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STATUTORY INSTRUMENTS

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**2010 No. 1554**

**The Pyrotechnic Articles (Safety) Regulations 2010**

**PART 4**

Conformity assessment etc.

**Process of appointment and notification of notified bodies etc.**

**43.**—(1) The Secretary of State may appoint, for the purposes of carrying out the conformity assessment procedures referred to in regulations 11 and 28, any corporate or other body as a body which is to carry out those procedures and any other tasks.

(2) Where the Secretary of State appoints a body under paragraph (1), the appointment shall—

- (a) be on such terms (including as to the duration of the appointment) as the Secretary of State specifies; and
- (b) specify the tasks which the body is to carry out.

(3) The Secretary of State may appoint a UK notified body only if it is a body in relation to which the minimum criteria set out in Annex III for the assessment of notified bodies are met.

(4) The Secretary of State may, in making an appointment, have regard (in addition to the minimum criteria referred to in paragraph (3)) to any other matter which appears relevant.

(5) To the extent that a body meets the assessment criteria for notified bodies laid down in a published harmonised standard relevant to notified bodies it is presumed (which presumption shall be rebuttable) to that extent to satisfy any corresponding minimum criteria in Annex III.

(6) The Secretary of State may vary or restrict the tasks that a UK notified body may carry out, and if the Secretary of State makes a variation or restriction, those tasks as amended will be the tasks which it is appointed to carry out.

(7) The Secretary of State may vary or restrict any appointment of a UK notified body under paragraph (1) if the body so requests.

(8) The Secretary of State may revoke an appointment of a UK notified body—

- (a) at the request of the body, on the expiry of 90 day's notice in writing;
- (b) if it appears to the Secretary of State that the body no longer meets the minimum criteria set out in Annex III;
- (c) if it appears to the Secretary of State that the body has failed to carry out its functions referred to in regulation 44(1); or
- (d) if it appears to the Secretary of State that any condition of the appointment is not complied with.

(9) Before making a variation or restriction under paragraph (6) or a revocation under paragraph (8)(b) or (c) the Secretary of State shall give the body an opportunity to make representations in writing and shall take into account any such representations as are made.

(10) Where the appointment of a UK notified body is revoked the conformity assessments and any related documents made by the body remain valid, unless it is established that there is an imminent and direct risk to health and safety.

(11) For the purposes of deciding whether or not a body is one in respect of which the criteria set out in Annex III are met as respects the tasks which the body wants to carry out, or carries out, the Secretary of State may arrange to inspect or for another person to inspect—

- (a) any premises occupied or plant or equipment used in connection with the carrying out of any such task; or
- (b) any premises occupied or plant occupied or plant or equipment used by a manufacturer where the body is undertaking any task in relation to that manufacturer,

and the Secretary of State may take into account for the purposes of the decision the results of any such inspection and any refusal to afford facilities or assistance as are reasonably required in order to carry out any such inspection.

(12) The Secretary of State may request that a UK notified body supply any or all relevant information and documents, including budgetary documents, to the Secretary of State or to another person, necessary to enable the Secretary of State to verify that the body meets the criteria set out in Annex III and the body shall supply any information or documents so requested.

(13) The Secretary of State shall notify the Commission of—

- (a) a body appointed under this regulation; and
- (b) the tasks which it has been appointed to carry out.

(14) The Secretary of State shall notify the Member States of—

- (a) a body appointed under this Regulation;
- (b) the tasks which it has been appointed to carry out; and
- (c) the identification number assigned by the Commission to the body in question.

(15) If the Secretary of State revokes an appointment of a UK notified body the Secretary of State shall notify the Commission and the Member States.

(16) The reference to Annex III in paragraphs (3), (5), (8), (11) and (12) is a reference to Annex III to the Directive as amended from time to time.

#### **Supplementary matters in relation to notified bodies**

44.—(1) Subject to the terms of appointment under regulation 43 and paragraph 2 a UK notified body shall carry out the functions of a notified body specified in the relevant modules of Annex II to the Directive as amended from time to time.

(2) A UK notified body shall not be obliged to carry out those functions where—

- (a) the documents submitted to it in relation to the carrying out of any such function (other than the instructions for an article) are not in English or another language acceptable to the body;
- (b) the manufacturer or, where regulation 7(1)(b) or 24(1)(b) applies, an importer has not submitted the amount of the fee which the body requires to be submitted with the application; or
- (c) the body reasonably believes that having regard to the number of outstanding applications made to it in relation to its appointment under these Regulations it will be unable to carry out the required work within 6 months of receiving the application.

(3) A UK notified body shall make provision for a manufacturer or, where regulation 7(1)(b) or 24(1)(b) applies, an importer to be able to make an appeal against a refusal by the UK notified body —

- (a) to issue an EC type-examination certificate referred to in point 1(5) (module B: EC type-examination) of Annex II to the Directive as amended from time to time;
  - (b) to affix, or cause to be affixed, the body's identification number or to issue a certificate of conformity referred to in point 5(2) (module G: unit verification) of Annex II to the Directive as amended from time to time; or
  - (c) make a positive decision in relation to the assessment decision referred to in point 6.3.3 (module H: full quality assurance) of Annex II to the Directive as amended from time to time.
- (4) A UK notified body may charge such fees in connection with, or incidental to, carrying out its functions under an appointment under regulation 43 (process of appointment and notification of notified bodies etc.) as it may determine, provided that such fees shall not exceed the sum of—
- (a) the costs incurred or to be incurred by the body in performing the relevant function;
  - (b) an amount on account of profit which is reasonable in the circumstances having regard to—
    - (i) the character and extent of the work done or to be done by the body on behalf of the manufacturer or, where regulation 7(1)(b) or 24(1)(b) applies, the importer of the article in question; and
    - (ii) the commercial rate normally charged on account of profit for that work or similar work.
- (5) A UK notified body may require the payment of fees or a reasonable estimate of fees in advance of carrying out the work required by the relevant person referred to in paragraph 4(b)(i).