
STATUTORY INSTRUMENTS

2016 No. 1153

The Measuring Instruments Regulations 2016

PART 7

MARKET SURVEILLANCE AND ENFORCEMENT

CHAPTER 1

MARKET SURVEILLANCE

The market surveillance authority

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

Regulated measuring instruments presenting a risk

63.—(1) This regulation applies where the market surveillance authority has sufficient reason to believe that a regulated measuring instrument presents a risk on grounds of public interest, public health, public safety, public order, protection of the environment, protection of consumers, the levying of taxes and duties or fair trading.

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

(3) The relevant economic operators in relation to the regulated measuring 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 the regulated measuring 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 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 measuring instrument of—

- (a) the respect in which the 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 measuring 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 measuring instrument being made available on the market, to withdraw the instrument from the 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;
 - (ii) shortcomings in the harmonised standards referred to in regulation 37(a).

EU safeguard procedure

64.—(1) Where another EEA State has initiated the procedure under Article 42 of the Directive, the Market surveillance authority must without delay, inform the Commission and the other EEA States of—

- (a) any measures taken by a competent authority in respect of the regulated measuring instrument;
- (b) any additional information which the market surveillance authority has at its disposal relating to the lack of conformity of the regulated measuring 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 measuring instrument is considered justified under Article 42 of the Directive, the market surveillance authority must ensure that appropriate measures to withdraw the instrument are taken in respect of the regulated measuring instrument without delay.

(3) If, pursuant to Article 43 of the Directive, the Commission considers a direction given pursuant to regulation 63(4) is unjustified, the market surveillance authority must forthwith withdraw it and notify other enforcement authorities and economic operators affected accordingly.

Compliant regulated measuring instruments which present a risk

65.—(1) This regulation applies where, having carried out an evaluation under regulation 63, the market surveillance authority finds that although a regulated measuring instrument is in compliance with the requirements of these Regulations, it presents a risk on grounds of public interest, public health, public safety, public order, protection of the environment, protection of consumers, the levying of taxes and duties or fair trading.

(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 regulated measuring instrument concerned, when placed on the market, no longer presents that risk;
- (b) withdraw the regulated measuring 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 measuring instrument concerned;
- (b) the origin and supply chain of the regulated measuring 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 63 and 65

66.—(1) This regulation applies in relation to directions given under regulations 63 and 65.

(2) A direction must—

- (a) be in writing;
- (b) describe the regulated measuring instrument to which it relates in a manner sufficient to identify that instrument;
- (c) specify the risk identified by the market surveillance authority;
- (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 63 or 65.

(4) Schedule 7 has effect in relation to a monetary penalty imposed under paragraph (3).

CHAPTER 2

ENFORCEMENT AUTHORITIES AND PROCEDURES

Enforcement of the Regulations

67.—(1) The Secretary of State—

- (a) must enforce these regulations where 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 in Great Britain,

and for the purposes of this paragraph may appoint a person to act on his behalf.

(2) In Great Britain it is the duty of every local weights and measures authority to enforce these Regulations within its area in relation to regulated measuring instruments other than—

- (a) gas meters;
- (b) active electrical energy meters;
- (c) taximeters; and
- (d) exhaust gas analysers.

- (3) In Northern Ireland—
- (a) the Department for Infrastructure must enforce these Regulations in relation to regulated measuring instruments of the following kinds—
 - (i) taximeters; and
 - (ii) exhaust gas analysers.
 - (b) the Utility Regulator (or the Secretary of State pursuant to arrangements made under paragraph (7)) must enforce the Regulations) in relation to regulated measuring instruments of the following kinds—
 - (i) gas meters; and
 - (ii) active electrical energy meters.
 - (c) the Department for the Economy must enforce these Regulations (other than Part 6) insofar as they relate to regulated measuring instruments of the following kinds—
 - (i) cold water meters;
 - (ii) automatic weighing instruments;
 - (iii) material measures; and
 - (iv) non-water liquid measuring systems.
- (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 shall authorise 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 measuring instrument except—
- (a) by or on behalf of a competent authority which has responsibility for enforcing these Regulations in respect of that regulated measuring instrument; or
 - (b) the Director of Public Prosecutions for Northern Ireland.
- (7) The Secretary of State and the Utility Regulator may, in relation to the enforcement of these Regulations in Northern Ireland, enter into arrangements for the Secretary of State to act on behalf of the Utility Regulator for, or in connection with, the carrying out of some or all of the functions conferred on the Utility Regulator by these Regulations.

Compliance notice procedure

68.—(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 measuring instrument that has been placed on the market or put into use—

- (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 notified 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 11 or regulation 20 is 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 the responsible for the breach which must—
- (a) describe the regulated measuring 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 measuring instrument;
 - (c) require the economic operator on whom the notice is served to take steps to remedy the matters referred to in 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 the economic operator that, where the non-conformity continues beyond the date specified in sub-paragraph (d), the competent authority may take further action under regulation 69 (enforcement notices) in respect of that regulated measuring 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 notices

69.—(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 measuring 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; and
 - (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 to whom the notice is given is required to comply with it.
- (3) An enforcement notice may impose either or both of the following requirements—
- (a) that the regulated measuring 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 putting into use of the regulated measuring 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 a 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 enforcement decisions of a competent authority

70.—(1) Where a notice is served under regulation 68 (compliance notice procedure) or 69 (enforcement notices) is by a competent authority other than the Secretary of State, an economic operator who is aggrieved by the decision to serve the 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 under paragraph (1) must be made by notice in writing to the Secretary of State, and must be sent to the Secretary of State not later than 21 days after the date of the notice of the decision in respect of which the application for review is sent to the economic operator.

(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 68 give instructions for the withdrawal of the notice given under paragraph (2) of that regulation; or
 - (ii) where the review relates to regulation 69, give instructions for the withdrawal of the notice given under paragraph (1) of that regulation.

Offence of failure to comply with an enforcement notice

71.—(1) This paragraph applies where an enforcement notice has, pursuant regulation 69 (enforcement notices), been served on an economic operator by a competent authority other than the Secretary of State and either—

- (a) the time for making an application by the economic operator for a review pursuant to regulation 70 (review of enforcement decisions of a competent authority) has expired without such application having been made; or
- (b) an application for review 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 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

72.—(1) This regulation and regulation 73 (re-qualification) apply only in relation to a regulated measuring instruments of the following kinds—

- (a) cold water meters;
- (b) automatic weighing instruments;
- (c) material measures; and
- (d) non-water liquid measuring systems.

(2) Where the circumstances in paragraph (3) apply, an inspector may affix a disqualification mark to a regulated measuring 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.

(3) The circumstances referred to in paragraph (2) are that the instrument is used for trade in circumstances where—

- (a) the instrument does not conform to the essential requirements (other than the requirements relating to maximum permissible errors);
- (b) the instrument is not in conformity with any EU-type examination certificate or EU-design examination certificate which applies to it;
- (c) by reason of any adjustment, alteration, addition, repair or replacement, it is likely that the instrument has ceased to conform with the essential requirements (other than the requirements relating to maximum permissible errors); or
- (d) any requirements applicable to the instrument by virtue of Part 6 are not met.

(4) Where one or more of the markings and identification requirements referred to in paragraph (2) is not affixed to a regulated measuring instrument, the inspector may affix a disqualification mark to the instrument.

(5) Where it appears to the inspector that the nature or degree of non-compliance of the regulated measuring instrument under paragraph (2) is not such that a disqualification mark should be immediately affixed to it or to any sealing device on 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.

(6) If a notice given under paragraph (5) is not complied with, the inspector must affix a disqualification mark to the regulated measuring instrument or to any sealing device on it.

(7) Any disqualification mark which is affixed to a regulated measuring 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 or where it is affixed to any sealing device on the instrument, it must be affixed in such a position that it obliterates as far as possible any inscription on that sealing device.

(8) A person is guilty of an offence if that person uses for trade a regulated measuring instrument to which there is affixed a disqualification mark, unless a re-qualification mark has been affixed to it in accordance with regulation 73 (requalification).

Re-qualification

73.—(1) This regulation applies where—

- (a) a disqualification mark has been affixed to a regulated measuring instrument in accordance with regulation 72 (disqualification);
- (b) a notice has been served under regulation 72(5); or
- (c) a regulated measuring instrument is intended to be used for trade in the circumstances referred to in regulation 72(3)(a) to (iv) or (3) but a disqualification mark has not been affixed to the instrument or to any sealing device on it.

(2) A person requiring a re-qualification mark to be affixed to a regulated measuring instrument must submit it, in such manner as may be directed, to an inspector or approved verifier and provide such assistance as the inspector or approved verifier may reasonably require.

(3) An inspector or approved verifier may affix a re-qualification mark to that regulated measuring instrument or to any sealing device if satisfied that the instrument is compliant with

- (a) the essential requirements;
- (b) any EU-type examination certificate or EU-design examination certificate which applies to it; and
- (c) any requirements applicable to that instrument by virtue of Schedule 6 other than the provisions relating to maximum permissible errors are met.

(4) For the purposes of being satisfied that a re-qualification mark may be affixed to a regulated measuring instrument or any sealing device on it under this regulation, an inspector or approved verifier may take such steps as the inspector or approved verifier considers appropriate, including testing the instrument by means of such test equipment as the inspector or approved verifier considers appropriate and suitable for the purpose.

(5) There may be charged in respect of any steps taken under paragraph (4) such fees as are reasonable in the circumstances.

(6) The inspector or approved verifier must keep a record of any test carried out under paragraph (4).

(7) Where a re-qualification mark is affixed to a regulated measuring instrument pursuant to paragraph (3), it must be affixed in such a position that it obliterates as far as possible any disqualification mark.

Testing of regulated measuring instruments

74.—(1) Where an inspector considers that a test of a regulated measuring instrument is necessary, otherwise than for the purposes of regulation 73, the inspector may require the controller 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 regulated measuring instrument submitted for testing by its controller must be in a clean condition.

(3) Paragraphs (4) to (9) of this regulation only apply to regulated measuring instruments that are non-water liquid measuring systems.

(4) No regulated measuring instrument shall be tested until it is installed ready for use and complete with all its parts.

(5) A regulated measuring instrument must be tested by an inspector under practical working conditions with a test liquid which must be—

- (a) the liquid fuel that the instrument is intended to deliver; or

- (b) a liquid having properties which replicate in all respects relevant to testing those of the liquid fuel that the instrument is intended to deliver.
- (6) An inspector may open a locked or sealed tank or container for the purpose of testing a regulated measuring instrument or returning any liquid withdrawn during testing.
- (7) Any liquid withdrawn during testing must be—
 - (a) returned to the tank or container from which it was withdrawn if the inspector is of the opinion that it is reasonable and practicable to do so and the controller agrees; or
 - (b) placed in another suitable receptacle reasonably convenient for the purpose that is provided by the controller.
- (8) An inspector, if requested to do so by the controller, must give to the controller a signed and dated statement of the quantity of liquid withdrawn during testing.
- (9) An inspector must—
 - (a) securely re-fasten any tank or container opened under paragraph (6) immediately after the conclusion of any test or after returning any liquid withdrawn during testing; and
 - (b) replace any sealing device broken by the inspector.
- (10) In this regulation references to the “controller” of a regulated measuring instrument are to the person who has control of the instrument or whom the inspector has reasonable cause to believe has control of the instrument.