



STATUTORY INSTRUMENTS.

S.I. No. 15 of 2022



EUROPEAN COMMUNITIES (SAFETY OF TOYS) (AMENDMENT)
(NO. 3) REGULATIONS 2022

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I, LEO VARADKAR, Minister for Enterprise, Trade and Employment, 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 full effect to Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019¹ and of giving further effect to Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009,² hereby make the following regulations:

1. (1) These Regulations may be cited as the European Communities (Safety of Toys) (Amendment) (No. 3) Regulations 2022.

(2) In these Regulations “Principal Regulations” means the European Communities (Safety of Toys) Regulations 2011 (S.I. No. 14 of 2011) as amended.

(3) These Regulations and the Principal Regulations as amended may be cited collectively as the European Communities (Safety of Toys) Regulations 2011 to 2022.

(4) References in the Principal Regulations to “these Regulations” shall be deemed to encompass the Principal Regulations and these Regulations.

(5) A word or expression that is used in these Regulations has the same meaning that it has in the Principal Regulations, with the exception of—

- (a) “Article”, which should be construed in its context in these Regulations, and
- (b) “Annex”, which should be construed in its context in these Regulations.

(6) A word or expression that is used in these Regulations or in the Principal Regulations and is also used in Regulation (EU) 2019/1020 or the Toy Safety Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in Regulation (EU) 2019/1020 and the Toy Safety Directive.

(7) References to Articles 15 to 29 of Regulation (EC) No. 765/2008 in the Principal Regulations shall be construed as references to Regulation (EU) 2019/1020 and shall be read in accordance with the correlation table in Annex III to Regulation (EU) 2019/1020.

2. Regulation 4 of the Principal Regulations is amended—

- (a) by inserting the following definitions in paragraph (1):

¹ OJ No. L 169, 25.6.2019, p. 1

² OJ No. L 170, 30.6.2009, p. 1

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

‘Member State’ means a Member State of the European Union and, in so far as may be necessary to give effect to the obligations of the State pursuant to the Agreement on the European Economic Area signed in Oporto on 2 May 1992,³ shall be construed as including a State (not being a Member State of the European Union) which is a contracting party to that Agreement;

‘person in charge’ means, in relation to a place—

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

(b) the person whom the authorised officer has reasonable grounds for believing is the person referred to in subparagraph (a);

‘Regulation (EU) 2019/1020’ means Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No. 765/2008 and (EU) No. 305/2011;”, and

(b) by substituting for the definition of “market” the following:

“ ‘market’ means the Community market and, in so far as may be necessary to give effect to the obligations of the State pursuant to the Agreement on the European Economic Area signed in Oporto on 2 May 1992,⁴ shall be construed as including the European Economic Area;”.

3. The Principal Regulations are amended by the insertion of the following before Regulation 7:

“Obligations of economic operators and information society service providers

6A. (1) An economic operator in respect of a toy, whether a manufacturer, authorised representative, importer, distributor or fulfilment service provider, shall comply with the obligations as set out in Chapter II of the Toy Safety Directive and in Articles 4 and 5 of Regulation (EU) 2019/1020.

(2) An economic operator shall comply with its obligation to cooperate with the Agency as the relevant market surveillance authority, as set out in Article 7(1) of Regulation (EU) 2019/1020.

³ OJ No. L 1, 3.1.1994, p. 3

⁴ OJ No. L 1, 3.1.1994, p. 3

(3) An information society service provider shall comply with its obligation to cooperate with the Agency as the relevant market surveillance authority, as set out in Article 7(2) of Regulation (EU) 2019/1020.

(4) A toy offered for sale online or through means of distance sales shall be deemed to be made available on the market if the offer is targeted at end users in a Member State. An offer for sale shall be considered to be targeted at end users in a Member State if the relevant economic operator directs, by any means, its activities to that Member State.”

4. The Principal Regulations are amended by the substitution of the following for Regulation 38:

“38. (1) The Agency may appoint such and so many persons as it thinks fit to be authorised officers for the purposes of ensuring compliance with these Regulations, the Toy Safety Directive and Regulation (EU) 2019/1020.

(2) An authorised officer shall be a person appointed as an authorised officer pursuant to section 35 of the Act of 2014.”

5. The Principal Regulations are amended by the insertion of the following after Regulation 38:

“Powers of the Agency

38A. (1) The Agency may use, as part of an investigation to verify the compliance of a toy, evidence that has been used by a market surveillance authority in another Member State without further formal requirements.

(2) The Agency may use any information, document, finding, statement, or intelligence as evidence for the purpose of an investigation, irrespective of the format in which and medium on which it is stored.”

6. The Principal Regulations are amended by the insertion of the following after Regulation 39:

“Powers of authorised officer

39A. (1) Without prejudice to any power or powers under any other provision of these Regulations, an authorised officer shall, for the purposes of enforcement of the provisions of the Toy Safety Directive, Regulation (EU) 2019/1020 and these Regulations, have the power to do one or more of the following:

(a) subject to paragraphs (3) and (5), enter at any time without warrant any premises, land or means of transport that the economic operator in question uses for purposes related to the economic operator’s trade, business, craft

or profession, in order to identify non-compliance and to obtain evidence;

(b) make inquiries in respect of, search, examine or inspect, as appropriate—

(i) any place, or any part of any place, referred to in subparagraph (a),

(ii) any activity, process, procedure, matter or thing at, or carried on at, a place referred to in subparagraph (a),

(iii) any toy or any record relating to such toy to ascertain whether the Toy Safety Directive, Regulation (EU) 2019/1020 or these Regulations have been or are being complied with and, for that purpose, take with him or her and use any toy he or she considers necessary;

(c) require that a place referred to in subparagraph (a) and its contents remain undisturbed for as long as is reasonably necessary for the purposes of any inquiry, search, examination, investigation or inspection under Regulation (EU) 2019/1020 or these Regulations;

(d) require any person in charge of, employed at or other relevant person at, a place referred to in subparagraph (a) to—

(i) produce to the authorised officer any toy in the possession or under the control of the person,

(ii) produce to the authorised officer any books, documents or records, and where such books, documents or records are kept in a non-legible form, reproduce them in a legible form, and

(iii) give to the authorised officer such information as the authorised officer may reasonably require in relation to any entries in the books, documents and records referred to in clause (ii);

(e) inspect and take copies of or extracts from any books, documents or records or any electronic information system at a place referred to in subparagraph (a), including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form, or require that such copies or extracts be provided;

(f) require a person in charge of, employed at or other relevant 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 require any

other person having control of, or otherwise concerned with, the operation of the computer, to afford the authorised officer access to the records on that computer and all reasonable assistance as the authorised officer may require in respect of accessing such records;

(g) remove from a place referred to in subparagraph (a) and detain any books, documents or records (including any information stored in a non-legible form) and any copies taken of such books, documents or records for such period as the authorised officer reasonably considers necessary for further examination or until the conclusion of any legal proceedings to which they relate;

(h) require that any books, documents or records at a place referred to in subparagraph (a) be maintained for such period as may be reasonable;

(i) require the person in charge of, employed at or other relevant person at a place referred to in subparagraph (a) to give the authorised officer such information as the authorised officer may reasonably require for the purposes of any inquiry, search, examination, investigation or inspection under Regulation (EU) 2019/1020 or these Regulations;

(j) require the person in charge of, employed at or other relevant person at a place referred to in subparagraph (a) to give the authorised officer such assistance and facilities within the person's power or control as are reasonably necessary to enable the authorised officer to exercise any of his or her powers under these Regulations;

(k) require any person (whether such person is at a place referred to in subparagraph (a) or otherwise) to produce to the authorised officer any records that the authorised officer may reasonably require that are under power or control of that person;

(l) examine any person (whether such person is at a place referred to in subparagraph (a) or otherwise) whom the authorised officer reasonably believes to be able to give to the authorised officer information relevant to any inquiry, search, examination, investigation or inspection under Regulation (EU) 2019/1020 or these Regulations and require the person to answer such questions as the authorised officer may ask relevant to the inquiry, search, examination, investigation or inspection and to sign a declaration of the truth of the answers;

(m) require that any procedure be followed for the purposes of any inquiry, search, examination,

investigation or inspection under Regulation (EU) 2019/1020 or these Regulations;

(n) take any measurements or photographs or make any tape, electrical or other recordings that the authorised officer considers necessary for the purposes of any inquiry, search, examination, investigation or inspection under Regulation (EU) 2019/1020 or these Regulations;

(o) take samples of air, soil, water or waste at or near a place referred to in subparagraph (a);

(p) where appropriate, install, use and maintain at a place referred to in subparagraph (a) monitoring instruments, systems and seals for the purposes of Regulation (EU) 2019/1020 or these Regulations;

(q) cause any toy found at any place to be subjected, at the place it is found or any other location, to any testing, examination or analysis (but not so as to damage or destroy it unless this is necessary for the purposes of Regulation (EU) 2019/1020 or these Regulations) and where an authorised officer proposes to exercise the power conferred by this subparagraph and if so requested by the person in charge, cause anything that is to be done by virtue of this subparagraph to be done in the presence of the person in charge save that the person in charge is responsible for his or her own costs in attending at the exercise of any power under this subparagraph and cannot unreasonably delay the authorised officer in the exercise of those powers;

(r) For the purposes of exercising a power under subparagraph (q)—

(i) require the person in charge to supply to the authorised officer without charge any toy or samples thereof, and

(ii) where necessary, remove, or have removed, to another location any toy or samples thereof;

(s) remove and retain for such period as is necessary a toy found at a place for one or more of the following purposes:

(i) to examine or arrange for the examination, testing or analysis of the toy in accordance with subparagraph (q);

(ii) to ensure that the toy is not tampered with before the examination, testing or analysis of it under clause (i) is completed;

(iii) to ensure that the toy is available for use as evidence in any proceedings;

(*t*) require an economic operator to provide any relevant document, technical specification, data or information on compliance and technical aspects of a toy, including providing access to embedded software in so far as such access is necessary for the purpose of assessing the compliance of any toy with these Regulations and the Toy Safety Directive, in any form or format and irrespective of the medium of storage or the place where such document, technical specification, data or information is stored;

(*u*) take or obtain copies of any document, technical specification, data or information referred to in subparagraph (*t*);

(*v*) require an economic operator to provide relevant information on the supply chain, on the details of the distribution network, on quantities of toys on the market and on other product models that have the same technical characteristics as the toys in question, where relevant for compliance with the applicable requirements in these Regulations or the Toy Safety Directive;

(*w*) require an economic operator to provide relevant information required for the purpose of ascertaining the ownership of a website, where the information in question is related to the subject matter of an investigation;

(*x*) require an economic operator to provide any other information that is relevant for compliance;

(*y*) acquire product samples, including under a cover identity, to inspect those samples and to reverse engineer them in order to identify non-compliance or to obtain evidence;

(*z*) where no other effective means are available to eliminate a serious risk—

(i) require the removal of content referring to the relevant toy from an online interface or to require the explicit display of a warning to end users when they access an online interface; or

(ii) where a request under clause (i) has not been complied with, require an information society service provider to restrict access to the online interface, including by requesting a relevant third party to implement such measures.

(2) Where a toy is found at a place referred to in paragraph (1)(*q*), and an inquiry is made by an authorised officer in the course of a search, examination, investigation or inspection as to the identity of the person who supplied the toy the person in

charge shall give the authorised officer the name and address of the supplier from whom the toy was purchased or otherwise obtained.

(3) An authorised officer shall not enter a private dwelling other than—

(a) with the consent of the occupier, or

(b) in accordance with a warrant of the District Court issued under paragraph (6) authorising such entry.

(4) The Agency may authorise such and so many other persons as it considers appropriate to accompany an authorised officer in the performance of his or her functions.

(5) Where an authorised officer is prevented from entering a place referred to in paragraph (1)(a), or in any other case where the authorised officer reasonably believes that entry to such a place will be prevented, the authorised officer may apply to a judge of the District Court in whose District Court district the place is situated for a warrant authorising entry of such place.

(6) Where an application is made under paragraph (5), if a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for believing that—

(a) there is at any place any toy or any books, documents, records or information (including information stored in a non-legible form) relating to a place or to a toy that the authorised officer requires to inspect for the purposes of Regulation (EU) 2019/1020 or these Regulations,

or

(b) there is, or is likely to be, at a place referred to in subparagraph (a) evidence of a contravention of the Toy Safety Directive, Regulation (EU) 2019/1020 or these Regulations,

the judge may issue a warrant authorising an authorised officer, accompanied by such other authorised officers or such other competent persons as may be appropriate 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 specified in the warrant, if necessary by the use of reasonable force, and perform the functions conferred on an authorised officer by these Regulations.

(7) Where an authorised officer has reasonable grounds for apprehending any serious obstruction in the performance of any of his or her functions or otherwise considers it necessary, he or she may be accompanied by a member or members of the Garda

Síochána and by any other person or persons authorised by the Agency, when performing any functions conferred on him or her by or under Regulation (EU) 2019/1020 or these Regulations.

(8) Where an authorised officer, upon reasonable grounds, believes that a person has committed an offence under these Regulations he or she may require the person to provide him or her with the person's name and the address at which that person ordinarily resides.

(9) A statement or admission made by a person pursuant to a requirement under paragraph (1)(i) or (l) shall not be admissible in proceedings brought against that person for any offence other than an offence of non-compliance with Regulation 48(4) relating to a breach of, or failure to comply with, any obligation in the said paragraph (1)(i) or (l).

(10) In this Regulation, reference to a toy shall be deemed to include any component or constituent material of a toy.

Contravention notice

39B. (1) An authorised officer who is of the opinion that an economic operator or an information society service provider is contravening or has contravened any of the provisions of the Toy Safety Directive, Regulation (EU) 2019/1020 or these Regulations or that a toy does not comply with the Toy Safety Directive, Regulation (EU) 2019/1020 or these Regulations for the purposes of Article 28(2) of Regulation (EU) 2019/1020 may serve a contravention notice on the relevant economic operator or information society service provider.

(2) A contravention notice shall—

- (a) state that the authorised officer is of the opinion referred to in paragraph (1),
- (b) specify the exact grounds for the opinion,
- (c) specify every provision (including the particular paragraph and subparagraph of such provision as appropriate) upon which the opinion is based,
- (d) direct that the person, where required, do one or more of the following:
 - (i) remedy the contravention or the matters occasioning the contravention notice;
 - (ii) refrain from placing on the market the toy to which the notice relates;
 - (iii) refrain from making available on the market that toy;
 - (iv) withdraw that toy from the market;
 - (v) recall that toy;

(vi) dispose of that toy;

(vii) destroy that toy;

by a date specified in the contravention notice that shall not be earlier than the expiration of the period within which an appeal may be made under Regulation 39C,

(e) inform the person on whom the contravention notice is served that he or she may appeal the notice to the District Court within 14 days in accordance with Regulation 39C,

(f) state that if the person on whom the contravention notice is served fails to comply with the notice within the time period specified in the notice, that person commits an offence,

(g) be signed and dated by the authorised officer, and

(h) be communicated to the relevant person without delay.

(3) A contravention notice may include—

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

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

and

(c) any other requirement that the authorised officer considers appropriate.

(4) Subject to Regulation 39C(5), the contravention notice shall take effect on the later of—

(a) the expiration of the period for making an appeal to the District Court, or

(b) the day specified in the contravention notice.

(5) A person on whom a contravention notice has been served under paragraph (1) shall comply with the notice.

(6) A person on whom a contravention notice has been served who is of the opinion that the notice has been complied with, shall confirm such compliance in writing to the authorised officer.

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

(8) An authorised officer may—

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

(b) where no appeal is made or pending under Regulation 39C, extend the period specified under paragraph (2)(d) of this Regulation.

(9) Subject to paragraph (10), in the case of a toy which the authorised officer does not consider to present a serious risk requiring rapid intervention under Article 19 of Regulation (EU) 2019/1020, the intended recipient of a contravention notice shall have the opportunity to make representations to the Agency within 10 working days of first being advised of the authorised officer's intention to serve a contravention notice on that person.

(10) Where an opportunity to make representations referred to in paragraph (9) is not possible because of the urgency of the measure directed in the contravention notice as referred to in the said paragraph (9), as justified by health or safety requirements or other grounds relating to public interests, the Agency shall give the recipient of the notice the opportunity to be heard as soon as possible after the service of the notice on that person and the service of the notice shall be reviewed promptly thereafter.

Appeal against contravention notice

39C. (1) A person on whom a contravention notice is served may, within 14 days beginning on the day on which the notice is served on him or her, appeal against the notice to a judge of the District Court in the District Court district in which the notice was served and in determining the appeal the judge may, if he or she considers it appropriate to do so, confirm, vary or cancel the notice.

(2) A person who appeals under paragraph (1) shall at the same time notify the Agency of the appeal and the grounds for the appeal and the Agency shall be entitled to appear, be heard and adduce evidence at the hearing of the appeal.

(3) Where a decision is made under paragraph (1), any person aggrieved may, within 14 days beginning on the day on which the decision was made, appeal it to the Circuit Court in the circuit in which the contravention notice was served and in determining the appeal, the court may, if it considers it appropriate to do so, confirm the decision of the District Court, vary it or allow the appeal.

(4) A decision under paragraph (3) shall be final, save that, by leave of the High Court, an appeal from the decision shall lie to the High Court on a specified question of law.

(5) Where an appeal is taken and the contravention notice is not withdrawn by the authorised officer, the notice shall take effect on the later of—

- (a) the day next following the day on which the contravention notice is confirmed or varied on final appeal,
- (b) the day next following the day on which the appeal is discontinued, or
- (c) the day specified in the contravention notice.

Order of High Court to direct compliance with contravention notice

39D. (1) Where a person fails to comply with a contravention notice an authorised officer may apply ex parte to the High Court for an order directing immediate compliance with the notice.

(2) The High Court may, upon an application under this Regulation, if satisfied that the person on whom the contravention notice is served has failed to comply with the notice, grant the order referred to in paragraph (1).

Toy presenting a serious risk

39E. (1) A decision taken by the Agency as to whether or not any toy presents a serious risk shall be based on an appropriate risk assessment that takes account of the nature of the hazard and the likelihood of its occurrence.

(2) The feasibility of obtaining higher levels of safety and the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering that a toy presents a serious risk.

Prohibition notice — toy presenting a serious risk

39F. (1) Where an authorised officer is of the opinion that a toy presents, or is likely to present, a serious risk to the health or safety of persons, including a serious risk the effects of which are not immediate, the authorised officer may serve a prohibition notice on a person, regardless of whether or not there is or is likely to be a contravention of the Toy Safety Directive, Regulation (EU) 2019/1020 or these Regulations.

(2) For the avoidance of doubt, where a toy does not have any marking (on its packaging or otherwise) or document required under the Toy Safety Directive, Regulation (EU) 2019/1020 or these Regulations, an authorised officer may form an opinion referred to in paragraph (1).

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

(4) A prohibition notice shall—

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

(b) specify the exact grounds for the opinion,

(c) where in the opinion of the authorised officer there is or is likely to be a contravention of any provision of the Toy Safety Directive, Regulation (EU) 2019/1020 or these Regulations, specify every such provision (including the particular paragraph and subparagraph of such provision as appropriate),

(d) prohibit any activity of the person on whom the prohibition notice is served that results in the toy referred to in paragraph (1) being placed on the market or made available on the market,

(e) inform the person on whom the prohibition notice is served that he or she may appeal the notice to the District Court within 7 days in accordance with Regulation 39G,

(f) state that if the person on whom the prohibition notice is served fails to comply with the notice, that person commits an offence,

(g) be signed and dated by the authorised officer, and

(h) be communicated to the relevant person without delay.

(5) A prohibition notice may include—

(a) directions as to the measures to be taken by the relevant person to stop the activity referred to in paragraph (4)(d), to remedy any contravention of the Toy Safety Directive, Regulation (EU) 2019/1020 or these Regulations or any matter to which the prohibition notice relates, or to otherwise comply with the notice, including directions to do one or more of the following regarding the toy referred to in paragraph (1):

(i) refrain from placing on the market the toy;

(ii) refrain from making available on the market the toy;

(iii) withdraw the toy from the market;

(iv) recall the toy;

(v) dispose of the toy;

(vi) destroy the toy,

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

and

(c) any other requirement that the authorised officer considers appropriate.

(6) Subject to Regulation 39G(9), a prohibition notice shall take effect immediately at the time the notice is received by the person on whom it is served.

(7) A person on whom a prohibition notice has been served under paragraph (1) shall comply with the notice.

(8) A person on whom a prohibition notice has been served who is of the opinion that the notice has been complied with, shall confirm such compliance in writing to the authorised officer.

(9) Where a person on whom a prohibition notice has been served confirms such compliance in accordance with paragraph (8), the authorised officer, on being satisfied that the person has complied with the notice, shall within one month of receipt of such confirmation give notice to the person of compliance with the prohibition notice.

(10) An authorised officer may at any time withdraw a prohibition notice if—

(a) the authorised officer is satisfied that the toy to which the prohibition notice relates no longer gives rise to a serious risk to health or safety of persons, or

(b) the authorised officer is satisfied that the prohibition notice was issued in error or is incorrect in some material respect.

(11) The Agency shall give the recipient of a prohibition notice an opportunity to make representations as soon as possible after the service of the notice on that person and the service of the notice shall be reviewed promptly thereafter.

Appeal against prohibition notice

39G. (1) A person on whom a prohibition notice is served may, within 7 days beginning on the day on which the notice is served on him or her, appeal against the notice to a judge of the District Court in the District Court district in which the notice was served and in determining the appeal the judge may, if he or she considers it appropriate to do so, confirm, vary or cancel the notice.

(2) A person who appeals under paragraph (1) shall at the same time notify the Agency of the appeal and the grounds for the appeal and the Agency shall be entitled to appear, be heard and adduce evidence at the hearing of the appeal.

(3) Where a decision is made under paragraph (1), any person aggrieved by that decision may, within 7 days beginning on the day on which the decision was made, appeal it to the Circuit

Court in the circuit in which the prohibition notice was served and in determining the appeal, the court may, if it considers it appropriate to do so, confirm the decision of the District Court, vary it or allow the appeal.

(4) A decision under paragraph (3) shall be final, save that, by leave of the High Court, an appeal from the decision shall lie to the High Court on a specified question of law.

(5) Subject to paragraph (6), the bringing of an appeal against a prohibition notice shall not have the effect of suspending the operation of the notice.

(6) Where a person brings an appeal under this Regulation, the appellant may apply to the court determining the appeal (being the District Court, Circuit Court or High Court) to have the operation of the prohibition notice suspended until the determination or discontinuation of the appeal before that court and, on such application, the court may, if it thinks proper to do so, grant the application.

(7) Where, on the hearing of an appeal under this Regulation, a prohibition notice is not cancelled, notwithstanding paragraph (6), the judge by whom the appeal is heard may, on the application of the appellant, suspend the operation of the notice for such period as in the circumstances of the case the judge considers appropriate.

(8) A person who applies for the suspension of the operation of a prohibition notice shall at the same time notify the Agency of the application and the grounds for the application.

(9) Where an appeal is brought under this Regulation and the court (being the District Court, Circuit Court or High Court) has granted a suspension on the operation of the prohibition notice, the prohibition notice shall take effect on the later of—

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

(b) the day next following the day on which the appeal is discontinued, or

(c) the day next following the expiration of the period of final suspension.

Order of High Court to direct compliance with prohibition notice

39H. (1) Where a person fails to comply with a prohibition notice an authorised officer may apply ex parte to the High Court for an order directing immediate compliance with the notice.

(2) The High Court may, upon an application under this Regulation, if satisfied that the person on whom the prohibition

notice is served has failed to comply with the notice, grant the order referred to in paragraph (1).

Seizure notice — seizure and disposal of toy presenting a serious risk

39I. (1) Where an authorised officer is of the opinion that a toy presents a serious risk, the authorised officer or any person directed by the authorised officer, may seize and destroy or dispose of the toy in such manner and such time and place as the authorised officer may direct.

(2) The authorised officer may require the economic operator relating to the toy referred to in paragraph (1), where known, to reimburse the cost or any portion of the cost of any measure taken under that paragraph.

(3) An authorised officer who has seized, or intends to seize, any toy under paragraph (1) shall serve a seizure notice on the economic operator relating to the toy, which seizure notice shall—

(a) state that the toy has been or is intended to be seized and that it is intended to destroy or dispose of the toy,

(b) specify the exact grounds for the seizure and intended destruction or disposal of the toy,

(c) where in the opinion of the authorised officer there is or is likely to be a contravention of any provision of the Toy Safety Directive, Regulation (EU) 2019/1020 or these Regulations, specify every such provision (including the particular paragraph and subparagraph of such provision as appropriate),

(d) inform the person on whom the seizure notice is served that he or she may appeal the notice to the District Court within 21 days in accordance with this Regulation,

and

(e) be signed and dated by the authorised officer.

(4) A person on whom a seizure notice is served may, within 21 days beginning on the day on which the seizure notice is served on him or her, appeal against the notice to the appropriate court (as defined in paragraph (17)) and in determining the appeal, the court may, if it considers it appropriate to do so, confirm, vary or cancel the notice or make any other order as it considers appropriate.

(5) An appeal under paragraph (4) shall state the grounds on which the appeal is made and shall be made by written notice, which notice shall be lodged with the office of the appropriate court.

(6) A person who appeals under paragraph (4) shall at the same time furnish a copy of the notice referred to in paragraph (5) to the Agency and the Agency shall be entitled to appear, be heard and adduce evidence at the hearing of the appeal.

(7) If, during the hearing of an appeal under paragraph (4) to the District Court, that court forms the opinion that the value of the toy 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 toy.

(8) If, during the hearing of an appeal under paragraph (4) to the Circuit Court, that court forms the opinion that the value of the toy the subject of the appeal, exceeds that court's jurisdiction in tort, it may, if it so thinks fit, transfer the appeal to the High Court.

(9) Paragraphs (7) and (8) are without prejudice to the jurisdiction of a court (being either the District Court or the Circuit Court) to determine an appeal under paragraph (4) in relation to which it was, at the time of the hearing of the appeal, the appropriate court.

(10) Where a decision is made under paragraph (4), any person aggrieved may, within 21 days beginning on the day on which the decision was made, appeal the decision to the following court:

(a) where the decision under paragraph (4) was made by the District Court, the Circuit Court;

(b) where the decision under paragraph (4) was made by the Circuit Court, the High Court;

(c) where the decision under paragraph (4) was made by the High Court, the Court of Appeal.

(11) On hearing an appeal under paragraph (10), the court may, if it considers it appropriate to do so, confirm the decision of the appropriate court, vary it or allow the appeal.

(12) A decision under paragraph (11) of the Circuit Court shall be final, save that, by leave of the High Court, an appeal from the decision shall lie to the High Court on a specified question of law.

(13) A decision under paragraph (11) of the High Court shall be final, save that, by leave of the Court of Appeal, an appeal from the decision shall lie to the Court of Appeal on a specified question of law.

(14) An appeal under paragraph (4) to the District Court shall be determined by a judge of the District Court for the District Court district in which the toy the subject of the appeal was placed on the market or the appellant ordinarily resides.

(15) An appeal under this Regulation (whether under paragraph (4) or (10)) to the Circuit Court shall be determined by a judge of the Circuit Court for the circuit in which the toy the subject of the appeal was placed on the market or the appellant ordinarily resides.

(16) Where an appeal is made under paragraph (4), the toy the subject of the appeal shall not be destroyed or disposed of until at least the day following the determination or discontinuation of the final appeal.

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

(a) in any case where the estimated value of the toy the subject of the appeal 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 toy referred to in subparagraph (a) exceeds the jurisdiction of the District Court in tort but 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 not coming within subparagraph (a) or (b), the High Court.

(18) In this Regulation “dispose” includes any manner of disposal which in the opinion of the authorised officer will least endanger the public and includes surrender of the toy to a member of the Garda Síochána or to any other competent agency or organisation for its destruction, or the certified return of the toy to the economic operator relating to the toy, in order to remove it from the market, at the expense of the economic operator, manager, or person having lawful possession of the toy at the time of seizure, where known.

(19) The Agency shall give the recipient of a seizure notice an opportunity to make representations as soon as possible after the service of the notice on that person and the service of the notice shall be reviewed promptly thereafter.

Forfeiture order

39J. (1) The Agency may apply for an order for the forfeiture to the Agency of any toy on the grounds that the toy does not comply with the Toy Safety Directive or these Regulations or, when properly maintained and used for its intended purpose or otherwise used under conditions which can be reasonably foreseen, is liable to be a risk to the health or safety of persons.

(2) An application under paragraph (1) shall be made to the appropriate court and the proceedings shall be served on the person against whom a forfeiture order is sought without delay.

(3) Upon hearing an application under paragraph (1), the appropriate court may, if it considers it appropriate to do so, grant a forfeiture order.

(4) The appropriate court may order that the person against whom a forfeiture order is granted pay the costs of seizure and destruction or disposal of the toy the subject of the order.

(5) A forfeiture order granted under paragraph (3) 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.

(6) If, during the hearing of an application under paragraph (1) to the District Court, that court forms the opinion that the value of the toy 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 toy.

(7) If, during the hearing of an application under paragraph (1) to the Circuit Court, that court forms the opinion that the value of the toy the subject of the appeal, exceeds that court's jurisdiction in tort, it may, if it so thinks fit, transfer the appeal to the High Court.

(8) 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 application under paragraph (1) in relation to which it was, at the time of the hearing of the application, the appropriate court.

(9) Where a decision is made under paragraph (3), any person aggrieved may, within 21 days beginning on the day the decision was made, appeal the decision to the following court:

(a) where the decision under paragraph (3) was made by the District Court, the Circuit Court;

(b) where the decision under paragraph (3) was made by the Circuit Court, the High Court;

(c) where the decision under paragraph (3) was made by the High Court, the Court of Appeal.

(10) On hearing an appeal under paragraph (9), the court may, if it considers it appropriate to do so, confirm the decision of the appropriate court, vary it or allow the appeal.

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

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

(13) An application under paragraph (1) to the District Court shall be determined by a judge of the District Court for the District Court district in which the toy the subject of the order sought was placed on the market or the person against whom the order is sought ordinarily resides.

(14) An application under paragraph (1) to the Circuit Court and any appeal under paragraph (9) to the Circuit Court shall be determined in the circuit in which the toy the subject of the application under paragraph (1) was placed on the market or the person against whom the order was sought in an application under paragraph (1) ordinarily resides.

(15) Where a forfeiture order is granted and there is no stay on the coming into force of the order, the toy the subject of the forfeiture order may be seized on behalf of the Agency by an authorised officer and destroyed, disposed of or released as the authorised officer considers appropriate.

(16) In this Regulation—

(a) “appropriate court” has the meaning assigned to it under Regulation 39I(17); and

(b) “dispose” has the meaning assigned to it under Regulation 39I(18).

Information notice

39K. (1) The Agency, or an authorised officer, may serve an information notice on a person which may require the person to give to the Agency or the authorised officer, within such period and in such form as may be specified in the notice, any information specified in the notice that the Agency or the authorised officer may reasonably require for the proper performance of any functions under Regulation (EU) 2019/1020 or these Regulations.

(2) An information notice shall—

(a) state the exact grounds on which the requirement for information is based and shall inform the person on whom the information notice is served that he or she may appeal the notice to the District Court within 7 days in accordance with this Regulation,

(b) state that if the person on whom the information notice is served fails to comply with the notice, that person commits an offence, and

(c) be signed and dated by the authorised officer.

(3) The period specified in the information notice referred to in paragraph (1) may be extended at the discretion of the Agency or an authorised officer on the written application of the person on whom the notice is served or at the volition of the Agency or the authorised officer issuing the notice.

(4) A person on whom an information notice is served may, within 7 days beginning on the day on which the notice is served on him or her, appeal against the notice to a judge of the District Court in the District Court district in which the notice was served and in determining the appeal the judge may, if he or she considers it appropriate to do so, confirm, vary or cancel the notice.

(5) A person who appeals under paragraph (4) shall at the same time notify the Agency of the appeal and the grounds for the appeal and the Agency shall be entitled to appear, be heard and adduce evidence at the hearing of the appeal.

(6) Where a decision is made under paragraph (4), any person aggrieved by that decision may, within 7 days beginning on the day on which the decision was made, appeal it to the Circuit Court in the circuit in which the information notice was served and in determining the appeal, the court may, if it considers it appropriate to do so, confirm the decision of the District Court, vary it or allow the appeal.

(7) A decision under paragraph (6) shall be final, save that, by leave of the High Court, an appeal from the decision shall lie to the High Court on a specified question of law.

(8) Where, upon the hearing of an appeal under this Regulation (whether under paragraph (4), (6) or (7)), an information notice is not cancelled by the court, the judge by whom the appeal is heard may, on the application of the appellant, suspend the operation of the information notice for such period as in the circumstances of the case the judge considers appropriate.

(9) Subject to paragraph (10), a person on whom an information notice is served shall comply with the notice before the later of—

(a) the expiration of the period to comply specified in the information notice, or

(b) where the period referred to in subparagraph (a) is extended under paragraph (3), the expiration of that extended period.

(10) Where an appeal is brought under this Regulation, the person on whom the information notice is served shall comply with the notice before—

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

(b) the day next following the day on which the appeal is discontinued,

(c) the expiration of the period to comply specified in the information notice,

or

(d) where the operation of the information notice has been suspended, the expiration of the period of final suspension,

whichever occurs latest.

(11) Subject to paragraph (12), in the case of a toy which the authorised officer does not consider to present a serious risk requiring rapid intervention under Article 19 of Regulation (EU) 2019/1020, the intended recipient of an information notice shall have the opportunity to make representations to the Agency within 10 working days of first being advised of the authorised officer's intention to serve an information notice on that person.

(12) Where an opportunity to make representations referred to in paragraph (11) is not possible because of the urgency of requirement to obtain the information, as justified by health or safety requirements or other grounds relating to public interests, the Agency shall give the recipient of the information notice the opportunity to be heard as soon as possible after the service of the notice on that person and the service of the notice shall be reviewed promptly thereafter.

Publication of information

39L. (1) The Agency may, in the interest of the protection of health or safety and in consultation, where appropriate, with a market surveillance authority of another Member State, take such measures as it considers appropriate to bring to the attention of the public matters giving rise to any contravention notice served under Regulation 39B, prohibition notice served under Regulation 39F, seizure notice served under Regulation 39I or forfeiture order granted under Regulation 39J.

(2) The Agency may, in the interest of the protection of health or safety, take such measures as it considers appropriate to bring to the attention of the public any other matter of concern arising from the requirements of the Toy Safety Directive, Regulation (EU) 2019/1020 or these Regulations."

7. The Principal Regulations are amended by the deletion of Regulations 40 to 44.

8. The Principal Regulations are amended by the substitution of the following for Regulation 46:

“46. Section 13 of the Act of 2014 shall apply to authorised officers appointed under these Regulations and to any member of staff of the Agency.”

9. The Principal Regulations are amended by the substitution of the following for Regulation 48:

“48. (1) A person who contravenes a provision or requirement of Regulation 6A(1), 7, 8, 9, 10, 12, 13, 14, 18, 19, 20 or 21 commits an offence.

(2) A person who, in relation to CE marking, other marking or any document required for the purposes of the Toy Safety Directive or these Regulations does one or more of the following commits an offence:

(a) forges or counterfeits any such document;

(b) gives or signs a document knowing it to be false in any material particular or makes a marking knowing it to be false in any material particular;

(c) knowingly uses a marking or document that is forged or counterfeited, or that is false in any material particular;

(d) knowingly uses as applying to any person or to any toy a marking or document which does not so apply;

(e) knowingly connives at any such forging, counterfeiting, giving, signing, or using referred to in subparagraphs (a) to (d);

(f) knowingly makes a false entry in any such document that is so required to be kept, served or sent;

(g) knowingly uses any false entry referred to in subparagraph (f);

(h) knowingly and without lawful authority has in his or her possession one or more of the following:

(i) a forged marking;

(ii) a forged document;

(iii) an altered marking;

(iv) an altered document.

(3) A person who—

(a) fails to comply with a contravention notice served under Regulation 39B within the period specified in the notice,

(b) fails to comply with a prohibition notice served under Regulation 39F within the period specified in the notice,

(c) fails to comply with any term of a forfeiture order granted under Regulation 39J that requires his or her compliance, or

(d) fails to comply with an information notice served under Regulation 39K within the period specified in the notice,

commits an offence.

(4) Any person who obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on him or her by these Regulations or by a warrant under Regulation 39A(6) or who impedes or prevents the exercise by the authorised officer or member, as the case may be, of such power, or fails or refuses to comply with a request or requirement of, or to answer a question asked by, an authorised officer or such a member pursuant to a power conferred by these Regulations, or in purported compliance with such request or requirement or answer to such question asked, gives information to the authorised officer or member that he or she knows to be false or misleading in any material respect, commits an offence.

(5) A person who, at any time during the period of 3 months immediately following the affixing of a notice in accordance with Regulation 53(1)(e) removes, alters, damages or defaces the notice without lawful authority commits an offence.

(6) A person who states to the Agency that another person has committed an offence under this Regulation or has failed to comply with a provision of these Regulations, knowing the statement to be false, commits an offence.

(7) A person who, in purported compliance with a requirement under these Regulations, furnishes information to the Agency that he or she knows or ought reasonably to know to be false or misleading in a material respect commits an offence.

(8) A person who prevents or attempts to prevent any person from answering any question to which an authorised officer may require an answer under Regulation 39A commits an offence.

(9) A person who fails to comply with a bona fide request, instruction or direction from an authorised officer in the exercise of his or her functions under these Regulations, commits an offence.

(10) Where an offence under a provision of these Regulations is committed by reason of a failure to do something at or within a time fixed by or under that provision, the offence shall be deemed to continue until that thing is done.”

10. The Principal Regulations are amended by the substitution of the following for Regulation 49:

“49. A person who commits an offence under these Regulations is liable—

(a) on summary conviction, to a class A fine, or imprisonment for a term not exceeding 6 months or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 2 years or both.”

11. The Principal Regulations are amended by the insertion of the following after Regulation 49:

“Forfeiture upon conviction

49A. (1) Where a person is convicted of an offence under these Regulations, the court may order the forfeiture to the Agency of any toy to which the offence relates.

(2) Where an order is made under paragraph (1), the Agency may for the purpose of giving effect to it—

(a) seize and detain the toy where it has not already been seized under these Regulations, and

(b) destroy or dispose of the toy.”

12. The Principal Regulations are amended by the substitution of the following for Regulation 52:

“52. (1) Summary proceedings in relation to an offence under these Regulations may be brought and prosecuted by the Agency.

(2) 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.”

13. The Principal Regulations are amended by the substitution of the following for Regulation 53:

“53. (1) Subject to paragraphs (2) and (3), a measure under Regulation 39B, 39F, 39I or 39K shall be addressed to the person concerned by name and may be given to the person in one of the following ways—

(a) by delivering it to the person,

(b) by leaving it at the address at which the person carries on business or ordinarily resides or, in the case in which an address for service has been furnished, at that address,

(c) by sending it by post in a prepaid registered letter to the address at which the person carries on business or ordinarily resides or, in a case in which an address for service has been furnished, to that address,

(d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to him or her in that manner,

(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, or

(f) if all of the methods set out at subparagraphs (a) to (e) are either not possible in the circumstances or have proved insufficient to effect service of the notice or document on the relevant person, by electronic means only.”

(2) Where a direction, notice or other measure under Regulation 39B, 39F, 39I or 39K is to be served on 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 these Regulations, a company within the meaning of the Companies Acts 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.”

14. The European Communities (Safety of Toys) (Amendment) Regulations 2016 (S.I. No. 644 of 2016) are revoked.



GIVEN under my Official Seal,
11 January, 2022.

LEO VARADKAR,
Minister for Enterprise, Trade and Employment.

EXPLANATORY NOTE

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

These regulations give full effect in Irish law to Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and give further effect in Irish law, as necessary, to Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys by amending the European Communities (Safety of Toys) Regulations 2011 (S.I. No. 14 of 2011). They also revoke the European Communities (Safety of Toys) (Amendment) Regulations 2016 (S.I. No. 644 of 2016).

Regulation (EU) 2019/1020 confers on national market surveillance authorities strengthened powers to carry out effective market surveillance to ensure that relevant products are compliant with certain EU harmonisation legislation, including Directive 2009/48/EC, with a view to ensuring the free movement of compliant products within the EU.

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