive.

(b) Annex 1 to the Directive is to be read as if—

(i) before Part 1—

(aa) in the first paragraph, the words from "The Commission must" to the end were omitted; and

(bb) in the second paragraph, for the words from "Article 15" to the end there were substituted "regulation 22 of the Ecodesign for Energy-Related Products Regulations 2010, the Secretary of State must identify, as appropriate to the product covered by the implementing measure, the relevant ecodesign parameters from among those listed in Part 1 and the requirements for the manufacturer listed in Part 3";

(ii) in Part 1—

(aa) in paragraph 1.2(e), for "Directive 2002/96/EC" there were substituted "the Waste Electrical and Electronic Equipment Regulations 2013"; and

(bb) for paragraph 1.3(d), there were substituted—

"(d) use of substances classified as hazardous to health or the environment according to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006, and taking into account legislation on the marketing and use of specific substances, such as—

(i) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC;

(ii) the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012(**6**); and"; and

(cc) in paragraph 1.3(k), for the words from "Directive 97/68/EC" to the end there were substituted "Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-

(**6**) S.I. 2012/3032, as amended by S.I. 2018/942.

road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC";

(iii) Part 2 were omitted; and

(iv) in Part 3, in the second subparagraph of paragraph 2, for "the Commission", there were substituted "the Secretary of State";

(c) Annex 2 to the Directive is to be read as if—

(i) before paragraph 1, in the second subparagraph—

(aa) for "Article 15, the Commission" there were substituted "regulation 22 of the Ecodesign for Energy-Related Products Regulations 2010, the Secretary of State"; and

(bb) the words from "in accordance" to "Article 19(2)," were omitted;

(ii) in the fifth subparagraph of paragraph 1, for "data provided from the European Central Bank" there were substituted "relevant data"; and

(iii) paragraph 2 were omitted;

(d) Annex 8 to the Directive is to be read as if—

(i) before paragraph 1, for the unnumbered paragraph, there were substituted—

"In addition to the basic legal requirement that self-regulatory initiatives must comply with all applicable domestic and international rules, the following non-exhaustive list of indicative criteria may be used to evaluate whether a self-regulatory initiative may be considered by the Secretary of State as an alternative to an implementing measure—";

(ii) in paragraph 5, in the second subparagraph, "Member States," were omitted;

(iii) in paragraph 6, in the first subparagraph—

(aa) for "Commission services", there were substituted "Secretary of State";

(bb) after "objectives", there were inserted "in the United Kingdom context";

(iv) in paragraph 6, in the second subparagraph, the words from "It must" to the end were omitted; and

(v) in paragraph 8, for "the policy objectives of this Directive" there were substituted "relevant ecodesign policy objectives".

(2) The modifications referred to in regulation 22(7)(d)(ii) to Annex 2 of the Decision, as it had effect immediately before exit day, are that Annex 2 is to be read as if—

(a) the definitions in regulation 2 of these Regulations apply and prevail over any conflicting definitions in the Decision;

(b) in each instance—

(i) for "EC design examination certificate", there were substituted "design examination certificate";

(ii) for "EC-type examination", there were substituted "type-examination";

(iii) for "harmonised standards" there were substituted "designated standards";

(iv) for "its notifying authorities" and "the notifying authorities", there were substituted "the Secretary of State";

(v) references to a "notified body" were references to an "approved body";

(vi) for "the national authorities", "relevant authorities" and "relevant national authorities", there were substituted "the Secretary of State"; and

(vii) the words "the references of which have been published in the Official Journal of the European Union", were omitted; and

(c) in the description of "Module B", in the third paragraph of point 8—

(i) for "The Commission, the Member States", there were substituted "The Secretary of State"; and

(ii) for "the Commission and the Member States", there were substituted "the Secretary of State";

(d) in the description of "Module H1", in the third paragraph of point 4.5—

(i) for "The Commission, the Member States", there were substituted "The Secretary of State"; and

(ii) for "the Commission and the Member States", there were substituted "the Secretary of State"; and

(e) in the heading to the Table, "Community" were omitted; and

(f) in the Table—

(i) for "national authorities" there were substituted "the Secretary of State"; and

(ii) for "EC-design examination certificate" there were substituted "design examination certificate".

Form of implementing measure

24.—(1) The power to make an implementing measure under regulation 22(1) is exercisable by statutory instrument, and—

(a) in the case of an implementing measure which lays down ecodesign requirements identical to requirements adopted by the European Commission (if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament) the statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament; and

(b) in any other case, the statutory instrument must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(2) An implementing measure under regulation 22(1) may—

(a) amend the list of energy-related products and corresponding implementing measures in the table in paragraph 4 of Schedule 1;

(b) make different provision for different cases or circumstances;

(c) include supplementary, incidental and consequential provision; and

(d) make transitional provision and savings.".

Amendment to Schedule 1

13.—(1) Schedule 1 (Declaration of Conformity) is amended as follows.

(2) In paragraph 3—

(a) in sub-paragraph (c)(i), for "harmonised", substitute "designated"; and

(b) for sub-paragraph (c)(iii), substitute—

"(iii) the reference to other legislation, not referred to in paragraph 4, providing for the affixing of the UK marking; and".

Insertion of Schedule 1A

14. After Schedule 1, insert—

"SCHEDULE 1A Regulation 3(3)

Conformity Assessment Procedures

PART 1

Internal design control

The internal design control procedure

1.—(1) The internal design control procedure is a procedure—

(a) whereby the manufacturer, or its authorised representative, ensures that a product is in conformity with the relevant requirements of the applicable implementing measure; and

(b) which complies with the requirements specified in sub-paragraph (2).

(2) The following are specified as requirements of an internal design control procedure—

(a) the manufacturer, or its authorised representative, must compile a technical documentation file making possible an assessment of the conformity of the product with the requirements of the applicable implementing measure;

(b) the technical documentation file must contain, in particular—

(i) a general description of the product and of its intended use;

(ii) the results of relevant environmental assessment studies carried out by the manufacturer, or references to environmental assessment literature or case studies, which are used by the manufacturer in evaluating, documenting and determining product design solutions;

(iii) the ecological profile, where required by the implementing measure;

(iv) elements of the product design specification relating to environmental design aspects of the product;

(v) a list of the relevant designated standards, applied in full or in part, and a description of the solutions adopted to meet the requirements of the applicable implementing measure where the designated standards have not been applied or where those standards do not cover entirely the requirements of the applicable implementing measure;

(vi) a copy of the information concerning the environmental design aspects of the product provided in accordance with any requirements of the applicable measure relating to the supply of information that may influence the way the product is handled, used or recycled by parties other than the manufacturer; and

(vii) the results of measurements on the ecodesign requirements carried out, including details of the conformity of these measurements as compared with the ecodesign requirements set out in the applicable implementing measure; and

(c) the manufacturer must take all measures necessary to ensure that the product is manufactured in compliance with the design specifications referred to in paragraph (b)(iv) and with the requirements of the implementing measure which applies to it.

PART 2

Management system

The management system procedure

2.—(1) The management system procedure is a procedure—

(a) whereby the manufacturer ensures that a product is in conformity with the relevant requirements of the applicable implementing measure; and

(b) which complies with the requirements specified in sub-paragraph (2).

(2) Paragraphs 3 to 6 specify the requirements of a management system procedure.

The environmental product performance policy

3.—(1) The manufacturer must, on request by the authorities of the United Kingdom—

(a) demonstrate conformity with the requirements of the applicable implementing measure; and

(b) provide a framework for setting and reviewing environmental product performance objectives and indicators with a view to improving the overall environmental product performance.

(2) All the measures adopted by the manufacturer to improve the overall environmental performance of, and to establish the ecological profile of, a product, if required by the implementing measure, through design and manufacturing, must be documented in a systematic and orderly manner in the form of written procedures and instructions.

(3) The procedures and instructions referred to in sub-paragraph (2) must contain, in particular, an adequate description of—

(a) the list of documents that must be prepared to demonstrate the product's conformity, and, if relevant, that have to be made available;

(b) the environmental product performance objectives and indicators and the organisational structure, responsibilities, powers of the manufacturer's management and the allocation of resources with regard to their implementation and maintenance;

(c) the checks and tests to be carried out after manufacture to verify product performance against environmental performance indicators;

(d) the procedures for controlling the required documentation and ensuring that it is kept up-to-date; and

(e) the method of verifying the implementation and effectiveness of the environmental elements of the management system.

Planning

4. The manufacturer must establish and maintain—

(a) procedures for establishing the ecological profile of the product;

(b) environmental product performance objectives and indicators, which consider technological options, taking into account technical and economic requirements; and

(c) a programme for achieving these objectives.

Implementation and documentation

5.—(1) The manufacturer must ensure that the documentation concerning the management system complies, in particular, with the following—

(a) responsibilities and authorities must be defined and documented for the purpose of ensuring effective environmental product performance and reporting on the management system's operation for review and improvement;

(b) documents must be established indicating the design control and verification techniques implemented and processes and systematic measures used when designing the product; and

(c) information must be established and maintained to describe the core environmental elements of the management system and the procedures for controlling all documents required.

(2) The manufacturer must ensure that the documentation concerning the product contains, in particular—

(a) a general description of the product and of its intended use;

(b) the results of relevant environmental assessment studies carried out by the manufacturer, or references to environmental assessment literature or case studies, which are used by the manufacturer in evaluating, documenting and determining product design solutions;

(c) the ecological profile, where required by the implementing measure;

(d) documents describing the results of measurements on the ecodesign requirements carried out including details of the conformity of these measurements as compared with the ecodesign requirements set out in the applicable implementing measure;

(e) specifications established by the manufacturer indicating, in particular, the designated standards which have been applied; where designated standards are not applied or where they do not cover entirely the requirements of the relevant implementing measure, the means used to ensure compliance; and

(f) a copy of the information concerning the environmental design aspects of the product provided in accordance with any requirements of the applicable measure relating to the supply of information that may influence the way the product is handled, used or recycled by parties other than the manufacturer.

Checking and corrective action

6. The manufacturer must—

(a) take all measures necessary to ensure that the product is manufactured in compliance with its design specification and with the requirements of the implementing measure which applies to it;

(b) establish and maintain procedures to investigate and respond to non-conformity, and implement changes in the documented procedures resulting from corrective action; and

(c) carry out at least every three years a full internal audit of the management system with regard to its environmental elements.".

Insertion of Schedule 1B

15. After Schedule 1A (conformity assessment procedures)(**7**), insert—

"SCHEDULE 1B Regulation 3(4)

Conformity Assessment Bodies

PART 1

Approval of Conformity Assessment Bodies

Approved bodies

1.—(1) An approved body is a conformity assessment body which—

(a) has been approved by the Secretary of State pursuant to the procedure set out in paragraph 2; or

(b) immediately before exit day was a notified body in respect of which no action has been taken by the Secretary of State to suspend or withdraw the body's status as a notified body.

(2) Sub-paragraph (1) has effect subject to paragraph 5.

(3) In this Schedule—

"accreditation certificate" means a certificate, issued by the UK national accreditation body, attesting that a conformity assessment body meets the approved body requirements;

"approved body requirements" means the requirements set out in Part 2;

"notified body" means a body—

(a) which the Secretary of State had before exit day notified to the European Commission and member States in accordance with Article 8(1) of Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels; and

(b) in respect of which no action has been taken to suspend or withdraw the body's status as a notified body; and

"UK national accreditation body" means the body appointed by the Secretary of State in accordance with Article 4 of RAMS.

Approval of conformity assessment bodies

2.—(1) The Secretary of State may approve only those conformity assessment bodies that qualify for approval.

(2) A conformity assessment body qualifies for approval if the first and second conditions below are met.

(3) The first condition is that the conformity assessment body has applied to the Secretary of State to become an approved body and that application is accompanied by—

(a) a description of—

(i) the conformity assessment activities that the conformity assessment body intends to carry out;

(**7**) As inserted by these Regulations.

(ii) the conformity assessment procedure in respect of which the conformity assessment body claims to be competent;

(iii) the category of products in respect of which the conformity assessment body claims to be competent; and

(b) either—

(i) an accreditation certificate; or

(ii) the documentary evidence necessary for the Secretary of State to verify, recognise and regularly monitor the conformity assessment body's compliance with the approved body requirements.

(4) The second condition is that the Secretary of State is satisfied that the conformity assessment body meets the approved body requirements.

(5) For the purposes of sub-paragraph (4), the Secretary of State may accept an accreditation certificate, provided in accordance with sub-paragraph (3)(b)(i), as sufficient evidence that the conformity assessment body meets the approved body requirements.

(6) When deciding whether to approve a conformity assessment body, the Secretary of State may—

(a) have regard to any other matter which appears to the Secretary of State to be relevant; and

(b) set such conditions in relation to the approval as the Secretary of State considers appropriate.

Presumption of conformity of approved bodies

3.—(1) Where a conformity assessment body demonstrates its conformity with the criteria laid down in a designated standard (or part of such standard), the Secretary of State is to presume that the conformity assessment body meets the approved body requirements covered by that standard (or that part of that standard).

(2) The presumption in sub-paragraph (1) is rebuttable.

Monitoring

4. The Secretary of State must monitor each approved body with a view to verifying that the body—

(a) continues to meet the approved body requirements;

(b) meets any conditions set—

(i) in accordance with paragraph 2(6)(b); or

(ii) in the case of an approved body which was a notified body immediately before exit day, by the Secretary of State immediately before exit day; and

(c) carries out its functions in accordance with these Regulations.

Restriction, suspension or withdrawal of approval

5.—(1) Where the Secretary of State determines that an approved body—

(a) no longer meets an approved body requirement; or

(b) is failing to fulfil its obligations under these Regulations, other than a condition referred to in paragraph 4(b),

the Secretary of State must restrict, suspend or withdraw the body's status as an approved body under paragraph 1.

(2) Where the Secretary of State determines that an approved body no longer meets a condition referred to in paragraph 4(b), the Secretary of State may restrict, suspend or withdraw the body's status as an approved body under paragraph 1.

(3) In deciding what action is required under sub-paragraph (1) or (2), the Secretary of State must have regard to the seriousness of the non-compliance.

(4) Before taking action under sub-paragraph (1) or (2), the Secretary of State must—

(a) give notice in writing to the approved body of the proposed action and the reasons for it;

(b) give the approved body an opportunity to make representations to the Secretary of State regarding the proposed action within a reasonable period from the date of the notice; and

(c) consider any such representations made by the approved body.

(5) Where the Secretary of State has taken action in respect of an approved body under sub-paragraph (1) or (2), or where an approved body has ceased its activity, the approved body must, at the request of the Secretary of State—

(a) transfer its files relating to the activities it has undertaken as an approved body to another approved body or to the Secretary of State; or

(b) keep its files relating to the activities it has undertaken as an approved body available for the Secretary of State and market surveillance authorities for a period of 10 years from the date they were created.

(6) The activities undertaken as an approved body referred to in sub-paragraph (5) include any activities that the body has undertaken as a notified body.

Operational matters in relation to approved bodies

6.—(1) Subject to the terms of its approval and to sub-paragraph (3), an approved body must carry out the conformity assessment activities and procedures—

(a) in respect of which the body's approval was given under paragraph 2; or

(b) in respect of which the body's approval as an approved body was made.

(2) Where an approved body carries out a conformity assessment procedure, it must do so in accordance with Part 3.

(3) An approved body must make provision for a manufacturer to be able to make an appeal against a refusal by the approved body—

(a) to issue a type-examination certificate referred to in Annexes 3 and 4 to Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (the "1992 Directive"), read as if modified by Article 4(4) and (5) of Commission Regulation (EU) No 813/2013 of 2 August 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for space heaters and combination heaters (the "2013 Regulation"); or

(b) to affix, or cause to be affixed, the approved body's identification number pursuant to paragraph 1 of the Module D: Production quality assurance section or paragraph 1 of the Module E: Product quality assurance section of Annex 4 to the 1992 Directive read as if modified by Article 4(5) of the 2013 Regulation.

Subsidiaries and contractors

7.—(1) An approved body may subcontract specific conformity assessment activities, or use a subsidiary to carry out such activities provided—

(a) the body is satisfied that the subcontractor or subsidiary meets the approved body requirements;

(b) the body has informed the Secretary of State that it is satisfied that the subcontractor or subsidiary meets those requirements; and

(c) the economic operator for whom the activities are to be carried out has consented to the activities being carried out by that person.

(2) The approved body which subcontracts specific conformity assessment activities or uses a subsidiary to carry out such activities remains responsible for the proper performance of those activities (irrespective of where the subcontractor or subsidiary is established).

(3) Where an approved body subcontracts, or uses a subsidiary to carry out, a specific conformity assessment activity, the approved body must, for a period of 10 years beginning on the day on which the activity is first carried out, keep available for inspection by the Secretary of State all relevant documentation concerning—

(a) the assessment of the qualifications of the subcontractor or the subsidiary; and

(b) the conformity assessment activity carried out by the subcontractor or subsidiary.

(4) In this paragraph, "subsidiary" has the meaning given to it in section 1159 of the Companies Act 2006(**8**).

Register of approved bodies

8.—(1) The Secretary of State must—

(a) assign an approved body identification number to each approved body; and

(b) compile and maintain a register of—

(i) approved bodies;

(ii) their approved body identification numbers;

(iii) the activities for which they have been approved; and

(iv) any restrictions on those activities.

(2) The register referred to in sub-paragraph (1) must be made publicly available.

UK national accreditation body

9. The Secretary of State may authorise the UK national accreditation body to carry out the following activities on behalf of the Secretary of State—

(a) assessing whether a conformity assessment body meets the approved body requirements;

(b) monitoring approved bodies in accordance with paragraph 4; and

(c) compiling and maintaining the register of approved bodies, in accordance with paragraph 8.

(**8**) 2006 c. 46.

PART 2

Approved body requirements

10.—(1) A conformity assessment body must be established in the United Kingdom and have legal personality.

(2) A conformity assessment body must be a third party body independent of the organisation or the product it assesses. A body belonging to a business association or professional federation representing businesses involved in the design, manufacturing, provision, assembly, use or maintenance of products which it assesses, may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered such a body.

(3) A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities must not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the products that they assess, nor the representative of any of those parties.

(4) Sub-paragraph (3) does not preclude the use of assessed products that are necessary for the operations of the conformity assessment body or the use of such products for personal purposes.

(5) A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks must not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of those products, or represent the parties engaged in those activities. They must not engage in any activity (including consultancy services) that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are approved.

(6) A conformity assessment body must ensure that the activities of its subsidiaries or sub-contractors do not affect the confidentiality, objectivity or impartiality of its conformity assessment activities.

(7) A conformity assessment body and its personnel must carry out conformity assessment activities with the highest degree of professional integrity and the requisite competence in the specific field and must be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their conformity assessment activities, particularly with regard to persons or groups of persons who have an interest in the results of those activities.

(8) A conformity assessment body must be capable of carrying out all of the conformity assessment activities for which it has been approved, whether that assessment is carried out by the body itself or on its behalf and under its responsibility.

(9) A conformity assessment body must have at its disposal—

(a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment activities;

(b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the transparency of and the ability to reproduce those procedures, and have appropriate policies and procedures in place that distinguish between tasks it carries out as an approved body and other activities; and

(c) procedures for the performance of conformity assessment activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

(10) A conformity assessment body must have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and must have access to the necessary equipment or facilities.

(11) The personnel responsible for carrying out conformity assessment must have—

(a) sound technical and vocational training, covering all conformity assessment activities in relation to which the conformity assessment body has been approved;

(b) satisfactory knowledge of the requirements of the assessments which the conformity assessment body carries out, and adequate authority to carry out those assessments;

(c) appropriate knowledge and understanding of the essential safety requirements, of the applicable designated standards and of the applicable provisions of these Regulations; and

(d) the ability to draw up certificates, records and reports demonstrating that the assessments have been carried out.

(12) A conformity assessment body must be able to demonstrate the impartiality of its top level management and the personnel responsible for carrying out the conformity assessment activities.

(13) The remuneration of the top level management and the personnel responsible for carrying out the conformity assessment activities must not depend on the number of assessments carried out or on the results of those assessments.

(14) A conformity assessment body must have, and must satisfy the Secretary of State that it has, adequate civil liability insurance in respect of its activities.

(15) A conformity assessment body must ensure that its personnel observe professional secrecy with regard to all information obtained in carrying out their tasks in accordance with these Regulations, and that proprietary rights are protected.

(16) Sub-paragraph (15) does not prevent the personnel from providing the information to the Secretary of State.

(17) A conformity assessment body must participate in, or ensure that its personnel who are responsible for carrying out the conformity assessment activities are informed of, the relevant standardisation activities and the activities of any approved body coordination group established by the Secretary of State and must apply as general guidance the administrative decisions and documents produced as a result of the work of that group.

PART 3

Operational obligations of approved bodies

11.—(1) An approved body must carry out conformity assessments in accordance with the conformity assessment procedures.

(2) An approved body must carry out conformity assessments in a proportionate manner, avoiding unnecessary burdens on economic operators.

(3) An approved body must perform its activities taking due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

(4) An approved body must respect the degree of rigour and the level of protection required to ensure that the product is in conformity with the requirements of these Regulations.

(5) Where an approved body finds that essential safety requirements or corresponding designated standards or other technical specifications have not been met by a manufacturer, it must require the manufacturer to take appropriate corrective measures and must not issue a certificate of conformity.

(6) Where, in the course of the monitoring of conformity following the issue of a certificate of conformity, an approved body finds that a product is no longer in conformity with the essential

safety requirements, it must require the manufacturer to take appropriate corrective measures and must, if necessary, suspend or withdraw the certificate of conformity.

(7) Where the approved body has required a manufacturer to take corrective measures and the manufacturer has failed to take such measures, or those measures have not had the required effect, the approved body must restrict, suspend or withdraw any certificate of conformity.

(8) Sub-paragraph (9) applies where an approved body is minded to—

(a) refuse to issue a certificate of conformity;

(b) restrict, suspend or withdraw a certificate of conformity.

(9) Where this paragraph applies, the approved body must—

(a) give the person applying for the certificate of conformity, or the person to whom the certificate of conformity has been given, a notice in writing giving reasons and specifying the date on which the refusal, restriction, suspension or withdrawal is intended to take effect;

(b) give the person referred to in paragraph (a), an opportunity to make representations within a reasonable period from the date of the notice; and

(c) take account of any representations made within the period referred to in paragraph (b) before taking its decision.

(10) An approved body must inform the Secretary of State of—

(a) any refusal, restriction, suspension or withdrawal of a certificate of conformity;

(b) any circumstances affecting the scope of or conditions for approval under paragraph 2;

(c) any request for information which it has received from a market surveillance authority regarding conformity assessment activities;

(d) on request, any conformity assessment activities performed within the scope of its approval under paragraph 2 and any other activity performed, including cross-border activities and subcontracting.

(11) An approved body must make provision in its contracts with its clients enabling such clients to appeal against a decision—

(a) to refuse to issue a certificate of conformity or grant an approval;

(b) to restrict, suspend or withdraw a certificate of conformity or approval.

(12) An approved body must provide other bodies approved under these Regulations carrying out similar conformity assessment activities covering the same products with relevant information on issues relating to negative and, on request, positive conformity assessment results.

(13) An approved body must participate in the work of any approved body coordination group established by the Secretary of State, directly or by means of its designated representatives.”.

Amendment to Schedule 3

16. In Schedule 3—

(a) in paragraph 1, for “notified”, substitute “approved”;

(b) in paragraph 4, omit “for the purposes of Article 4(7) of the Marketing Decision”.