



STATUTORY INSTRUMENTS.

S.I. No. 65 of 2017



EUROPEAN UNION (RECREATIONAL CRAFT AND PERSONAL
WATERCRAFT) REGULATIONS 2017

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WATERCRAFT) REGULATIONS 2017

CONTENTS

Regulations

PART 1

GENERAL PROVISIONS

1. Citation
2. Interpretation
3. Application
4. Making available on the market, putting into service and essential requirements
5. Free movement
6. Market surveillance authority and competent authority

PART 2

OBLIGATIONS OF ECONOMIC OPERATORS AND PRIVATE IMPORTERS

7. Obligations of manufacturers
8. Authorised representatives
9. Obligations of importers
10. Obligations of distributors
11. Cases in which obligations of manufacturers apply to importers and distributors
12. Obligations of private importers
13. Identification of economic operators

PART 3

CONFORMITY OF PRODUCTS

14. Presumption of conformity of products
15. EU declaration of conformity and declaration in accordance with Annex III
16. General principles of CE marking

17. Products subject to CE marking
18. Rules and conditions for affixing CE marking and other markings

PART 4

CONFORMITY ASSESSMENT PROCEDURES

19. Applicable conformity assessment procedures
20. Design and construction
21. Exhaust emissions
22. Noise emissions
23. Post construction assessment
24. Supplementary requirements
25. Technical documentation

PART 5

NOTIFICATION OF CONFORMITY ASSESSMENT BODIES

26. Notifying authority
27. Notification
28. Application for notification
29. Presumption of conformity
30. Restriction, suspension or withdrawal of notification
31. Operational obligations of notified bodies
32. Appeal from decision of notified body
33. Information obligations of notified bodies
34. Fees

PART 6

UNION MARKET SURVEILLANCE, CONTROL OF PRODUCTS ENTERING UNION
MARKET AND SAFEGUARD PROCEDURE

35. Union market surveillance and control of products entering Union market
36. Procedure for dealing with products presenting risk at national level
37. Products presenting serious risk
38. Formal non-compliance

PART 7

INSPECTIONS AND SURVEILLANCE

39. Inspections and surveillance
40. Appointment of authorised officers
41. Powers of authorised officers
42. Compliance notice
43. Procedures for prohibition notices and restriction measures
44. Publication of information relating to prohibition notices and restriction measures
45. Right of appeal against prohibition notice and restriction measures
46. Giving of documents
47. Offences and penalties
48. Forgery
49. Offence by body corporate
50. Forfeiture and seizure
51. Costs of prosecutions
52. Prosecution of offences

PART 8

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

53. Transitional provisions
54. Continuance of Regulations of 1998
55. Revocations

SCHEDULE

MINIMUM CRITERIA FOR NOTIFICATION AS A NOTIFIED BODY IN THE STATE

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I, SHANE ROSS, T.D., Minister for Transport, Tourism and Sport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive No. 2013/53/EU of 20 November 2013¹ and of giving further effect to Regulation (EC) No. 765/2008 of 9 July 2008², hereby make the following regulations:

PART 1

General Provisions

Citation

1. These Regulations may be cited as the European Union (Recreational Craft and Personal Watercraft) Regulations 2017.

Interpretation

2. (1) In these Regulations—

“accreditation” has the meaning assigned to it by Article 2(10) of Regulation (EC) No. 765/2008²;

“Accreditation Board” means the Irish National Accreditation Board being a committee of the Health and Safety Authority referred to in section 56A (inserted by section 32 of the Industrial Development (Forfás Dissolution) Act 2014 (No. 13 of 2014)) of the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005);

“Annex” means an Annex to the Directive;

“authorised officer” means a person appointed under Regulation 40;

“authorised representative” means a person established within the Union who has received a written mandate from a manufacturer to act on behalf of the manufacturer in relation to specified tasks;

“CE marking” means a marking by which a manufacturer indicates that the product is in conformity with the applicable requirements set out in Union harmonisation legislation providing for its affixing;

“CI engine” means a compression ignition engine;

¹OJ No. L 354, 28.12.2013, p. 90

²OJ No. L 218, 13.8.2008, p. 30

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 10th March, 2017.*

“competent authority” means the Marine Survey Office;

“compliance notice” has the meaning given to it by Regulation 42;

“component” means any of the components specified in Annex II when placed separately on the Union market;

“conformity assessment” means the process demonstrating whether the requirements of these Regulations relating to a product have been fulfilled;

“conformity assessment body” means a person who performs conformity assessment activities including calibration, testing, certification and inspection;

“Decision” means Decision No. 768/2008/EC of 9 July 2008³;

“Directive” means Directive No. 2013/53/EU of 20 November 2013¹;

“Directive No. 97/68/EC” means Directive No. 97/68/EC of 16 December 1997⁴, as amended by—

(a) Commission Directive No. 2001/63/EC of 17 August 2001⁵,

(b) the Act concerning the conditions of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the Adjustments to the Treaties on which the European Union is founded⁶,

(c) Directive No. 2002/88/EC of 9 December 2002⁷,

(d) Directive No. 2004/26/EC of 21 April 2004⁸,

(e) Council Directive No. 2006/105/EC of 20 November 2006⁹,

(f) Regulation (EC) No. 596/2009 of 18 June 2009¹⁰,

(g) Commission Directive No. 2010/26/EU of 31 March 2010¹¹,

(h) Directive No. 2011/88/EU of 16 November 2011¹², and

(i) Commission Directive No. 2012/46/EU of 6 December 2012¹³;

³OJ No. L 218, 13.8.2008, p. 82

⁴OJ No. L 59, 27.2.1998, p. 1

⁵OJ No. L 227, 23.8.2001, p. 41

⁶OJ No. L 236, 23.9.2003, p. 33

⁷OJ No. L 35, 11.2.2003, p. 28

⁸OJ No. L 146, 30.4.2004, p. 1

⁹OJ No. L 363, 20.12.2006, p. 368

¹⁰OJ No. L 188, 18.7.2009, p. 14

¹¹OJ No. L 86, 1.4.2010, p. 29

¹²OJ No. L 305, 23.11.2011, p. 1

¹³OJ No. L 353, 21.12.2012, p. 80

“distributor” means a person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market;

“economic operator” means a manufacturer, an authorised representative, an importer or a distributor;

“engine family” means a manufacturer’s grouping of engines which, through their design, have similar exhaust or noise emission characteristics;

“harmonised standard” means harmonised standard within the meaning of Article 2(1)(c) of Regulation (EU) No. 1025/2012 of 25 October 2012¹⁴;

“hull length” means the length of the hull measured in accordance with the harmonised standard;

“importer” means a person established within the Union who places a product from a third country on the Union market;

“major craft conversion” means a conversion of a watercraft which—

- (a) changes the means of propulsion of the watercraft,
- (b) involves a major engine modification, or
- (c) alters the watercraft to such an extent that it may not meet the applicable essential safety and environmental requirements specified in these Regulations;

“major engine modification” means the modification of a propulsion engine which—

- (a) could potentially cause the engine to exceed the emission limits set out in Part B of Annex I, or
- (b) increases the rated power of the engine by more than 15 per cent;

“making available on the market” means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;

“manufacturer” means a person who manufactures a product or has such a product designed or manufactured and markets that product under the manufacturer’s name or trademark;

“Marine Survey Office” means that part of the Department of Transport, Tourism and Sport which is known by that name;

“market” means the Union market;

“market surveillance” means the activities carried out and measures taken by the market surveillance authority to ensure that products comply with the

¹⁴OJ No. L 316, 14.11.2012, p. 12

applicable requirements set out in Union harmonisation legislation and do not endanger health, safety or any other aspect of public interest protection;

“market surveillance authority” means the Marine Survey Office;

“means of propulsion” means the method by which the watercraft is propelled;

“Minister” means Minister for Transport, Tourism and Sport;

“notified body” means a conformity assessment body notified to the Commission to carry out conformity assessment procedures that has been granted notification—

(a) under Regulation 27, or

(b) by another Member State, and whose appointment has been notified to the Commission under Article 26 of the Directive;

“notifying authority” means the Minister;

“personal watercraft” means a watercraft intended for sports and leisure purposes of less than 4 metres in hull length which uses a propulsion engine having a water jet pump as its primary source of propulsion and designed to be operated by a person or persons sitting, standing or kneeling on, rather than within the confines of, a hull;

“placing on the market” means the first making available of a product on the Union market;

“private importer” means a person established within the Union who imports, in the course of a non-commercial activity, a product from a third country into the Union with the intention of putting it into service for the person’s own use;

“product” shall be construed in accordance with Regulation 3(1);

“prohibition notice” means a notice given to a person under Regulation 36, 37 or 38(4), as the case may be;

“propulsion engine” means any spark or compression ignition internal combustion engine used directly or indirectly for propulsion purposes;

“putting into service” means the first use of a product to which these Regulations apply in the Union by its end-user;

“recall” means any measure aimed at achieving the return of a product that has already been made available to the end-user;

“recreational craft” means any watercraft of any type, excluding personal watercraft, intended for sports and leisure purposes, of hull length from 2.5 metres to 24 metres, regardless of the means of propulsion;

“Regulation (EC) No. 595/2009” means Regulation (EC) No. 595/2009 of 18 June 2009¹⁵ as amended by Commission Regulation (EU) No. 582/2011 of 25 May 2011¹⁶ and Commission Regulation (EU) No. 133/2014 of 31 January 2014¹⁷;

“Regulation (EC) No. 765/2008” means Regulation (EC) No. 765/2008 of 9 July 2008²;

“Regulations of 1998” means the European Communities (Recreational Craft) Regulations 1998 (S.I. No. 40 of 1998) (as amended by the European Communities (Recreational Craft) (Amendment) Regulations 2004 (S.I. No. 422 of 2004));

“SI engine” means a spark ignition engine;

“small or medium-sized enterprise” means a small or medium-sized enterprise as defined in Article 2 of the Annex to Commission Recommendation No. 2003/361/EC of 6 May 2003¹⁸;

“Union” means the European Union;

“Union harmonisation legislation” means any Union legislation harmonising the conditions for the marketing of products;

“watercraft” means any recreational craft or personal watercraft;

“watercraft built for own use” means a watercraft predominantly built by its future user for that person’s own use;

“withdrawal” means any measure aimed at preventing a product in the supply chain from being made available on the market.

(2) A word or expression which is used in these Regulations and which is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

Application

3. (1) Subject to paragraph (2), these Regulations apply to the following products:

- (a) recreational craft and partly completed recreational craft;
- (b) personal watercraft and partly completed personal watercraft;
- (c) components;
- (d) propulsion engines installed or specifically intended for installation on or in watercraft;

¹⁵OJ No. L 188, 18.7.2009, p. 1

¹⁶OJ No. L 167, 25.6.2011, p. 1

¹⁷OJ No. L 47, 18.2.2014, p. 1

¹⁸OJ No. L 124, 20.5.2003, p. 36

(e) propulsion engines installed on or in watercraft that are subject to a major engine modification;

(f) watercraft that are subject to major craft conversion.

(2) These Regulations do not apply to the following products:

(a) with regard to the design and construction requirements specified in Part A of Annex I:

(i) watercraft intended solely for racing, including rowing racing boats and training rowing boats, labelled as such by the manufacturer;

(ii) canoes and kayaks designed to be propelled solely by human power, gondolas and pedalos;

(iii) surfboards designed solely to be propelled by wind and to be operated by a person or persons standing;

(iv) surfboards;

(v) original historical watercraft and individual replicas of such watercraft designed before 1950, built predominantly with the original materials and labelled as such by the manufacturer;

(vi) experimental watercraft, provided that the watercraft is not placed on the Union market;

(vii) watercraft built for own use, provided that the watercraft is not subsequently placed on the Union market during a period of 5 years from the date it is put into service;

(viii) watercraft specifically intended to be crewed and to carry passengers for commercial purposes, regardless of the number of passengers, but without prejudice to paragraph (3);

(ix) submersibles;

(x) air cushion vehicles;

(xi) hydrofoils;

(xii) external combustion steam powered watercraft, fuelled by coal, coke, wood, oil or gas;

(xiii) amphibious vehicles, such as wheeled or track-laying motor vehicles, which are able to operate both on water and on solid land;

(b) with regard to exhaust emission requirements specified in Part B of Annex I:

- (i) propulsion engines installed or specifically intended for installation on the following products:
 - (I) watercraft intended solely for racing and labelled as such by the manufacturer;
 - (II) experimental watercraft, provided that the watercraft is not placed on the Union market;
 - (III) watercraft specifically intended to be crewed and to carry passengers for commercial purposes, regardless of the number of passengers, but without prejudice to paragraph (3);
 - (IV) submersibles;
 - (V) air cushion vehicles;
 - (VI) hydrofoils;
 - (VII) amphibious vehicles, such as wheeled or track-laying motor vehicles, which are able to operate both on water and on land;
 - (ii) original and individual replicas of historical propulsion engines, which are based on a pre-1950 design, not produced in series and fitted on watercraft referred to in clause (v) or (vii) of subparagraph (a);
 - (iii) propulsion engines built for own use provided that such engines are not subsequently placed on the Union market during a period of 5 years from the date the watercraft in which the engines are installed are put into service;
- (c) with regard to noise emission requirements referred to in Part C of Annex I:
- (i) all watercraft referred to in subparagraph (b);
 - (ii) watercraft built for own use, provided that the watercraft is not subsequently placed on the Union market during a period of 5 years from the date it is put into service.

(3) Notwithstanding subparagraph (a)(viii), (b)(i)(III) or (c)(i) of paragraph (2), these Regulations apply to watercraft which may be used for charter or for sports and leisure training when placed on the Union market for recreational purposes.

Making available on the market, putting into service and essential requirements

4. (1) A product to which these Regulations apply may be made available on the market or put into service only if—

- (a) the product does not endanger the health and safety of persons, property or the environment, when correctly maintained and used in accordance with its intended purpose, and
 - (b) the product meets the essential requirements specified in Annex I applicable to that product.
- (2) A person who makes available on the market a product to which these Regulations apply in contravention of paragraph (1) shall be guilty of an offence.
- (3) Each of the following persons who put into service a product to which these Regulations apply in contravention of paragraph (1) shall be guilty of an offence:
- (a) a private importer;
 - (b) a person referred to in Regulation 5(4) who has adapted an engine referred to in subparagraph (b) or (c) of Regulation 5(3);
 - (c) a person who has carried out a major engine modification referred to in subparagraph (a) of Regulation 19(3) or a major craft conversion referred to in subparagraph (b) of Regulation 19(3);
 - (d) a person referred to in Regulation 19(4).

Free movement

5. (1) Nothing in these Regulations shall impede the making available on the market of a partly completed watercraft in respect of which the manufacturer or the importer, as the case may be, has drawn up a declaration in accordance with Annex III that such watercraft is intended to be completed by another person.

(2) Nothing in these Regulations shall impede the making available on the market or the putting into service of a component—

- (a) that complies with these Regulations,
- (b) that is intended to be incorporated into watercraft, and
- (c) in respect of which the appropriate declaration referred to in Regulation 15 has been drawn up by the manufacturer or importer, as the case may be.

(3) Nothing in these Regulations shall impede the making available on the market or the putting into service of a propulsion engine—

- (a) that complies with these Regulations, whether or not installed in a watercraft,
- (b) that—
 - (i) is installed in a watercraft,

(ii) is type-approved in accordance with Directive No. 97/68/EC and is in compliance with emission limits for CI engines as provided for in point 4.1.2 of Annex I to that Directive and specified for—

(I) stage III A,

(II) stage III B, or

(III) stage IV,

and used in other applications than propulsion of inland waterway vessels, locomotives or railcars, and

(iii) complies with these Regulations, other than the exhaust emission requirements applicable to propulsion engines specified in Part B of Annex I,

or

(c) that—

(i) is installed in a watercraft,

(ii) is type-approved in accordance with Regulation (EC) No. 595/2009, and

(iii) complies with these Regulations, other than the exhaust emission requirements applicable to propulsion engines specified in Part B of Annex I.

(4) Notwithstanding paragraph (3), in respect of a propulsion engine referred to in paragraph (b) or (c) of that paragraph, the person undertaking the adaptation of such an engine shall—

(a) ensure that, when installed in a watercraft in accordance with that person's installation instructions and taking full account of the information and data available from the engine manufacturer, the propulsion engine will continue to comply with the exhaust emission requirements of either—

(i) Directive No. 97/68/EC, or

(ii) Regulation (EC) No. 595/2009,

applicable to that propulsion engine, as declared by the engine manufacturer, and

(b) draw up an EU declaration of conformity referred to in Regulation 15 that the propulsion engine will continue to meet the exhaust emission requirements of either—

(i) Directive No. 97/68/EC, or

(ii) Regulation (EC) No. 595/2009,

applicable to that propulsion engine, when installed in accordance with the installation instructions supplied by that person.

(5) Nothing in these Regulations shall impede the showing of products to which these Regulations apply that do not comply with these Regulations at trade fairs, exhibitions and demonstrations provided that a clearly visible sign is displayed at any such trade fair, exhibition or demonstration indicating that the products concerned—

(a) do not comply with these Regulations, and

(b) shall not be made available on the market or put into service until they so comply.

Market surveillance authority and competent authority

6. For the purposes of these Regulations, the Marine Survey Office is the market surveillance authority and the competent authority in the State.

PART 2

Obligations of Economic Operators and Private Importers

Obligations of manufacturers

7. (1) A manufacturer shall ensure that a product placed on the market by that manufacturer has been designed and manufactured in accordance with the requirements of Regulation 4(1) and the essential requirements specified in Annex I applicable to the product.

(2) Before placing a product on the market, the manufacturer of the product shall—

(a) draw up the technical documentation in accordance with Regulation 25,

(b) either—

(i) carry out the conformity assessment procedure applicable to the product, or

(ii) have the conformity assessment procedure carried out, in accordance with Regulations 19, 20, 21, 22 and 24,

(c) where the compliance of the product with the applicable requirements set out in Annex I has been demonstrated by the conformity assessment procedure, draw up the appropriate declaration referred to in Regulation 15 in accordance with that Regulation,

(d) affix a CE marking to a product in accordance with Regulations 17 and 18,

- (e) ensure that the product bears a type, batch or serial number or other element allowing its identification or in the case of a component, where because of its size or nature that is not possible, on its packaging or in the document accompanying the component,
 - (f) ensure that procedures are in place for series production to remain in conformity with the requirements of these Regulations, having regard to any changes in product design or characteristics and changes in the harmonised standards by reference to which conformity of a product is declared,
 - (g) indicate on the product or, where that is not possible, on its packaging or a document accompanying the product—
 - (i) the manufacturer's name, registered trade name or registered trade mark, and
 - (ii) the postal address which shall indicate a single point at which the manufacturer can be contacted,and
 - (h) ensure that the product is accompanied by instructions and safety information in an owner's manual in both the Irish and English languages or in the English language only.
- (3) A manufacturer of a product which the manufacturer has placed on the market shall—
- (a) retain the technical documentation and a copy of the appropriate declaration referred to in Regulation 15 for 10 years after the product has been placed on the market,
 - (b) carry out, as required, when deemed appropriate with regard to a risk presented by a product, to protect the health and safety of consumers, sample testing of the product which has been made available on the market,
 - (c) investigate and, if necessary, keep a register of complaints, non-conforming products and product recalls,
 - (d) keep distributors informed of any such monitoring referred to in subparagraphs (b) and (c),
 - (e) in respect of a product which the manufacturer considers or has reason to believe is not in conformity with the requirements of these Regulations—
 - (i) immediately take any corrective measures necessary to bring the product into conformity including withdrawing it, or recalling it, if appropriate, and

(ii) where the product presents a risk, immediately inform the competent authority and the competent authorities of the other Member States in which the product has been made available, to that effect, giving details of—

(I) the non-compliance, and

(II) any corrective measures taken,

(f) further to a reasoned request from the competent authority, provide it with all the information and documentation, in the Irish or English language, necessary to demonstrate the conformity of the product, and

(g) cooperate with the competent authority, at its request, on any action taken to eliminate a risk posed by a product which the manufacturer has placed on the market.

(4) Where a manufacturer affixes, or has affixed on its behalf, a CE marking to a product, the manufacturer indicates that it takes responsibility for the conformity of the product with all the applicable requirements set out in the relevant Union harmonisation legislation which provides for the affixing of the CE marking to the product.

(5) This Regulation applies to importers and distributors in the circumstances referred to in Regulation 11 and, accordingly, in this Regulation a reference to a manufacturer includes a reference to an importer or a distributor, as the case may be.

Authorised representatives

8. (1) A manufacturer may, by written mandate, appoint an authorised representative.

(2) Subject to paragraph (3), an authorised representative shall perform the tasks specified in the mandate received from the manufacturer.

(3) The tasks referred to in paragraph (2) shall not include—

(a) the obligations referred to in Regulation 7(1), and

(b) the drawing up of the technical documentation referred to in Regulation 25.

(4) The mandate shall permit the authorised representative to perform the following tasks in respect of a product which shall include, but are not limited to:

(a) retaining a copy of the appropriate declaration referred to in Regulation 15 at the disposal of the market surveillance authority for 10 years after a product has been placed on the market;

- (b) retaining a copy of the technical documentation referred to in Regulation 25 at the disposal of the market surveillance authority for 10 years after a product has been placed on the market;
- (c) further to a reasoned request from the competent authority, providing it with all the information and documentation necessary to demonstrate the conformity of a product;
- (d) cooperate with the competent authority, at its request, on any action taken to eliminate a risk posed by a product covered by its mandate.

Obligations of importers

9. (1) An importer shall not place a product on the market unless that product complies with these Regulations.

- (2) Before placing a product on the market an importer shall ensure that—
 - (a) the appropriate conformity assessment procedure has been carried out by the manufacturer,
 - (b) the manufacturer has drawn up the technical documentation in accordance with Regulation 25, and containing the relevant documents specified in Annex IX,
 - (c) the product bears a CE marking in accordance with Regulation 17,
 - (d) the product is accompanied by the appropriate declaration referred to in Regulation 15,
 - (e) the product is accompanied by an owner’s manual—
 - (i) specified in point 2.5 of Part A of Annex I, and
 - (ii) in the case of—
 - (I) a product referred to in Part B of Annex I, an owner’s manual specified in point 4 of that Part;
 - (II) a product referred to in Part C of Annex I, containing the information or instructions, as the case may be, referred to in point 2 of that Part,
 - (f) the manufacturer has complied with the requirements specified in subparagraphs (e) and (g) of Regulation 7(2),
 - (g) the product is accompanied by instructions and safety information in an owner’s manual in both the Irish and English languages or in the English language only, and
 - (h) the importer’s name, registered trade name or registered trade mark and the postal address at which the importer can be contacted is indicated on the product, or, in the case of a component where that is not

possible, on the packaging or in a document accompanying the product.

(3) Before placing a product on the market, where an importer considers or has reason to believe that a product is not in conformity with the requirements specified in Regulation 4(1) and Annex I, the importer—

- (a) shall not place the product on the market until the product has been brought into conformity, and
- (b) where the product presents a risk, shall inform the manufacturer and the market surveillance authority of the risk.

(4) Before placing a product on the market, an importer shall ensure that, while the product is under the responsibility of the importer, the storage of the product or the conditions under which it is transported do not jeopardise its compliance with the requirements specified in Regulation 4(1) and Annex I.

(5) An importer of a product which the importer has placed on the market shall, for 10 years after the product has been placed on the market—

- (a) retain a copy of the appropriate declaration referred to in Regulation 15 at the disposal of the market surveillance authority, and
- (b) ensure that the technical documentation drawn up in accordance with Regulation 25 is made available to the market surveillance authority, upon request.

(6) An importer shall—

- (a) carry out, as required, when deemed appropriate with regard to a risk presented by a product, to protect the health and safety of consumers, sample testing of any such product made available on the market,
- (b) investigate and, if necessary, keep a register of complaints, non-conforming products and product recalls, and
- (c) keep distributors informed of any such monitoring referred to in subparagraphs (a) and (b).

(7) An importer who considers, or has reason to believe, that a product which the importer has placed on the market is not in conformity with the requirements of these Regulations—

- (a) shall immediately take any corrective measures necessary to bring that product into conformity, including withdrawing or recalling it, if appropriate, and
- (b) where the product presents a risk, shall immediately inform the competent authority and the competent authorities of the other Member

States in which the importer made the product available, to that effect, giving details of—

- (i) the non-compliance, and
- (ii) any corrective measures taken.

(8) An importer shall—

- (a) further to a reasoned request from the competent authority, provide it with all the information and documentation, in the Irish or the English language, necessary to demonstrate the conformity of a product, and
- (b) cooperate with the competent authority, at its request, on any action taken to eliminate a risk posed by a product which the importer has placed on the market.

Obligations of distributors

10. (1) A distributor shall not make a product available on the market without acting with due care in relation to the requirements of these Regulations.

(2) Before making a product available on the market, a distributor shall verify that—

- (a) the product bears the CE marking in accordance with Regulation 17,
- (b) the product is accompanied by an owner's manual—
 - (i) specified in point 2.5 of Part A of Annex I, and
 - (ii) in the case of—
 - (I) a product referred to in Part B of Annex I, an owner's manual specified in point 4 of that Part;
 - (II) a product referred to in Part C of Annex I, containing the information or instructions, as the case may be, referred to in point 2 of that Part,
- (c) the product is accompanied by the appropriate declaration referred to in Regulation 15,
- (d) the product is accompanied by instructions and safety information in an owner's manual in both the Irish and English languages or in the English language only,
- (e) the manufacturer has complied with the requirements specified in subparagraphs (e) and (g) of Regulation 7(2), and
- (f) the importer has complied with the requirements specified in Regulation 9(2)(h).

(3) Before making a product available on the market, where a distributor considers, or has reason to believe, that a product is not in conformity with the requirements specified in Regulation 4(1) and Annex I, the distributor—

- (a) shall not make the product available on the market until the product has been brought into conformity with those requirements, and
- (b) where the product presents a risk, shall inform the manufacturer or the importer, as the case may be, and the market surveillance authority of the risk.

(4) A distributor shall ensure that, while a product is under the responsibility of the distributor, the storage of the product or the conditions under which it is transported do not jeopardise its compliance with the requirements specified in Regulation 4(1) and Annex I.

(5) A distributor who considers, or has reason to believe, that a product which the distributor has made available on the market is not in conformity with the requirements of these Regulations—

- (a) shall ensure that the necessary corrective measures, as appropriate, are taken to bring that product into conformity, or to withdraw or recall the product, and
- (b) where the product presents a risk, shall immediately inform the competent authority and the competent authorities of the other Member States in which the distributor made the product available on the market to that effect, giving details of—
 - (i) the non-compliance, and
 - (ii) any corrective measures taken.

(6) A distributor shall—

- (a) further to a reasoned request from the competent authority, provide it with all the information and documentation which is necessary to demonstrate the conformity of a product, and
- (b) cooperate with the competent authority, at its request, on any action taken to eliminate a risk posed by a product which the distributor has made available on the market.

Cases in which obligations of manufacturers apply to importers and distributors

11. An importer or a distributor shall be considered a manufacturer for the purposes of these Regulations and shall fulfil the obligations of the manufacturer under Regulation 7 where any of the following circumstances apply:

- (a) the importer places a product on the market under the importer's name or trademark;

- (b) the distributor places a product on the market under the distributor's name or trademark;
- (c) the importer or distributor modifies a product already placed on the market in such a way that compliance with the requirements of these Regulations may be affected.

Obligations of private importers

12. Where a manufacturer does not fulfil the obligations to ensure the conformity of a product with these Regulations, a private importer shall, before putting a product into service—

- (a) ensure that it was designed and manufactured in accordance with the requirements of Regulation 4(1) and Annex I,
- (b) carry out, or have carried out, the obligations of the manufacturer under subparagraphs (a) to (d) and (h) of paragraph (2) and subparagraphs (a), (f) and (g) of paragraph (3) of Regulation 7,
- (c) draw up, or have drawn up by a person with an appropriate level of qualifications and technical expertise and competence, the technical documentation required under Regulation 7(2)(a), where the manufacturer has not already done so, and
- (d) ensure that the name and address of the notified body which has carried out the conformity assessment of the product is marked on the product.

Identification of economic operators

13. (1) An economic operator (“the first-mentioned economic operator”) shall, on request, identify to the market surveillance authority any other economic operator—

- (a) who has supplied the first-mentioned economic operator with a product, or
- (b) to whom the first-mentioned economic operator has supplied a product.

(2) An economic operator shall be able to present the information referred to in paragraph (1) to the market surveillance authority for a period of 10 years after the economic operator has supplied, or been supplied with, the product.

(3) A private importer shall, on request, identify to the market surveillance authority the economic operator who has supplied the private importer with a product.

(4) A private importer shall be able to present the information referred to in paragraph (3) to the market surveillance authority for a period of 10 years after the private importer has been supplied with the product.

PART 3

Conformity of Products

Presumption of conformity of products

14. A product which is in conformity with harmonised standards (or parts of such standards), references to which have been published in the *Official Journal of the European Union*, shall be presumed to be in conformity with the requirements covered by those standards (or parts of those standards) specified in Regulation 4(1) and Annex I.

EU declaration of conformity and declaration in accordance with Annex III

15. (1) A person required by these Regulations to draw up an EU declaration of conformity in respect of a product to which these Regulations apply shall ensure that the declaration—

- (a) states that the fulfilment of the following requirements applicable to the product have been demonstrated in respect of that product:
 - (i) the requirements specified in Regulation 4(1) and Annex I, or
 - (ii) the requirements specified in subparagraph (b) or (c) of Regulation 5(3) and in Regulation 5(4),
- (b) has the model structure set out in Annex IV,
- (c) contains the elements specified in the relevant modules—
 - (i) in Annex II to the Decision for the relevant conformity assessment procedure applicable to, and followed in respect of, a product, and
 - (ii) in Annex V for equivalent conformity based on post-construction assessment applicable to, and followed in respect of, a product,and
- (d) when the product is made available on the market or put into service in the State, is translated into—
 - (i) both the Irish and English languages, or
 - (ii) the English language only.

(2) A person who has drawn up an EU declaration of conformity in accordance with paragraph (1) shall ensure that the declaration is continuously updated.

(3) A manufacturer, a private importer or a person referred to in Regulation 5(4) who has adapted an engine referred to in subparagraph (b) or (c) of Regulation 5(3), who has drawn up an EU declaration of conformity in accordance

with paragraph (1), shall be responsible for compliance of the product with these Regulations.

(4) A manufacturer, a private importer, or a person referred to in Regulation 5(4) who has adapted an engine referred to in subparagraph (b) or (c) of Regulation 5(3), who has drawn up an EU declaration of conformity in accordance with paragraph (1), shall ensure that the declaration shall accompany—

- (a) watercraft,
- (b) components, when placed on the market separately, and
- (c) propulsion engines,

when made available on the market or put into service.

(5) A manufacturer or an importer of a partly completed watercraft specified in Regulation 5(1) shall, when the partly completed watercraft is made available on the market in the State—

- (a) draw up a declaration containing the elements specified in Annex III,
- (b) ensure the declaration shall accompany the partly completed watercraft, and
- (c) translate the declaration into—
 - (i) both the Irish and English languages, or
 - (ii) the English language only.

General principles of CE marking

16. (1) The CE marking shall be affixed to a product only in accordance with the requirements of these Regulations.

(2) The CE marking shall be the only marking which attests to the conformity of a product with all the applicable requirements of the relevant Union harmonisation legislation which provides for the affixing of the CE marking to the product.

(3) The following persons, as the case may require, shall ensure that this Regulation is complied with in relation to a product:

- (a) the manufacturer of the product;
- (b) the authorised representative concerned, where the requirement to affix the CE marking to a product in accordance with Regulations 17 and 18 is specified in the mandate received by the authorised representative from the manufacturer;

- (c) the importer of the product, in the circumstances referred to in paragraph (a) or (c) of Regulation 11;
- (d) a distributor of the product, in the circumstances referred to in paragraph (b) or (c) of Regulation 11;
- (e) a private importer of the product, in a case where Regulation 12(b) applies;
- (f) a person referred to in Regulation 5(4) who has adapted an engine referred to in subparagraph (b) or (c) of Regulation 5(3);
- (g) a person who has carried out a major engine modification referred to in subparagraph (a) of Regulation 19(3) or a major craft conversion referred to in subparagraph (b) of Regulation 19(3);
- (h) a person referred to in Regulation 19(4);
- (i) a person referred to in Regulation 19(5).

Products subject to CE marking

17. (1) The following products are subject to CE marking when made available on the market or put into service:

- (a) watercraft;
- (b) components;
- (c) propulsion engines.

(2) A product referred to in paragraph (1) which bears the CE marking shall be presumed to comply with these Regulations.

Rules and conditions for affixing CE marking and other markings

18. (1) A person shall not make available on the market or put into service a product referred to in Regulation 17(1), unless the CE marking, specified in Annex II to Regulation (EC) No. 765/2008, is affixed to the product, in accordance with paragraphs (2) to (6), before it is so made available or put into service.

(2) The CE marking shall be affixed visibly, legibly and indelibly to the product concerned.

(3) In the case of a component, where it is not possible or warranted, because of the nature or size of that product, to affix the CE marking in accordance with paragraph (1), the CE marking shall be affixed to the packaging and the accompanying documents.

(4) In the case of a watercraft, the CE marking shall be affixed on the watercraft builder's plate which is mounted separately from the watercraft identification number.

- (5) In the case of a propulsion engine, the CE marking shall be affixed on the engine.
- (6) The CE marking shall be affixed to the product before it is placed on the market or put into service.
- (7) The CE marking shall be followed by the identification number of the notified body, where that body is involved in the production control phase or the post-construction assessment.
- (8) The identification number of the notified body shall be affixed—
- (a) by the notified body itself, or
 - (b) where instructed to do so by the notified body, by—
 - (i) the manufacturer,
 - (ii) the authorised representative of the manufacturer,
 - (iii) the private importer,
 - (iv) the person who has carried out a major engine modification referred to in subparagraph (a) of Regulation 19(3) or a major craft conversion referred to in subparagraph (b) of Regulation 19(3),
 - (v) the person referred to in Regulation 19(4), or
 - (vi) the person referred to in Regulation 19(5).
- (9) The CE marking and, where applicable, the identification number of the notified body referred to in paragraph (7), may be followed by a pictogram or any other mark indicating a special risk or use.
- (10) A person shall not affix a sign, marking or inscription to a product which is likely to mislead third parties as to the meaning or form of the CE marking.
- (11) A person shall not affix a marking to a product if it is likely to impair the visibility, legibility or meaning of the CE marking.
- (12) A person shall not affix a CE marking, in a manner which contravenes this Regulation, to a product which is otherwise in conformity with the requirements of these Regulations.
- (13) A person who affixes a CE marking to a product which is not in conformity with the requirements of these Regulations shall be guilty of an offence.

PART 4

Conformity Assessment Procedures

Applicable conformity assessment procedures

19. (1) A manufacturer of a product to which these Regulations apply shall apply the conformity assessment procedures specified in Regulations 20, 21 and 22 before placing the product on the market.

(2) A private importer of a product to which these Regulations apply shall apply the conformity assessment procedure specified in Regulation 23 before putting the product into service where the manufacturer has not carried out the conformity assessment for the product concerned.

(3) A person shall apply the conformity assessment procedure specified in Regulation 23 before placing on the market or putting into service—

(a) a propulsion engine following the carrying out of a major engine modification, or

(b) a watercraft following the carrying out of a major craft conversion.

(4) A person who intends—

(a) to place on the market or put into service a watercraft to which these Regulations do not apply, and

(b) to change the purpose of the watercraft in such a manner that these Regulations shall apply to the watercraft following such change,

shall apply the conformity assessment procedure specified in Regulation 23 before placing the watercraft on the market or putting it into service.

(5) A person who intends to place on the market a watercraft referred to in subparagraph (a)(vii) of Regulation 3(2) before the end of a period of 5 years from the date the watercraft was put into service, shall apply the conformity assessment procedure specified in Regulation 23 before placing the watercraft on the market.

Design and construction

20. (1) The conformity assessment procedures specified in Annex II to the Decision and set out in this Regulation shall apply with regard to design and construction of recreational craft, personal watercraft and components.

(2) The conformity assessment procedures to be applied in respect of recreational craft of hull length from 2.5 metres to less than 12 metres of design categories A and B referred to in point 1 of Part A of Annex I shall be—

(a) Module A1,

(b) (i) Module B, and

(ii) any one of the following modules:

(I) Module C;

(II) Module D;

(III) Module E;

(IV) Module F,

(c) Module G, or

(d) Module H.

(3) The conformity assessment procedures to be applied in respect of recreational craft of hull length from 12 metres to 24 metres of design categories A and B referred to in point 1 of Part A of Annex I shall be—

(a) (i) Module B, and

(ii) any one of the following modules:

(I) Module C;

(II) Module D;

(III) Module E;

(IV) Module F,

(b) Module G, or

(c) Module H.

(4) The conformity assessment procedures to be applied in respect of recreational craft of hull length from 2.5 metres to less than 12 metres of design category C referred to in point 1 of Part A of Annex I shall be—

(a) where the harmonised standards relating to points 3.2 and 3.3 of Part A of Annex I are complied with—

(i) Module A,

(ii) Module A1,

(iii) (I) Module B, and

(II) any one of the following modules:

(A) Module C;

(B) Module D;

- (C) Module E;
 - (D) Module F,
 - (iv) Module G, or
 - (v) Module H,
 - or
 - (b) where the harmonised standards relating to points 3.2 and 3.3 of Part A of Annex I are not complied with—
 - (i) Module A1,
 - (ii) (I) Module B, and
 - (II) any one of the following modules:
 - (A) Module C;
 - (B) Module D;
 - (C) Module E;
 - (D) Module F,
 - (iii) Module G, or
 - (iv) Module H.
- (5) The conformity assessment procedures to be applied in respect of recreational craft of hull length from 12 metres to 24 metres of design category C referred to in point 1 of Part A of Annex I shall be—
- (a) (i) Module B, and
 - (ii) any one of the following modules:
 - (I) Module C;
 - (II) Module D;
 - (III) Module E;
 - (IV) Module F,
 - (b) Module G, or
 - (c) Module H.

(6) The conformity assessment procedures to be applied in respect of recreational craft of hull length from 2.5 metres to 24 metres of design category D referred to in point 1 of Part A of Annex I shall be—

- (a) Module A,
- (b) Module A1,
- (c) (i) Module B, and
 - (ii) any one of the following modules:
 - (I) Module C;
 - (II) Module D;
 - (III) Module E;
 - (IV) Module F,
- (d) Module G, or
- (e) Module H.

(7) The conformity assessment procedures specified in Annex II to the Decision to be applied in respect of the design and construction of personal watercraft shall be—

- (a) Module A,
- (b) Module A1,
- (c) (i) Module B, and
 - (ii) any one of the following modules:
 - (I) Module C;
 - (II) Module D;
 - (III) Module E;
 - (IV) Module F,
- (d) Module G, or
- (e) Module H.

(8) The conformity assessment procedures specified in Annex II to the Decision to be applied in respect of the design and construction of components shall be—

- (a) (i) Module B, and

(ii) any one of the following modules:

(I) Module C;

(II) Module D;

(III) Module E;

(IV) Module F,

(b) Module G, or

(c) Module H.

Exhaust emissions

21. The manufacturer of a propulsion engine referred to in subparagraph (d) or (e) of Regulation 3(1) shall apply the following conformity assessment procedures specified in Annex II to the Decision in respect of exhaust emissions of such a propulsion engine:

(a) where tests are conducted using the harmonised standard for exhaust emission measurement—

(i) (I) Module B, and

(II) any one of the following modules:

(A) Module C;

(B) Module D;

(C) Module E;

(D) Module F,

(ii) Module G, or

(iii) Module H;

(b) where tests are conducted without using the harmonised standard for exhaust emission measurement—

(i) Module B and Module C1, or

(ii) Module G.

Noise emissions

22. (1) A manufacturer shall apply the conformity assessment procedures specified in Annex II to the Decision in respect of noise emissions to—

(a) recreational craft with stern drive propulsion engines without integral exhausts,

- (b) recreational craft with inboard propulsion engine installations,
- (c) recreational craft with stern drive propulsion engines without integral exhausts subject to major craft conversion and subsequently placed on the market within 5 years of the conversion, and
- (d) recreational craft with inboard propulsion engine installations subject to major craft conversion and subsequently placed on the market within 5 years of the conversion.

(2) The conformity assessment procedures to be applied in respect of the recreational craft specified in paragraph (1) shall be—

- (a) where tests are conducted using the harmonised standard for noise measurement—
 - (i) Module A1,
 - (ii) Module G, or
 - (iii) Module H,
- (b) where tests are conducted without using the harmonised standard for noise measurement, Module G, or
- (c) where the Froude number and power displacement ratio method is used for assessment—
 - (i) Module A,
 - (ii) Module G, or
 - (iii) Module H.

(3) A manufacturer of a personal watercraft or a propulsion engine shall apply the conformity assessment procedures specified in Annex II to the Decision in respect of noise emissions to—

- (a) personal watercraft,
- (b) outboard propulsion engines intended for installation on recreational craft, and
- (c) stern drive propulsion engines with integral exhausts intended for installation on recreational craft.

(4) The conformity assessment procedures to be applied in respect of a personal watercraft or a propulsion engine specified in paragraph (3) shall be—

- (a) where tests are conducted using the harmonised standard for noise measurement—

- (i) Module A1,
 - (ii) Module G, or
 - (iii) Module H,
- or

- (b) where tests are conducted without using the harmonised standard for noise measurement, Module G.

Post construction assessment

23. For the purposes of paragraphs (2), (3), (4) and (5) of Regulation 19, the post construction conformity assessment procedure shall be carried out in accordance with Annex V.

Supplementary requirements

24. (1) Where the procedure specified in Module B of Annex II to the Decision is used to conduct the assessments specified for the purposes of Regulation 20, 21 or 22, the EU type examination shall be carried out in the manner specified in the second indent of point 2 of Module B.

(2) A production type as referred to in Module B of Annex II to the Decision used by a notified body to carry out conformity assessment may apply to several versions of the same product, provided that—

- (a) any difference between the versions of the product does not affect the level of safety and other requirements in relation to the performance of the product, and
- (b) other versions of the product are referred to in the corresponding EU type examination certificate and, if necessary, by amendments to the original certificate.

(3) Where the procedure specified in Module A1 of Annex II to the Decision is used to conduct the assessments specified for the purposes of Regulation 20, 21 or 22, the product checks shall be carried out on one or more watercraft representing the production of the manufacturer, and the supplementary requirements specified in Annex VI shall apply.

(4) The product checks referred to in Module A1 or C1 of Annex II to the Decision shall not be carried out by accredited in-house bodies referred to in those modules.

(5) Where the procedure specified in Module F of Annex II to the Decision is used to conduct the assessments specified for the purposes of Regulation 21, Annex VII shall apply to the assessment of conformity with the exhaust emission requirements.

(6) Where the procedure specified in Module C of Annex II to the Decision is used to conduct the assessments specified for the purposes of Regulation 21,

and if the manufacturer is not operating an approved quality system specified in Module H of Annex II to the Decision, a notified body, chosen by the manufacturer to carry out the product checks or to have them carried out at random intervals determined by the notified body, shall carry out such checks in order to verify the quality of the internal checks on the product.

(7) If, in respect of the procedures referred to in paragraph (6), the notified body is of the opinion that—

- (a) the quality level may be unsatisfactory, or
- (b) it may be necessary to verify the validity of the data presented by the manufacturer,

the procedure specified in Annex VIII shall apply.

Technical documentation

25. (1) The technical documentation referred to in Regulation 7(2)(a) shall contain—

- (a) all relevant data and details of the means used by the manufacturer to ensure that a product complies with the requirements of Regulation 4(1) and Annex I, and
- (b) the relevant documents specified in Annex IX.

(2) The technical documentation shall ensure that the design, construction, operation and assessment of conformity of the product shall be clear and intelligible.

PART 5

Notification of Conformity assessment Bodies

Notifying authority

26. (1) The Minister is designated as the notifying authority in the State for the purposes of Article 27 of the Directive and these Regulations.

(2) The Accreditation Board shall carry out the following activities on behalf of the notifying authority—

- (a) the setting up and carrying out of the necessary procedures for the assessment and accreditation of conformity assessment bodies, and
- (b) the monitoring of notified bodies, including compliance with the requirements of paragraphs 16, 17, 18, and 19 of the Schedule.

Notification

27. (1) A conformity assessment body shall meet the requirements of and fulfil the obligations specified in the Schedule for the purposes of notification.

(2) An application for notification by a conformity assessment body shall be in accordance with Regulation 28.

(3) The notifying authority may, where—

- (a) a conformity assessment body has made an application in accordance with Regulation 28, and
- (b) the notifying authority is satisfied that the conformity assessment body meets the requirements of and fulfils the obligations specified in the Schedule,

grant notification to the conformity assessment body.

(4) The grant of notification may be made subject to such conditions as the notifying authority may determine, and such conditions may include conditions which apply upon or during, or following the termination of, the grant of notification.

(5) Subject to paragraph (6), the duration of the grant of notification shall be at the discretion of the notifying authority which may renew or withdraw the grant as appropriate.

(6) A grant of notification shall be withdrawn—

- (a) upon the expiry of the period of the grant,
- (b) upon the expiry of 90 days notice in writing given by a notified body to the notifying authority,
- (c) upon determination by the notifying authority, or by an appeal panel on appeal under Regulation 30, that the notified body no longer meets the requirements of and fulfils the obligations specified in the Schedule, or
- (d) upon determination by the notifying authority that the notified body does not comply with, or has ceased to comply with, the conditions attached to such grant.

(7) A person shall not hold himself or herself out, or represent himself or herself, as being a notified body where the person has not been granted a notification under paragraph (3) or by the notifying authority of another Member State in accordance with Article 26 of the Directive.

Application for notification

28. (1) A conformity assessment body shall submit an application for notification as a notified body under these Regulations to the notifying authority.

(2) The application referred to in paragraph (1) shall be accompanied—

- (a) by a description of the conformity assessment activities,

(b) by—

- (i) the conformity assessment module or modules, and
- (ii) the product or, if applicable, more than one of the products to which these Regulations apply,

in relation to which the conformity assessment body claims to have the competence to perform conformity assessment in accordance with the requirements of these Regulations and relevant harmonised standards,

and

- (c) by such other information and documentation as the notifying authority may require to satisfy itself that the conformity assessment body meets the requirements of, and fulfils the obligations specified in, the Schedule for the purposes of notification as a notified body.

(3) The application referred to in paragraph (1) shall be accompanied by a certificate of accreditation issued by the Accreditation Board attesting that the conformity assessment body meets the requirements specified in paragraphs 1 to 15 of the Schedule.

Presumption of conformity

29. Where a conformity assessment body demonstrates conformity with the criteria laid down in the relevant harmonised standards (or part of such standards), the references to which have been published in the *Official Journal of the European Union*, the body shall be presumed to comply with the requirements specified in paragraphs 1 to 15 of the Schedule, in so far as the applicable harmonised standards (or part of such standards) apply to those requirements.

Restriction, suspension or withdrawal of notification

30. (1) Where the notifying authority has ascertained or has been informed that a notified body no longer meets the requirements specified in paragraphs 1 to 15 of the Schedule or that it is failing to fulfil its obligations under this Part, the notifying authority shall restrict, suspend or withdraw notification, as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations.

(2) The notifying authority shall inform the notified body concerned of its decision and allow the body an opportunity to make representations to it.

(3) Where a notified body is aggrieved by a decision of the notifying authority to restrict, suspend or withdraw its notification, the notified body may, within 21 days of the date of the decision, appeal the decision to an appeal panel established by the notifying authority for the purpose of hearing the appeal and stating the grounds on which the appeal is made.

(4) An appeal panel referred to in paragraph (3) shall consist of such number of independent and suitably qualified persons as the notifying authority decides.

(5) An appeal panel may affirm, set aside or modify the decision of the notifying authority.

(6) The decision of an appeal panel is final other than on a point of law on which an appeal lies to the High Court.

Operational obligations of notified bodies

31. (1) A notified body shall carry out a conformity assessment in accordance with the conformity assessment procedures specified in Regulations 19 to 24 and Article 38(2) of the Directive.

(2) Where a notified body finds that the requirements specified in Regulation 4(1) and Annex I or corresponding harmonised standards have not been met by a manufacturer or a private importer, it shall require that manufacturer or private importer, as the case may be, to take appropriate corrective measures and it shall not issue a conformity certificate.

(3) Where, in the course of the monitoring of conformity following the issue of a certificate, a notified body finds that a product is no longer in compliance, it shall, by notification, require the manufacturer of the product to take appropriate corrective measures and shall suspend or withdraw the certificate, if necessary.

(4) Where corrective measures referred to in paragraph (3) are not taken or do not have the required effect, the notified body concerned shall, having considered any representations made to it by the manufacturer or the private importer, as the case may be, restrict, suspend or withdraw any certificate, as appropriate.

Appeal from decision of notified body

32. (1) A manufacturer or a private importer, as the case may be, may, within 21 days of the date of a refusal to issue a certificate under paragraph (2) of Regulation 31, or the restriction, suspension or withdrawal of a certificate under paragraph (3) or (4) of Regulation 31, appeal the decision of the notified body to the notifying authority, stating the grounds on which the appeal is made.

(2) The notifying authority shall establish an appeal panel for the purpose of hearing an appeal under paragraph (1).

(3) An appeal panel shall comprise such number of independent and suitably qualified persons as the notifying authority decides.

(4) An appeal panel may affirm, set aside or modify the decision of the notified body.

(5) The decision of an appeal panel is final other than on a point of law which lies to the High Court.

Information obligations on notified bodies

33. (1) A notified body shall inform the notifying authority of—

- (a) any refusal, restriction, suspension or withdrawal of a certificate,
- (b) any circumstances affecting the scope of or conditions for notification,
- (c) any request for information which it has received from the market surveillance authority or the market surveillance authorities of other Member States regarding conformity assessment activities, and
- (d) conformity assessment activities performed within the scope of its notification and any other conformity assessment activity performed, including cross-border activities and subcontracting, on request from the notifying authority.

(2) A notified body shall provide other notified bodies which perform conformity assessment activities of a similar nature in respect of the same products with relevant information on matters relating to negative and, on request, positive, conformity assessment results.

Fees

34. (1) A notified body may charge fees in connection with or incidental to carrying out conformity assessment procedures under these Regulations.

(2) The fees charged under paragraph (1) shall not exceed the sum of the following:

- (a) the costs incurred or to be incurred by the notified body in carrying out conformity assessment procedures;
- (b) an amount of profit which is reasonable in the circumstances, having regard to the character and extent of the work done by the body on behalf of the person who has submitted the product for the assessment of conformity, and the commercial rate normally charged on account of profit for that work or similar work.

(3) The power in paragraph (1) includes the power to require the payment of fees in advance of carrying out the conformity assessment procedures requested.

(4) The fees charged under paragraph (1) shall be recoverable, from the person by whom the fee is payable, as a simple contract debt in any court of competent jurisdiction.

PART 6

Union Market Surveillance, Control of Products Entering Union Market and Safeguard Procedure

Union market surveillance and control of products entering Union market

35. (1) A person shall not place a product on the market unless, when used in accordance with its intended purpose or under conditions which may reasonably be foreseen and when properly installed and maintained, it does not endanger the health or safety of persons.

(2) A person who fails to comply with paragraph (1) shall be guilty of an offence.

(3) Articles 15(3) and 16 to 29 of Regulation (EC) No. 765/2008 apply to the products to which these Regulations apply.

Procedure for dealing with products presenting risk at national level

36. (1) Where the market surveillance authority has reason to believe that a product presents a risk to the health or safety of persons, to property or to the environment, it shall carry out an evaluation in relation to the product concerned in respect of all relevant requirements specified in these Regulations.

(2) The relevant economic operator or the private importer, as the case may be, shall cooperate as necessary with the market surveillance authority in carrying out an evaluation under paragraph (1).

(3) Where, in the course of carrying out an evaluation under paragraph (1), the market surveillance authority finds that the product does not comply with the requirements specified in these Regulations, it shall notify its finding without delay to the relevant economic operator concerned, or the private importer, as the case may be.

(4) Where the market surveillance authority has reason to believe that action is required to prevent a risk to the health and safety of persons, to property or to the environment it may decide to give a prohibition notice stating that opinion, having regard to the nature of the risk referred to in paragraph (1), to—

- (a) the economic operator or operators concerned, requiring the economic operator, within a reasonable period stated in the prohibition notice, to—
 - (i) take all appropriate corrective action to bring the product into compliance with the requirements of these Regulations,
 - (ii) withdraw the product from the market, or
 - (iii) recall the product,

or

- (b) the private importer concerned, specifying the appropriate corrective action to be taken by the private importer to—
 - (i) bring the product into compliance with the requirements of these Regulations,
 - (ii) refrain from putting the product into service, or
 - (iii) where the product has been put into service, to refrain from use of the product.

(5) The market surveillance authority shall take all appropriate provisional measures it considers necessary where the relevant economic operator or private importer, as the case may be, does not take adequate corrective action as required by, and within the period referred to in, the prohibition notice given under paragraph (4).

(6) The provisional measures which the market surveillance authority may take under paragraph (5) are as follows:

- (a) in respect of the relevant economic operator—
 - (i) the prohibition or restriction of the product from being made available on the market in the State,
 - (ii) the withdrawal of the product from the market in the State, or
 - (iii) the recall of the product from the market in the State;
- (b) in respect of a private importer—
 - (i) the prohibition of the putting into service of the product in the State, or
 - (ii) the prohibition or restriction of the use of the product which has been put into service in the State.

(7) Where the market surveillance authority decides to withdraw a product manufactured in another Member State, it shall inform the economic operator concerned at the address indicated on the product or in the documentation accompanying the product.

(8) The market surveillance authority shall inform the notified body which carried out the conformity assessment of the product of the giving of a prohibition notice under paragraph (4).

(9) Where the market surveillance authority considers that the non-compliance is not restricted to the State, it shall inform the Commission and the other Member States of the results of the evaluation referred to in paragraph (1) and of the actions it has required the relevant economic operator to take.

(10) Regulations 43, 44 and 45 apply to a prohibition notice given under paragraph (4) and to any measures taken by the market surveillance authority under paragraph (5).

Products presenting serious risk

37. (1) Where, in the course of carrying out an evaluation under Regulation 36(1) or where it has otherwise ascertained or been informed, the market surveillance authority is of the opinion that a product may present a serious risk to the health or safety of persons, to property or to the environment and that immediate action is required to prevent such harm, it shall undertake such evaluation and assessment as seem to it to be appropriate, including a risk assessment, if necessary.

(2) An evaluation or assessment referred to in paragraph (1), including any risk assessment, shall take into account, but shall not be limited to, an assessment of the nature of the hazard and the likelihood of its occurrence.

(3) Where, having carried out an evaluation and assessment referred to in paragraph (1), and having conducted a risk assessment, the market surveillance authority finds that the product presents a serious risk to the health or safety of persons, to property or to the environment, it shall notify its finding without delay to the relevant economic operator concerned, or the private importer, as the case may be.

(4) Where the market surveillance authority has reason to believe that immediate action is required to prevent a serious risk to the health and safety of persons, to property or to the environment it may decide to give a prohibition notice stating that opinion, having regard to the nature of the risk referred to in paragraph (1), to—

- (a) the economic operator or operators concerned, requiring the economic operator to do one or more of the following—
 - (i) refrain from placing the product on the market,
 - (ii) refrain from making the product available on the market in the State,
 - (iii) withdraw the product from the market in the State, or
 - (iv) recall the product from the market in the State,or
- (b) the private importer concerned, requiring the private importer to—
 - (i) refrain from putting the product into service in the State, or
 - (ii) where the product has been put into service in the State, refrain from use of the product.

(5) The market surveillance authority may take any other measures it considers appropriate including prohibiting a product from being placed on the market, seizing a product, destroying a product or rendering a product inoperable where it finds the product presents a serious risk referred to in paragraph (3) and it considers those measures to be necessary and proportionate.

(6) An economic operator shall comply with measures taken under paragraph (5).

(7) Notwithstanding subparagraph (a) or (b) of paragraph (4) a prohibition notice given under paragraph (4) may be given to any person the market surveillance authority has reasonable grounds for believing is in a position to take the action specified in the notice.

(8) Regulations 43, 44 and 45 apply to a prohibition notice given under paragraph (4) and to any measures taken by the market surveillance authority under paragraph (5).

Formal non-compliance

38. (1) (a) Without prejudice to Regulation 36 or 37, where the market surveillance authority makes one or more of the findings specified in paragraph (b) it shall, by a compliance notice require the relevant economic operator or the private importer, as the case may be, to put an end to the non-compliance concerned.

(b) The findings referred to in paragraph (a) are:

- (i) the CE marking has been affixed in contravention of Regulation 16, 17 or 18;
- (ii) the CE marking, as referred to in Regulation 17, has not been affixed;
- (iii) the EU declaration of conformity or the declaration referred to in Annex III has not been drawn up;
- (iv) the EU declaration of conformity or the declaration referred to in Annex III has not been drawn up correctly;
- (v) the technical documentation is either not available or not complete;
- (vi) the information referred to in Regulation 7(2)(g) or 9(2)(h) is absent, false or incomplete;
- (vii) any other administrative requirement provided for in Regulation 7 or 9 is not fulfilled.

(2) The economic operator or the private importer, as the case may be, shall ensure that corrective action is taken in respect of all products that are found to be non-compliant under paragraph (1).

(3) Regulation 42 applies to a compliance notice given under paragraph (1).

(4) Where the non-compliance referred to in paragraph (1) persists, the market surveillance authority may decide to give a prohibition notice, as it considers necessary—

(a) in respect of an economic operator—

(i) to restrict or prohibit the product being made available on the market in the State, or

(ii) to ensure that it is recalled or withdrawn from the market in the State,

or

(b) in respect of a private importer, to restrict or prohibit the use of the product in the State.

(5) Regulations 43, 44 and 45 apply to a prohibition notice given under paragraph (4).

PART 7

Inspections and Surveillance

Inspections and surveillance

39. (1) The market surveillance authority shall carry out inspections of products to which these Regulations apply where appropriate—

(a) on their entry into the State (where the State is their place of entry into the Union), or

(b) at the storage or manufacturing sites of such products.

(2) The market surveillance authority shall organise and perform appropriate surveillance of products made available on the market or put into service, taking due account of the presumption of the conformity of products bearing a CE marking.

Appointment of authorised officers

40. (1) The Minister may appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of all or any of these Regulations, Regulation (EC) No. 765/2008 and the Decision and of ensuring compliance with their requirements.

(2) The Minister may terminate the appointment of an authorised officer appointed by him or her, whether or not the appointment was for a fixed period.

(3) An appointment as an authorised officer ceases—

(a) if it is terminated under paragraph (2),

- (b) if it is for a fixed period, on the expiry of that period, or
- (c) if the person appointed is an officer of the Minister, upon the person ceasing to be such an officer.

(4) Nothing in paragraph (3) is to be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph relates.

(5) An authorised officer shall be furnished with a warrant of his or her appointment and shall, when exercising any power conferred on him or her under these Regulations, if requested by a person affected, produce the warrant of appointment or a copy of it to that person.

Powers of authorised officers

41. (1) An authorised officer shall, for the purposes of all or any of these Regulations and of ensuring compliance with their requirements, have power to do any or all of the following:

- (a) subject to paragraph (4), at all reasonable times enter and examine any place, at which there are reasonable grounds to believe that a product is being kept or has been manufactured, stored, distributed, supplied, placed on the market, made available on the market or put into service or that records relating to the product are kept, and search and inspect the place, any process being carried out and any product or records found at that place;
- (b) secure for later inspection a place referred to in subparagraph (a) or part of that place, or a product or records kept at that place and require that the place, part thereof, product or records or any other thing kept at that place as the authorised officer considers appropriate having regard to his or her functions is or are left undisturbed for so long as is reasonably necessary for the purpose of any search, examination, investigation, inspection or inquiry;
- (c) require any person in charge of, or employed in, a place referred to in subparagraph (a) to produce to the authorised officer such books, documents or records (and in the case of such information in a non-legible form to reproduce it in a permanent legible form) that are in the person's power, possession or control or to give to the authorised officer such information as the officer may reasonably require in relation to any entries in such records;
- (d) inspect and take copies of or extracts from any such books, documents or records (including in the case of information in non-legible form a copy of or extract from such information in a permanent legible form) or require that such a copy be provided;
- (e) require a person at a place referred to in subparagraph (a) by whom or on whose behalf a computer is or has been used to produce or store records or any person having control of, or otherwise concerned

with the operation of the computer, to afford the authorised officer access thereto and such reasonable assistance as the authorised officer may require;

- (f) remove and detain, where the officer has reasonable cause to suspect that there has been a contravention of these Regulations, a product or records (including documents stored in a non-legible form) and any copies taken for such period as the authorised officer considers reasonably to be necessary for further examination or until the conclusion of any legal proceedings;
- (g) require that records at a place referred to in subparagraph (a) be maintained for such period as the authorised officer considers reasonably to be necessary;
- (h) require any person to give the authorised officer such information in relation to a product or part thereof or any article or substance or process used in the manufacture of a product as the authorised officer may reasonably require for the purposes of any search, examination, investigation, inspection or inquiry under these Regulations;
- (i) require by notice, at a time and place specified in the notice, any person (including the person in charge) to give the authorised officer any information that the authorised officer may reasonably require in relation to such place, any product or part of the place, activity, installation or procedure at such place, and to produce to the authorised officer any records that are in that person's power, possession or control;
- (j) examine any person whom the authorised officer reasonably believes to be able to give to the authorised officer information relevant to any search, examination, investigation, inspection or inquiry under these Regulations and require the person to answer such questions as the authorised officer may ask relative to the search, examination, investigation, inspection or inquiry and to sign a declaration of the truth of the answers;
- (k) where appropriate, install, use and maintain at a place referred to in subparagraph (a) monitoring instruments or systems or take any measurements or photographs or make any tape, electronic or other recordings that the authorised officer considers necessary for the purposes of any search, examination, investigation, inspection or inquiry under these Regulations;
- (l) as regards any product or any article or substance used in the manufacture of a product the authorised officer finds at a place referred to in subparagraph (a), require any person in charge of the place, or any person who appears to the authorised officer to be in possession of the product or the article or substance, to supply without charge or payment, for test, examination or analysis sufficient samples thereof;

- (m) take samples of air, soil, water or waste at or near such place;
- (n) take possession of and detain any product or part thereof or any article or substance used in the manufacture of a product kept at a place referred to in subparagraph (a) which appears to the authorised officer to be in contravention of these Regulations for so long as is necessary for all or any of the following purposes, namely:
 - (i) to examine or arrange for the examination, testing or analysis of it under subparagraph (o);
 - (ii) to ensure that it is not tampered with before the examination, testing or analysis of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings;
- (o) cause any product or part thereof or any article or substance used in the manufacture of a product found at a place referred to in subparagraph (a) which appears to the authorised officer to be in contravention of these Regulations to be dismantled or subjected to any process, test or analysis (but not so as to damage or destroy it unless this is in the circumstances necessary for the purposes of these Regulations) and where an authorised officer proposes to exercise this power in the case of a product or an article or substance used in the manufacture of a product found at a place referred to in subparagraph (a), the authorised officer shall, if so requested by a person who at the time is present at or in, and has responsibilities in relation to, that place, and if it is practicable and safe to do so, cause anything which is to be done by virtue of that power to be done in the presence of that person;
- (p) require any person to afford the authorised officer such facilities and assistance within the person's power, control or responsibilities as are reasonably necessary to enable the authorised officer to exercise any of the powers conferred on him or her by these Regulations.

(2) Before exercising the power conferred by paragraph (1)(n) or (o) in respect of any product, article or substance, an authorised officer shall, in so far as it is reasonably practicable to do so, consult such persons as appear to him or her to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he or she proposes to do under that power.

(3) Where, under the power conferred by paragraph (1)(n) or (o), an authorised officer takes possession of any product, article or substance found at or in any place, the authorised officer shall, if it is practicable for him or her to do so, take a sample thereof and give to a responsible person at the place a portion of the sample marked by the authorised officer in a manner sufficient to identify it.

(4) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under paragraph (6) authorising such entry.

(5) Where an authorised officer in the exercise of his or her powers under this Regulation is prevented from entering any place, an application may be made to the District Court under paragraph (6) for a warrant authorising such entry.

(6) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is information required by an authorised officer under this Regulation held in any place or any part thereof, or that there is a product which an authorised officer requires to inspect for the purposes of these Regulations, and that such inspection is likely to disclose evidence of a contravention of these Regulations, the judge may issue a warrant authorising an authorised officer, accompanied by such other authorised officers or members of the Garda Síochána as may be necessary at any time or times within one month from the date of issue of the warrant, on production of the warrant, if requested, to enter the place, if necessary by reasonable force, and perform the functions or exercise all or any of the powers conferred on an authorised officer under these Regulations.

(7) An application under paragraph (6) shall be made to the judge of the District Court in whose District Court district the place is situated.

(8) A person shall not—

(a) obstruct or interfere with an authorised officer or a member of the Garda Síochána in the exercise of the powers conferred on him or her by these Regulations or a warrant under paragraph (6),

(b) without reasonable excuse fail or refuse to comply with a request from or requirement of or to answer a question asked by an authorised officer or such member pursuant to a power conferred by these Regulations, or

(c) make a statement or give information to an authorised officer or such member that the person knows is false or misleading in a material respect.

(9) A statement or admission made by a person pursuant to a requirement under subparagraph (h), (i) or (j) of paragraph (1) shall not be admissible in proceedings brought against that person for an offence (other than an offence under paragraph (10)).

(10) A person who contravenes paragraph (8) shall be guilty of an offence.

(11) A person who falsely represents himself or herself to be an authorised officer shall be guilty of an offence.

(12) Where any measure has been taken or notice issued by the market surveillance authority under this Regulation or Regulation 36, 37, or 38, the costs of any removal, detention, seizure, destruction, rendering inoperable or disposal for the purposes of these Regulations may be charged to the economic operator, the manager of the place where the product was found or the private importer, where known.

(13) In this Regulation and in Regulations 42 and 43 “place” means any structure, premises, land or other location or part of such place, and includes any container, railway wagon, vessel, aircraft, motor or other vehicle.

(14) In this Regulation—

(a) “person in charge” means, in relation to a place—

- (i) the person under whose direction and control the activities at that place are being conducted, or
- (ii) the person whom the authorised officer has reasonable grounds for believing is in control of that place;

(b) “record” includes any memorandum, book, report, statement, register, plan, chart, map, drawing, specification, diagram, pictorial or graphic work or other document, any photograph, film or recording (whether of sound or images or both), any form in which data (within the meaning of the Data Protection Acts 1988 and 2003) are held, any form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically, and anything that is a part or copy, in any form, of any of, or any combination of, the foregoing.

Compliance notice

42. (1) In this Regulation “appeal” means an appeal under paragraph (8).

(2) Where an authorised officer is of the opinion that a provision of these Regulations is not being or has not been complied with, the authorised officer shall give a notice (referred to in these Regulations as a “compliance notice”) stating that opinion to one or more than one of the following persons, as the case may be, to whom the notice relates:

- (a) the relevant economic operator;
- (b) the private importer of the product;
- (c) the person referred to in Regulation 5(4) who has adapted an engine referred to in subparagraph (b) or (c) of Regulation 5(3);
- (d) the person who has carried out a major engine modification referred to in subparagraph (a) of Regulation 19(3) or a major craft conversion referred to in subparagraph (b) of Regulation 19(3);

- (e) the person referred to in Regulation 19(4);
 - (f) the person referred to in Regulation 19(5).
- (3) A compliance notice shall—
 - (a) state the reason for the opinion of the authorised officer referred to in paragraph (2),
 - (b) identify the provision of these Regulations in respect of which that opinion is held,
 - (c) require the person to whom it is given to take such action as is specified in the notice, including but not limited to—
 - (i) bringing the product into compliance with the requirements of these Regulations, and
 - (ii) taking all appropriate action to remedy the non-compliance or suspected non-compliance,
 - (d) inform the person of the requirement to confirm compliance with the notice as referred to in paragraph (6),
 - (e) inform the person of the right to appeal the notice and the requirements of paragraph (9),
 - (f) include an address for service of an appeal,
 - (g) be signed and dated by the authorised officer, and
 - (h) state that if the person to whom it is given fails to comply with the notice the person shall be guilty of an offence and shall be liable on conviction to the penalty referred to in Regulation 47(5).
- (4) A compliance notice shall be complied with within such period as may be specified in the notice which period shall not be less than 14 days after the date of the notice.
- (5) A compliance notice may include directions—
 - (a) as to the action to be taken to bring the product into compliance with the requirements of these Regulations or to remedy the non-compliance to which the notice relates, and
 - (b) to bring the notice to the attention of any person who may be affected by the non-compliance or to the notice of the public generally.
- (6) A person to whom a compliance notice has been given shall confirm in writing to the authorised officer concerned that the compliance notice has been complied with, as soon as practicable after complying with the notice, and in

any case, not later than 7 days after the date specified in the notice by which it is to be complied with.

(7) Where a person to whom a compliance notice has been given so confirms in writing under paragraph (6) that the compliance notice has been complied with, the authorised officer concerned shall, on being so satisfied, within one month of receipt of such confirmation, give notice to the person concerned of compliance with the compliance notice.

(8) A person aggrieved by a compliance notice may, not later than 14 days after the notice is given to the person, appeal against the notice to a judge of the District Court in the District Court district in which the person bringing the appeal ordinarily resides or carries on business, and, in determining the appeal the judge may confirm, vary or revoke the notice.

(9) Notice of an appeal shall contain a statement of the grounds upon which the appeal is made and shall be given by the appellant to the authorised officer who gave the compliance notice at the address provided in the notice not later than 48 hours before the hearing of the appeal and the authorised officer shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(10) A person bringing an appeal shall lodge a copy of the notice of appeal with the District Court Clerk concerned not later than 48 hours before the hearing of the appeal.

(11) Where an appeal is made, the person to whom the compliance notice was given shall comply with the notice by the later of—

- (a) the day immediately after the end of the period of 14 days after the date of the determination of the appeal and the confirmation of the notice,
- (b) the date of the withdrawal of the appeal, or
- (c) the day specified in the compliance notice.

(12) Where no appeal is made, the person to whom the compliance notice was given shall comply with the notice by the later of—

- (a) the day immediately after the end of the period within which an appeal may be made, or
- (b) the day specified in the compliance notice.

(13) An authorised officer may, where he or she considers it appropriate to do so, by notice in writing to the person to whom a compliance notice was given, withdraw the compliance notice.

(14) A person to whom a compliance notice has been given who fails to comply with, or causes or permits another person to contravene, the notice shall be guilty of an offence.

(15) Where a person fails to comply with a compliance notice the authorised officer may apply to the judge of the District Court in whose District Court district the person ordinarily resides or carries on business for an order requiring the person to comply with the terms of the notice and the Court may make an order directing the person to comply with the notice.

(16) A person to whom a compliance notice has been given shall not—

- (a) pending the determination of an appeal, deal with a product, place, machinery, equipment or other thing to which the notice relates, other than in accordance with the terms of the compliance notice, or
- (b) if the notice is confirmed or varied on appeal, deal with a product, place, equipment, machinery or other thing to which the notice relates other than in accordance with the terms of the compliance notice as confirmed or varied.

(17) A person who fails to comply with paragraph (16) shall be guilty of an offence.

(18) This Regulation shall not operate to prevent or restrict—

- (a) the entitlement of any person to bring proceedings for the purpose of securing compliance with these Regulations, Regulation (EC) No. 765/2008 or the Decision, or
- (b) the bringing or prosecuting of any proceedings for an offence under these Regulations.

Procedures for prohibition notices and restriction measures

43. (1) Subject to paragraph (7), where the market surveillance authority proposes to give a prohibition notice, the authority shall, before giving the notice, give notice of the proposal to the person and that notice shall contain a statement in summary form of its opinion and a statement that the person may within 14 days of receipt of the notice make representations in writing to the authority in relation to the proposal, and any such representations made by a person to the authority within that period shall be considered by the authority in deciding whether to give a prohibition notice to the person.

(2) A prohibition notice under paragraph (1) may be given to one or more than one of the following persons, as the case may be, to whom the notice relates:

- (a) the relevant economic operator;
- (b) the private importer of the product;
- (c) the person referred to in Regulation 5(4) who has adapted an engine referred to in subparagraph (b) or (c) of Regulation 5(3);

- (d) the person who has carried out a major engine modification referred to in subparagraph (a) of Regulation 19(3) or a major craft conversion referred to in subparagraph (b) of Regulation 19(3);
 - (e) the person referred to in Regulation 19(4);
 - (f) the person referred to in Regulation 19(5).
- (3) A prohibition notice shall—
- (a) state the reason for the opinion referred to in paragraph (1),
 - (b) identify the provision of these Regulations in respect of which that opinion is held,
 - (c) specify the action to be taken in respect of the product by the person to whom it is given, within the period specified in the notice,
 - (d) inform the person of the requirement to confirm compliance with the notice as referred to in paragraph (9),
 - (e) inform the person of the right to appeal the notice under Regulation 45,
 - (f) include an address for service of an appeal,
 - (g) be signed and dated by the market surveillance authority, and
 - (h) state that if the person to whom it is given fails to comply with the notice the person shall be guilty of an offence and shall be liable on conviction to the penalty referred to in Regulation 47(5).
- (4) A prohibition notice may require that the action required to bring the non-compliance to an end be undertaken—
- (a) immediately, because of the urgency of the matter,
 - (b) by a specified date, or
 - (c) between specified dates.
- (5) A prohibition notice may include directions as to—
- (a) the action to be taken to bring the product into compliance with the requirements of these Regulations, and
 - (b) the bringing of the notice to the attention of any person who may be affected by the non-compliance or to the notice of the public generally.
- (6) A person to whom a prohibition notice has been given may appeal the notice under Regulation 45.

(7) Where, in the opinion of the market surveillance authority—

- (a) urgent action is required which is justified, in particular, by public health or safety requirements, and
- (b) it is necessary, because of the gravity of the non-compliance with the requirements of these Regulations, to immediately give the person a prohibition notice,

the authority may, notwithstanding paragraphs (1) and (2), give the person a prohibition notice.

(8) Where paragraph (7) applies, the market surveillance authority shall give the person to whom the prohibition notice is given the opportunity to make representations to it in writing as soon as may be after the giving of the prohibition notice.

(9) A person to whom a prohibition notice has been given shall, as soon as practicable after so complying, and in any case not later than 7 days after the date specified in the notice by which it is to be complied with, notify the market surveillance authority in writing that the prohibition notice has been complied with.

(10) The market surveillance authority shall, within one month of receiving a notification under paragraph (9), confirm in writing to the person concerned compliance with the prohibition notice where the authority is satisfied that the prohibition notice has been complied with.

(11) The market surveillance authority may, where it considers it appropriate to do so, by notice in writing to the person to whom a prohibition notice was given, withdraw a prohibition notice.

(12) A prohibition notice shall, subject to Regulation 45(5) and (6), take effect on the date specified in the notice.

(13) The market surveillance authority shall cause the Commission to be notified of the giving of a prohibition notice.

(14) A person to whom a prohibition notice has been given who fails to comply with, or causes or permits another person to contravene, the notice shall be guilty of an offence.

(15) Where a person fails to comply with a prohibition notice the market surveillance authority may apply to the judge of the District Court in whose District Court district the person resides or carries on business for an order requiring the person to comply with the notice and the Court may make an order directing the person to comply with the notice.

(16) A person to whom a prohibition notice has been given shall not—

- (a) pending the determination of an appeal, deal with a product, place, machinery, equipment or other thing to which the notice relates, other than in accordance with the terms of the prohibition notice, or
- (b) if the notice is confirmed or varied on appeal, deal with a product, place, equipment, machinery or other thing to which the notice relates other than in accordance with the terms of the prohibition notice as confirmed or varied.

(17) A person who fails to comply with paragraph (16) shall be guilty of an offence.

(18) This Regulation shall not operate to prevent or restrict—

- (a) the entitlement of any person to bring proceedings for the purpose of securing compliance with these Regulations, Regulation (EC) No. 765/2008 or the Decision, or
- (b) the bringing or prosecuting of any proceedings for an offence under these Regulations.

Publication of information relating to prohibition notices and restriction measures

44. The market surveillance authority may, for the purposes of its functions under these Regulations, Regulation (EC) No. 765/2008 or the Decision, and in the interest of the protection of health or safety of persons, take such measures as it considers appropriate to bring to the attention of the public—

- (a) prohibition notices given, or
- (b) measures taken by it to—
 - (i) restrict products from being made available on the market or put into service, or
 - (ii) recall or withdraw products which have been made available on the market or put into service.

Right of appeal against prohibition notices and restriction measures

45. (1) In this Regulation—

“appeal” means an appeal under paragraph (2);

“appropriate court” means—

- (a) in case the estimated value of the product or products to which the prohibition notice relates does not exceed €15,000, or such other amount as may stand specified for the time being by law as that Court’s jurisdiction in tort, the District Court,

- (b) in case the estimated value of the product or products to which the prohibition notice relates does not exceed €75,000, or such other amount as may stand specified for the time being by law as that Court's jurisdiction in tort, the Circuit Court, and
 - (c) in any other case, the High Court.
- (2) A person may appeal to the appropriate court against—
 - (a) a prohibition notice,
 - (b) the giving of a direction under a prohibition notice, or
 - (c) any measures taken by the market surveillance authority under Regulation 36(5) or 37(5).
- (3) Notice of an appeal shall contain a statement of the grounds upon which the appeal is made and shall be lodged by the appellant with the appropriate office of the court concerned by the appellant not later than 14 days after the date upon which the prohibition notice was given to him or her or the measure was taken.
- (4) A copy of the notice by which a person makes an appeal shall be given by the appellant to the market surveillance authority not later than 48 hours before the hearing of the appeal and the authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal and at the hearing of any application referred to in paragraph (6).
- (5) Upon the hearing of an appeal the appropriate court may confirm, vary or revoke the prohibition notice, the direction or the measure, as the case may be.
- (6) The bringing of an appeal shall not have the effect of suspending the operation of the notice, direction or measure, as the case may be, but the appropriate court to which the appeal has been made, may, on application to it by an appellant, suspend its operation.
- (7) An appeal to the District Court shall be determined by the judge of the District Court for the District Court district in which the appellant ordinarily resides or carries on business.
- (8) An appeal to the Circuit Court shall be determined by the judge of the Circuit Court for the circuit in which the appellant ordinarily resides or carries on business.

Giving of documents

46. (1) Subject to paragraphs (2) and (3), a notice that is required to be given to a person by these Regulations shall be addressed to the person concerned by name, and may be so given to the person in one or more of the following ways:
- (a) by delivering it to the person;

- (b) by leaving it at the address at which the person carries on business or ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter to the address at which the person carries on business or ordinarily resides or, in a case in which an address for service has been furnished, to that address;
- (d) where there is a facility for receiving the text of the notice by electronic means at the address at which the person carries on business or ordinarily resides, by transmitting the text of the notice by such means to such address, provided that the notice is also delivered in any of the other ways referred to in this paragraph;
- (e) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the notice relates to a premises, by delivering it to the premises or by affixing it in a conspicuous position on or near the premises.

(2) Where a notice under these Regulations is to be given to a person who is the owner or occupier of land or property and the name of the person cannot be ascertained by reasonable inquiry, it may be addressed to the person by using the words “the owner” or, as the case may require, “the occupier”.

(3) For the purposes of this Regulation, a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(4) Where an opinion, finding, statement or decision of the competent authority or the market surveillance authority is contained in a document which—

- (a) purports to have been made by or at the direction of the competent authority or the market surveillance authority, as the case may be, and
- (b) is produced in evidence by an officer of the competent authority or the market surveillance authority, as the case may be, or by an authorised officer in any proceedings,

such document shall be admissible in evidence and shall be evidence of any such opinion, finding, statement or decision in such proceedings without further proof.

Offences and penalties

47. (1) A person guilty of an offence under Regulation 4(2), 18(13) or 35(2) shall be liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 3 months or both, or

(b) on conviction on indictment, to a fine not exceeding €300,000 or to imprisonment for a term not exceeding 12 months or both.

(2) A person guilty of an offence under Regulation 4(3) or 43(14) shall be liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €300,000.

(3) A person who fails to comply with a requirement of Regulation 5(4), 7, 9 (other than paragraph (5)), 10 (other than paragraph (1)), 12(a), 18(10), (11) or (12), 19 or 27(7) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €300,000.

(4) An authorised representative who fails to comply with a requirement of these Regulations, specified in a mandate referred to in Regulation 8(1), the failure to comply with which is an offence under another provision of this Regulation, shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €300,000.

(5) A person guilty of an offence under Regulation 41(10) or (11), 42(14) or (17) or 43(17) shall be liable on summary conviction to a class A fine.

(6) A person who fails to comply with a requirement of Regulation 9(5), 12(b), (c) or (d), 13, 15 (other than paragraph (3)), 16(1) or 18(1), (2), (3), (4), (5), (6), (7) or (8) shall be guilty of an offence and shall be liable on summary conviction to a class B fine.

Forgery

48. (1) A person who forges, or utters knowing it to be forged—

(a) a CE marking,

(b) any document required for the purposes of these Regulations, or

(c) a notice or certificate issued, granted or given under these Regulations,

(in this Regulation referred to as a "forged document") shall be guilty of an offence.

(2) A person who alters with intent to defraud or deceive, or utters knowing it to be so altered—

(a) a CE marking,

(b) any document required for the purposes of these Regulations, or

(c) a notice or certificate issued, granted or given under these Regulations,

(in this Regulation referred to as an “altered document”) shall be guilty of an offence.

(3) A person who, without lawful authority, has in his or her possession a forged document or an altered document shall be guilty of an offence.

(4) A person guilty of an offence under this Regulation shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 3 months or both.

Offence by body corporate

49. (1) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of, or to be attributable to any wilful neglect on the part of, any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Forfeiture and seizure

50. (1) Where a person is convicted on indictment of an offence under Regulation 4(2) or (3), 18(13) or 35(2) the court may order the forfeiture to the Minister of any product to which the offence relates.

(2) Where an order is made under paragraph (1), the market surveillance authority may, for the purpose of giving effect to it, seize and detain the product where it has not already been seized under these Regulations.

Costs of prosecutions

51. (1) Where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not doing so, order the person to pay to the prosecutor a sum equal to the costs and expenses, measured by the court, reasonably incurred by the prosecutor in relation to the investigation, detection and prosecution of the offence, including costs incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees, consultants and advisers.

(2) An order for costs and expenses referred to in paragraph (1) shall be in addition to and not instead of any fine or penalty the court may impose.

Prosecution of offences

52. Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Minister.

PART 8

Miscellaneous and Transitional Provisions

Transitional provisions

53. Notwithstanding anything in these Regulations, a person may make available on the market or put into service an outboard SI propulsion engine with power equal to or less than 15kW which—

- (a) complies with stage I exhaust emission limits specified in point 2.1 of Part B of Annex I,
- (b) was manufactured by a small or medium-sized enterprise, and
- (c) is placed on the market before 18 January 2020.

Continuance of Regulations of 1998

54. (1) A person may, before 18 January 2017, place on the market or put into service a product to which the Regulations of 1998 apply.

(2) A person may, at any time, make available on the market a product referred to in paragraph (1).

(3) Notwithstanding their revocation under Regulation 55, the Regulations of 1998 shall continue to apply to a product specified in the Regulations of 1998 which is—

- (a) placed on the market or put into service in accordance with paragraph (1), or
- (b) made available on the market in accordance with paragraph (2).

(4) A person who, immediately before the coming into operation of these Regulations, was an authorised officer under the Regulations of 1998 shall be deemed to be an authorised officer appointed under these Regulations and, accordingly, paragraph (3) of Regulation 40 shall apply in respect of that person.

Revocations

55. The following are revoked:

- (a) the European Communities (Recreational Craft) Regulations 1998 (S.I. No. 40 of 1998);
- (b) the European Communities (Recreational Craft) (Amendment) Regulations 2004 (S.I. No. 422 of 2004).

SCHEDULE

Regulation 27

Minimum Criteria for Notification as a Notified Body in the State

1. A conformity assessment body shall be a third-party body independent of the organisation or the product it assesses. A body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of products which it assesses, may, on condition that it can demonstrate independence and the absence of any conflict of interest, be considered such a body.
2. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks shall not be the designer, manufacturer, supplier, installer, purchaser, owner, user or person undertaking maintenance of the products which they assess, nor the representative of any of those parties. This shall not preclude the use of assessed products that are necessary for the operations of the conformity assessment body or the use of such products for personal purposes.
3. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks shall not be directly involved in the design, manufacture, marketing, installation, use or maintenance of those products, or represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified. This shall also apply to consultancy services provided by the conformity assessment body.
4. A conformity assessment body shall ensure that the activities of a subsidiary of the body or a subcontractor undertaking activities under the responsibility of the body, if any, do not affect the confidentiality, objectivity or impartiality of its conformity assessment activities.
5. A conformity assessment body and its personnel shall carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and shall be free from all pressures and inducements, including financial, which might influence their judgement or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in the results of those activities.
6. A conformity assessment body shall be capable of carrying out the conformity assessment tasks assigned to it under Regulations 19 to 24 and in relation to which it has been notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf or under its responsibility.
7. A conformity assessment body shall have at its disposal, at all times and for each conformity assessment procedure and each kind or category of products in relation to which it has been notified, the necessary—

- (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment tasks, and
- (b) descriptions of procedures in accordance with which conformity assessment is carried out ensuring the transparency and ability of reproduction of those procedures.

8. A conformity assessment body shall have appropriate policies and procedures in place that distinguish between the tasks carried out as a notified body and other activities.

9. A conformity assessment body shall have at its disposal, at all times and for each conformity assessment procedure and each kind or category of products in relation to which it has been notified, the necessary procedures for the performance of activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the technology of the product in question and the mass or serial nature of the production process.

10. A conformity assessment body shall have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and shall have access to all necessary equipment or facilities.

11. The personnel responsible for carrying out the conformity assessment activities shall have—

- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified,
- (b) satisfactory knowledge of the requirements of the assessments they carry out and adequate authority to carry out those assessments,
- (c) appropriate knowledge and understanding of the essential requirements, the applicable harmonised standards, the relevant Union harmonisation legislation and Irish legislation implementing those requirements, and
- (d) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.

12. A conformity assessment body shall ensure that it is impartial and shall ensure the impartiality of its top level management and assessment personnel. The remuneration of the top level management and assessment personnel of a conformity assessment body shall not depend on the number of assessments carried out or on the results of those assessments.

13. A conformity assessment body shall take out a contract of, or make another arrangement in respect of, insurance against liability for damages or costs that may be incurred in respect of any act done or omitted to be done in

the performance or purported performance of conformity assessment activities by it.

14. The personnel of a conformity assessment body shall be bound to observe professional secrecy with regard to all information obtained in carrying out tasks under Regulations 19 to 24, except as regards information provided to the competent authority or the competent authorities of other Member States in which it carries out its activities. Proprietary rights shall be protected.

15. A conformity assessment body shall participate in, or ensure that their assessment personnel are informed of, the relevant standardisation activities and the activities of any notified body coordination group or groups established by the Commission under Article 42 of the Directive and shall apply, as general guidance, the administrative decisions and documents produced as a result of the work of that group.

16. Where a notified body subcontracts specific tasks connected with conformity assessment or has recourse to a subsidiary for the purpose of carrying out conformity assessment tasks, it shall ensure that the subcontractor or the subsidiary, as the case may be, meets the requirements specified in paragraphs 1 to 15, and shall inform the notifying authority accordingly.

17. A notified body shall take full responsibility for the tasks connected with conformity assessment performed by a subcontractor or a subsidiary, as the case may be, wherever such a subcontractor or subsidiary is established.

18. Conformity assessment activities may be subcontracted to a subcontractor or carried out by a subsidiary only with the agreement of the client of the notified body.

19. A notified body shall keep at the disposal of the notifying authority the relevant documents concerning the assessment of the qualifications of a subcontractor or a subsidiary and the work carried out by such entity under Regulations 19 to 24.

20. A notified body shall participate in, or ensure that a designated representative of the body participates in the work of any coordination group or groups established by the Commission under Article 42 of the Directive.



GIVEN under my Official Seal,
3 March 2017.

SHANE ROSS,
Minister for Transport, Tourism and Sport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations give effect to Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft.

The Regulations outline the obligations of the manufacturer, importer, private importer and distributor when making recreational craft and personal watercraft available on the market and they prohibit a person from placing any watercraft on the market unless it satisfies the essential safety requirements, has been subject to conformity assessment procedures, has had the CE marking affixed to it, and when used for its intended purpose, does not endanger the health and safety of persons.

The Regulations also make provision for the notification of conformity assessment bodies.

The Regulations revoke the European Communities (Recreational Craft) Regulations 1998 (S.I. No. 40 of 1998), and the European Communities (Recreational Craft) (Amendment) Regulations 2004 (S.I. No. 422 of 2004). These Regulations do not impede the making available on the market, or putting into service, (1) products which comply with the Regulations of 1998 and which are placed on the market or put into service before 18 January 2017, and (2) outboard spark ignition propulsion engines with power equal to or less than 15kW which—

- (a) comply with stage I exhaust emission limits specified in point 2.1 of Part B of Annex I,
- (b) were manufactured by a small or medium-sized enterprise, and
- (c) are placed on the market before 18 January 2020.

The Regulations designate the Marine Survey Office as the market surveillance authority and the competent authority in the State for the purposes of the Directive.

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