



STATUTORY INSTRUMENTS.

S.I. No. 227 of 2016



EUROPEAN COMMUNITIES (SIMPLE PRESSURE VESSELS)
REGULATIONS 2016

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I, RICHARD BRUTON, Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) (as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007)) and for the purpose of giving effect to Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014¹ and of giving further effect to Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008², hereby make the following regulations:

PART 1

GENERAL PROVISIONS

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Simple Pressure Vessels) Regulations 2016.

(2) These Regulations come into operation on 20 April 2016.

Interpretation

2. (1) In these Regulations—

“accreditation” has the meaning assigned to it in point 10 of Article 2 of Regulation (EC) No. 765/2008;

“authorised officer” means a person appointed under Regulation 30;

“authorised representative” means any natural or legal person established within the European Economic Area who has received a written mandate from a manufacturer to act on his behalf in relation to specified tasks;

“CE marking” means a marking by which the manufacturer indicates that the vessel is in conformity with the applicable requirements set out in European Union harmonisation legislation providing for its affixing, in accordance with Regulation 16;

“competent authority” means—

(a) in the State, the authority designated as competent authority under Regulation 3, or

¹OJ No. L 96, 29.3.2014, p. 45.

²OJ No. L 218, 13.8.2008, p. 30.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 10th May, 2016.

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

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

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

“contravention notice” means a notice under Regulation 32;

“Directive” means Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014¹;

“Directive 2009/105/EC” means Directive 2009/105/EC of the European Parliament and of the Council of 16 September 2009³;

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

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

“EU declaration of conformity” means the declaration of conformity provided for in Regulation 15;

“forfeiture order” means the order provided for in Regulation 31;

“harmonised standard” means harmonised standard as defined in paragraph (c) of point 1 of Article 2 of Regulation (EU) No. 1025/2012 of 25 October 2012⁴;

“importer” means any natural or legal person established within the European Economic Area who places a vessel from a third country on the market of the European Economic Area;

“making available on the market” means any supply of a vessel for distribution or use on the market of the European Economic Area in the course of a commercial activity, whether in return for payment or free of charge;

“manufacturer” means any natural or legal person who manufactures a vessel or has a vessel designed or manufactured, and markets that vessel under his name or trade mark;

“market surveillance authority” means—

(a) in the State, the authority designated as market surveillance authority under Regulation 3, or

³OJ No. L 264, 8.10.2009, p. 12.

⁴OJ No. L 316, 14.11.2012, p. 12.

(b) in another Member State, any authority or body designated as market surveillance authority by that Member State for the purposes of the Directive;

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

“Member State” means a state which is a contracting party to the Agreement on the European Economic Area signed in Oporto on 2 May 1992;

“notifying authority” means the person designated as the notifying authority in the State under Regulation 3(c);

“notified body” has the meaning assigned to it in Regulation 17(2);

“national accreditation body” means national accreditation body as defined in point 11 of Article 2 of Regulation (EC) No. 765/2008;

“Official Journal” means the Official Journal of the European Union;

“placing on the market” means the first making available of a vessel on the market of the European Economic Area;

“prohibition notice” means a notice under Regulation 33;

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

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

“technical specification” means a document that prescribes technical requirements to be fulfilled by a vessel;

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

“vessel” means simple pressure vessel;

“withdrawal” means any measure aimed at preventing a vessel 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.

(3) References to Directive 2009/105/EC in existing laws, regulations and administrative provisions of the State shall be construed as references to this Directive.

Designation of competent authority and market surveillance authority

3. For the purposes of the Directive and these Regulations—

- (a) the Minister is designated as the competent authority in the State,
- (b) the Minister is designated as the market surveillance authority in the State, and
- (c) the Minister is designated as the notifying authority in the State.

Application

4. (1) Subject to paragraph (2), these Regulations apply to vessels manufactured in series with the following characteristics—

- (a) the vessels are welded, intended to be subjected to an internal gauge pressure greater than 0.5 bar and to contain air or nitrogen, and are not intended to be fired,
- (b) the parts and assemblies contributing to the strength of the vessel under pressure are made either of non-alloy quality steel or of non-alloy aluminium or non-age hardening aluminium alloys,
- (c) the vessel is made of either of the following elements—
 - (i) a cylindrical part of circular cross-section closed by outwardly dished and/or flat ends which revolve around the same axis as the cylindrical part, or
 - (ii) two dished ends revolving around the same axis,
- (d) the maximum working pressure of the vessel does not exceed 30 bar and the product of that pressure and capacity of the vessel (PS x V) does not exceed 10,000 bar.L, and
- (e) the minimum working temperature is no lower than -50 °C and the maximum working temperature is not higher than 300 °C for steel and 100 °C for aluminium or aluminium alloy vessels.

(2) These Regulations do not apply to—

- (a) vessels specifically designed for nuclear use, failure of which may cause an emission of radioactivity,
- (b) vessels specifically intended for installation in or the propulsion of ships and aircraft, or
- (c) fire extinguishers.

Making available on the market and putting into service

5. A person shall not make available on the market or put into service a vessel unless it satisfies the requirements of these Regulations when properly installed and maintained and used for the purposes for which it is intended.

Essential requirements

6. (1) Vessels of which the product of $PS \times V$ exceeds 50 bar.L shall satisfy the essential safety requirements set out in Annex I to the Directive.

(2) Vessels of which the product of $PS \times V$ is 50 bar.L or less shall be designed and manufactured in accordance with the sound engineering practice in one of the Member States.

PART 2

OBLIGATIONS OF ECONOMIC OPERATORS

Obligations of manufacturers

7. A manufacturer shall—

- (a) when placing on the market a vessel of which the product of $PS \times V$ exceeds 50 bar.L—
 - (i) ensure that it has been designed and manufactured in accordance with the essential safety requirements set out in Annex I to the Directive,
 - (ii) draw up the technical documentation referred to in Annex II to the Directive and carry out the relevant conformity assessment procedure referred to in Regulation 14 or have it carried out, and
 - (iii) where compliance of the vessel with the applicable requirements has been demonstrated by the conformity assessment procedure referred to in Regulation 14, draw up an EU declaration of conformity and affix the CE marking and the inscriptions provided for in point 1 of Annex III to the Directive,
- (b) when placing on the market a vessel of which the product of $PS \times V$ is 50 bar.L or less, ensure—
 - (i) that it has been designed and manufactured in accordance with the sound engineering practice in one of the Member States, and
 - (ii) that it bears the inscriptions laid down in point 1 of Annex III to the Directive,
- (c) keep the technical documentation and the EU declaration of conformity for 10 years after the vessel has been placed on the market,
- (d) ensure that procedures are in place for series production to remain in conformity with these Regulations and adequately take into account changes in vessels design or characteristics and changes in the harmonised standards or in the other technical specifications by reference to which conformity of a vessel is declared,

- (e) when deemed appropriate with regard to the risks presented by a vessel, to protect the health and safety of end-users, carry out sample testing of vessels made available on the market, investigate, and, if necessary, keep a register of complaints, of non-conforming vessels and vessel recalls, and keep distributors informed of any such monitoring,
- (f) ensure that vessels which the manufacturer has placed on the market bear a type and serial or batch identification allowing their identification,
- (g) indicate on the vessel, in a language easily understood by end-users and the market surveillance authorities, the manufacturer's name, registered trade name or registered trade mark and the postal address at which the manufacturer can be contacted, which address should indicate a single point of contact,
- (h) ensure that the vessel is accompanied by the instructions and safety information referred to in point 2 of Annex III to the Directive, in a language which can be easily understood by end-users and that such instructions and safety information, as well as any labelling, are clear, understandable and intelligible,
- (i) in the case of a vessel which the manufacturer has placed on the market and which the manufacturer considers or has reason to believe is not in conformity with these Regulations—
 - (i) immediately take the corrective measures necessary to bring that vessel into conformity with these Regulations, or to withdraw or recall it if appropriate, and
 - (ii) where that vessel presents a risk, immediately inform the competent authorities of the Member States in which the manufacturer made the vessel available on the market to that effect and give details, in particular, of the non-compliance and of any corrective measures taken, and
- (j) further to a reasoned request from a competent authority—
 - (i) provide it with all the information and documentation in paper or electronic form necessary to demonstrate the conformity of a vessel with these Regulations, in a language which can be easily understood by that authority, and
 - (ii) cooperate with that authority, at its request, on any action taken to eliminate the risk posed by a vessel placed on the market by the manufacturer.

Authorised representatives

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

(2) The obligations laid down in Regulation 7(a) and (b) shall not form part of the authorised representative's mandate.

(3) The authorised representative shall perform the tasks specified in the mandate received from the manufacturer which shall, at least, allow the authorised representative to—

- (a) keep the EU declaration of conformity and the technical documentation at the disposal of market surveillance authorities for 10 years after the vessel has been placed on the market,
- (b) further to a reasoned request from a competent authority, provide that authority with all the information and documentation necessary to demonstrate the conformity of a vessel, and
- (c) cooperate with the competent authorities, at their request, on any action taken to eliminate the risks posed by vessels covered by the authorised representative's mandate.

Obligations of importers

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

(2) An importer shall—

- (a) before placing on the market a vessel of which the product of PS x V exceeds 50 bar.L, ensure—
 - (i) that the appropriate conformity assessment procedure referred to in Regulation 14 has been carried out by the manufacturer,
 - (ii) that the manufacturer has drawn up the technical documentation,
 - (iii) that the vessel bears the CE marking and the inscriptions provided for in point 1 of Annex III to the Directive and is accompanied by the required documents, and
 - (iv) that the manufacturer has complied with the requirements set out in Regulation 7(f) and (g),
- (b) in the case of a vessel of which the product of PS x V exceeds 50 bar.L which an importer considers or has reason to believe is not in conformity with the essential safety requirements set out in Annex I to the Directive—
 - (i) not place the vessel on the market until it has been brought into conformity, and

- (ii) where the vessel presents a risk, inform the manufacturer and the market surveillance authorities to that effect,
- (c) before placing on the market a vessel of which the product of PS x V is 50 bar.L or less, ensure that—
 - (i) it has been designed and manufactured in accordance with the sound engineering practice in one of the Member States,
 - (ii) it bears the inscriptions provided for in point 1.2 of Annex III to the Directive, and
 - (iii) the manufacturer has complied with the requirements set out in Regulation 7(f) and (g),
- (d) indicate on the vessel in a language which can be easily understood by end-users and market surveillance authorities, or where it is not possible to do so on the vessel, in a document accompanying it, the importer's name, registered trade name or registered trade mark and the postal address at which the importer can be contacted,
- (e) ensure that the vessel is accompanied by the instructions and safety information referred to in point 2 of Annex III to the Directive, in a language which can be easily understood by end-users,
- (f) ensure that, while a vessel in respect of which the product of PS x V exceeds 50 bar.L is under his or her responsibility, its storage or transport conditions do not jeopardise its compliance with the essential safety requirements set out in Annex I to the Directive,
- (g) when deemed appropriate with regard to the risks presented by a vessel, an importer shall, to protect the health and safety of end-users, carry out sample testing of vessels made available on the market, investigate and, if necessary, keep a register of complaints, of non-conforming vessels and vessel recalls, and shall keep distributors informed of any such monitoring,
- (h) in the case of a vessel which the importer has placed on the market and which the importer considers or has reason to believe is not in conformity with these Regulations—
 - (i) immediately take the corrective measures necessary to bring that vessel into conformity with these Regulations, or to withdraw it or recall it if appropriate, and
 - (ii) where that vessel presents a risk, immediately inform the competent authorities of the Member States in which the importer made the vessel available on the market to that effect and give details of the non-compliance and of any corrective measures taken,

- (i) in the case of vessels of which the product of $PS \times V$ exceeds 50 bar.L—
 - (i) keep a copy of the EU declaration of conformity at the disposal of the market surveillance authorities for 10 years after the vessel has been placed on the market, and
 - (ii) ensure that the technical documentation can, upon request, be made available to those authorities for 10 years after the vessel has been placed on the market, and
- (j) further to a reasoned request from a competent authority—
 - (i) provide it with all the information and documentation in paper or electronic form necessary to demonstrate the conformity of a vessel in a language which can be easily understood by that authority, and
 - (ii) cooperate with that authority, at its request, on any action taken to eliminate the risks posed by a vessel which the importer has placed on the market.

Obligations of distributors

10. A distributor shall—

- (a) act with due care in relation to the requirements of these Regulations, when making a vessel available on the market,
- (b) before making available on the market a vessel of which the product of $PS \times V$ exceeds 50 bar.L, verify that—
 - (i) the vessel bears the CE marking and the inscriptions provided for in point 1 of Annex III to the Directive,
 - (ii) the vessel is accompanied by the required documents and by instructions and safety information referred to in point 2 of Annex III to the Directive in a language which can be easily understood by end-users in the Member State in which the vessel is to be made available on the market, and
 - (iii) the manufacturer has complied with the requirements set out in Regulation 7 (f) and (g), and
 - (iv) the importer has complied with the requirements set out in Regulation 9(2)(d),
- (c) in the case of a vessel of which the product of $PS \times V$ exceeds 50 bar.L which a distributor considers or has reason to believe is not in conformity with the essential safety requirements set out in Annex I to the Directive—

- (i) not make the vessel available on the market until it has been brought into conformity, and
 - (ii) where the vessel presents a risk, inform the manufacturer or the importer to that effect as well as the market surveillance authorities,
- (d) before making available on the market a vessel of which the product of $PS \times V$ is 50 bar.L or less, verify that—
- (i) the vessel bears the inscriptions provided for in point 1.2 of Annex III to the Directive,
 - (ii) the vessel is accompanied by the instructions and safety information referred to in point 2 of Annex III to the Directive in a language which can be easily understood by end-users in the Member State in which the vessel is to be made available on the market,
 - (iii) the manufacturer has complied with the requirements set out in Regulation 7 (f) and (g), and
 - (iv) the importer has complied with the requirements set out in Regulation 9(2)(d),
- (e) ensure that while a vessel of which the product of $PS \times V$ exceeds 50 bar.L is under his or her responsibility, its storage or transport conditions do not jeopardise its compliance with the essential safety requirements set out in Annex I to the Directive,
- (f) in the case of a vessel which the distributor has made available on the market which the distributor considers or has reason to believe is not in conformity with these Regulations—
- (i) make sure that the corrective measures necessary to bring that vessel into conformity, to withdraw it or recall it, if appropriate, are taken,
 - (ii) where that vessel presents a risk, immediately inform the competent authorities of the Member States in which the distributor made the vessel available on the market to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken, and
- (g) further to a reasoned request of a competent authority—
- (i) provide it with all the information and documentation in paper or electronic form necessary to demonstrate that conformity of a vessel, and

- (ii) cooperate with that authority, at its request, on any action taken to eliminate the risks posed by vessels which they have placed on the market.

Cases in which obligations of manufacturers apply to importers and distributors

11. An importer or distributor shall be considered a manufacturer for the purposes of these Regulations and shall be subject to the obligations of the manufacturer under Regulation 7, where that importer or distributor—

- (a) places a vessel on the market under his or her name or trade mark, or
- (b) modifies a vessel already placed on the market in such a way that compliance with these Regulations may be affected.

Identification of economic operators

12. An economic operator shall—

- (a) on request, identify to the market surveillance authorities any other economic operator—
 - (i) who has supplied the first named economic operator with a vessel, or
 - (ii) to whom the first named economic operator has supplied a vessel, and
- (b) be able to present the information referred to in paragraph (a) for 10 years after the first named economic operator has been supplied with the vessel and for 10 years after the first named economic operator has supplied the vessel.

PART 3

CONFORMITY OF VESSELS OF WHICH THE PRODUCT OF PS X V EXCEEDS 50 BAR.L

Presumption of conformity of vessels of which the product of PS x V exceeds 50 bar.L

13. A vessel of which the product of PS x V exceeds 50 bar.L and which is in conformity with harmonised standards or parts thereof the references of which have been published in the Official Journal shall be presumed to be in conformity with the essential safety requirements set out in Annex I to the Directive covered by those standards or parts thereof.

Conformity assessment procedures

14. (1) Prior to its manufacture, a vessel of which the product of PS x V exceeds 50 bar.L shall be subject to the EU-type examination (Module B) set out in point 1 of Annex II to the Directive, as follows—

- (a) for a vessel manufactured in accordance with the harmonised standards referred to in Regulation 13, at the choice of the manufacturer, in either of the following two manners—

- (i) assessment of the adequacy of the technical design of the vessel through examination of the technical documentation and supporting evidence without examination of a specimen (Module B — design type), or
 - (ii) assessment of the adequacy of the technical design of the vessel through examination of the technical documentation and supporting evidence, plus examination of a prototype, representative of the production envisaged, of the complete vessel (Module B — production type),
- (b) for a vessel not manufactured, or manufactured only partly, in accordance with the harmonised standards referred to in Regulation 13, the manufacturer shall submit for examination a prototype, representative of the production envisaged, of the complete vessel and the technical documentation and supporting evidence for examination and assessment of the adequacy of the technical design of the vessel (Module B — production type).
- (2) Prior to being placed on the market, a vessel shall be subject to the following procedures—
- (a) where the product of $PS \times V$ exceeds 3 000 bar.L, to conformity to type based on internal production control plus supervised vessel testing (Module C1) set out in point 2 of Annex II to the Directive,
 - (b) where the product of $PS \times V$ does not exceed 3 000 bar.L but exceeds 200 bar.L, at the choice of the manufacturer, to either of the following—
 - (i) conformity to type based on internal production control plus supervised vessel testing (Module C1) set out in point 2 of Annex II to the Directive, or
 - (ii) conformity to type based on internal production control plus supervised vessel checks at random intervals (Module C2) set out in point 3 of Annex II to the Directive, and
 - (c) where the product of $PS \times V$ does not exceed 200 bar.L but exceeds 50 bar.L, at the choice of the manufacturer, to either of the following—
 - (i) conformity to type based on internal production control plus supervised vessel testing (Module C1) set out in point 2 of Annex II to the Directive, or
 - (ii) conformity to type based on internal production control (Module C) set out in point 4 of Annex II to the Directive.
- (3) The records and correspondence relating to the conformity assessment procedures referred to in paragraphs (1) and (2) shall be drawn up in an official

language of the Member State in which the notified body is established or in a language accepted by that body.

EU declaration of conformity

15. (1) An EU declaration of conformity for a vessel shall—

- (a) state that the fulfilment of the essential safety requirements set out in Annex I to the Directive has been demonstrated,
- (b) have the model structure as set out in Annex IV to the Directive,
- (c) contain the elements specified in the relevant modules set out in Annex II to the Directive,
- (d) be continuously updated, and
- (e) be translated into the language or languages required by the Member State in which the vessel is placed or made available on the market.

(2) Where a vessel is subject to more than one European Union act requiring an EU declaration of conformity, a single EU declaration of conformity shall be drawn up in respect of all such European Union acts and shall identify the European Union acts concerned, including their publication references.

(3) By drawing up the EU declaration of conformity a manufacturer shall assume responsibility for the compliance of the vessel with the requirements laid down in the Directive and in these Regulations.

Rules and conditions for affixing the CE marking and inscriptions

16. (1) The CE marking and the inscriptions referred to in point 1 of Annex III to the Directive shall be affixed visibly, legibly and indelibly to the vessel or to its data plate.

(2) The CE marking shall be affixed before the vessel is placed on the market.

(3) The CE marking shall be followed by the identification number of the notified body involved in the production control phase.

(4) The identification number of the notified body shall be affixed by the body itself or, under its instructions, by the manufacturer or authorised representative thereof.

(5) The CE marking and the identification number of the notified body may be followed by any other mark indicating a special risk or use.

(6) A person shall not affix a CE marking—

- (a) in a manner that is in contravention of this Regulation, to a vessel which conforms with these Regulations, or
- (b) to a vessel which does not conform with these Regulations.

PART 4

NOTIFICATION OF CONFORMITY ASSESSMENT BODIES

Notified bodies

17. (1) The notifying authority in the State shall notify the Commission and the other Member States of the conformity assessment bodies authorised under these Regulations to carry out third party conformity assessment tasks.

(2) Only conformity assessment bodies which have been notified to the European Commission and other Member States in accordance with this Part and the Directive, and against whom no objections are raised by the European Commission or the other Member States within the time periods set down under paragraph 5 of Article 25 of the Directive, shall be notified bodies for the purposes of the Directive and these Regulations.

Applications for notification by conformity assessment bodies

18. (1) A conformity assessment body seeking to become a notified body shall meet the requirements set down in paragraphs 2 to 11 of Article 21 of the Directive.

(2) Without prejudice to paragraph (1), where a conformity assessment body demonstrates its conformity with the criteria laid down in the relevant harmonised standards or parts thereof the references of which have been published in the Official Journal, it shall be presumed to comply with the requirements set out in Article 21 of the Directive insofar as the applicable harmonised standards cover those requirements.

(3) A conformity assessment body seeking to become a notified body shall submit to the notifying authority in the State an application, which application shall be in accordance with Article 24 of the Directive.

Notification of conformity assessment bodies

19. (1) The notifying authority in the State may notify only a conformity assessment body where that body—

(a) has made an application to it in accordance with Article 24 of the Directive, and

(b) meets the requirements set out in Article 21 of the Directive.

(2) Notifications by the notifying authority in the State under paragraph (1) shall be made in accordance with the notification procedure set down in paragraphs 2, 3 and 4 of Article 25 of the Directive.

(3) The notifying authority in the State shall notify the European Commission and the other Member States of any subsequent relevant changes to the notification.

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

- (a) the setting up and carrying out the necessary procedures for the assessment and accreditation of conformity assessment bodies, and
- (b) the monitoring of notified bodies, including their compliance with Articles 21, 24, 29 and 31 of the Directive.

Changes to notifications

20. (1) Where the notifying authority in the State has ascertained or has been informed that a notified body no longer meets the requirements laid down in Article 21 of the Directive or that it is failing to fulfil its obligations under Article 29 or 31 of the Directive or under this Part, that 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) In the event of restriction, suspension or withdrawal of notification, or where the notified body has ceased its activity, the notifying authority in the State shall—

- (a) immediately inform the European Commission and other Member States of same, and
- (b) take appropriate steps to ensure that the files of that notified body are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities at their request.

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

(4) The Minister shall establish a panel (“appeal panel”) for the purposes of considering appeals under this Regulation. An appeal panel shall consist of at least 3 but not more than 5 persons appointed by the Minister, one of whom shall be designated by the Minister to be chairperson of the panel. An appeal panel shall not consist of any person who decided or was involved in the decision to restrict, suspend or withdraw the relevant notification pertaining to a notified body. The Minister may establish more than one appeal panel to consider one or more appeals. An appeal panel shall establish its own procedure.

(5) Where the notifying authority decides to restrict, suspend or withdraw the notification pertaining to a notified body, the latter may, within 14 days of the notification under paragraph (3), appeal to an appeal panel against the restriction, suspension or withdrawal, as the case may be. The notification pertaining to a notified body stands restricted, suspended or withdrawn, as the case may be, from the date of the notification of the decision under paragraph (3), unless the appeal panel, upon an application to it, decides otherwise, pending the outcome of the appeal. On hearing the appeal the appeal panel may confirm the decision, vary it or allow the appeal and shall notify the appellant of its decision. The decision of the appeal panel is final except that an appeal lies to the High Court on application to it on a specified point of law. Such an application does not affect the decision of the appeal panel and its operation.

(6) All expenses reasonably incurred by the notifying authority in relation to an appeal before an appeal panel or the High Court shall be borne by the appellant where the appeal panel or the Court confirms or confirms with a variation the decisions of the notifying authority. The notifying authority may recover these expenses as a simple contract debt in a court of competent jurisdiction.

Subsidiaries of and subcontracting by notified bodies

21. Where a notified body subcontracts specific tasks connected with conformity assessment or has recourse to a subsidiary, it shall comply with Article 23 of the Directive.

Operational obligations of notified bodies

22. (1) A notified body shall carry out a conformity assessment in accordance with the conformity assessment procedure provided for in Annex II to, and Article 29(2) of, the Directive.

(2) Where a notified body finds that essential safety requirements set out in Annex I to the Directive or corresponding harmonised standards or other technical specifications have not been met by a manufacturer, it shall require that manufacturer to take appropriate corrective measures and shall not issue a certificate of conformity.

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

(4) Where corrective measures are not taken or do not have the required effect, the notified body shall restrict, suspend or withdraw any certificates, as appropriate.

(5) The notified body shall inform the manufacturer concerned of its decision to restrict, suspend or withdraw any certificate held by it.

Appeal against decisions of notified bodies

23. (1) The Minister shall establish a panel (“appeal panel”) for the purposes of considering appeals against restrictions, suspensions or withdrawals rendered by notified bodies under Regulation 22. An appeal panel shall consist of at least 3 but not more than 5 persons appointed by the Minister, one of whom shall be designated by the Minister to be chairperson of the panel. An appeal panel shall not consist of any person who decided or was involved in the decision to restrict, suspend or withdraw the relevant certificate. The Minister may establish more than one appeal panel to consider one or more appeals. An appeal panel shall establish its own procedure.

(2) Where a notified body decides to restrict, suspend or withdraw a certificate held by a manufacturer, the latter may, within 14 days of the notification under Regulation 22(5), appeal to an appeal panel against the restriction, suspension or withdrawal, as the case may be. The certificate held by the manufacturer stands restricted, suspended or withdrawn, as the case may be, from the

date of the notification of the decision under Regulation 22(5), unless the appeal panel, upon an application to it, decides otherwise, pending the outcome of the appeal. On hearing the appeal the appeal panel may confirm the decision, vary it or allow the appeal and shall notify the appellant of its decision. The decision of the appeal panel is final except that an appeal lies to the High Court on application to it on a specified point of law. Such an application does not affect the decision of the appeal panel and its operation.

(3) All expenses reasonably incurred by the notifying authority in relation to an appeal before an appeal panel or the High Court shall be borne by the appellant where the appeal panel or the Court confirms or confirms with a variation the decisions of the notifying authority. The notifying authority may recover these expenses as a simple contract debt in a court of competent jurisdiction.

Information obligation on notified bodies

24. A notified body shall—

- (a) inform the notifying authority in the State of the matters referred to in Article 31(1)(a), (b), (c) and (d) of the Directive,
- (b) provide other notified bodies carrying out similar conformity assessment activities covering the same vessels with relevant information on issues relating to negative conformity assessment results, and
- (c) on request, provide other notified bodies carrying out similar conformity assessment activities covering the same vessels with relevant information on issues relating to positive conformity assessment results.

PART 5

MARKET SURVEILLANCE, CONTROL OF VESSELS ENTERING THE MARKET, SAFEGUARD PROCEDURE

Market surveillance and control of vessels entering the market

25. The market surveillance authority in the State shall organise and carry out market surveillance of vessels covered by these Regulations and control the entry into the State of vessels covered by these Regulations in accordance with Articles 16 to 29 of Regulation (EC) No. 765 of 2008.

Procedure for dealing with vessels presenting a risk at national level

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

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

(3) Where, in the course of the evaluation referred to in paragraph (1), the market surveillance authority in the State finds that the vessel does not comply with the requirements laid down in these Regulations, it shall—

- (a) without delay require the relevant economic operator to take all appropriate corrective actions to bring the vessel into compliance with those requirements, to withdraw the vessel from the market, or to recall it within a reasonable period commensurate with the nature of the risk, as the authority decides,
- (b) inform the notified body who carried out the conformity assessment procedure on the vessel of the vessel's non-compliance, and
- (c) apply the provisions of Article 21 of Regulation (EC) No. 765/2008 to the measures referred to in subparagraph (a).

(4) Where the market surveillance authority in the State 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.

(5) The relevant economic operator shall ensure that all appropriate corrective action is taken in respect of all the vessels concerned that it has made available on the market throughout the European Economic Area.

(6) Where the relevant economic operator does not take adequate corrective action within the period referred to in paragraph (3)(a), the market surveillance authority in the State shall, without delay, take all appropriate provisional measures to prohibit or restrict the vessel being made available on the market in the State, to withdraw the vessel from that market or to recall it.

(7) The market surveillance authority in the State shall inform the European Commission and the other Member States, without delay, of any measures taken under paragraph (6), and shall—

- (a) include all available details, in particular the data necessary for the identification of the non-compliant vessel, the origin of the vessel, the nature of the non-compliance alleged and the risk involved, the nature and duration of the measures taken in the State and the arguments put forward by the relevant economic operator, and
- (b) in particular, indicate whether the non-compliance is due to either—
 - (i) the failure of the vessel to meet requirements relating to the health or safety of persons, to the protection of domestic animals or property, or
 - (ii) shortcomings in the harmonised standards referred to in Regulation 13 conferring a presumption of conformity.

(8) Where another Member State has initiated the procedure under Article 35 of the Directive, the market surveillance authority in the State shall, without delay, inform the European Commission and the other Member States—

- (a) of any measures adopted and any additional information at its disposal relating to the vessel concerned, or
- (b) of its objections, in the event of disagreement with the adopted measure of the other Member State.

(9) Where, within three months of receipt of the information referred to in paragraph (7), no objection has been raised by either a Member State or the European Commission in respect of a provisional measure taken by the market surveillance authority in the State, that measure shall be deemed to be justified.

(10) The market surveillance authority in the State shall ensure that appropriate restrictive measures, such as withdrawal of the vessel from the market, are taken in respect of the vessel concerned without delay.

Safeguard procedure

27. (1) Where a national measure is considered justified by the European Commission in accordance with the procedure in paragraph 1 of Article 36 of the Directive, the market surveillance authority in the State shall take the necessary measures to ensure that the non-compliant vessel is withdrawn from the market in the State and shall inform the European Commission accordingly.

(2) Where a national measure is considered unjustified by the European Commission in accordance with the procedure in paragraph 1 of Article 36 of the Directive, the market surveillance authority in the State shall withdraw any measures it took under paragraph (6) or (10) of Regulation 26.

Compliant vessels which present a risk

28. (1) Where, having carried out an evaluation under Regulation 26(1), the market surveillance authority in the State finds that although a vessel is in compliance with these Regulations, 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 vessel concerned, when placed on the market, no longer presents that risk, to withdraw the vessel from the market or to recall it within a reasonable period, commensurate with the nature of the risk, as it may require and,
- (b) immediately inform the European Commission and the other Member States, of all available details and in particular of—
 - (i) the data necessary for the identification of the vessel concerned,
 - (ii) the origin and the supply chain of the vessel,
 - (iii) the nature of the risk involved, and

(iv) the nature and the duration of the national measures taken.

(2) An economic operator shall ensure that the corrective action required under paragraph (1) is taken in respect of all vessels concerned that the operator has made available on the market throughout the European Economic Area.

Formal non-compliance

29. (1) Without prejudice to Regulation 26, the market surveillance authority in the State shall require the relevant economic operator to put an end to the non-compliance concerned where it finds that—

- (a) the CE marking has been affixed in violation of Article 30 of Regulation (EC) No. 765/2008 or of Regulation 16,
- (b) the CE marking has not been affixed,
- (c) the identification number of the notified body involved in the production control phase has been affixed in violation of Regulation 16 or has not been affixed,
- (d) the inscriptions referred to in point 1 of Annex III to the Directive have not been affixed or have been affixed in violation of Regulation 16 or point 1 of Annex III to the Directive,
- (e) the EU declaration of conformity has not been drawn up,
- (f) the EU declaration of conformity has not been drawn up correctly,
- (g) the technical documentation is either not available or not complete,
- (h) the information referred to in Regulation 7(g) or Regulation 9(2)(d) is absent, false or incomplete, or
- (i) any other administrative requirement provided for in Regulation 7 or Regulation 9 is not fulfilled.

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

PART 6

POWERS OF THE MARKET SURVEILLANCE AUTHORITY

Authorised officers

30. (1) The market surveillance authority in the State may appoint such and so many persons as it thinks fit to be authorised officers for the purposes of compliance with these Regulations.

(2) An authorised officer—

- (a) shall be furnished with a warrant of his or her appointment, and
 - (b) when exercising any power conferred on him or her under these Regulations shall, if requested by any person thereby affected, produce the warrant or a copy of it to that person for inspection.
- (3) Subject to paragraph (7), an authorised officer may for the purpose of ensuring that these Regulations and the Directive are being complied with and where necessary and justified—
- (a) at all reasonable times enter the premises of an economic operator, at which there are reasonable grounds to believe that a vessel to which these Regulations apply is being or has been manufactured, distributed, supplied, placed on or made available on the market or that records relating to the vessel are kept, and search and inspect the premises or place and any vessel or records found therein,
 - (b) secure for later inspection any premises or place or part of it in which such vessels or records are kept or there are reasonable grounds for believing that such vessels or records are kept,
 - (c) require any person in charge of or employed in such premises or place 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 a 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, the vessels or records for such period as may be reasonable for further examination or until the conclusion of any legal proceedings,
 - (f) as regards any vessel or any article or substance used in the manufacture of a vessel 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 vessel or the article or substance, to supply without payment, for test, examination or analysis sufficient samples thereof,
 - (g) cause any vessel or any article or substance used in the manufacture of vessels found at or in any premises which appears to the officer to present a serious risk to be destroyed or otherwise rendered inoperable where deemed necessary by the officer, or subjected to any process or test and where an authorised officer proposes to exercise this power in the case of a vessel or an article or substance used in the

manufacture of vessels found at or in any premises, the officer shall, if so requested by a person who at the time is present at or in and has responsibilities in relation to that premises, 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,

- (h) in relation to any vessel or any article or substance used in the manufacture of vessels found at a premises in accordance with subparagraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely to—
 - (i) examine or arrange for the examination of it and do to it anything which he or she has power to do under subparagraph (g),
 - (ii) ensure that it is not tampered with before the examination of it is completed, and
 - (iii) ensure that it is available for use as evidence in any proceedings,
- (i) require any person to afford the authorised 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 of a vessel.

(4) Before exercising the power conferred by paragraph (3)(g) in the case of any vessel, 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.

(5) Where under the power conferred by paragraph (3)(h) an authorised officer takes possession of any vessel, article or substance found at or in any premises, the 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 premises a portion of the sample marked in a manner sufficient to identify it.

(6) 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 (9) authorising such entry.

(7) 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 (9) for a warrant authorising such entry.

(8) 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 or seizing any product under a forfeiture order made under Regulation 31.

(9) 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 a vessel which an authorised officer requires to inspect for the purposes of these Regulations or the Directive 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, whether alone or accompanied by other authorised officers or 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.

(10) An application under paragraph (9) shall be made to the judge of the District Court in whose District Court district the premises is situated.

(11) 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 from an authorised officer under this Regulation, or
- (c) make a statement to such officer which the person knows is false or misleading.

Forfeiture orders

31. (1) The market surveillance authority in the State may apply under this Regulation for an order for the forfeiture to that authority of any vessel to which these Regulations apply on the grounds that the vessel, when used in accordance with its intended purpose or under conditions which can be reasonably foreseen and when properly installed and maintained is liable to compromise the health or safety of users or, that the vessel does not otherwise conform to these Regulations.

(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 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 vessel the subject of a forfeiture order may be seized on behalf of the market surveillance authority in the State by an authorised officer.

(5) Subject to paragraph (6), where any vessel is forfeited under a forfeiture order it shall be 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 vessel 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) Where a forfeiture order is made or where the District Court refuses to make such an order, any person aggrieved may, within 21 days of the order or refusal, appeal to the judge of the Circuit Court in whose Circuit a forfeiture order has been made or refused.

(8) Where an appeal is made under paragraph (7), the appellant may make an application to the court to delay the coming into force of the order pending the determination of any appeal.

(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.

Contravention notice

32. (1) An authorised officer who is of the opinion that an economic operator is contravening or has contravened any of the provisions of these Regulations may serve a contravention notice on the economic operator.

(2) A contravention notice—

(a) 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, and

(b) shall be served in accordance with the requirements of Regulation 37(1).

(3) A contravention notice shall—

(a) state that the authorised officer is of the opinion referred to in paragraph (1),

(b) state the reason for that opinion,

(c) identify the relevant provision, in respect of which that opinion is held,

(d) direct the economic operator to—

(i) remedy, by a date specified in the notice, the contravention or the matters occasioning that notice, or

(ii) remove the vessel 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 (10),

- (e) include information regarding the making of an appeal under paragraph (10) and the provisions of paragraph (7),
 - (f) include any other requirement that the market surveillance authority in the State considers appropriate, and
 - (g) be signed and dated by the market surveillance authority in the State.
- (4) 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.
- (5) 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.
- (6) Where a person on whom a contravention notice has been served so confirms in writing in accordance with paragraph (5) 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.
- (7) Where an appeal under paragraph (10) is taken, and the contravention notice is not cancelled, the notice shall take effect on the later of—
 - (a) the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn, or
 - (b) the day specified in the notice.
- (8) Where there is no appeal under paragraph (10), 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.
- (9) An authorised officer may—
 - (a) withdraw a contravention notice at any time, or
 - (b) where an appeal is made or pending under paragraph (10), extend the period specified under paragraph (3)(d).

(10) Where a contravention notice is served, any person aggrieved by the notice may, within 21 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.

(11) A person who appeals under paragraph (10) shall at the same time notify the market surveillance authority of the appeal and the grounds for the appeal and the market surveillance authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(12) Where an appeal is made under paragraph (10), the appellant may make an application to the Court to delay the coming into force of the order pending the determination of any appeal.

(13) On hearing of an appeal under paragraph (10), the District Court may either confirm or vary the notice, or allow the appeal.

(14) A decision of the District Court on an appeal under paragraph (10) 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.

Vessels presenting a serious risk to persons

33. (1) Where an authorised officer ascertains that a vessel, bearing a CE mark, accompanied by a EC declaration of conformity and used in accordance with its intended purpose or under conditions which can reasonably be foreseen and when properly installed and maintained, presents a serious risk, he or she—

(a) shall, serve by notice in writing a prohibition notice, directing the person on whom it is served to do one or more of the following—

(i) withdraw the vessel from the market,

(ii) refrain from making the vessel available on the market, or

(iii) take such other measures that have the effect of restricting the free movement of the vessel, and

(b) may take any other appropriate measures, including the seizing and removing of the vessel from the market, to ensure compliance with these Regulations.

(2) A prohibition notice—

(a) 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, and

(b) shall be served in accordance with the requirements of Regulation 37(1).

(3) A prohibition notice shall—

- (a) state that the authorised officer is of the opinion referred to in paragraph (1),
 - (b) state the reason for that opinion,
 - (c) specify the situation or activity in respect of which that opinion is held,
 - (d) where, in the opinion of the authorised officer, the activity involves a contravention, or likely contravention of any of these Regulations, specify the provision concerned,
 - (e) prohibit the carrying on of the activity concerned until the matters that give rise or are likely to give rise to the risk are remedied, and
 - (f) be signed and dated by the 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 the public generally.
- (5) A prohibition notice shall take effect—
- (a) when the notice is received by the person on whom it is served, or
 - (b) where an appeal is brought against the prohibition notice, on the day immediately following—
 - (i) the day on which the notice is confirmed on appeal or the appeal is withdrawn, or
 - (ii) the day specified in the notice, whichever occurs later.
- (6) A person on whom a prohibition notice has been served who is of the opinion that the matters referred to in the prohibition notice have been remedied by the date specified in the notice shall confirm in writing to the authorised officer that those matters have been so remedied.
- (7) Where a person on whom a prohibition notice has been served confirms in writing to the authorised officer in accordance with paragraph (6) that the matters referred to in the prohibition notice have been remedied, the authorised officers 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 such compliance with the prohibition notice.
- (8) An authorised officer may at any time withdraw a prohibition notice if—

- (a) the authorised officer is satisfied that the situation or activity to which the notice relates no longer involves a serious risk to health or the environment, or
- (b) the authorised officer is satisfied that the notice was issued in error or is incorrect in some material respect.

(9) Where a prohibition notice is served, any person aggrieved by the notice may, within 21 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.

(10) A person who—

- (a) brings an appeal under paragraph (9), or
- (b) applies for the suspension of the operation of a prohibition notice under paragraph (12),

shall at the same time notify the market surveillance authority in the State of the appeal or the application and the grounds for the appeal or application.

(11) Where an appeal is made under paragraph (9), the appellant may make an application to the court to delay the coming into force of the notice pending the determination of any appeal.

(12) On hearing of an appeal under paragraph (9), the District Court may either confirm or vary the notice, or allow the appeal and, notwithstanding paragraph (5), may on the application of the appellant suspend the operation of the prohibition notice for such period as in the circumstances of the case the judge considers appropriate.

(13) A decision of the District Court on an appeal under paragraph (9) 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.

Contravention of prohibition notice — application to High Court

34. (1) Where a person contravenes a prohibition notice, an authorised officer may apply *ex parte* to the High Court for an order prohibiting the continued contravention of the notice.

(2) The High Court may, upon an application under this Regulation, order the person on whom the prohibition notice concerned was served to cease doing such acts as the High Court directs.

Publication of information relating to contravention notices and prohibition notices

35. The market surveillance authority in the State may, in the interest of the protection of safety or health and in consultation, where appropriate, with another competent authority, take such measures as it considers appropriate to bring to the attention of the public matters giving rise to any contravention notice or prohibition notice served under these Regulations.

Measures entailing refusal or restriction

36. (1) Where the market surveillance authority in the State takes—
- (a) a measure referred to in Regulation 26, 28 or 33, or
 - (b) any other measure under these Regulations, other than those referred to in Regulation 38, to prohibit or restrict the making available of a vessel on the market, or to withdraw a vessel from the market, the authority shall follow the procedures set out in this Regulation.
- (2) A measure referred to in paragraph (1) shall be notified without delay to the person concerned, and the notification shall—
- (a) state the exact grounds on which the measure is based,
 - (b) inform the person concerned of his or her right to make representations under paragraph (3) and of his right of appeal under Regulation 39, and
 - (c) explain the measures, and any time limits associated with them, that must be taken in order to remove the necessity for the prohibition or restriction.
- (3) Subject to paragraph (4), a person concerned by a measure referred to in paragraph (1) shall have the opportunity to make representations to the market surveillance authority in the State in advance of the measure being taken.
- (4) Where, due to the urgency of the measure referred to in paragraph (1), as justified in particular by public health, security or safety requirements, it is not possible to give the person concerned the opportunity to make representations in advance of the measure being taken, the market surveillance authority in the State shall give such opportunity, as soon as may be, thereafter.
- (5) The market surveillance authority in the State may, where he or she considers it appropriate to do so, withdraw, or amend by a further notification in writing any notification given under this Regulation.
- (6) A notification under this Regulation may require that the measures concerned be undertaken—
- (a) immediately, because of the urgency of the matter,
 - (b) from a specified date,
 - (c) by a specified date, or
 - (d) between specified dates.
- (7) A notification under this Regulation shall, subject to Regulation 39, take effect on the date specified therein.

(8) The market surveillance authority in the State shall cause the European Commission to be notified of any relevant notification or other measures taken pursuant to paragraph (1).

(9) A person shall comply with a notification under this Regulation, or a requirement of a notification, unless and until the notification is annulled under Regulation 39.

(10) In this Regulation and in Regulations 37 and 39, a reference to a notification under this Regulation includes a reference to a notice referred to in Regulation 33(1)(a).

(11) Where a person fails to comply with a notification under this Regulation or a requirement of a notification, the market surveillance authority in the State may institute proceedings, in a court of competent jurisdiction, for an order requiring the person to comply with the terms of the notification.

Service of notifications

37. (1) Subject to paragraphs (2) and (3), a notification under Regulation 26, 28 or 33 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) 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, or
- (e) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the compliance 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 notification under Regulation 26, 28 or 33 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 Act 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.

Seizure and disposal of unsafe vessels

38. (1) Notwithstanding Regulations 31 and 33, any vessel that appears to an authorised officer to present a serious risk, may be seized and destroyed or otherwise disposed of by such person 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 vessel was found, or the person having lawful possession of the vessel 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 surrender of the vessel to a member of the Garda Síochána, or to any other competent agency or organisation for its destruction, or the certified return of the vessel to the economic operator who manufactured, imported, distributed or supplied the articles, in order to remove it from the market, at the expense of the economic operator, manager, or person having lawful possession of the vessel 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 vessel, and
- (b) the right of appeal under Regulation 39.

Right of appeal against certain notifications or measures

39. (1) A person aggrieved by a notification or measure to which no other appeals procedure applies under these Regulations may, within 21 days of receipt of the notification or measure, 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 and lodged with the appropriate office of the court.

(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 market surveillance authority in the State.

(4) Where an appeal is made under paragraph (1), the appellant may make an application to the court that the notification or measure shall stand suspended until the appeal is determined or withdrawn.

(5) On the hearing of an appeal under this Regulation the appropriate court may either confirm or vary the notification or 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 vessel concerned or the consignment of vessels 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 vessel concerned or the consignment of vessels 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 the opinion during the hearing of the appeal that the value of the vessel, 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 vessel.

(8) If, in relation to an appeal under this Regulation to the Circuit Court, that court becomes of the opinion during the hearing of the appeal that the value of the vessel, the subject of the appeal, exceeds that courts’ 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 vessel 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 vessel 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 7

OFFENCES AND PENALTIES

Offences and penalties

40. (1) A person who contravenes these Regulations commits an offence and 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.

(2) 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.

(3) 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.

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

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

(6) Where an order is made under paragraph (5), the market surveillance authority in the State may for the purpose of giving effect to that order, seize and detain the vessel where it has not already been seized under this Regulation.

(7) 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.

PART 8

TRANSITIONAL

Transitional

41. (1) The making available on the market or the putting into service of a vessel which is in conformity with Directive 2009/105/EC and which was placed on the market before 20 April 2016 continues to be lawful.

(2) Certificates issued by approved inspection bodies under Directive 2009/105/EC continue to be valid under these Regulations.



GIVEN under my Official Seal,
4 May 2016.

RICHARD BRUTON,
Minister for Jobs, Enterprise and Innovation.

EXPLANATORY NOTE

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

These Regulations transpose into Irish law Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels. These Regulations also give further effect to Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93.

These Regulations do not impede the making available on the market or the putting into service of vessels covered by Directive 2009/105/EC which are in conformity with that Directive and which were placed on the market before 20 April 2016. Further, these Regulations do not invalidate certificates issued by approved inspection bodies under Directive 2009/105/EC.

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