

SCHEDULE 1

AMENDMENTS TO THE ECODESIGN FOR ENERGY-RELATED PRODUCTS REGULATIONS 2010

Insertion of Schedule 1B

15. After Schedule 1A (conformity assessment procedures)(1), 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.

(1) As inserted by these Regulations.

(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;
 - (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⁽²⁾.

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

(2) 2006 c. 46.

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

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.”.