
STATUTORY INSTRUMENTS

2016 No. 1092

The Simple Pressure Vessels (Safety) Regulations 2016

PART 5

Market surveillance and enforcement

Designation of market surveillance authority

- 54.**—(1) In Great Britain, the market surveillance authority is—
- (a) within its area, the weights and measures authority in relation to vessels for private use or consumption; and
 - (b) subject to paragraph (3), the HSE in relation to vessels for use in the workplace.
- (2) In Northern Ireland, the market surveillance authority is—
- (a) within its area, the district council in relation to vessels for private use or consumption; and
 - (b) the HSENI in relation to vessels for use in the workplace.
- (3) In so far as these Regulations apply to vessels intended exclusively or primarily for use on relevant nuclear sites, the market surveillance authority is the Office for Nuclear Regulation.
- (4) In paragraph (3), “relevant nuclear site” means a site which is—
- (a) a GB nuclear site (within the meaning given in section 68 of the Energy Act 2013⁽¹⁾);
 - (b) an authorised defence site (within the meaning given in regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998⁽²⁾); or
 - (c) a new nuclear build site (within the meaning given in regulation 2A of those Regulations).

Enforcement

- 55.**—(1) Subject to paragraph (2), these Regulations and RAMS (in its application to vessels) must be enforced by the market surveillance authority.
- (2) The Secretary of State, or a person appointed by the Secretary of State to act on behalf of the Secretary of State, may enforce these Regulations and RAMS (in its application to vessels).
- (3) Before taking action under paragraph (2), an enforcing authority which is not the market surveillance authority must notify the market surveillance authority of the proposed action.
- (4) In Scotland, only the Lord Advocate may prosecute offences under these Regulations.

Enforcement Powers

- 56.**—(1) Schedule 5 has effect where the enforcing authority is—
- (a) a weights and measures authority;

(1) 2013 c. 32.

(2) S.I. 1998/494, amended by S.I. 2014/469; there are other amending instruments but none is relevant.

- (b) a district council; or
- (c) the Secretary of State.

(2) Schedule 6 has effect where the enforcing authority is the HSE or the Office for Nuclear Regulation.

(3) Schedule 7 has effect where the enforcing authority is the HSENI.

(4) In addition to the powers available to an enforcing authority under, as appropriate, paragraph (1), (2) or (3), the authority may use the powers set out in Schedule 8.

Exercise of enforcement powers

57. When enforcing these Regulations or RAMS (in its application to vessels), the enforcing authority must exercise its powers in a manner which is consistent with—

- (a) regulation 58 (evaluation of vessels presenting a risk);
- (b) regulation 59 (enforcement action in respect of vessels which are not in conformity);
- (c) regulation 60 (EU safeguard procedure);
- (d) regulation 61 (enforcement action in respect of vessels which are in conformity but which present a risk);
- (e) regulation 62 (enforcement action in respect of formal non-compliance); and
- (f) regulation 63 (restrictive measures).

Evaluation of vessels presenting a risk

58.—(1) Where the market surveillance authority has sufficient reason to believe that a vessel presents a risk to the health or safety of persons, to domestic animals or to property, the market surveillance authority must carry out an evaluation in relation to the vessel covering the relevant requirements of Part 2 applying in respect of that vessel.

(2) Where an enforcing authority other than the market surveillance authority has sufficient reason to believe that a vessel presents a risk to the health or safety of persons, to domestic animals or to property, that enforcing authority may carry out an evaluation in relation to the vessel covering the relevant requirements of Part 2 applying in respect of that vessel.

Enforcement action in respect of vessels which are not in conformity

59.—(1) Where, in the course of the evaluation referred to in regulation 58 (evaluation of vessels presenting a risk), an enforcing authority finds that the vessel is not in conformity with Part 2, it must, without delay, require a relevant economic operator to—

- (a) take appropriate corrective actions to bring the vessel into compliance with those requirements within a prescribed period;
- (b) withdraw the vessel from the market within a prescribed period; or
- (c) recall the vessel within a prescribed period.

(2) The enforcing authority must inform the notified body which carried out the conformity assessment procedure in respect of the vessel of—

- (a) the respects in which the vessel is not in conformity with Part 2; and
- (b) the corrective actions which it requires the relevant economic operator to take.

(3) Where the enforcing authority is not the Secretary of State and it considers that the lack of conformity referred to in paragraph (1) is not restricted to the United Kingdom, it must notify the Secretary of State of—

- (a) the results of the evaluation; and
 - (b) the corrective actions which it requires the relevant economic operator to take.
- (4) Where the Secretary of State receives a notice under paragraph (3), or otherwise considers that the lack of conformity referred to in paragraph (1) is not restricted to the United Kingdom, the Secretary of State must inform the European Commission and other Member States of—
- (a) the results of the evaluation; and
 - (b) the actions which the enforcing authority requires the relevant economic operator to take.
- (5) Where the relevant economic operator does not take adequate corrective action within the prescribed period referred to in paragraph (1), the enforcing authority must take all appropriate measures to—
- (a) prohibit or restrict the vessel being made available on the market in the United Kingdom;
 - (b) withdraw the vessel from the United Kingdom market; or
 - (c) recall the vessel.
- (6) Where the enforcing authority is not the Secretary of State and it takes measures under paragraph (5), it must notify the Secretary of State of those measures without delay.
- (7) Where the Secretary of State receives a notice under paragraph (6), or takes measures under paragraph (5), the Secretary of State must notify the European Commission and the other Member States of those measures without delay.
- (8) The notices in paragraphs (6) and (7) must include all available details and, in particular—
- (a) the data necessary for the identification of the vessel;
 - (b) the origin of the vessel;
 - (c) the nature of the lack of conformity alleged and the risk involved;
 - (d) the nature and duration of the measures taken;
 - (e) the arguments put forward by the relevant economic operator; and
 - (f) whether the lack of conformity is due to either of the following—
 - (i) the failure of the vessel to meet relevant requirements relating to the health or safety of persons, to the protection of domestic animals or to property; or
 - (ii) shortcomings in a harmonised standard referred to in regulation 39 (presumption of conformity of category A vessels) conferring a presumption of conformity.
- (9) In this regulation, “prescribed period” means a period which is—
- (a) prescribed by the enforcing authority; and is
 - (b) reasonable and commensurate with the nature of the risk presented by the vessel.
- (10) An economic operator must ensure that it takes the action required by an enforcing authority under paragraph (1) of this regulation in respect of all the vessels that it has made available on the market throughout the EU.

EU safeguard procedure

- 60.**—(1) Where the market surveillance authorities of another Member State have initiated the procedure under Article 35 of the Directive (as amended from time to time), each enforcing authority (other than the Secretary of State) must, without delay, inform the Secretary of State of—
- (a) any measures taken by the enforcing authority in respect of the vessel;
 - (b) any additional information which the enforcing authority has at its disposal relating to the lack of conformity of the vessel.

(2) Where the market surveillance authorities of another Member State have initiated the procedure under Article 35 of the Directive (as amended from time to time), the Secretary of State must, without delay, inform the European Commission and the other Member States of—

- (a) any measures taken by an enforcing authority in respect of the vessel;
- (b) any additional information which an enforcing authority has at its disposal relating to the lack of conformity of the vessel; and
- (c) any objections that the Secretary of State may have to the measure taken by the Member State initiating the procedure.

(3) Where a measure taken by another Member State in respect of a vessel is deemed justified under Article 35(7) of the Directive, the market surveillance authority must ensure that appropriate measures, such as withdrawal, are taken in respect of the vessel without delay.

(4) Where a measure taken by another Member State under in respect of a vessel is considered by the European Commission to be justified pursuant to Article 36(1) of the Directive (as amended from time to time), the market surveillance authority must take all necessary measures to ensure that the vessel is withdrawn from the United Kingdom market.

(5) Where the market surveillance authority is not the Secretary of State and it has taken action under paragraphs (3) or (4), it must notify the Secretary of State.

(6) Where the Secretary of State receives a notice under paragraph (5), or has taken action under paragraphs (3) or (4), the Secretary of State must inform the European Commission of the action taken.

(7) If a measure taken by an enforcing authority pursuant to regulation 59 is considered unjustified by the European Commission under Article 36(1) of the Directive (as amended from time to time), the enforcing authority must withdraw that measure.

Enforcement action in respect of vessels which are in conformity, but which present a risk

61.—(1) Where, having carried out an evaluation under regulation 58 (evaluation of vessels presenting a risk), an enforcing authority finds that although a vessel is in conformity with Part 2, it presents a risk to the health or safety of persons, to domestic animals or to property, the enforcing authority must require a relevant economic operator to take all appropriate measures to—

- (a) ensure that the vessel concerned, when placed on the market, no longer presents such a risk;
- (b) withdraw the vessel within a prescribed period; or
- (c) recall the vessel within a prescribed period.

(2) Where an enforcing authority is not the Secretary of State and it takes measures under paragraph (1), it must notify the Secretary of State immediately.

(3) Where the Secretary of State receives a notice under paragraph (2) or takes measures under paragraph (1), the Secretary of State must notify the European Commission and the other Member States immediately.

(4) The notices referred to in paragraphs (2) and (3) must include all available details and, in particular—

- (a) the data necessary for the identification of the vessel;
- (b) the origin and the supply chain of the vessel;
- (c) the nature of the risk involved; and
- (d) the nature and duration of the measures taken by the enforcing authority.

(5) In this regulation, “prescribed period” means a period which—

- (a) is prescribed by the enforcing authority; and
- (b) is reasonable and commensurate with the nature of the risk presented by the vessel.

Enforcement action in respect of formal non-compliance

62.—(1) Where an enforcing authority makes one of the following findings in relation to a vessel, it must require a relevant economic operator to remedy the non-compliance concerned within such reasonable period as the enforcing authority specifies—

- (a) in relation to a category A vessel—
 - (i) no CE marking has been affixed;
 - (ii) the CE marking has been affixed otherwise than in accordance with regulation 6 (EU declaration of conformity, CE marking and inscriptions for category A vessels) or 38 (prohibition on improper use of CE marking);
 - (iii) where a notified body is involved in the production control phase for the vessel—
 - (aa) no identification number in respect of the notified body has been affixed; or
 - (bb) an identification number in respect of the notified body has been affixed otherwise than in accordance with regulation 44 (identification number);
 - (iv) the EU declaration of conformity has not been drawn up or has been drawn up otherwise than in accordance with regulations 6 (EU declaration of conformity, CE marking and inscriptions for category A vessels) or 43 (EU declaration of conformity);
 - (v) the technical documentation is unavailable or incomplete;
- (b) in relation to a category A or a category B vessel—
 - (i) an inscription has not been affixed or has been affixed otherwise than in accordance with regulation 6 (EU declaration of conformity, CE marking and inscriptions for category A vessels) or 7 (inscriptions for category B vessels);
 - (ii) the information specified in regulation 11 (labelling of vessels) or 21 (information identifying importer) is absent, false or incomplete;
 - (iii) any other administrative requirement imposed on the manufacturer or importer under Part 2 has not been fulfilled.

(2) The enforcing authority must not take any enforcement action against the relevant economic operator under these Regulations in respect of the non-compliance concerned until the period referred to in paragraph (1) has elapsed.

(3) Where the non-compliance referred to in paragraph (1) persists, the enforcing authority must take all appropriate measures to—

- (a) restrict or prohibit the vessel being made available on the market;
- (b) ensure that the vessel is withdrawn; or
- (c) ensure that the vessel is recalled.

(4) Nothing in this regulation is to prevent an enforcing authority from taking action under regulations 59 (enforcement action in respect of vessels which are not in conformity) or 60(3) (EU safeguard procedure).

Restrictive measures

63. When enforcing these Regulations, an enforcing authority must comply with the requirements of Article 21 of RAMS (as amended from time to time) in relation to any measure to—

- (a) prohibit or restrict a vessel being made available on the market;
- (b) withdraw a vessel; or
- (c) recall a vessel.

Offences

64.—(1) It is an offence for a person to contravene or fail to comply with any requirement of regulations 4 to 13, 14(4), 16 to 26, 27(4), 28 to 33, 34(4) or 37 to 38.

(2) It is an offence for any person to contravene or fail to comply with any requirement of a withdrawal or recall notice served on that person by an enforcing authority under these Regulations.

Penalties

65.—(1) A person guilty of an offence under regulation 64 (offences) (other than an offence arising from a contravention of or failure to comply with a requirement of regulation 8 or regulation 26) is liable on summary conviction—

- (a) in England and Wales, to a fine or imprisonment for a term not exceeding three months, or to both;
- (b) in Scotland, to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding three months, or to both; and
- (c) in Northern Ireland, to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding three months, or to both.

(2) A person guilty of an offence arising from a contravention of or failure to comply with a requirement of regulation 8 or regulation 26 is liable on summary conviction—

- (a) in England and Wales, to a fine;
- (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

66.—(1) Subject to paragraphs (2) to (5), in proceedings for an offence under regulation 64 (offences), it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under paragraph (1) which involves a third party allegation unless P has—

- (a) served a notice in accordance with paragraph (3); or
- (b) obtained the leave of the court.

(3) The notice referred to in paragraph (2) must—

- (a) give any information in P’s possession which identifies or assists in identifying the person who—
 - (i) committed the act or default; or
 - (ii) supplied the information on which P relied.
- (b) be served on the person bringing the proceedings not less than seven clear days before—
 - (i) in England, Wales and Northern Ireland, the hearing of the proceedings;
 - (ii) in Scotland, the trial diet.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied upon the information, having regard in particular—

(a) to the steps that P took, and those which might reasonably have been taken, for the purpose of verifying the information; and

(b) to whether P had any reason to disbelieve the information.

(5) In this regulation, “third party allegation” means an allegation that the commission of the offence was due—

(a) to the act or default of another person; or

(b) to reliance on information supplied by another person.

Liability of persons other than principal offender

67.—(1) Where the commission of an offence by one person (“A”) under regulation 64 (offences) is due to anything which another person (“B”) did or failed to do in the course of business, B is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against A.

(2) Where a body corporate commits an offence, a relevant person is also guilty of the offence where the body corporate’s offence was committed—

(a) with the consent or connivance of the relevant person; or

(b) as a result of the negligence of the relevant person.

(3) In paragraph (2), “relevant person” means—

(a) a director, manager, secretary or other similar officer of the body corporate;

(b) in relation to a body corporate managed by its members, a member of that body corporate performing managerial functions;

(c) in relation to a Scottish partnership, a partner;

(d) a person purporting to act as a person described in sub-paragraphs (a), (b) or (c).

Time limit for prosecution of offences

68.—(1) Subject to paragraph (4), in England and Wales an information relating to an offence under regulation 64 (offences) that is triable by a magistrates’ court may be so tried if it is laid within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(2) Subject to paragraph (4), in Scotland—

(a) summary proceedings for an offence under regulation 64 may be commenced before the end of 12 months after the date on which evidence sufficient in the Lord Advocate’s opinion to justify the proceedings came to the Lord Advocate’s knowledge; and

(b) section 136(3) of the Criminal Procedure (Scotland) Act 1995(3) (time limit for certain offences) applies for the purpose of this paragraph as it applies for the purpose of that section.

(3) Subject to paragraph (4), in Northern Ireland summary proceedings for an offence under regulation 64 may be instituted within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the knowledge of the prosecutor.

(4) No proceedings may be brought more than three years after the commission of the offence.

(5) For the purposes of this regulation a certificate of the prosecutor (or in Scotland, the Lord Advocate) as to the date on which the evidence referred to paragraphs (1), (2) or (3) came to light, is conclusive evidence.

(3) 1995 c.46.

(6) This regulation has effect subject to paragraph 1(n) of Schedule 6 and paragraph 1(n) of Schedule 7.

Service of documents

69.—(1) Any document required or authorised by these Regulations to be served on a person may be served by—

- (a) delivering it to that person in person;
- (b) leaving it at that person’s proper address;
- (c) sending it by post or electronic means to that person’s proper address;

(2) In the case of a body corporate, a document may be served on a director of that body.

(3) In the case of a partnership, a document may be served on a partner or a person having control or management of the partnership business.

(4) For the purposes of this regulation, “proper address” means—

- (a) in the case of a body corporate or its director—
 - (i) the registered or principal office of that body; or
 - (ii) the email address of the secretary or clerk of that body;
- (b) in the case of a partnership, a partner or person having control or management of the partnership business—
 - (i) the principal office of the partnership; or
 - (ii) the email address of a partner or person having that control or management;
- (c) in any other case, a person’s last known address, which address may be an email address.

(5) If a person to be served with a document has specified an address in the United Kingdom (other than that person’s proper address) at which that person or someone on that person’s behalf will accept service, that address must also be treated as that person’s proper address.

(6) In this regulation, “partnership” includes a Scottish partnership.

Recovery of expenses of enforcement

70.—(1) This regulation applies where a person commits an offence under regulation 64 (offences).

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person to reimburse the enforcing authority for any expenditure which the enforcing authority has incurred in investigating the offence.

Action by enforcing authority

71.—(1) An enforcing authority may itself take action which an economic operator could have been required to take by a notice served under these Regulations where the conditions for serving such a notice are met and either—

- (a) the enforcing authority has been unable to identify any economic operator on whom to serve such a notice; or
- (b) the economic operator on whom such a notice has been served has failed to comply with it.

(2) If the enforcing authority has taken action as a result of the condition in paragraph (1)(b) being met, the authority may recover from that person as a civil debt any costs or expenses reasonably incurred by the enforcing authority in taking the action.

(3) A civil debt recoverable under paragraph (2) may be recovered summarily—

- (a) in England and Wales by way of a complaint pursuant to section 58 of the Magistrates' Courts Act 1980(4);
- (b) in Northern Ireland in proceedings under article 62 of the Magistrates' Court (Northern Ireland) Order 1981(5).

Appeals against notices

72.—(1) Any application for an order to vary or set aside the terms of a notice served under these Regulations may be made—

- (a) by the economic operator on whom the notice has been served; and
- (b) in the case of a notice other than a recall notice by a person having an interest in the vessel in respect of which the notice has been served.

(2) An application must be made before the end of the period of 21 days beginning with the day on which the notice was served.

(3) The appropriate court may only make an order setting aside a notice served under these Regulations if satisfied—

- (a) that the requirements of these Regulations and RAMS (in its application to vessels) have been complied with in respect of the vessel to which the notice relates; or
- (b) that the enforcing authority failed to comply with regulation 57 (exercise of enforcement powers) when serving the notice.

(4) On an application to vary the terms of a notice served under these Regulations, the appropriate court may vary the terms of the notice as it considers appropriate.

(5) In this regulation—

- (a) the “appropriate court” is to be determined in accordance with regulation 73 (appropriate court for appeals against notices); and
- (b) “notice” means—
 - (i) a prohibition notice served in accordance with Schedule 5;
 - (ii) a notice to warn served in accordance with Schedule 5;
 - (iii) a suspension notice served in accordance with Schedule 5;
 - (iv) a compliance notice served in accordance with Schedule 8;
 - (v) a withdrawal notice served in accordance with Schedule 8;
 - (vi) a recall notice served in accordance with Schedule 8.

Appropriate court for appeals against notices

73.—(1) In England and Wales or Northern Ireland, the appropriate court for the purposes of regulation 72 (appeals against notices) is—

- (a) the court in which proceedings have been brought in relation to the vessel for an offence under regulation 64 (offences);
- (b) an employment tribunal seized of appeal proceedings against a notice which relates to the vessel and which has been served under or by virtue of paragraph 1 of Schedule 6;
- (c) an industrial tribunal seized of appeal proceedings against a notice which relates to the vessel and which has been served under or by virtue of paragraph 1 of Schedule 7; or

(4) 1980 c.43; section 58 was amended by the Crime and Courts Act 2013 (c.22), Schedule 10 paragraph 40.

(5) S.I. 1981/1675 (N.I. 26).

- (d) in any other case, a magistrates' court.
- (2) In Scotland, the appropriate court for the purposes of regulation 72 is—
 - (a) the sheriff court within whose sheriffdom the appellant resides or, as the case may be, has a registered or principal office; or
 - (b) an employment tribunal seized of appeal proceedings against a notice which relates to the vessel and which has been served under or by virtue of paragraph 1 of Schedule 6.
- (3) A person aggrieved by an order made by a magistrates' court in England and Wales or Northern Ireland pursuant to an application under regulation 72, or by a decision of such a court not to make such an order, may appeal against that order or decision—
 - (a) in England and Wales, to the Crown Court;
 - (b) in Northern Ireland, to the county court.

Compensation

74.—(1) Where an enforcing authority other than the HSE, the HSENI or the Office for Nuclear Regulation serves a relevant notice in respect of a vessel, that authority is liable to pay compensation to a person having an interest in the vessel for any loss or damage suffered by reason of the notice if both of the conditions in paragraph (2) are met.

- (2) The conditions are that—
 - (a) the vessel in respect of which the relevant notice was served neither—
 - (i) presents a risk to the health and safety of persons, to domestic animals or to property; nor
 - (ii) contravenes any requirement of these Regulations; and
 - (b) the relevant notice was not served because of neglect or default by a relevant economic operator.
- (3) In this regulation, “relevant notice” means a suspension, withdrawal or recall notice as referred to in regulation 72(5)(b).