

SCHEDULE 28

Amendment of the Recreational Craft Regulations 2017 and related amendment

PART 1

Amendment to the Recreational Craft Regulations 2017

Substitution of Part 4

36. For Part 4 substitute—

“PART 4

APPROVAL OF CONFORMITY ASSESSMENT BODIES

Approved bodies

- 55.**—(1) An approved body is a conformity assessment body which—
- (a) has been approved by the Secretary of State pursuant to the procedure set out in regulation 56 (approval of conformity assessment bodies); or
 - (b) immediately before exit day was a notified body in respect of which the Secretary of State had taken no action under regulation 61(1) or (2) as they had effect immediately before exit day to suspend or withdraw the body’s status as a notified body.
- (2) Paragraph (1) has effect subject to regulation 59 (restriction, suspension or withdrawal of approval).
- (3) In this Part—
- “notified body” means a body—
- (a) which the Secretary of State had before exit day notified to the European Commission and the member States of the European Union in accordance with Article 26 of the Directive; and
 - (b) in respect of which no objections had been raised, as referred to in regulation 55(b), as it had effect immediately before exit day;
- “approved body requirements” means the requirements set out in Schedule 11.

Approval of conformity assessment bodies

- 56.**—(1) The Secretary of State may approve only those conformity assessment bodies that qualify for approval.
- (2) A conformity assessment body qualifies for approval if the first and second conditions below are met.
- (3) The first condition is that the conformity assessment body has applied to the Secretary of State to become an approved body and the application is accompanied by—
- (a) a description of—
 - (i) the conformity assessment activities that the conformity assessment body intends to carry out;

Status: This is the original version (as it was originally made).

- (ii) the relevant conformity assessment procedure in respect of which the conformity assessment body claims to be competent;
- (iii) the product in respect of which the conformity assessment body claims to be competent; and

(b) either—

- (i) an accreditation certificate; or
- (ii) the documentary evidence necessary for the Secretary of State to verify, recognise and regularly monitor the conformity assessment body's compliance with the approved body requirements.

(4) The second condition is that the Secretary of State is satisfied that the conformity assessment body meets the approved body requirements.

(5) For the purposes of paragraph (4), the Secretary of State may accept an accreditation certificate provided in accordance with paragraph (3)(b), as sufficient evidence that the conformity assessment body meets the approved body requirements.

(6) When deciding whether to approve a conformity assessment body that qualifies for approval, the Secretary of State may—

- (a) have regard to any other matter which appears to the Secretary of State to be relevant; and
- (b) set conditions that the conformity assessment body must meet.

(8) For the purposes of this regulation, “accreditation certificate” means a certificate, issued by the UK national accreditation body, attesting that a conformity assessment body meets the approved body requirements.

Presumption of conformity of approved bodies

57.—(1) Where a conformity assessment body demonstrates its conformity with the criteria set out in a designated standard (or part of such standard), the Secretary of State is to presume that the conformity assessment body meets the approved body requirements covered by that standard (or that part of the standard).

(2) The presumption in paragraph (1) is rebuttable.

Monitoring of approved bodies

58. The Secretary of State must monitor each approved body with a view to verifying that the body—

- (a) continues to meet the approved body requirements;
- (b) meets any condition set—
 - (i) in accordance with regulation 56(6)(b); or
 - (ii) in the case of an approved body that was a notified body immediately before exit day, in accordance with regulation 56(6)(b) as it applied immediately before exit day; and
- (c) carries out its functions in accordance with these Regulations.

Restriction, suspension or withdrawal of approval

59.—(1) Where the Secretary of State determines that an approved body—

- (a) no longer meets an approved body requirement; or

- (b) is failing to fulfil its obligations under these Regulations, other than a condition referred to in regulation 58(b),

the Secretary of State must restrict, suspend or withdraw the body's status as an approved body under regulation 55 (approved bodies).

(2) With the consent of the approved body or where the Secretary of State determines that an approved body no longer meets a condition referred to in regulation 58(b), the Secretary of State may restrict, suspend or withdraw the body's status as an approved body under regulation 55.

(3) In deciding what action is required under paragraph (1) or (2), the Secretary of State must have regard to the seriousness of the non-compliance.

(4) Where the Secretary of State has taken action in respect of an approved body under paragraph (1) or (2), or where an approved body has ceased its activities, the approved body must—

- (a) at the request of the Secretary of State, transfer its files relating to the activities it has undertaken as an approved body to another approved body or to the Secretary of State; or
- (b) in the absence of a request under sub-paragraph (a), keep its files relating to the activities it has undertaken as an approved body available for inspection by the Secretary of State and the market surveillance authorities for a period of 10 years from the date they were created.

(5) The activities undertaken as an approved body referred to in paragraph (4) include any activities that the body has undertaken as a notified body.

Notice of proposed restriction, suspension or withdrawal of approval

60.—(1) Where the Secretary of State proposes to restrict, suspend or withdraw a body's status as an approved body in accordance with regulation 59 (restriction, suspension or withdrawal of approval), the Secretary of State must give notice in writing to the approved body that its approval will be restricted, suspended or withdrawn.

(2) A notice provided in accordance with paragraph (1) must—

- (a) state the date on which the notice is issued;
- (b) state the reasons why the approval is being restricted, suspended or withdrawn;
- (c) state the date on which the restriction, suspension or withdrawal of the approval is to take effect;
- (d) where an approval is being restricted or suspended, state what the effect of that restriction or suspension is on the approved body;
- (e) inform the approved body of its right to make written representations to the Secretary of State against the proposal within 14 days of the date of the notice.

(3) Where an approved body submits written representations to the Secretary of State within 14 days of the notice in accordance with paragraph (2)(e), the Secretary of State must respond to the representations within 21 days of the date on which the representations are received, stating whether, having considered the representations, the notice issued under paragraph (1) will be modified or withdrawn.

Operational requirements of approved bodies

61. When an approved body carries out a relevant conformity assessment procedure, Schedule 12 (operational requirements of approved bodies) has effect.

Subsidiaries and contractors

62.—(1) Where an approved body subcontracts specific tasks connected with conformity assessment, or has such tasks carried out by a subsidiary, the tasks are to be treated as having been carried out by an approved body for the purposes of regulations 44 to 47 only where the conditions in paragraphs (2) and (3) are satisfied.

(2) The approved body must—

(a) ensure that the subcontractor or subsidiary meets the approved body requirements; and

(b) inform the Secretary of State accordingly.

(3) The approved body must have obtained the agreement of the client economic operator to the use of a subcontractor or subsidiary.

(4) Where an approved body subcontracts specific tasks connected with conformity assessment, or has such tasks carried out by a subsidiary, the approved body must, for a period of 10 years beginning on the day on which the tasks are carried out, keep at the disposal of the Secretary of State the documentation concerning—

(a) the assessment of the qualifications of the subcontractor or subsidiary; and

(b) the conformity assessment activities carried out by the subcontractor or subsidiary.

(5) When monitoring an approved body in accordance with regulation 58 (monitoring of approved bodies), the Secretary of State must treat the approved body as responsible for the tasks performed by a subcontractor or subsidiary, wherever the subcontractor or subsidiary is established.

(6) In this regulation “subsidiary” has the meaning given to it in section 1159 of the Companies Act 2006⁽¹⁾.

Register of approved bodies

63.—(1) The Secretary of State must—

(a) assign an approved body identification number to each approved body; and

(b) compile and maintain a register of—

(i) approved bodies;

(ii) their approved body identification numbers;

(iii) the activities for which they have been approved; and

(iv) any restrictions on those activities.

(2) The register referred to in paragraph (1) must be made publicly available.

Authorisation of UK national accreditation body

64. The Secretary of State may authorise the UK national accreditation body to carry out the following activities on behalf of the Secretary of State—

(a) assessing whether a conformity assessment body meets the approved body requirements;

(b) monitoring approved bodies in accordance with regulation 58;

(1) 2006 c.46.

- (c) compiling and maintaining the register of approved bodies in accordance with regulation 63.”