
STATUTORY INSTRUMENTS

2016 No. 1152

The Non-automatic Weighing Instruments Regulations 2016

PART 8

MARKET SURVEILLANCE AND ENFORCEMENT

CHAPTER 1

MARKET SURVEILLANCE

The market surveillance authority

57. The Secretary of State is the market surveillance authority for the purposes of these Regulations and RAMS.

Regulated non-automatic weighing instruments presenting a risk

58.—(1) This regulation applies where the market surveillance authority has sufficient reason to believe that a regulated non-automatic weighing instrument presents a risk in relation to any of the purposes set out in regulation 3(2).

(2) Where this regulation applies the market surveillance authority must carry out an evaluation of the regulated non-automatic weighing instrument covering all relevant requirements of these Regulations which apply to that instrument.

(3) The relevant economic operators in relation to the non-automatic weighing instrument must co-operate as necessary with the market surveillance authority for that purpose.

(4) Where, in the course of the evaluation referred to in paragraph (2), the market surveillance authority finds that that the regulated non-automatic weighing instrument does not comply with the essential requirements applicable to it, it must without delay issue a direction which requires the relevant economic operator to—

- (a) take all appropriate corrective actions;
- (b) withdraw the regulated non-automatic weighing instrument from the market; or
- (c) recall it within a reasonable period commensurate with the nature of the risk.

(5) Where the market surveillance authority acts under paragraph (4) it must without delay inform the notified body that carried out the conformity assessment procedure in respect of the regulated non-automatic weighing instrument of—

- (a) the respect in which the regulated non-automatic weighing instrument is not in conformity with the requirements of these Regulations; and
- (b) the actions that the authority is requiring the relevant economic operator to take.

(6) Where the market surveillance authority considers that non-compliance is not restricted to the United Kingdom, it must inform the Commission and the other EEA states of the results of the evaluation and of the actions which they have required the economic operator to take.

(7) The economic operator must ensure that all appropriate corrective action is taken in respect of all the regulated non-automatic weighing instruments concerned that it has made available on the market throughout the European Economic Area.

(8) Where the relevant economic operator does not take adequate corrective action within a reasonable period, the market surveillance authority must take all provisional measures to prohibit or restrict the regulated non-automatic weighing instrument being made available on the market, to withdraw the instrument from that market or to recall it.

(9) Where the market surveillance authority takes measures under paragraph (8), the market surveillance authority must notify the Commission and the other EEA states of those measures without delay.

(10) A notification under paragraph (9) must include all available details, in particular—

- (a) the data necessary for the identification of the non-compliant regulated measuring instrument;
- (b) the origin of the instrument;
- (c) the nature of the non-compliance 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 non-compliance is due to either of the following—
 - (i) failure of the regulated measuring instrument to meet the requirements relating to a risk; or
 - (ii) shortcomings in the harmonised standards referred to in regulation 34(a).

EU safeguard procedure

59.—(1) Where another EEA state has initiated the procedure under Article 37 of the Directive, the market surveillance authority must without delay, inform the Commission and the other EEA states of—

- (a) any measures taken by competent authority in respect of the regulated non-automatic weighing instrument;
- (b) any additional information which the market surveillance authority has at its disposal relating to the lack of conformity of the regulated non-automatic weighing instrument; and
- (c) any objections that the market surveillance authority may have to the measure taken by the EEA state initiating the procedure;

(2) Where a measure taken by another EEA state in respect of a regulated non-automatic weighing instrument is considered justified under Article 37(7) of the Directive, the market surveillance authority must ensure that appropriate measures to withdraw the instrument are taken in respect of the regulated non-automatic weighing instrument without delay.

(3) If, pursuant to Article 38 of the Directive, the Commission considers a direction given pursuant to regulation 58(4) is unjustified, the market surveillance authority must forthwith withdraw it and notify other competent authorities and economic operators affected accordingly.

Compliant regulated non-automatic weighing instruments which present a risk

60.—(1) This regulation applies where, having carried out an evaluation under regulation 58 (regulated non-automatic weighing instruments presenting a risk), the market surveillance authority finds that although a regulated non-automatic weighing instrument is in compliance with the requirements of these Regulations, it presents a risk in relation to its use in relation to any activity referred to in regulation 3(2).

(2) Where this regulation applies, the market surveillance authority must issue a direction requiring the economic operator to—

- (a) take all appropriate measures to ensure that the non-automatic weighing instrument concerned, when placed on the market, no longer presents that risk;
- (b) withdraw the non-automatic weighing instrument from the market; or
- (c) recall it within a reasonable period, commensurate with the nature of the risk as it may prescribe.

(3) Where this regulation applies, the market surveillance authority must immediately inform the Commission and the other EEA states of all available details including—

- (a) the data necessary for the identification of the regulated non-automatic weighing instrument concerned;
- (b) the origin and supply chain of the regulated non-automatic weighing instrument;
- (c) the nature of the risk involved; and
- (d) the nature and duration of the national measures taken.

Provisions as to directions under regulations 58 and 60

61.—(1) This regulation applies in relation to directions given under regulations 58 (regulated non-automatic weighing instruments presenting a risk) and 60 (compliant regulated non-automatic weighing instruments which present a risk).

(2) A direction must—

- (a) be in writing;
- (b) describe the regulated non-automatic weighing instrument to which it relates in a manner sufficient to identify that instrument;
- (c) specify the risk identified by the market surveillance authority; and
- (d) specify the steps that the economic operator must take (including the time period within which they must be taken).

(3) The Secretary of State may impose a monetary penalty on an economic operator who fails to comply with a direction given under regulation 58 or 60.

(4) Schedule 5 has effect in relation to monetary penalties imposed under paragraph (3).

CHAPTER 2

ENFORCEMENT PROCEDURES

Competent authorities and enforcement proceedings

62.—(1) In Great Britain, it is the duty of every local weights and measures authority to enforce these Regulations within its area.

(2) In Northern Ireland, it is the duty of the Department for the Economy to enforce these Regulations (other than Part 7).

(3) The Secretary of State—

- (a) must enforce these Regulations when required to do so in the capacity of the market surveillance authority; and
- (b) may otherwise than in the capacity of market surveillance authority enforce these Regulations and for that purpose may appoint any person to act on his behalf.

(4) No proceedings for an offence under these Regulations may be instituted in England and Wales except by or on behalf of a competent authority.

(5) Nothing in these Regulations authorises a competent authority to bring proceedings in Scotland for an offence.

(6) No proceedings shall be instituted in Northern Ireland for an offence under these Regulations in respect of a regulated non-automatic weighing instrument except—

- (a) by or on behalf of a competent authority which has responsibility for enforcing these Regulations in respect of that regulated non-automatic weighing instrument; or
- (b) the Director of Public Prosecutions for Northern Ireland.

Compliance notice procedure

63.—(1) This regulation applies where a competent authority has reasonable grounds for considering that one or more of the following breaches applies in relation to a regulated non-automatic weighing instrument that has been placed on the market—

- (a) the CE marking or the M marking has been affixed in violation of Article 30 of the RAMS Regulation or the requirements of these Regulations;
- (b) the CE marking or the M marking has not been affixed;
- (c) the identification number of the notified body, where the body is involved in the production control phase has—
 - (i) been affixed otherwise than in accordance with the requirements of these Regulations; or
 - (ii) not been affixed;
- (d) the EU declaration of conformity has not been drawn up correctly;
- (e) the technical documentation is either not available or is not complete;
- (f) the information referred to in regulation 10 (manufacturers to mark contact details on regulated non-automatic weighing instruments) or regulation 18 (requirements to mark importers' details on regulated non-automatic weighing instruments) is absent, false or incomplete; or
- (g) any other failure—
 - (i) by a manufacturer to comply with the requirements of Chapter 1 of Part 2; or
 - (ii) by an importer to comply with the requirements of Chapter 2 of Part 2.

(2) The competent authority may serve a notice in writing (“a compliance notice”) on the economic operator it considers is responsible for the breach which must—

- (a) describe the regulated non-automatic weighing instrument to which it relates in a manner sufficient to identify that instrument;
- (b) specify which of the circumstances in paragraph (1) applies in relation to the regulated non-automatic weighing instrument;
- (c) require the economic operator on whom the notice is served to take steps specified in the notice to remedy the matters referred to in sub-paragraph (b);
- (d) specify the date, being not less than 21 days from the date of the notice, by which the steps specified in it must be taken; and
- (e) warn that person that, where the non-conformity continues beyond the date specified in sub-paragraph (d), the competent authority may take further action under regulation 64 (enforcement notice procedure) in respect of that regulated non-automatic weighing instrument.

(3) Where a compliance notice is served by a competent authority other than the Secretary of State, it must, at the same time as it serves that notice, send a copy to the Secretary of State.

Enforcement notice procedure

64.—(1) This regulation applies where a competent authority has reasonable grounds for considering that an economic operator on whom a compliance notice has been served by the competent authority has failed to comply with that notice.

(2) The competent authority may serve a notice (“an enforcement notice”) on the economic operator which must—

- (a) be in writing;
- (b) describe the regulated non-automatic weighing instrument to which it relates in a manner sufficient to identify that instrument;
- (c) specify, with reasons, the respects in which, in the opinion of the competent authority, the compliance notice has not been complied with;
- (d) specify the steps that the economic operator must take to comply with the compliance notice; and
- (e) specify the date, being not less than 21 days from the date of the notice, by which the economic operator is required to take the steps specified in it.

(3) An enforcement notice may impose either or both of the following requirements where appropriate—

- (a) that the regulated non-automatic weighing instrument is to be withdrawn from the market unless the steps referred to in paragraph (2)(d) are taken; or
- (b) that the placing on the market or making available on the market of the regulated non-automatic weighing instrument is to be prohibited or restricted unless the steps referred to in paragraph (2)(d) are taken.

(4) Where an enforcement notice is served by an competent authority other than the Secretary of State, it must at the same time as it serves that notice send a copy of the notice to the Secretary of State.

(5) If the Secretary of State is of the opinion that consideration ought to be given as to whether a certificate or notification which is granted by a United Kingdom notified body should be withdrawn, the Secretary of State must inform that notified body of that fact.

(6) If the Secretary of State is of the opinion that consideration ought to be given as to whether a certificate or notification which is granted by a notified body in another EEA state should be withdrawn, the Secretary of State must inform the market surveillance authority in that state of that fact.

Review of decisions of a competent authorities

65.—(1) Where a notice is served under regulation 63 (compliance notice procedure) or 64 (enforcement notice procedure) by a competent authority other than the Secretary of State, an economic operator who is aggrieved by the decision to serve that notice may, in accordance with paragraphs (2) and (3) apply to the Secretary of State to review the decision and on such application the Secretary of State may—

- (a) hold an inquiry in connection with the decision; and
- (b) appoint an assessor for the purposes of assisting him with his review or any such inquiry.

(2) An application for a review of a decision under paragraph (1) must be made by notice in writing to the Secretary of State before the end of the period of 21 days beginning with the day on

which the notice is served on the economic operator by the competent authority under regulation 63 or 64

(3) A notice of application for review under this regulation must state the grounds on which the application is made.

(4) The Secretary of State must, within a reasonable time, inform the economic operator and the authority referred to in paragraph (1) in writing of the Secretary of State's decision whether to uphold the decision of that authority and—

- (a) in a case where the Secretary of State upholds that decision, must also state the grounds for the Secretary of State's decision; and
- (b) in a case where the Secretary of State does not uphold that decision, may—
 - (i) where the review relates to regulation 63, give instructions for the withdrawal of the notice given under paragraph (2) of that regulation; or
 - (ii) where the review relates to regulation 64, give instructions for the withdrawal of the notice given under paragraph (2) of that regulation.

Offence of failing to comply with an enforcement notice

66.—(1) This paragraph applies where an enforcement notice has been served pursuant to regulation 64 (enforcement notice procedure) on an economic operator by a competent authority other than the Secretary of State and either—

- (a) the time for making an application for a review pursuant to regulation 65 (review of decisions of competent authorities) has expired without such an application having been made; or
- (b) an application has been made by the economic operator and determined without an instruction for the withdrawal of the notice being given and a period of 21 days has elapsed beginning with the day after notice of the outcome of the review has been served on the economic operator.

(2) Where this paragraph (1) applies, if the economic operator on whom the compliance notice has been served, fails to comply with the requirements of that notice, that economic operator is guilty of an offence.

(3) An economic operator that fails to comply with an enforcement notice served on the economic operator by the Secretary of State is guilty of an offence.

Disqualification

67.—(1) Where the circumstances in paragraph (2) apply, an inspector may affix a disqualification mark to a regulated non-automatic weighing instrument which bears the—

- (a) CE marking;
- (b) M marking; and
- (c) identification number of the notified body which carried out the conformity assessment procedure in respect of the instrument

(2) The circumstances referred to in paragraph (1) are that the instrument is used for any of the purposes listed in regulation 3(2) in circumstances where—

- (a) the instrument does not conform to the essential requirements;
- (b) the instrument does not conform to any EU-type examination certificate issued in relation to it;

(c) by reason of any adjustment, alteration, addition, repair or replacement it is likely that the instrument has ceased to be compliant with the essential requirements; or

(d) any requirements applicable to the instrument by virtue of Part 7 are not met.

(3) Where one or more of the markings and identification requirements referred to in paragraph (1) is not affixed to a regulated non-automatic weighing instrument, the inspector may affix a disqualification mark to the instrument.

(4) Where it appears to the inspector that the nature or degree of non-compliance of the regulated non-automatic weighing instrument under paragraph (1) is not such that a disqualification mark should be immediately affixed to it, the inspector may give to any person in possession of the instrument a notice requiring the person to ensure that the instrument is made to comply with the essential requirements before the expiry of 21 days from the date of the notice or such longer period as may be specified in the notice.

(5) If a notice given under paragraph (4) is not complied with, the inspector must affix a disqualification mark to the regulated non-automatic weighing instrument.

(6) Any disqualification mark which is affixed to a regulated non-automatic weighing instrument under this regulation must be affixed in such a position that it is clearly visible when the instrument is in its regular operating position.

(7) A person is guilty of an offence if that person uses for any of the purposes mentioned in regulation 3(2) a regulated non-automatic weighing instrument to which there is affixed a disqualification mark, unless a re-qualification mark has been affixed to it in accordance with regulation 68 (re-qualification).

Re-qualification

68.—(1) This regulation applies where—

(a) a disqualification mark has been affixed to a regulated non-automatic weighing instrument in accordance with regulation 67 (disqualification);

(b) a notice has been served under regulation 67(4); or

(c) a regulated non-automatic weighing instrument intended to be used for any of the purposes mentioned in regulation 3(2) in the circumstances referred to in regulation 67(2)(a) to (iv) or (2) but a disqualification mark has not been affixed to the instrument.

(2) A person requiring a re-qualification mark to be affixed to the regulated non-automatic weighing instrument must submit it, in such manner as may be directed, to a re-qualification authority and provide such assistance as the requalification authority may reasonably require.

(3) For the purposes of this regulation, a requalification authority is—

(a) an inspector;

(b) an approved verifier;

(c) a UK approved notified body for module F or F1 in Annex II to the Directive; or

(d) a manufacturer whose quality system has been approved by a UK notified body under module D or D1 of Annex II to the Directive for the purposes of re-qualification.

(4) A requalification authority may affix a re-qualification mark to that regulated non-automatic weighing instrument if satisfied that the instrument is compliant with—

(a) the essential requirements;

(b) any EU-type examination certificate which applies to it; and

(c) where it is intended that the instrument is to be used for trade any requirements applicable to that instrument by virtue of Schedule 4.

(5) For the purposes of being satisfied that a re-qualification mark may be affixed to a regulated non-automatic weighing instrument, a requalification authority may take such steps as the requalification authority considers appropriate, including testing the instrument by means of such test equipment as the requalification authority considers appropriate and suitable for the purpose.

(6) There may be charged in respect of any steps taken under paragraph (5) such fees as are reasonable in the circumstances.

(7) The requalification authority must keep a record of any test carried out under paragraph (5).

(8) Where a re-qualification mark is affixed to a regulated non-automatic weighing instrument pursuant to paragraph (4), it must be affixed in such a position that it obliterates as far as possible any disqualification mark.

Testing of regulated non-automatic weighing instruments

69.—(1) Where an inspector considers that a test of a regulated non-automatic weighing instrument is necessary, otherwise than for the purposes of regulation 68 (re-qualification), the inspector may require the person who has control of the instrument, or whom the inspector has reasonable cause to believe has control of the instrument, to provide to the inspector such equipment, test liquid, materials, qualified personnel or other assistance as the inspector may reasonably require.

(2) Every instrument submitted for testing must be in a clean condition.

Unsuitable use of regulated non-automatic weighing instruments

70.—(1) This regulation applies to a regulated non-automatic weighing instrument.

(2) If it appears to an inspector that a regulated non-automatic weighing instrument used for a purpose mentioned in regulation 3(2)—

- (a) for a purpose for which it is unsuitable; or
- (b) in circumstances where it is subject to any extraordinary environmental or operating conditions which—
 - (i) may prevent it operating consistently or accurately; or
 - (ii) are likely prematurely to degrade its metrological characteristics,

the inspector may affix a disqualification mark to the instrument; and any such mark must be affixed in such a position that it is clearly visible when the instrument is in its regular operating position.