



STATUTORY INSTRUMENTS.

S.I. No. 126 of 2018



EUROPEAN UNION (APPLIANCES BURNING GASEOUS FUELS)
REGULATIONS 2018

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I, HEATHER HUMPHREYS, Minister for Business, Enterprise and Innovation in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purposes of giving full effect to Regulation (EU) 2016/426 of the European Parliament and of the Council of 9 March 2016¹ on appliances burning gaseous fuels and repealing Directive 2009/142/EC hereby make the following regulations:

PART 1

GENERAL PROVISIONS

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Appliances Burning Gaseous Fuels) Regulations 2018.

(2) These Regulations shall come into operation on 21 April 2018.

Interpretation

2. (1) In these Regulations—

“Act of 2014” means the Competition and Consumer Protection Act 2014 (No. 29 of 2014);

“annex” means an annex of the Council Regulation;

“authorised officer” means a person appointed under Regulation 16;

“Council Regulation” means Regulation (EU) 2016/426 of the European Parliament and of the Council of 9 March 2016¹ on appliances burning gaseous fuels and repealing Directive 2009/142/EC;

“competent authority” means—

(a) in the State, the relevant competent authority, or

(b) in another Member State, any authority or body designated as competent authority by that Member State for the purposes of the Council Regulation;

“Minister” means the Minister for Business, Enterprise and Innovation;

¹OJ No. L 81, 31.3.2016, p. 99.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 1st May, 2018.*

“Regulation (EC) No. 765/2008” means Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008² setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93;

“Regulations of 1992” means the European Communities (Appliances Burning Gaseous Fuels) Regulations 1992 (S.I. No. 101 of 1992);

“relevant competent authority” shall be construed in accordance with Regulation 3;

“relevant market surveillance authority” shall be construed in accordance with Regulation 3.

(2) A word or expression which is used in these Regulations and which is also used in the Council Regulation or in Regulation (EC) No. 765/2008 has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Council Regulation or Regulation (EC) No. 765/2008 as the case may be.

Designation of competent authority and market surveillance authority

3. (1) For the purposes of these Regulations and the Council Regulation, the Competition and Consumer Protection Commission is designated as—

- (a) the relevant market surveillance authority, and
- (b) the relevant competent authority,

for domestic appliances.

(2) For the purposes of these Regulations and the Council Regulation, the Health and Safety Authority is designated as—

- (a) the relevant market surveillance authority, and
- (b) the relevant competent authority,

for non-domestic appliances.

Making available on the market and putting into service

4. A person shall not make available on the market or put into service any appliance or fitting unless, when normally used, it satisfies the requirements of these Regulations and the Council Regulation.

Essential requirements

5. (1) An appliance or a fitting shall meet the essential requirements set out in Annex I.

(2) A person shall not make available on the market or put into service any appliance or fitting unless the appliance or fitting concerned meets the essential requirements set out in Annex I.

²OJ No. L 218, 13.8.2008, p. 30.

Exception for trade fairs, exhibitions and demonstrations

6. (1) Nothing in these Regulations shall prevent the showing of appliances or fittings that are not in conformity with these Regulations or the Council Regulation at trade fairs, exhibitions, demonstrations or similar events, provided that a clearly visible sign is displayed indicating—

(a) that the appliances or fittings concerned do not conform with these Regulations, and

(b) that the appliances or fittings are not for sale until they are brought into conformity with these Regulations.

(2) During demonstrations, an economic operator shall ensure that adequate safety measures are taken to ensure the protection of persons, domestic animals and property.

Obligations of economic operators

7. A manufacturer, authorised representative, importer or distributor of appliances and fittings shall comply with the provisions listed in Chapter II of the Council Regulation.

PART 2

NOTIFICATION OF CONFORMITY ASSESSMENT BODIES

Notification

8. The Minister shall notify the European Commission and the other Member States of bodies authorised in the State to carry out third-party conformity assessment tasks under the Council Regulation.

Notifying Authority

9. (1) The Minister is designated as the notifying authority for purposes of Article 20 of the Council Regulation.

(2) The Minister shall set up and carry out the necessary procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, including compliance with Article 25 of the Council Regulation.

Requirements relating to notified bodies

10. (1) A conformity assessment body shall meet the requirements of Article 23 of the Council Regulation for the purposes of notification.

(2) Where the Minister has ascertained or has been informed that a notified body no longer meets the requirements laid down in Article 23 of the Council Regulation or that it is failing to fulfil its obligations, the Minister shall restrict, suspend or withdraw notification as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations.

(3) The Minister shall—

- (a) inform the notified body concerned in writing of his or her decision under paragraph (2) and allow the body an opportunity to make representation to him or her, and
- (b) immediately inform the European Commission and other Member States accordingly.

(4) Where the Minister has restricted, suspended or withdrawn notifications in accordance with paragraph (2) or where the notified body has ceased its activity, the Minister shall take appropriate steps to ensure that the files of that body are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities at their request.

(5) A notified body shall inform the Minister of the following:

- (a) any refusal, restriction, suspension or withdrawal of a certificate or approval decision;
- (b) any circumstances affecting the scope of or conditions for notification;
- (c) any request for information which they have received from market surveillance authorities regarding conformity assessment activities;
- (d) on request, conformity assessment activities performed within the scope of their notification and any other activity performed, including cross-border activities and subcontracting.

(6) A notified body shall provide the other bodies notified under the Council Regulation carrying out similar conformity assessment activities covering the same appliances or fittings with relevant information on issues relating to negative and, on request, positive conformity assessment results.

(7) An application for notification by a conformity assessment body shall be made to the Minister in accordance with Article 26 of the Council Regulation.

PART 3

MARKET SURVEILLANCE, CONTROL OF APPLIANCES AND FITTINGS ENTERING THE MARKET AND SAFEGUARD PROCEDURE

Market surveillance and control of appliances and fittings entering the market

11. Article 15(3) and Articles 16 to 29 of Regulation (EC) No. 765/2008 shall apply to appliances and fittings covered by the Council Regulation.

Procedure for dealing with appliances or fittings presenting a risk at national level

12. (1) Where the relevant market surveillance authority has sufficient reason to believe that an appliance or fitting covered by the Council Regulation presents a risk to the health or safety of persons or domestic animals, or to property, it shall carry out an evaluation in relation to the appliance or fitting concerned covering all relevant requirements laid down in the Council Regulation.

(2) The relevant economic operator shall cooperate as necessary with the relevant market surveillance authority in carrying out an evaluation under paragraph (1).

(3) Where, in the course of the evaluation referred to in paragraph (1), the relevant market surveillance authority finds that the appliance or fitting does not comply with the requirements laid down in these Regulations or the Council Regulation, it shall without delay require the relevant economic operator—

- (a) to take all appropriate corrective actions to bring the appliance or fitting into compliance with those requirements,
- (b) to withdraw the appliance or fitting from the market, or
- (c) to recall it,

within a reasonable period, commensurate with the nature of the risk, as the authority decides.

(4) Article 21 of Regulation (EC) No. 765/2008 applies to the measures referred to in paragraph (3).

(5) The relevant market surveillance authority shall inform the relevant notified body of the matters referred to in paragraph (3).

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

(7) The relevant economic operator shall ensure that all appropriate corrective action is taken in respect of all the appliances and fittings concerned that it has made available on the market throughout the European Union.

(8) Where the relevant economic operator does not take adequate corrective action within the period referred to in paragraph (3), the relevant market surveillance authority in the State shall take all appropriate provisional measures to—

- (a) prohibit or restrict the appliances or fittings from being made available on the market in the State,
- (b) to withdraw the appliance or fitting from the market, or
- (c) to recall the appliance or fitting.

(9) The relevant market surveillance authority shall immediately inform the European Commission and the other Member States of any measures taken under paragraph (8) and shall include all available details including—

- (a) the data necessary for the identification of the non-compliant appliance or fitting,

- (b) the origin of the appliance or fitting,
- (c) the nature of the alleged non-compliance and the risk involved,
- (d) the nature and duration of the measures taken in the State, and
- (e) the arguments put forward by the relevant economic operator.

(10) The relevant market surveillance authority shall indicate in addition to the matters referred to in paragraph (9), whether the non-compliance is due to—

- (a) the failure of the appliance or fitting to meet the requirements relating to the health or safety of persons or to the protection of domestic animals or property, or
- (b) shortcomings in the harmonised standards referred to in Article 13 of the Council Regulation conferring a presumption of conformity.

(11) Where another Member State has initiated the procedure under Article 37 of the Council Regulation—

- (a) the relevant market surveillance authority shall, without delay, inform the European Commission and the other Member States—
 - (i) of any measures adopted, and
 - (ii) any additional information at its disposal relating to the non-compliance of the appliance or fitting concerned, and
- (b) where the relevant market surveillance authority disagrees with the adopted national measure, the objections of the authority.

(12) Where, within 3 months of receipt of the information referred to in paragraph (9), no objection has been raised by—

- (a) another Member State, or
- (b) the European Commission,

in respect of a provisional measure taken by a Member State, that measure shall be deemed to be justified.

(13) The relevant market surveillance authority shall ensure that appropriate restrictive measures, such as withdrawal of the appliance or fitting from the market, are taken in respect of the appliance or fitting concerned, without delay.

Safeguard procedure

13. Where on completion of the procedure pursuant to paragraphs 3 and 4 of Article 37 of the Council Regulation, a national measure of a Member State—

- (a) is considered justified, the relevant market surveillance authority shall—

- (i) take the necessary measures to ensure that the non-compliant appliance or fitting is withdrawn from the market in the State, and
 - (ii) inform the European Commission accordingly, or
- (b) is considered unjustified, the relevant market surveillance authority shall withdraw that appliance or fitting.

Compliant appliances or fittings which present a risk

14. (1) Where, having carried out an evaluation under Regulation 12(1), the relevant market surveillance authority finds that although an appliance or fitting is in compliance with the Council Regulation, it presents a risk to the health or safety of persons or to domestic animals or to property, it shall—

- (a) require the relevant economic operator to take all appropriate measures to ensure that the appliance or fitting concerned, when placed on the market, no longer presents that risk,
- (b) to withdraw the appliance or fitting from the market, or
- (c) to recall it,

within a reasonable period, commensurate with the nature of the risk, as it may require.

(2) An economic operator shall ensure that corrective action required under paragraph (1) is taken in respect of all the appliances or fittings concerned that he or she has made available on the market throughout the European Union.

(3) The relevant market surveillance authority shall immediately inform the European Commission and the other Member States of the matters referred to in paragraph (1) and shall include all available details including—

- (a) the data necessary for the identification of the appliance or fitting concerned,
- (b) the origin and the supply chain of the appliance or fitting,
- (c) the nature of the risk involved, and
- (d) the nature and the duration of the national measures taken.

Formal non-compliance

15. (1) Without prejudice to Regulation 12, where the relevant market surveillance authority finds that an economic operator has not complied with the Council Regulation or these Regulations in one or more of the following ways, he or she may request that economic operator to put an end to the non-compliance within a specified period of time:

- (a) the CE marking has been affixed in violation of Article 30 of Regulation (EC) No. 765/2008 or of Article 17 of the Council Regulation;

- (b) the CE marking has not been affixed;
- (c) the inscriptions referred to in Annex IV of the Council Regulation have not been affixed or have been affixed in violation of Article 18 of the Council Regulation;
- (d) the identification number of the notified body involved in the production control phase has been affixed in violation of Article 17 of the Council Regulation or has not been affixed;
- (e) the EU declaration of conformity has not been drawn up or has not been drawn up correctly;
- (f) a copy of the EU declaration of conformity does not accompany the appliance or fitting;
- (g) the technical documentation is either not available or not complete;
- (h) the information referred to in Article 7(6) of the Council Regulation or Article 9(3) of the Council Regulation is absent, false or incomplete;
- (i) any other administrative requirement provided for in Article 7 or Article 9 of the Council Regulation is not fulfilled.

(2) Where the non-compliance referred to in paragraph (1) persists, the relevant market surveillance authority shall take all appropriate measures to restrict or prohibit the appliance or fitting being made available on the market or ensure that it is recalled or withdrawn from the market.

PART 4

ENFORCEMENT

Authorised officers

16. (1) The relevant market surveillance authority may appoint such and so many persons as it thinks fit to be authorised officers for the purposes of ensuring compliance with these Regulations, the Council Regulation and the Articles of Regulation (EC) No. 765/2008 referred to in Regulation 11.

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

Indemnification of authorised officers

17. Section 13 of the Act of 2014 and section 86 of the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005) shall apply to authorised officers appointed under these Regulations.

Powers of authorised officers

18. (1) Subject to paragraph (5), an authorised officer may for the purpose of ensuring that these Regulations and the Council Regulation are being complied with—

- (a) at all reasonable times enter any premises or a place, at which there are reasonable grounds to believe that an appliance or fitting to which these Regulations or the Council Regulation apply, are or are likely to be found, or placed on the market or that books, documents or records relating to such an appliance or fitting are kept, and search and inspect the premises or place and any appliance or fitting or books, documents or records found therein,
- (b) secure for later inspection any premises or place or part of it in which such appliance or fitting or books, documents or records are kept or there are reasonable grounds for believing that such appliance or fittings or books, documents or records are kept,
- (c) require any person in charge of or employed in such premises or place or relevant person to produce to the 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 or control or to give to the 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),
- (e) remove and detain, where the officer has reasonable cause to suspect that there has been a contravention of these Regulations or the Council Regulation, the appliance or fitting, device, part or component or books, documents or records for such period as may be reasonable for further examination or until the conclusion of any legal proceedings,
- (f) as regards any appliance or fitting or any article or device, part or component used in the manufacture of an appliance or fitting the officer finds at or in a premises, require any person in charge of the premises, or any person who appears to the officer to be in possession of the appliance or fitting or the article or device, part or component, to supply without payment, for test, examination or analysis sufficient samples thereof,
- (g) require any person to give the officer such information in relation to an appliance or fitting or part thereof or any article or substance or process used in the manufacture of an appliance or fitting as the

officer may reasonably require for the purposes of any search, examination, investigation, inspection or inquiry under these Regulations,

- (h) require by notice, at a time and place specified in the notice, any person (including the person in charge) to give the officer any information that the officer may reasonably require in relation to such place, any appliance or fitting or part of the place, activity, installation or procedure at such place, and to produce to the officer any records that are in that person's power, possession or control,
- (i) require any person to afford the officer such facilities and assistance within the person's control or responsibilities as are reasonably necessary to enable the officer to exercise any of the powers conferred on an authorised officer under this Regulation, and
- (j) examine any procedure connected with the manufacture, import or distribution of an appliance or fitting.

(2) 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 (5) authorising such entry.

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

(4) An authorised officer, where he or she considers it necessary, may be accompanied by a member of the Garda Síochána when performing any powers conferred on an authorised officer under this Regulation.

(5) 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 on any premises or any part of any premises or there is an appliance or fitting or article, device, part or component of an appliance or fitting which an authorised officer requires to inspect for the purposes of these Regulations or 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 either or both authorised officers and members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter, if need be by reasonable force, the premises and exercise all or any of the powers conferred on an authorised officer under this Regulation.

(6) An application under paragraph (5) shall be made to the judge of the District Court in whose District Court district the premises is situated.

(7) A person shall not—

- (a) obstruct or interfere with an authorised officer in the exercise of the officer's powers under this Regulation,
- (b) without reasonable excuse, fail to comply with a request or a requirement of an authorised officer under this Regulation, or
- (c) make a statement to such officer which the person knows is false or misleading.

(8) A person appointed as an authorised officer under Regulation 15 of the Regulations of 1992 who immediately before the making of these Regulations held office as such an officer continues to be an authorised officer under this Regulation.

(9) In this Regulation, premises or a place includes a vehicle or vessel.

Contravention notice

19. (1) An authorised officer who is of the opinion that a person is contravening or has contravened any provision of these Regulations or the Council Regulation may serve a notice (in these Regulations referred to as a "contravention notice") on the person.

(2) A contravention notice shall—

- (a) state that the authorised officer is of the opinion that the person is contravening or has contravened any of the provisions of these Regulations or the Council Regulation,
- (b) state the reason for that opinion,
- (c) identify the relevant provision, in respect of which that opinion is held,
- (d) direct the person to—
 - (i) remedy the contravention or the matters occasioning that notice,
 - (ii) refrain from making the appliance or fitting available on the market,
 - (iii) recall the appliance or fitting, or
 - (iv) remove the appliance or fitting from the market,

by a date specified in the notice that shall not be earlier than the end of the period within which an appeal may be made under paragraph (9),

- (e) include information regarding the making of an appeal under paragraph (6),
- (f) include any other requirement that the relevant market surveillance authority considers appropriate, and

(g) be signed and dated by the relevant market surveillance authority.

(3) A contravention notice may include directions—

(a) as to the measures to be taken to remedy any contravention or matter to which the notice relates, or to otherwise comply with the notice, and

(b) to bring the notice to the attention of any person who may be affected by it or the public generally.

(4) A person on whom a contravention notice has been served who is of the opinion that the contravention notice has been complied with shall confirm in writing to the authorised officer concerned that the matters referred to in the notice have been so remedied.

(5) Where a person on whom a contravention notice has been served so confirms in writing in accordance with paragraph (4) that the matters referred to in the contravention notice have been remedied, the authorised officer concerned shall, on being satisfied that the matters have been so remedied, within one month of receipt of such confirmation, give notice to the person concerned of compliance with the contravention notice.

(6) Where a contravention notice is served, any person aggrieved by the notice may, within 14 days of the service of the notice upon him or her, appeal to the judge of the District Court in whose district the notice was served.

(7) A person who appeals under paragraph (6) shall at the same time notify the relevant market surveillance authority of the appeal and the grounds for the appeal and the authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(8) Where an appeal under paragraph (6) is made, and the contravention notice is not cancelled, the notice as confirmed or varied shall take effect on the later of—

(a) the day next following the day on which the notice is confirmed or varied on appeal or the appeal is withdrawn, or

(b) the day specified in the notice.

(9) Where there is no appeal under paragraph (6), the contravention notice shall take effect on the later of—

(a) the end of the period for making an appeal, or

(b) the day specified in the notice.

(10) The relevant market surveillance authority may—

(a) withdraw a contravention notice at any time, or

- (b) where no appeal is made or pending under paragraph (6), extend the period specified under paragraph (2)(d).

Forfeiture orders

20. (1) The relevant market surveillance authority may apply to the District Court for an order (in these Regulations referred to as a “forfeiture order”) for the forfeiture to the authority of any appliance or fitting to which these Regulations or the Council Regulation apply on the grounds that the appliance or fitting, when properly stored and used for their intended purpose, endangers the health and safety of persons.

(2) An application under this Regulation shall be made to the judge of the District Court in whose District Court district the person against whom the forfeiture order is sought ordinarily resides or carries on business.

(3) Any forfeiture order may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

(4) Any appliance or fitting the subject of a forfeiture order may be seized by the relevant market surveillance authority.

(5) Subject to paragraph (6), where any appliance or fitting is forfeited under a forfeiture order it shall be disposed of or destroyed in accordance with such directions as the District Court may give.

(6) On making a forfeiture order the District Court may, if it considers it appropriate to do so, direct that the appliance or fitting to which the order relates shall (instead of being destroyed) be released to such person and on such conditions as the Court may specify.

(7) Any person aggrieved by the making of a forfeiture order or by a decision of the District Court not to make such an order, may appeal against that order or decision to the Circuit Court.

(8) An appeal under paragraph (7) shall be made to a judge of the circuit in which the forfeiture order was made or refused or the circuit in which the appellant ordinarily resides or carries on business.

(9) On hearing of an appeal under paragraph (7), the Circuit Court may either confirm or vary the order, or allow the appeal.

(10) A decision of the Circuit Court on an appeal under paragraph (7) shall be final, save that, by leave of the Court an appeal from the decision shall lie to the High Court on a specified question of law.

Prohibition notice

21. (1) Where an authorised officer is of the opinion that an appliance or fitting, used in accordance with its intended purpose or under conditions which can reasonably be foreseen and when properly installed and maintained, presents or is likely to present a serious risk, he or she—

- (a) may serve a notice (in these Regulations referred to as a “prohibition notice”), directing the person on whom it is served to do one or more of the following—
 - (i) withdraw the appliance or fitting from the market,
 - (ii) refrain from making the appliance or fitting available on the market,
 - (iii) refrain from placing the appliance or fitting on the market,
 - (iv) recall the appliance or fitting, or
 - (v) take such other measures that have the effect of restricting the free movement of the appliance or fitting, and
- (b) may take any other appropriate measures, including the seizing and removing of the appliance or fitting from the market, to ensure compliance with these Regulations and the Council Regulation.

(2) A prohibition notice may be served on any person the authorised officer has reasonable grounds for believing is in a position to take the measures specified in the notice.

(3) A prohibition notice shall—

- (a) be signed by the authorised officer issuing it,
- (b) state that the authorised officer is of the opinion that an appliance or fitting presents a serious risk,
- (c) specify the provision or provisions of these Regulations or the Council Regulation in relation to which the relevant appliance or fitting is not in compliance and the matters giving rise to the non-compliance, and
- (d) direct the person on whom the prohibition order is served to ensure that the relevant appliance or fitting—
 - (i) is not to be placed or made available on the market until such time as all appropriate measures, including corrective measures, have been taken to bring the appliance or fitting into compliance with these Regulations and the Council Regulation,
 - (ii) is prohibited from being placed or made available on the market,
 - (iii) is to be withdrawn or recalled from the market within a specified time-limit, or
 - (iv) is to be destroyed or disposed of within a specified time limit and in a manner prescribed by the authorised officer or is to be detained for the purposes of destruction by an authorised officer.

- (4) A prohibition notice may include directions—
- (a) as to the measures to be taken to remedy any contravention or matter to which the notice relates, or to otherwise comply with the notice, and
 - (b) to bring the notice to the attention of any person who may be affected by it, or to the public generally.
- (5) A prohibition notice shall take effect—
- (a) where the prohibition order so declares, immediately the order is received by the person on whom it is served, or
 - (b) in any other case—
 - (i) where no appeal is taken against the prohibition order, on the expiration of the period during which such an appeal may be taken or the day specified in the prohibition order as the day on which it is to come into effect, whichever is the later, or
 - (ii) where an appeal is taken, on the day next following the day on which the prohibition order is confirmed on appeal or the appeal is withdrawn or the day specified in the prohibition order as the day on which it is to come into effect, whichever is the later.
- (6) The bringing of an appeal against a prohibition order which is to take effect in accordance with paragraph (5)(a) shall not have the effect of suspending the operation of the prohibition order, but the appellant may apply to the District Court to have the operation of the prohibition order suspended until the appeal is disposed of and, on such application, the District Court may, if it thinks it proper to do so, direct that the operation of the prohibition order be suspended until the appeal is disposed of.
- (7) In the event of non-compliance or delay by the person on whom the prohibition order has been served, an authorised officer shall take whatever steps are considered necessary to ensure compliance with the direction given under this Regulation and this may include the withdrawal, recall, seizure and destruction of the appliances or fittings in question or the making of any arrangements for such withdrawal, recall, seizure or destruction.
- (8) (a) A person who is aggrieved by a prohibition order may, within the period of 7 days beginning on the day on which the prohibition order is served on him or her, appeal against the order to a judge of the District Court in the District Court district in which the prohibition order was served in the prescribed manner and in determining the appeal the judge may—
- (i) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the prohibition order, with or without modification, or

(ii) cancel the prohibition order.

(b) Where on the hearing of an appeal under this paragraph a prohibition order is confirmed, notwithstanding paragraph (6), the judge of the District Court by whom the appeal is heard may, on the application of the appellant, suspend the operation of the prohibition order for such period as in the circumstances of the case the judge considers appropriate.

(9) A person who appeals against a prohibition order or who applies for a direction suspending the application of the prohibition order under paragraph (6) shall at the same time notify the relevant market surveillance authority of the appeal or the application and the grounds for the appeal or the application and the relevant market surveillance authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

(10) The relevant market surveillance authority may for stated reasons, revoke or vary a prohibition order made in accordance with this Regulation.

(11) (a) Where a prohibition order has been served and activities are carried on in contravention of the prohibition order, the High Court may, on the application of the relevant market surveillance authority, by order prohibit the continuance of the activities.

(b) An application to the High Court for an order under this paragraph shall be by motion and the Court, when considering the matter, may make such interim or interlocutory order (if any) as it considers appropriate and the order by which an application under this paragraph is determined may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate.

Seizure and disposal of unsafe appliances or fittings

22. (1) Notwithstanding Regulations 20 and 21, any appliance or fitting that appears to an authorised officer to present a serious risk, may be seized and destroyed or otherwise disposed of by the authorised officer and in such manner and at such time and place as the authorised officer may direct, and the costs of seizure and disposal may be charged to the economic operator, manager of the premises or place where the appliance or fitting was found, or the person having lawful possession of the appliance or fitting at the time of seizure where known.

(2) In this Regulation, “disposed of” includes any manner of disposal which in the opinion of the authorised officer will least endanger the public, and includes—

(a) the surrender of the appliance or fitting to a member of the Garda Síochána, or to any other competent agency or organisation for its destruction, or

(b) the certified return of the appliance or fitting to the economic operator who manufactured, imported, distributed or supplied the appliance or fitting, in order to remove it from the market, at the

expense of the economic operator, manager or person having lawful possession of the appliance or fitting at the time of seizure, where known.

(3) An authorised officer, when taking a measure referred to in paragraph (1), shall notify the person concerned in writing, setting out—

- (a) the reasons for the seizure and disposal of the appliance or fitting, and
- (b) the right of appeal under Regulation 24.

Service of notifications

23. (1) Subject to paragraphs (2) and (3), a measure under Regulation 12, 14, 15, 19, 20, 21 and 22 shall be addressed to the person concerned by name and may be given to the person in one 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 the 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) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to him or her in that manner, or
- (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 or other document 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 within the meaning of the Companies Acts 2014 (No. 38 of 2014) 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.

Right of appeal against certain measures

24. (1) A person aggrieved by a measure taken under Regulation 12, 14, 15 or 22 may appeal to the appropriate court against the giving of the direction or taking of the measure.

(2) An appeal under this Regulation shall state the grounds on which the appeal is made and be made by written notice, which shall be lodged with the appropriate office of the court not later than 21 days from the date upon which the notification concerned was given to him or her or the measure was taken.

(3) A copy of the notice by which a person makes an appeal under this Regulation shall be given by him or her to the relevant market surveillance authority.

(4) Where an appeal is made under paragraph (1), the notification shall remain in force until the appeal is determined or withdrawn, subject to any decision to the contrary by the High Court.

(5) On the hearing of an appeal under this Regulation the appropriate court may either confirm or vary the measure or allow the appeal and make any other such order as it considers appropriate.

(6) In this Regulation “appropriate court” means—

(a) in any case where the estimated value of the appliance or fitting concerned 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 any case where the estimated value of the appliance or fitting concerned 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 case, the High Court.

(7) If, in relation to an appeal under this Regulation to the District Court, that court becomes of opinion during the hearing of the appeal that the value of the appliance or fitting, the subject of the appeal, exceeds that court’s jurisdiction in tort, it may, if it so thinks fit, transfer the appeal to the Circuit Court or the High Court, whichever it considers appropriate having regard to its opinion of the value of the appliance or fitting.

(8) If, in relation to an appeal under this Regulation to the Circuit Court, that court becomes of opinion during the hearing of the appeal that the value of the appliance or fitting, the subject of the appeal, exceeds that court’s jurisdiction in tort, it may, if it so thinks fit, transfer the appeal to the High Court.

(9) Paragraphs (6) and (7) are without prejudice to the jurisdiction of a court (being either the District Court or the Circuit Court) to determine an appeal under this Regulation in relation to which it was, at the time of the hearing of the appeal, the appropriate court.

(10) An appeal under this Regulation to the District Court shall be determined by the judge of the District Court for the District Court district in which the appliance or fitting concerned was placed on the market or the appellant ordinarily resides.

(11) An appeal under this Regulation to the Circuit Court shall be determined by the judge of the Circuit Court for the circuit in which the appliance or fitting concerned was placed on the market or the appellant ordinarily resides.

(12) A decision of the District Court on an appeal under this Regulation shall be final, save that, by leave of the Court an appeal from the decision shall lie to the High Court on a specified question of law.

(13) A decision of the Circuit Court on an appeal under this Regulation shall be final, save that, by leave of the Court an appeal from the decision shall lie to the High Court on a specified question of law.

(14) A decision of the High Court on an appeal under this Regulation shall be final, save that, by leave of the Court an appeal from the decision shall lie to the Court of Appeal on a specified question of law.

PART 5

OFFENCES AND PENALTIES

Offences and Penalties

25. (1) A person who contravenes Regulations 4, 5(2), 6(2), 7, 12(2), 12(7) or 14(2) commits an offence.

(2) A person who—

(a) forges or counterfeits the CE marking,

(b) applies to any appliance or fitting a marking which he or she knows to be forged or counterfeit, or

(c) knowingly, makes available or places on the market any appliance or fitting with such forged or counterfeit mark, or any mark liable to be confused with marks authorised under these Regulations,

commits an offence.

(3) A person who fails to comply with a contravention notice under Regulation 19 within the period specified in the notice commits an offence.

(4) A person who fails to comply with a prohibition notice under Regulation 21 within the period specified in the notice commits an offence.

(5) An offence under these Regulations may be prosecuted summarily by the relevant market surveillance authority.

(6) Where a person is convicted of an offence under these Regulations, the court may order the forfeiture to the relevant market surveillance authority in the State of any appliance or fitting to which the offence relates.

(7) Where an order is made under paragraph (6), the relevant market surveillance authority in the State may for the purpose of giving effect to it seize and detain the appliance or fitting where it has not already been seized under this Regulation.

(8) If 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 so doing, order the person to pay to the prosecutor 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.

Offence of providing false or misleading information

26. A person who provides to the relevant market surveillance authority information which the person knows or ought reasonably to know to be false or misleading (whether on the person's own behalf or on behalf of another person) in purported compliance with a requirement imposed by these Regulations, commits an offence.

Penalties

27. A person convicted of an offence under these Regulations is liable—

- (a) on summary conviction, to a class A fine, or imprisonment for a term not exceeding 6 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 2 years or both.

Offences by bodies corporate

28. (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 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, commits 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.

Amendment of Consumer Protection Act 2007

29. The Consumer Protection Act 2007 (No.19 of 2007) is amended, in Schedule 9 (inserted by section 81 of the Act of 2014), by the insertion—

(a) in Column (1), of “S.I. No. 126 of 2018”, and

(b) in Column (2), of “European Union (Appliances Burning Gaseous Fuels) Regulations 2018”.

Transitional provisions

30. (1) An appliance or fitting which is in conformity with the European Communities (Appliances Burning Gaseous Fuels) Regulations 1992 to 1995 and which were placed or made available on the market or put into use before the coming into operation of these Regulations may continue to be made available on the market.

(2) Certificates issued under the Regulations of 1992 shall be valid under these Regulations.

(3) Where, before the coming into operation of these Regulations, a person had made an application under the Regulations of 1992 for a certificate to be issued by a notified body but the application was not completed then, the application shall be deemed to be a request under these Regulations and shall be dealt with accordingly.

Revocation

31. The following Regulations are revoked:

(a) the Regulations of 1992;

(b) the European Communities (Appliances Burning Gaseous Fuels) (Amendment) Regulations 1995 (S.I. No. 150 of 1995).



GIVEN under my Official Seal,
20 April 2018.

HEATHER HUMPHREYS,
Minister for Business, Enterprise and Innovation.

EXPLANATORY NOTE

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

These Regulations are for the purposes of giving full effect to Regulation (EU) 2016/426 of the European Parliament and of the Council of 9 March 2016 on appliances burning gaseous fuels and repealing Directive 2009/142/EC.

The aim of the Regulation (EU) 2016/426 is to ensure a single market for appliances and fittings burning gaseous fuels by laying down the essential safety requirements and type-approval rules. A person shall not make available on the market or put into service any appliance or fitting unless, when normally used, it satisfies the requirements of these Regulations and the Council Regulation.

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