

SCHEDULE 4

Regulation 5

Compliance, Withdrawal and Recall Notices

Compliance notice

1.—(1) An enforcement authority may serve a compliance notice on a relevant economic operator in respect of PPE if the authority has reasonable grounds for believing that there is non-compliance with the requirements or obligations of EU Regulation 2016/425.

(2) A compliance notice must—

(a) require the relevant economic operator on which it is served to—

- (i) end the non-compliance within such period as may be specified in the notice; or
- (ii) provide evidence, within such period as may be specified in the notice, demonstrating to the satisfaction of the enforcement authority that the non-compliance has not in fact occurred;

(b) warn the relevant economic operator that, if the non-compliance persists or if satisfactory evidence has not been produced under paragraph (a) within the period specified in the notice, further action may be taken in respect of the PPE or any such equipment of the same type made available on the market by that economic operator.

(3) A compliance notice may include directions as to the measures to be taken by the relevant economic operator to secure compliance, including different ways of securing compliance.

(4) Subject to sub-paragraph (5), an enforcement authority may revoke or vary a compliance notice by serving a notification on the relevant economic operator.

(5) An enforcement authority may not vary a compliance notice so as to make it more restrictive for the relevant economic operator or more onerous for the economic operator to comply.

Withdrawal notice

2.—(1) An enforcement authority may serve a withdrawal notice on a relevant economic operator in respect of PPE if the authority has reasonable grounds for believing that—

(a) the PPE has been made available on the market; and

(b) either of the following conditions are met—

- (i) the PPE presents a risk; or
- (ii) the PPE is not in conformity with the requirements of EU Regulation 2016/425 or RAMS (in its application to PPE);

(2) A withdrawal notice must prohibit the relevant economic operator from making the PPE available on the market without the consent of the enforcement authority.

(3) A withdrawal notice may require the relevant economic operator to take action to alert end-users to any risk presented by the PPE.

(4) A withdrawal notice may require the relevant economic operator to keep the enforcement authority informed of the whereabouts of any PPE referred to in the notice.

(5) A consent given by the enforcement authority pursuant to a withdrawal notice may impose such conditions on the making available on the market as the authority considers appropriate.

Recall notice

3.—(1) The enforcement authority may serve a recall notice on a relevant economic operator in respect of PPE if the authority has reasonable grounds for believing that—

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- (a) the PPE has been made available to end-users; and
 - (b) either of the following conditions is met—
 - (i) the PPE presents a risk;
 - (ii) the PPE is not in conformity with the requirements of EU Regulation 2016/425 or RAMS (in its application to PPE).
- (2) A recall notice must require the relevant economic operator to use reasonable endeavours to organise the return of the PPE from end-users to the economic operator or another person specified in the notice.
- (3) A recall notice may—
- (a) require the recall to be effected in accordance with a code of practice;
 - (b) require the relevant economic operator to—
 - (i) contact end-users in order to inform them of the recall, to the extent that it is practicable to do so;
 - (ii) publish a notice in such form and such manner as is likely to bring to attention of end-users any risk the PPE poses and the fact of recall;
 - (iii) make arrangements for the collection or return of the PPE from end-users or its disposal;
 - (iv) impose such additional requirements on the relevant economic operator as are reasonable and practicable with a view to achieving the return of the PPE.
- (4) In determining what requirements to include in a recall notice, the enforcement authority must take into consideration the need to encourage distributors and end-users to contribute to its implementation.
- (5) A recall notice may only be issued by the enforcement authority where—
- (a) other action which it may require under these Regulations would not suffice to address the non-compliance;
 - (b) the action being undertaken by the relevant economic operator in fulfilment of the requirements of EU Regulation 2016/425 is unsatisfactory or insufficient to address the non-compliance;
 - (c) the enforcement authority has given not less than ten days' notice to the economic operator of its intention to serve such a notice; and
 - (d) the enforcement authority has taken account of any advice obtained under sub-paragraph (6).
- (6) A relevant economic operator which has received notice from the enforcement authority of an intention to serve a recall notice may at any time prior to the service of the recall notice require the authority to seek the advice of such person as the Institute determines on questions of—
- (a) whether there is non-compliance; and
 - (b) whether the issue of a recall notice would be proportionate.
- (7) Sub-paragraph (5)(b), (c) and (d) do not apply in the case of PPE presenting a serious risk requiring, in the view of the enforcement authority, urgent action.
- (8) Where a relevant economic operator requires the enforcement authority to seek advice under sub-paragraph (6), that economic operator is to be responsible for the fees, costs and expenses of the Institute and of the person appointed by the Institute to advise the enforcement authority.
- (9) A recall notice served by the enforcement authority may require the relevant economic operator to keep the authority informed of the whereabouts of the PPE to which the recall notice relates, so far as the economic operator is able to do so.

(10) In this paragraph, “Institute” means the charitable organisation with registered number 803725 and known as the Chartered Institute of Arbitrators.

Interpretation

4. In this Schedule “non-compliance” means that PPE—
- (a) presents a risk; or
 - (b) is not in conformity with the requirements of EU regulation 2016/425 or RAMS (in its application to PPE).