



STATUTORY INSTRUMENTS.

S.I. No. 177 of 2017



EUROPEAN UNION (MARINE EQUIPMENT) REGULATIONS 2017

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EUROPEAN UNION (MARINE EQUIPMENT) REGULATIONS 2017

I, SHANE ROSS, Minister for Transport, Tourism and Sport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014¹ and of giving further effect to Regulation (EC) No. 765/2008 of 9 July 2008², hereby make the following regulations:

PART 1

GENERAL PROVISIONS

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Marine Equipment) Regulations 2017.

(2) These Regulations come into operation on 1 May 2017.

Interpretation

2. (1) In these Regulations—

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

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

“Annex” means an Annex to the Directive;

“authorised officer” means a surveyor of ships (within the meaning of section 2 of the Merchant Shipping Act 2010 (No. 14 of 2010)) or a person appointed under Regulation 32;

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

“Commission” means the Commission of the European Union;

¹OJ No. L 257, 28.8.2014, p. 146

²OJ No. L 218, 13.8.2008, p. 30

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 2nd May, 2017.*

“compliance notice” has the meaning given to it by Regulation 34;

“conformity assessment” means the process carried out by a notified body demonstrating whether marine equipment complies with the requirements of these Regulations;

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

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

“Directive” means Directive No. 2014/90/EU of 23 July 2014¹ on marine equipment and repealing Council Directive 96/98/EC⁴;

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

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

“EU declaration of conformity” means a statement issued by a manufacturer in accordance with Regulation 13;

“EU ship” means a ship, other than an Irish ship, which is registered in a Member State and which falls within the scope of the international conventions;

“IMO” means International Maritime Organisation;

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

“Irish ship” means a ship known as such under section 9 of the Mercantile Marine Act 1955 (No. 29 of 1955) that falls within the scope of the international instruments;

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

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

“marine equipment” means equipment falling within the scope of these Regulations by virtue of Regulation 3;

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

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

³OJ No. L 218, 13.8.2008, p. 82

⁴OJ No. L 46, 17.2.1997, p. 25

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

(a) under Regulation 15, or

(b) by another Member State, and whose appointment has been notified to the Commission under Article 17 of the Directive;

“notifying authority” means the Minister;

“placing on the market” means the first making available of marine equipment on the Union market;

“product” means an item of marine equipment;

“prohibition notice” means a notice given to a person under Regulation 24, 25, 26 or 27, as the case may be;

“recall” means any measure aimed at achieving the return of marine equipment that has already been placed on board Irish ships or purchased with the intention of being placed on board Irish ships;

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

“Regulations of 2014” means the European Union (Marine Equipment) Regulations 2014 (S.I. No. 540 of 2014) (amended by the European Union (Marine Equipment) (Amendment) Regulations 2015 (S.I. No. 359 of 2015) and the European Union (Marine Equipment) (Amendment) Regulations 2016 (S.I. No. 235 of 2016));

“Regulation of 2017” means Commission Implementing Regulation (EU) 2017/306 of 6 February 2017⁵ indicating design, construction and performance requirements and testing standards for marine equipment;

“relevant period” means a period of at least 10 years after the wheel mark was affixed to the marine equipment concerned and not less than the expected life of the equipment;

“Union” means the European Union;

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

“wheel mark” means the symbol referred to in Article 9 of the Directive and set out in Annex I or, as appropriate, the electronic tag referred to in Article 11 of the Directive;

⁵OJ No. L 48, 24.2.2017, p. 1

“withdrawal” means any measure aimed at preventing marine equipment 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) Where a ship is managed by a person other than the owner (whether on behalf of the owner, some other person or on his or her own behalf), a reference in these Regulations to the owner is construed as including a reference to that person.

Application

3. These Regulations apply to marine equipment placed or to be placed on board an Irish ship and for which the approval of the Minister is required by the international instruments, regardless of whether the ship is situated in the State at the time when it is fitted with the equipment.

Requirements for marine equipment

4. (1) Marine equipment that is placed on board an Irish ship shall meet the design, construction and performance requirements of the international instruments applicable at the time when that equipment is placed on board.

(2) Compliance of marine equipment with the requirements referred to in paragraph (1) shall be demonstrated solely in accordance with the testing standards and by means of the conformity assessment procedures.

(3) A person who makes available on the market a product to which these Regulations apply in contravention of paragraph (1) is guilty of an offence.

Functioning of internal market

5. Nothing in these Regulations shall impede—

- (a) the placing on the market or the placing on board an Irish ship of marine equipment which complies with these Regulations, or
- (b) the issuing or renewal of the certificates relating thereto to an Irish ship.

Transfer of a non-Union ship to the Irish flag

6. (1) Where a ship that is not registered in a Member State is to be transferred to the Irish flag, the ship shall, during transfer, be subject to inspection as directed by the Minister to verify that—

- (a) the actual condition of its marine equipment corresponds to its safety certificates, and
- (b) the marine equipment—
 - (i) complies with these Regulations and bears the wheel mark, or

(ii) is equivalent, to the satisfaction of the Minister, to marine equipment certified in accordance with these Regulations.

(2) Where the date of installation on board the ship concerned of marine equipment cannot be established, the Minister may determine satisfactory requirements of equivalence, taking into account relevant international instruments.

(3) If the marine equipment concerned—

(a) does not bear the wheel mark, or

(b) is not considered by the Minister to be equivalent,

the Minister shall give a direction to the owner of the ship concerned to replace the equipment.

(4) An owner who fails to comply with a direction given under paragraph (3) is guilty of an offence.

(5) Where the marine equipment concerned is considered by the Minister to be equivalent pursuant to this Regulation, the Minister shall issue a certificate—

(a) giving the Minister's permission for the equipment to be retained on board the ship,

(b) specifying any restrictions he or she has imposed or laying down any provisions relating to the use of the equipment that he or she considers necessary, and

(c) which shall be carried with the equipment whenever the equipment is on board the ship concerned.

(6) The Minister may impose any restriction or lay down any provision relating to the use of the equipment that he or she considers necessary.

(7) The Minister may by notice to the owner of the ship concerned withdraw a certificate issued under paragraph (5) where there is a breach of any restriction or provision relating to the use of equipment specified in the certificate.

(8) Where there is a contravention of paragraph (5)(c), the owner of the ship concerned is guilty of an offence.

Market surveillance authority and competent authority

7. For the purposes of these Regulations, the competent authority and the market surveillance authority under the Directive for the State is the Marine Survey Office.

PART 2

WHEEL MARK

Wheel mark

8. (1) The wheel mark is the only marking which attests to the conformity of a product with all the applicable requirements of the relevant Union harmonisation legislation providing for its affixing to the product.

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

Rules and conditions for affixing wheel mark

9. (1) A person shall not make available on the market a product to which these Regulations apply unless the wheel mark is affixed to it in accordance with paragraphs (2) to (7) before it is so made available.

(2) The wheel mark shall be affixed only to marine equipment where it has been demonstrated, in accordance with the relevant conformity assessment procedures, that the equipment complies with the requirements of these Regulations. It shall not be affixed to any other product.

(3) The wheel mark shall be in the form set out in Annex I.

(4) The wheel mark shall be affixed to a product only by—

(a) the manufacturer, or

(b) the authorised representative concerned, where the requirement to affix the wheel mark to a product in accordance with this Regulation is specified in the mandate received by the authorised representative from the manufacturer.

(5) The wheel mark shall be affixed visibly, legibly and indelibly to the product or to its data plate and, where relevant, embedded in its software.

(6) In the case of a product where it is not possible or warranted, because of the nature of the product, to affix the wheel mark in accordance with paragraph (5), the wheel mark shall be affixed to the packaging and the accompanying documents.

(7) The wheel mark shall be affixed to the product at the end of the production phase.

(8) The wheel mark shall be followed by—

- (a) the identification number of the notified body which carried out the conformity assessment, where that body is involved in the production control phase, and
 - (b) the year in which it is affixed.
- (9) Where the identification number of the notified body is to be affixed under paragraph (8), it shall be affixed—
- (a) by the notified body itself, or
 - (b) where instructed to do so by the notified body, by—
 - (i) the manufacturer, or
 - (ii) the authorised representative of the manufacturer.
- (10) A person shall not affix a sign, marking or inscription to a product which is likely to mislead any person as to the meaning or form of the wheel mark.
- (11) A person shall not affix a marking to a product if it is likely to impair the visibility, legibility or meaning of the wheel mark.
- (12) A person shall not affix a wheel mark, in a manner which contravenes this Regulation, to a product which is otherwise in conformity with the requirements of these Regulations.
- (13) A person who affixes a wheel mark to a product which is not in conformity with any of the requirements of these Regulations is guilty of an offence.

PART 3

OBLIGATIONS OF ECONOMIC OPERATORS

Obligations of manufacturers

10. (1) By affixing the wheel mark, the manufacturer shall be responsible for guaranteeing that the marine equipment to which the wheel mark is affixed has been designed and manufactured in accordance with the technical specifications and standards implemented in accordance with Article 35(2) and shall assume the obligations set out in paragraph (2).
- (2) The manufacturer shall, in relation to the marine equipment concerned—
- (a) draw up the required technical documentation in accordance with the requirements set out in Annex II,
 - (b) have the conformity assessment carried out, through a notified body, using one of the procedures referred to in Article 15(2)(a) or (b) of the Directive and the modules for conformity assessment set out in the Annex to the Regulation of 2017,

- (c) where the compliance of marine equipment with the applicable requirements has been demonstrated by the conformity assessment procedure, draw up an EU declaration of conformity,
- (d) affix the wheel mark to a product in accordance with Regulations 8 and 9,
- (e) retain the technical documentation and the EU declaration of conformity for the relevant period,
- (f) ensure that procedures are in place for series production to remain in conformity with the requirements of these Regulations, taking account of changes in marine equipment design or characteristics and changes in the requirements in the international instruments referred to in Regulation 4, on the basis of which conformity of marine equipment is declared, and, when necessary in accordance with Annex II, have a new conformity assessment carried out,
- (g) ensure that the product bears a type, batch or serial number or other element allowing its identification or, in the case of a product where because of its size or nature that is not possible, ensure that the required information is provided on its packaging or in a document accompanying the product or both (as appropriate),
- (h) indicate on the product or, where that is not possible, on its packaging or in a document accompanying the product or both (as appropriate)—
 - (i) the manufacturer's name, registered trade name or registered trade mark, and
 - (ii) the postal address which shall indicate a single point at which the manufacturer can be contacted,
- (i) ensure that the product is accompanied by—
 - (i) instructions and all necessary information for safe installation on board and safe use of the product, including limitations of use, if any, that can be easily understood by the users, and
 - (ii) any other documentation required by the international instruments or testing standards,
- (j) if the manufacturer considers or has reason to believe that a product to which the manufacturer has affixed the wheel mark is not in conformity with the applicable design, construction and performance requirements and with the testing standards—
 - (i) immediately take the necessary corrective measures to bring the product into conformity, to withdraw it, or to recall it, if appropriate, and

- (ii) where the product presents a risk, immediately inform the competent authority and the competent authorities of the Member States, giving details, in particular, of—
 - (I) the non-compliance, and
 - (II) any corrective measures taken,
 and
- (k) further to a reasoned request from a competent authority—
 - (i) as soon as is reasonably practicable provide it with all the information and documentation, in a language which can be easily understood by or is acceptable to that authority, necessary to demonstrate the conformity of the product,
 - (ii) grant it access to the manufacturer's premises for market surveillance purposes in accordance with Regulation 23,
 - (iii) make samples of equipment available or give access to such samples, at the manufacturer's own cost, and
 - (iv) cooperate with it, at its request, on any action taken to eliminate a risk posed by a product which the manufacturer has placed on the market.

Authorised representatives

11. (1) A manufacturer who is not located in the territory of at least one Member State shall—

- (a) by written mandate appoint an authorised representative for the Union, and
- (b) indicate in the mandate the name of the authorised representative and the address at which the authorised representative can be contacted.

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

(3) The tasks referred to in paragraph (2) shall not include fulfilment of the obligations laid down in Regulation 10(1).

(4) The mandate shall require the authorised representative to perform at least the following tasks in respect of a product:

- (a) retaining the—
 - (i) EU declaration of conformity, and
 - (ii) technical documentation referred to in Regulation 10(2)(a),

at the disposal of the Marine Survey Office and the surveillance authorities of other Member States for the relevant period,

- (b) further to a reasoned request from the Marine Survey Office or from any competent authority of any other Member State, providing it with all the information and documentation necessary to demonstrate the conformity of a product,
- (c) cooperating with the Marine Survey Office or with any competent authority of any other Member State, at its request, on any action taken to eliminate a risk posed by a product covered by its mandate.

Other economic operators

12. (1) An importer shall indicate the importer's name, registered trade name or registered trade mark and the address at which the importer can be contacted on the product or, where that is not possible, on its packaging or in a document accompanying the product or both (as appropriate).

(2) Importers and distributors shall—

- (a) further to a reasoned request from the Marine Survey Office or from a competent authority of any other Member State, provide it with all the information and documentation necessary to demonstrate the conformity of a product, in the Irish or English language or both if considered necessary by the Marine Survey Office or, in the case of any other competent authority, in a language which can be easily understood by, or is acceptable to that competent authority, and
- (b) cooperate with the Marine Survey Office or that competent authority, at its request, on any action taken to eliminate a risk posed by a product which they have placed on the market.

(3) An importer or distributor, as the case may be, shall be considered a manufacturer for the purposes of these Regulations and shall fulfil the obligations of the manufacturer under Regulation 10 where any of the following circumstances apply:

- (a) the importer places marine equipment on the market or on board an Irish ship under the importer's name or trademark;
- (b) the distributor places marine equipment on the market or on board an Irish ship under the distributor's name or trademark;
- (c) the importer or distributor, as the case may be, modifies marine equipment already placed on the market in such a way that compliance with the requirements of these Regulations may be affected.

(4) During the relevant period, an economic operator ("the first-mentioned economic operator") shall, on request, identify to the market surveillance authorities any other economic operator—

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

PART 4

CONFORMITY ASSESSMENT AND NOTIFICATION OF CONFORMITY ASSESSMENT BODIES

EU declaration of conformity

13. (1) A manufacturer, in respect of a product to which these Regulations apply, shall ensure that an EU declaration of conformity—

- (a) states that the fulfilment of the requirements referred to in Regulation 4 has been demonstrated in respect of the product,
- (b) has the model structure set out in Annex III to the Decision,
- (c) contains the elements specified in the relevant modules set out in Annex II for the relevant conformity assessment procedure applicable to, and followed in respect of, a product, and
- (d) is continuously updated.

(2) A manufacturer who has drawn up an EU declaration of conformity shall assume the responsibility and obligations laid down in Regulation 10.

(3) When marine equipment is placed on board an Irish ship, a copy of the EU declaration of conformity covering the marine equipment concerned, translated by the manufacturer into both the Irish and English languages, or the English language only, shall be—

- (a) provided to the ship with the equipment, and
- (b) kept on board until that equipment is removed from the ship.

(4) Where there is a contravention of paragraph (3)(b) the owner of the ship concerned is guilty of an offence.

(5) The manufacturer shall provide a copy of the EU declaration of conformity to the notified body or to the bodies which carried out the relevant conformity assessment procedures.

Notifying authority

14. (1) The Minister is designated as the notifying authority in the State for the purposes of Article 18 of the Directive and these Regulations.

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

- (a) the setting up and carrying out of the necessary procedures for the assessment and accreditation of conformity assessment bodies, and
- (b) the monitoring of notified bodies, including compliance with Regulation 17, at least every 2 years beginning with the date of the grant of notification to the body concerned under Regulation 15.

Notification

15. (1) A conformity assessment body shall meet the requirements set out in Annex III for the purposes of notification.

(2) An application for notification by a conformity assessment body shall be in accordance with Regulation 16.

(3) The notifying authority may, where—

- (a) a conformity assessment body has made an application in accordance with Regulation 16, and
- (b) the notifying authority is satisfied that the conformity assessment body meets the requirements set out in Annex III,

grant notification to the conformity assessment body.

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

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

(6) A grant of notification shall be withdrawn—

- (a) on the expiry of the period of the grant,
- (b) on the expiry of 90 days' notice given by a notified body to the notifying authority,
- (c) on determination by the notifying authority, or by an appeal panel on appeal under Regulation 19, that the notified body no longer meets the requirements set out in Annex III, or
- (d) on determination by the notifying authority that the notified body does not comply with, or has ceased to comply with, the conditions attached to such grant.

(7) A person shall not hold himself or herself out, or represent himself or herself, as being a notified body where the person has not been granted a notification under paragraph (3) or by the notifying authority of another Member State in accordance with Article 17 of the Directive.

Application for notification

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

(2) The application for notification shall be accompanied—

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

(b) by—

(i) the conformity assessment module or modules, and

(ii) the product or, if applicable, more than one of the products to which these Regulations apply,

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

(c) by such other information and documentation as the notifying authority may require to satisfy itself that the conformity assessment body meets the requirements set out in Annex III for the purposes of notification as a notified body.

(3) The application for notification shall be accompanied by a certificate of accreditation issued by the Accreditation Board attesting that the conformity assessment body meets the requirements set out in Annex III.

Subsidiaries of, and subcontracting by, notified bodies

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

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

(3) Conformity assessment activities may be subcontracted to a subcontractor or carried out by a subsidiary only with the prior written agreement of the client of the notified body.

(4) A notified body shall keep at the disposal of the notifying authority the relevant documents concerning the assessment of the qualifications of any subcontractor or subsidiary and the work carried out by such subcontractor or subsidiary under these Regulations.

Restriction, suspension or withdrawal of notification

18. Subject to Regulation 19, where the notifying authority has ascertained, or has been informed, that a notified body no longer meets the requirements

set out in Annex III or that it is failing to fulfil its obligations under these Regulations, the notifying authority shall restrict, suspend or withdraw notification, as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations.

Appeal against restriction, suspension or withdrawal of notification

19. (1) Where the notifying authority decides to restrict, suspend or withdraw notification under Regulation 18, it shall inform the notified body concerned of its decision and allow the body an opportunity to make representations to it.

(2) Where a notified body is aggrieved by a decision of the notifying authority to restrict, suspend or withdraw its notification, the notified body may, not later than 21 days from the date of the decision, appeal the decision to an appeal panel established by the notifying authority for the purpose of hearing the appeal and stating the grounds on which the appeal is made.

(3) An appeal panel referred to in paragraph (2) shall consist of such number of independent and suitably qualified persons as the notifying authority decides.

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

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

Operational obligations of notified bodies

20. (1) A notified body shall carry out a conformity assessment in accordance with the conformity assessment procedures.

(2) Where a notified body finds that the obligations set out in Regulation 10(2) have not been met by a manufacturer, it shall require the manufacturer to take appropriate corrective measures without delay and it shall refuse to issue a conformity certificate.

(3) Where, in the course of monitoring conformity following the issue of a conformity certificate, a notified body finds that a product no longer complies, it shall, by notification, require the manufacturer to take appropriate corrective measures without delay and shall suspend or withdraw the conformity certificate, if necessary.

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

(5) Where a notified body refuses to issue, suspends, restricts or withdraws, as the case may be, a conformity certificate under this Regulation, it shall notify the manufacturer and shall give reasons for its decision.

Appeal from decision of notified body

21. (1) A manufacturer may, not later than 21 days from the date of—
- (a) a refusal to issue a conformity certificate under Regulation 20(2),
 - (b) the suspension or withdrawal of a conformity certificate under Regulation 20(3), or
 - (c) the restriction, suspension or withdrawal of a conformity certificate under Regulation 20(4),

appeal the decision of the notified body to the notifying authority, stating the grounds on which the appeal is made.

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

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

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

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

Obligation of notified bodies to provide information

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

(2) A notified body shall provide the Commission and the other Member States, on request, with relevant information concerning matters relating to negative and positive conformity assessment results.

(3) A notified body shall provide other notified bodies which perform conformity assessment activities in respect of the same products with information concerning negative and, on request, positive conformity assessment results.

PART 5

UNION MARKET SURVEILLANCE, CONTROL OF PRODUCTS AND SAFEGUARD
PROVISIONS*Union market surveillance framework*

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

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

(3) The market surveillance authority shall, as regards marine equipment, subject to paragraphs (4) to (7), undertake market surveillance in accordance with the EU market surveillance framework laid down in Chapter III of Regulation (EC) No. 765/2008.

(4) The national market surveillance infrastructures and programmes shall take into account the specific features of the marine equipment sector, including the various procedures carried out as part of the conformity assessment and, in particular, the responsibilities placed on the flag State administration by the international conventions.

(5) Market surveillance may include documentary checks as well as checks of marine equipment which bears the wheel mark whether or not it has been placed on board ships.

(6) Checks of marine equipment already placed on board ships shall be limited to such examination as can be carried out while the equipment concerned remains fully functional on board.

(7) Where the market surveillance authority intends to carry out sample checks, it may, when it is reasonable and practicable to do so, request the manufacturer to make the necessary samples available or to give on-the-spot access to the samples at the manufacturer's own cost.

Procedure for dealing with marine equipment presenting risk at national level

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

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

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

(4) Where the market surveillance authority has reason to believe that action is required to prevent a risk to maritime safety, to health or to the environment, it may decide to give a prohibition notice stating that opinion to the relevant economic operator concerned requiring the economic operator, commensurate with the nature of the risk referred to in paragraph (1) and within a reasonable period specified in the notice, to—

- (a) take all appropriate corrective action to bring the marine equipment into compliance with the requirements of these Regulations,
- (b) withdraw the marine equipment from the market in the State, or
- (c) recall the marine equipment from the market in the State.

(5) The market surveillance authority shall inform the relevant notified body of the giving of a prohibition notice under paragraph (4).

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

(7) Where the market surveillance authority considers that non-compliance of marine equipment is not restricted to the State or to Irish ships, it shall inform the Commission and the other Member States, by means of the information system made available by the Commission for market surveillance purposes, of the results of the evaluation carried out under paragraph (1) and of the actions it has required the economic operator to take.

(8) The economic operator shall ensure that all appropriate corrective action is taken in respect of all products that are found to be non-compliant under paragraph (3) that it has made available on the market or, as the case may be, it has placed or delivered to be placed on board Irish ships or EU ships.

(9) The market surveillance authority shall take all appropriate provisional measures specified in paragraph (10) as it considers necessary where the relevant economic operator does not take adequate corrective action as required by, and within the period specified in, the prohibition notice given under paragraph (4) or otherwise fails to meet its obligations under these Regulations.

(10) The market surveillance authority may take all or any of the following provisional measures:

- (a) the prohibition or restriction of the marine equipment from being made available on the market in the State or placed on board Irish ships;
- (b) the withdrawal of the marine equipment from the market in the State;
- (c) the recall of the marine equipment from the market in the State.

(11) The market surveillance authority shall inform the Commission and the other Member States of any measures taken under paragraph (9).

(12) Regulations 35, 36 and 37 apply to a prohibition notice given under paragraph (4) and to any measures taken by the market surveillance authority under paragraph (9).

Products presenting serious risk

25. (1) Where, in the course of carrying out an evaluation under Regulation 24(1) or where it has otherwise ascertained or been informed, the market surveillance authority is of the opinion that a product may present a serious risk to maritime safety, to health or to the environment and that immediate action is required to prevent such harm, it shall undertake such evaluation and assessment as seem to it to be appropriate, including a risk assessment, if necessary.

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

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

(4) Where the market surveillance authority has reason to believe that immediate action is required to prevent a serious risk to maritime safety, to health or to the environment, it may decide to give a prohibition notice stating that opinion, having regard to the nature of the risk referred to in paragraph (1), to the economic operator concerned, requiring the economic operator to do one or more of the following:

- (a) refrain from placing the product on the market in the State;
- (b) refrain from making the product available on the market in the State;
- (c) withdraw the product from the market in the State;
- (d) recall the product from the market in the State.

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

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

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

(8) Regulations 35, 36 and 37 apply to a prohibition notice given under paragraph (4) and to any measures taken by the market surveillance authority under paragraph (5).

Compliant products which present a risk to maritime safety, to health or to the environment

26. (1) Where, having carried out an evaluation under Regulation 24(1), the market surveillance authority finds that marine equipment which is in compliance with these Regulations nevertheless presents a risk to maritime safety, to health or to the environment, it may decide to give a prohibition notice stating that opinion to the economic operator concerned, requiring the economic operator, commensurate with the nature of the risk and within a reasonable period specified in the notice, to—

- (a) take all appropriate measures to ensure that the marine equipment concerned, when placed on the market no longer presents that risk,
- (b) withdraw the marine equipment from the market in the State, or
- (c) recall the marine equipment from the market in the State.

(2) The economic operator shall ensure that corrective action is taken in respect of all the products concerned that it has made available on the market or placed on board Irish ships or EU ships.

(3) The market surveillance authority shall immediately inform the Commission and the other Member States of any findings made under paragraph (1).

(4) The information provided under paragraph (3) shall include all available details, including in particular—

- (a) the data necessary for the identification of the marine equipment concerned, its origin and the supply chain,
- (b) the nature of the risk involved, and
- (c) the nature and duration of any requirement imposed under paragraph (1).

(5) Regulations 35, 36 and 37 apply to a prohibition notice given under paragraph (1).

Formal non-compliance

27. (1) (a) Without prejudice to Regulation 24, 25 or 26, where the market surveillance authority makes one or more of the findings specified in subparagraph (b) it shall, by a compliance notice, require the relevant economic operator to put an end to the non-compliance concerned.

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

- (i) the wheel mark has been affixed in contravention of Regulation 9;
- (ii) the wheel mark has not been affixed;
- (iii) the EU declaration of conformity has not been drawn up;
- (iv) the EU declaration of conformity has not been drawn up correctly;
- (v) technical documentation is not available or not complete;
- (vi) the EU declaration of conformity has not been sent to the ship.

(2) The economic operator shall ensure that corrective action is taken in respect of all products that are found to be non-compliant under paragraph (1).

(3) Regulation 34 applies, with any necessary modifications, to a compliance notice given under paragraph (1) and for the purposes of its application references in Regulation 34 to an authorised officer shall be read as references to the market surveillance authority.

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

- (a) restrict or prohibit the marine equipment being made available on the market in the State, or
- (b) ensure that it is recalled or withdrawn from the market in the State.

(5) Regulations 35, 36 and 37 apply to a prohibition notice given under paragraph (4).

Exemptions based on technical innovation

28. (1) In exceptional circumstances of technical innovation, the Minister may permit marine equipment which does not comply with the conformity assessment procedures to be placed on board an Irish ship if it is established by trial or otherwise to the satisfaction of the Minister that such equipment meets the objectives of the Directive.

(2) The trial procedures referred to in paragraph (1) shall in no way discriminate between marine equipment produced in the State and marine equipment produced in other Member States.

(3) The Minister shall issue a certificate in respect of any marine equipment permitted to be placed on board a ship pursuant to paragraph (1)—

- (a) giving the Minister's permission for the equipment to be placed on board the ship,

(b) specifying any restrictions he or she has imposed and laying down any provisions relating to the use of the equipment that he or she considers necessary, and

(c) which shall be carried with the equipment whenever the equipment is on board the ship concerned.

(4) The Minister may impose any restriction or lay down any provision relating to the use of the equipment that he or she considers necessary.

(5) The Minister may by notice to the owner of the ship concerned withdraw a certificate issued under paragraph (3) where—

(a) there is a breach of any restriction or provision relating to the use of equipment specified in the certificate, or

(b) the Commission requires the withdrawal of the certificate under Article 30(5) of the Directive.

(6) Where a ship, with marine equipment on board which has been granted a certificate in another Member State in accordance with Article 30 of the Directive, is to be transferred to the Irish flag, the Minister may take the necessary measures, which may include tests and practical demonstrations, to ensure that the equipment is at least as effective as equipment which does comply with the conformity assessment procedures set out in Annex II of the Directive.

(7) Where there is a contravention of paragraph (3)(c), the owner of the ship concerned is guilty of an offence.

Exemptions for testing and evaluation

29. (1) The Minister may permit marine equipment which does not comply with the conformity assessment procedures or which is not covered by Regulation 28 to be placed on board an Irish ship for reasons of testing or evaluation if all of the following conditions are complied with:

(a) the Minister gives a certificate for the marine equipment—

(i) giving the Minister's permission for the equipment to be placed on board the ship,

(ii) specifying any restrictions he or she has imposed and laying down any provisions relating to the use of the equipment that he or she considers necessary, and

(iii) which shall be carried with the equipment whenever it is on board the ship concerned,

(b) the permission is limited to the period considered by the Minister as being necessary to complete the testing, which period shall be as short as possible, and

- (c) the marine equipment is not relied on in place of equipment which meets the requirements of these Regulations and does not replace such equipment, which shall remain on board the ship in working order and ready for immediate use.

(2) The Minister may impose any restriction or lay down any provision relating to the use of the equipment that he or she considers necessary.

(3) The Minister may by notice to the owner of the ship concerned withdraw a certificate issued under paragraph (1) where there is a breach of any restriction or provision relating to the use of equipment specified in the certificate.

(4) Where there is a contravention of paragraph (1)(a)(iii), the owner of the ship concerned is guilty of an offence.

Exemptions in exceptional circumstances

30. (1) Where marine equipment on board an Irish ship needs to be replaced in a port outside the Union and it is not practicable for reasons of time, delay or cost to replace the equipment with equipment which bears the wheel mark, equipment which does not bear the wheel mark (in this Regulation referred to as “replacement equipment”) may be placed on board, provided that—

- (a) the replacement equipment is accompanied by documentation issued by a member state of the IMO which is a party to the relevant international conventions, certifying that the replacement equipment complies with the relevant IMO requirements, and
- (b) the master of the ship concerned notifies the Minister immediately of the nature and characteristics of the replacement equipment.

(2) The documentation referred to in paragraph (1)(a) shall be carried with the equipment whenever the equipment is on board the ship concerned.

(3) Where it has been demonstrated that specific marine equipment bearing the wheel mark is not available on the market, the Minister may permit other marine equipment to be placed on board until such time as equipment bearing the wheel mark is available.

(4) The Minister shall issue an interim certificate of approval (in this Regulation referred to as an “interim certificate”) in respect of marine equipment permitted to be placed on board pursuant to paragraph (3)—

- (a) giving the Minister’s permission for the equipment to be placed on board,
- (b) setting out—
 - (i) the equipment bearing the wheel mark which the certified equipment is due to replace,

- (ii) the exact circumstances under which the interim certificate has been issued and, in particular, the unavailability in the market of equipment bearing the wheel mark,
- (iii) the exact design, construction and performance requirements against which the certified equipment has been approved, and
- (iv) the testing standards applied, if any, in the relevant approval process,

and

- (c) which shall be carried with the equipment whenever the equipment is on board the ship concerned.

(5) When issuing an interim certificate, the Minister shall ensure that, as far as possible, the marine equipment complies with the requirements and testing standards referred to in Regulation 4.

(6) Where the Minister issues an interim certificate, he or she shall immediately inform the Commission.

(7) The Minister may withdraw an interim certificate by notice to the owner of the ship concerned where—

- (a) equipment bearing the wheel mark is made available on the market, or
- (b) the Commission requires the interim certificate to be withdrawn under Article 32(8) of the Directive.

(8) Where there is a contravention of paragraph (2) or (4)(c), the owner of the ship is guilty of an offence.

PART 6

INSPECTIONS AND SURVEILLANCE

Inspections and surveillance

31. (1) The market surveillance authority shall carry out inspections of marine equipment where appropriate—

- (a) on their entry into the State (where the State is their place of entry into the Union), or
- (b) at the storage and manufacturing sites of such products.

(2) The market surveillance authority shall organise and perform appropriate surveillance of marine equipment made available on the market.

Appointment of authorised officers

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

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

(3) An appointment as an authorised officer ceases—

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

(b) if it is for a fixed period, on the expiry of that period, or

(c) if the person appointed is an officer of the Minister, on the person ceasing to be such an officer.

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

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

Powers of authorised officers

33. (1) An authorised officer shall have power to do one or more than one of the following:

(a) subject to paragraph (4), at all reasonable times enter and examine any place, at which there are reasonable grounds to believe that a product is being or has been manufactured, stored, distributed, supplied, placed on the market or made available on the market or that records relating to the product are kept, and search and inspect the place, any process being carried out and any product or records found at that place;

(b) secure for later inspection a place referred to in subparagraph (a) or part of that place, or a product or records kept at that place and require that the place, part thereof, product or records or any other thing kept at that place as the authorised officer considers appropriate having regard to his or her functions be left undisturbed for so long as is reasonably necessary for the purpose of any search, examination, investigation, inspection or inquiry;

(c) require any person in charge of, or employed in, a place referred to in subparagraph (a) to produce to the authorised officer such records

(and in the case of such information in a non-legible form to reproduce it in a permanent legible form) that are in the person's power, possession or control or to give to the authorised officer such information as the officer may reasonably require in relation to any entries in such records;

- (d) inspect and take copies of or extracts from any such 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) or require that such a copy be provided;
- (e) require a person at a place referred to in subparagraph (a) by whom or on whose behalf a computer is or has been used to produce or store records or any person having control of, or otherwise concerned with the operation of the computer, to afford the authorised officer access thereto and such reasonable assistance as the authorised officer may require;
- (f) remove and detain, where the officer has reasonable cause to suspect that there has been a contravention of these Regulations, a product or records (including documents stored in a non-legible form) and any copies taken for such period as the authorised officer considers reasonably to be necessary for further examination or until the conclusion of any legal proceedings;
- (g) require that records at a place referred to in subparagraph (a) be maintained for such period as the authorised officer considers reasonably to be necessary;
- (h) require any person to give the authorised officer such information in relation to a product or part thereof or any article or substance or process used in the manufacture of a product as the authorised officer may reasonably require for the purposes of any search, examination, investigation, inspection or inquiry under these Regulations;
- (i) require by notice, at a time and place specified in the notice, any person (including the person in charge) to give the authorised officer any information that the authorised officer may reasonably require in relation to a place referred to in subparagraph (a), any product or part of the place or product, activity, installation or procedure at that place, and to produce to the authorised officer any records that are in that person's power, possession or control;
- (j) examine any person whom the authorised officer reasonably believes to be able to give to the authorised officer information relevant to any search, examination, investigation, inspection or inquiry under these Regulations and require the person to answer such questions as the authorised officer may ask relative to the search, examination, investigation, inspection or inquiry and to sign a declaration of the truth of the answers;

- (k) where appropriate, install, use and maintain at a place referred to in subparagraph (a) monitoring instruments or systems or take any measurements or photographs or make any tape, electronic or other recordings that the authorised officer considers necessary for the purposes of any search, examination, investigation, inspection or inquiry under these Regulations;
- (l) as regards any product or any article or substance used in the manufacture of a product the authorised officer finds at a place referred to in subparagraph (a), require any person in charge of the place, or any person who appears to the authorised officer to be in possession of the product or the article or substance, to supply without charge or payment, for test, examination or analysis sufficient samples thereof;
- (m) take samples of air, soil, water or waste at or near a place referred to in subparagraph (a);
- (n) cause any product or part thereof or any article or substance used in the manufacture of a product found at or in a place referred to in subparagraph (a) which appears to the authorised officer to be in contravention of these Regulations to be dismantled or subjected to any process, test or analysis (but not so as to damage or destroy it unless this is in the circumstances necessary for the purposes of these Regulations) and where an authorised officer proposes to exercise this power in the case of a product or an article or substance used in the manufacture of a product found at or in any such place, the authorised officer shall, if so requested by a person who at the time is present at or in, and has responsibilities in relation to, that place, and if it is practicable and safe to do so, cause anything which is to be done by virtue of that power to be done in the presence of that person;
- (o) take possession of and detain any product or part thereof or any article or substance used in the manufacture of a product found at a place in accordance with subparagraph (n) for so long as is necessary for all or any of the following purposes, namely:
 - (i) to examine or arrange for the examination, testing or analysis of it and do to it anything which he or she has power to do under subparagraph (n);
 - (ii) to ensure that it is not tampered with before the examination, testing or analysis of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings;
- (p) require any person to afford the authorised officer such facilities and assistance within the person's power, control or responsibilities as are reasonably necessary to enable the authorised officer to exercise any of the powers conferred on him or her by these Regulations.

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

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

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

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

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

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

(8) A person shall not—

- (a) obstruct or interfere with an authorised officer or a member of the Garda Síochána in the exercise of the powers conferred on him or her by these Regulations or a warrant under paragraph (6),
- (b) without reasonable excuse fail or refuse to comply with a request from or requirement of or to answer a question asked by an authorised officer or such member pursuant to a power conferred by these Regulations, or

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

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

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

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

(12) Where any measure has been taken or notice given by the market surveillance authority under this Regulation or Regulation 24, 25, 26 or 27, the costs of any removal, detention, seizure, destruction, rendering inoperable or disposal for the purposes of these Regulations may be charged to the economic operator or the manager of the place where the product was found.

(13) (a) In this Regulation and in Regulations 34 and 35 “place” means any structure, premises, land or other location or part of such place, and includes any container, railway wagon, vessel, aircraft, motor or other vehicle.

(b) In this Regulation—

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

(i) the person under whose direction and control the activities at that place are being conducted, or

(ii) the person whom the authorised officer has reasonable grounds for believing is in control of that place;

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

Compliance notice

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

(2) Where an authorised officer is of the opinion that a provision of these Regulations is not being or has not been complied with, the authorised officer shall give a notice (referred to in these Regulations as a “compliance notice”)

stating that opinion to the relevant economic operator or operators to whom the notice relates.

(3) A compliance notice shall—

- (a) state the reason for the opinion referred to in paragraph (2),
- (b) identify the provision of these Regulations in respect of which that opinion is held,
- (c) require the person to whom it is given to take such action as is specified in the notice, including but not limited to—
 - (i) bringing the product into compliance with the requirements of these Regulations, and
 - (ii) taking all appropriate action to remedy the non-compliance or suspected non-compliance,
- (d) inform the person of the requirement to confirm compliance with the notice as referred to in paragraph (6),
- (e) inform the person of the right to appeal the notice and the requirements of paragraph (9),
- (f) include an address for service of an appeal,
- (g) be signed and dated by the authorised officer, and
- (h) state that if the person to whom it is given fails to comply with the notice the person is guilty of an offence and is liable on conviction to the penalty referred to in Regulation 39(3).

(4) A compliance notice shall be complied with within such period as may be specified in the notice which period shall not be less than 14 days from the date of the notice.

(5) A compliance notice may include directions—

- (a) as to the action to be taken to bring the product into compliance with the requirements of these Regulations or to remedy the non-compliance to which the notice relates, and
- (b) to bring the notice to the attention of any person who may be affected by the non-compliance or to the notice of the public generally.

(6) A person to whom a compliance notice has been given shall confirm in writing to the authorised officer concerned that the compliance notice has been complied with, as soon as practicable after so complying, and in any case not later than 7 days from the date specified in the notice by which it is to be complied with.

(7) The authorised officer shall, not later than one month from the date of receiving confirmation under paragraph (6), on being satisfied that the person has so complied, give notice to the person concerned of compliance with the compliance notice.

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

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

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

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

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

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

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

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

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

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

the person to comply with the terms of the notice and the Court may make an order directing the person to comply with the notice.

- (16) A person to whom a compliance notice has been given shall not—
- (a) pending the determination of an appeal, deal with a product, place, machinery, equipment or other thing to which the notice relates, other than in accordance with the terms of the compliance notice, or
 - (b) if the notice is confirmed or varied on appeal, deal with a product, place, machinery, equipment or other thing to which the notice relates other than in accordance with the terms of the compliance notice as confirmed or varied.
- (17) A person who fails to comply with paragraph (16) is guilty of an offence.
- (18) This Regulation shall not operate to prevent or restrict—
- (a) the entitlement of any person to bring proceedings for the purpose of securing compliance with these Regulations, Regulation (EC) No. 765/2008 or the Decision, or
 - (b) the bringing or prosecuting of any proceedings for an offence under these Regulations.

Prohibition notice and measures entailing restriction

35. (1) Subject to paragraph (6), where the market surveillance authority proposes to give a prohibition notice, the authority shall, before giving the notice, give notice of the proposal to the person and that notice shall contain a statement in summary form of its opinion and a statement that the person may not later than 14 days from the date of receipt of the notice make representations in writing to the authority in relation to the proposal, and any such representations made by a person to the authority within that period shall be considered by the authority in deciding whether to give a prohibition notice to the person.

- (2) A prohibition notice shall—
- (a) state the reason for the opinion referred to in paragraph (1),
 - (b) identify the provision of these Regulations in respect of which that opinion is held,
 - (c) specify the action to be taken in respect of the product by the person to whom it is given, within the period specified in the notice,
 - (d) inform the person of the requirement to confirm compliance with the notice as referred to in paragraph (8),
 - (e) inform the person of the right to appeal the notice under Regulation 36,
 - (f) include an address for service of an appeal,

- (g) be signed and dated by the market surveillance authority, and
 - (h) state that if the person to whom it is given fails to comply with the notice the person is guilty of an offence and is liable on conviction to the penalty referred to in Regulation 39(2).
- (3) A prohibition notice may require that the action required to bring the non-compliance to an end be undertaken—
 - (a) immediately, because of the urgency of the matter,
 - (b) by a specified date, or
 - (c) between specified dates.
- (4) A prohibition notice may include directions as to—
 - (a) the action to be taken to bring the product into compliance with the requirements of these Regulations or to remedy the non-compliance to which the notice relates, and
 - (b) the bringing of the notice to the attention of any person who may be affected by the non-compliance or to the notice of the public generally.
- (5) A person to whom a prohibition notice has been given may appeal the notice under Regulation 36.
- (6) Where, in the opinion of the market surveillance authority—
 - (a) urgent action is required which is justified, in particular, by public health or safety requirements, and
 - (b) it is necessary, because of the gravity of the non-compliance with the requirements of these Regulations, to immediately give the person a prohibition notice,the authority may, notwithstanding paragraph (1), give the person a prohibition notice.
- (7) Where paragraph (6) applies, the market surveillance authority shall give the person to whom the prohibition notice is given the opportunity to make representations to it in writing as soon as may be after the giving of the prohibition notice.
- (8) A person to whom a prohibition notice has been given shall confirm in writing to the market surveillance authority that the prohibition notice has been complied with, as soon as practicable after so complying, and in any case not later than 7 days from the date specified in the notice by which it is to be complied with.

(9) The market surveillance authority shall, not later than one month from the date of receiving confirmation under paragraph (8), on being satisfied that the person has so complied, give notice to the person concerned of compliance with the prohibition notice.

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

(11) A prohibition notice shall, subject to Regulation 36(5) and (6), take effect on the date specified in the notice.

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

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

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

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

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

(16) A person who fails to comply with paragraph (15) is guilty of an offence.

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

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

Right of appeal against prohibition notice and measures entailing restriction

36. (1) In this Regulation—

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

“appropriate court” means—

- (a) in case the estimated value of the product or products to which the prohibition notice relates does not exceed €15,000, or such other amount as may stand specified for the time being by law as that Court’s jurisdiction in tort, the District Court,
 - (b) in case the estimated value of the product or products to which the prohibition notice relates does not exceed €75,000, or such other amount as may stand specified for the time being by law as that Court’s jurisdiction in tort, the Circuit Court, and
 - (c) in any other case, the High Court.
- (2) A person may appeal to the appropriate court against—
 - (a) a prohibition notice,
 - (b) the giving of a direction under a prohibition notice, or
 - (c) any measures taken by the market surveillance authority under Regulation 24(9) or 25(5).
- (3) Notice of an appeal shall contain a statement of the grounds on which the appeal is made and shall be lodged with the appropriate office of the court concerned by the appellant not later than 14 days from the date on which the prohibition notice was given to the appellant or the measure was taken.
- (4) A copy of the notice by which a person makes an appeal shall be given by the appellant to the market surveillance authority not later than 48 hours before the hearing of the appeal and the authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal and at the hearing of any application referred to in paragraph (6).
- (5) On the hearing of an appeal the appropriate court may confirm, vary or cancel the prohibition notice, direction or measure, as the case may be.
- (6) The bringing of an appeal shall not have the effect of suspending the operation of the prohibition notice, direction or measure, as the case may be, but the appropriate court to which the appeal has been made, may, on application to it by an appellant, suspend its operation.
- (7) An appeal to the District Court shall be determined by the judge of the District Court for the District Court district in which the appellant ordinarily resides or carries on business.
- (8) An appeal to the Circuit Court shall be determined by the judge of the Circuit Court for the circuit in which the appellant ordinarily resides or carries on business.

Publication of information relating to prohibition or compliance notices and restriction measures

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

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

Giving of documents

38. (1) Subject to paragraphs (2) and (3), a notice, direction, certificate or any other document that is required to be given to a person by these Regulations shall be in writing and addressed to the person concerned by name, and may be so given to the person in one or more of the following ways:

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

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

(3) For the purposes of this Regulation, a company formed and registered under the Companies Act 2014 (No. 38 of 2014) or an existing company within the meaning of that Act shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

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

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

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

Offences and penalties

39. (1) A person guilty of an offence under Regulation 4(3), 9(13) or 23(2) is liable—

- (a) on summary conviction, to a class A fine, or to imprisonment for a term not exceeding 3 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €300,000 or to imprisonment for a term not exceeding 12 months or both.

(2) A person guilty of an offence under Regulation 35(13) is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €300,000.

(3) A person guilty of an offence under Regulation 6(4), 33(10) or (11), 34(14) or (17) or 35(16) is liable on summary conviction to a class A fine.

(4) A person guilty of an offence under Regulation 6(8), 13(4), 28(7), 29(4) or 30(8) is liable on summary conviction to a class C fine.

(5) A person who fails to comply with a requirement of Regulation 9(10), (11) or (12), 11(2) or 15(7) is guilty of an offence and is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €300,000.

(6) An authorised representative who fails to comply with a requirement of these Regulations, specified in a mandate referred to in Regulation 11(1), the

failure to comply with which is an offence under another provision of this Regulation, is guilty of an offence and is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €300,000.

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

Forgery

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

- (a) a wheel mark,
- (b) any document required for the purposes of these Regulations, or
- (c) a notice or certificate issued, granted or given under these Regulations,

(in this Regulation referred to as a “forged document”) is guilty of an offence.

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

- (a) a wheel mark,
- (b) any document required for the purposes of these Regulations, or
- (c) a notice or certificate issued, granted or given under these Regulations,

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

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

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

Offence by body corporate

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

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

Forfeiture and seizure

42. (1) Where a person is convicted on indictment of an offence under Regulation 4(3), 9(13) or 23(2) the court may order the forfeiture to the Minister of any product to which the offence relates.

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

Costs of prosecutions

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

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

Prosecution of offences

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

PART 7

REVOCATIONS, SAVER AND TRANSITIONAL PROVISIONS

Revocations

45. The following are revoked:

- (a) the European Union (Marine Equipment) Regulations 2014 (S.I. No. 540 of 2014);
- (b) the European Union (Marine Equipment) (Amendment) Regulations 2015 (S.I. No. 359 of 2015);
- (c) the European Union (Marine Equipment) (Amendment) Regulations 2016 (S.I. No. 235 of 2016).

Saver and transitional provisions

46. (1) Notwithstanding the revocation of the Regulations of 2014 under Regulation 45, the design, construction and performance requirements and testing standards for marine equipment applicable, before the coming into operation

of these Regulations, pursuant to the Regulations of 2014 shall continue to apply after the said coming into operation until the entry into force of the implementing acts referred to in Article 35(2) of the Directive.

(2) Any certificate issued or mark affixed pursuant to the Regulations of 2014 before the coming into operation of these Regulations has effect, after the said coming into operation, as if that certificate were issued or that mark were affixed under these Regulations.

(3) Marine equipment listed as a new item in column 1 of the Annex to the Regulation of 2017 which complies with the requirements for type-approval in force in the State before 16 March 2017 may continue to be placed on the market or on board an Irish ship until 16 March 2020.



GIVEN under my Official Seal,
27 April 2017.

SHANE ROSS,
Minister for Transport, Tourism and Sport.

EXPLANATORY NOTE

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

These Regulations give effect to Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC. They come into effect on 1 May 2017.

The Regulations outline the obligations of the manufacturers, importers, authorised representatives and distributors when making certain marine equipment available on the market or when placing such equipment on an Irish ship. They also prohibit the placing of any such marine equipment on the market or on board an Irish ship unless it satisfies the essential safety requirements, has been subject to the relevant conformity assessment procedures, has had the ‘wheel mark’ affixed to it and, when used for its intended purpose, does not endanger maritime safety, health or the environment.

The Regulations also make provision for the notification of conformity assessment bodies and that such bodies must meet the requirements as set out in Annex III of Directive 2014/90/EU.

The Regulations revoke the the European Union (Marine Equipment) Regulations 2014 (S.I. No. 540 of 2014) as amended.

The Regulations designate the Marine Survey Office of the Department of Transport, Tourism and Sport as the market surveillance authority and the competent authority in the State for the purposes of the Directive. The Irish National Accreditation Board (a committee of the Health and Safety Authority) is designated as the body to set up and carry out the necessary procedures for the assessment and accreditation of conformity assessment bodies and with the monitoring of any notified bodies.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
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