For use only if the UK has left the EU without a deal

ELECTRICAL EQUIPMENT (SAFETY) REGULATIONS 2016 as amended by the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019

Guidance

September 2019

This will only apply if the UK leaves the EU without a deal.
Electrical Equipment (Safety) Regulations 2016: EU Exit Guidance

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1. **Introduction**

The Electrical Equipment (Safety) Regulations 2016 set out the requirements which must be met before electrical equipment products can be placed on the UK market. The purpose of the legislation is to ensure safe products are placed on the market by requiring manufacturers to show how their products meet the ‘essential requirements’.

This guidance is designed to help you understand the Electrical Equipment (Safety) Regulations 2016, now that the UK has left the EU, as amended by the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (“the 2016 Regulations as amended”).

2. **Legislative Background**

The Electrical Equipment (Safety) Regulations 2016 implemented EU Directive (2014/35/EU) on electrical equipment designed for use within certain voltage limits (commonly called the Low Voltage Directive). The EU Withdrawal Act 2018 preserves the Regulations and enables them to be amended so as to continue to function effectively now that the UK has left the EU. Accordingly, the 2019 Amendment Regulations fix any deficiencies that arose from the UK leaving the EU (such as references to EU institutions) and make specific provision for the UK market.

3. **Scope**

The Regulations apply to all electrical equipment that is designed or adapted for use between 50 and 1,000 volts (in the case of alternating current) and 75 and 1,500 volts (in the case of direct current). The Regulations cover domestic electrical equipment and equipment that is intended for use in the workplace.

The Regulations do not apply to electrical equipment listed in Regulation 3 (2) of the Regulations.

**Components**: The Low Voltage Directive and the Regulations apply to electrical equipment. In general components as such are not covered by the requirements of the Regulations but components which are in themselves ‘electrical equipment’ need to satisfy the requirements of the Regulations and in particular bear the relevant marking.

4. **Obligations of manufacturers**

A manufacturer is a person who manufactures electrical equipment, or has electrical equipment designed or manufactured, and markets that equipment under their name or trade mark.

The obligations of manufacturers of electrical equipment include:

1. Before placing electrical equipment on the market, the manufacturer must ensure that the equipment has been designed and manufactured in accordance with the principal elements of the safety objectives. These are set out in Schedule 1 to the Regulations. Manufacturers must also have a relevant conformity assessment procedure carried out and technical documentation drawn up.
2. Once this has been done, the manufacturer must draw up a declaration of conformity\(^1\), and affix the relevant marking to the equipment.

3. Manufacturers must keep technical documentation and the declaration of conformity for 10 years after the equipment has been placed on the market.

4. Manufacturers must also label their equipment with their name, registered trade name or registered trade mark and address; the type batch or serial number (or other identification); and ensure that it is accompanied by instructions which are easily understood by the end user.

5. Manufacturers must, when appropriate with regard to any risk posed to consumers, carry out sample testing of equipment and must investigate any complaints that the electrical equipment is not in conformity and keep records of these complaints.

6. Manufacturers must take action where they have reason to believe that the electrical equipment they have placed on the market is not in conformity with the 2016 Regulations as amended.

7. Manufacturers must also cooperate with and provide information to enforcing authorities, such as local Trading Standards authorities, following any requests.

5. Obligations of authorised representatives

Manufacturers are able by written mandate to appoint authorised representatives to perform certain tasks on their behalf.

Mandated authorised representatives established in the EEA or Switzerland before the UK left the EU continue to be recognised as authorised representatives by the UK to act in the UK for the purposes of the legislation. However, any authorised representatives appointed and mandated after the UK left the EU to act in the UK must be established in the UK to be recognised under UK law.

Businesses with an existing authorised representative based in an EU Member State, the EEA or Switzerland can continue to use the same authorised representative post exit.

No UK-based authorised representatives are recognised under EU law to carry out tasks on the manufacturer's behalf for equipment being placed on the EU market. Therefore, a manufacturer exporting equipment to the EU, who wishes to appoint an authorised representative to carry out tasks for them in respect of that equipment, must appoint an authorised representative based in the EU.

The obligations of authorised representatives include:

1. An authorised representative must comply with the duties imposed on the manufacturer regulation 7 (retention of technical file) and regulation 13 (provision of information and cooperation), as well as perform the tasks which the mandate appoints them to perform.

2. As far as those duties, as well as penalties for failure to comply with those duties, are concerned, any references in the 2016 Regulations as amended to the manufacturer are to be taken as a reference to the authorised representative. Nevertheless, the manufacturer remains responsible for the proper performance of any duties the authorised representative performs on their behalf.

\(^1\) A Declaration of Conformity is a document that declares that the product is in conformity with the relevant statutory requirements applicable to the specific product.
6. Obligations of importers

An importer is a person or business based in the UK who places electrical equipment on the UK market from a country outside the UK. This means that UK businesses who used to act as a ‘distributor’ legally become an ‘importer’ if they place electrical equipment from an EEA country on the UK market.

Importers have additional legal obligations which go beyond those of distributors, such as checking that manufacturers have carried out the right conformity assessment procedures and included their name, registered trade name or mark and a postal address on the equipment or, where this is not possible, on its packaging or in accompanying documentation.

To assist with the transition, the UK is applying a transitional period of 18 months to allow UK distributors of goods from the EEA or Switzerland who become importers to provide their details on the packaging or in accompanying documentation as an alternative to placing them on the equipment itself.

The EU does not have any such transitional provision. Therefore, electrical equipment exported from the UK to the EU must be labelled with the EU-based importer’s address.

The obligations of importers in the UK include:

1. Before placing electrical equipment on the market, the importer must ensure that it is in conformity with the principal elements of the safety objectives and that the obligations in the 2016 Regulations as amended have been met. If the electrical equipment presents a risk, the importer must inform the manufacturer and the market surveillance authority of that risk.

2. The importer must ensure that the relevant conformity assessment has been carried out by the manufacturer; the manufacturer has drawn up the technical documentation; the manufacturer has affixed relevant marking to the equipment and has drawn up the declaration of conformity.

3. The importer must keep a copy of the declaration of conformity and technical documentation for a period of 10 years after the equipment has been placed on the market.

4. The importer must provide their name, registered trade name and a postal address at which they can be contacted on the electrical equipment (or – see above for transitional provisions – on its packaging or in accompanying documentation).

5. The importer must ensure that equipment is accompanied by instructions which are easily understood by the end user.

6. The importer must, when appropriate with regard to any risk posed to consumers, carry out sample testing of equipment and investigate complaints about electrical equipment that is not in conformity with the 2016 Regulations as amended and keep a register of those complaints.

7. The importer must take action where they have reason to believe that the electrical equipment they have placed on the market is not in conformity with the 2016 Regulations as amended.

8. The importer must ensure that while electrical equipment is under their responsibility, its storage and transport conditions do not jeopardise its conformity with the essential health and safety requirements.
9. The importer must also cooperate with and provide information to enforcing authorities following any requests.

7. Obligations of distributors

UK businesses which were distributors of electrical equipment within the EU single market should now consider whether they are importers from the EU single market and therefore what additional requirements they might face – see section 6 above. The same applies to distributors of goods from the EEA and Switzerland.

A distributor is any person, other than the manufacturer or importer, who makes electrical equipment available on the market.

The obligations of distributors include:

1. When making electrical equipment available on the market, the distributor must act with due care to ensure that it is in conformity with the principal elements of the safety objectives and that the obligations in the 2016 Regulations as amended have been met.

2. Where a distributor considers that the equipment is not in conformity with the principal elements of the safety objectives, they must not make the equipment available on the market until it has been brought into conformity.

3. Before making equipment available on the market, the distributor must verify that the equipment bears the relevant marking; is accompanied by the required instructions and safety information; and that the importer and manufacturer have complied with their obligations as to required labelling. The distributor must take action where they have reason to believe that the electrical equipment that they have made available on the market is not in conformity with the 2016 Regulations as amended.

4. The distributor must also cooperate with and provide information to enforcing authorities following any requests.

8. Transitional arrangements

‘Deeming’ provision

Electrical equipment which has undergone full conformity assessment under the equivalent EU requirements and bears the CE conformity mark is deemed compliant with the UK legislation and can be placed on the UK market as if it had been UK conformity marked.

This ‘deeming provision’ will be available for a time-limited period. This will be the subject of amending legislation in the future at a time yet to be decided. The Government will consult with industry and provide notice before ending this time-limited period.

9. UK Conformity Mark

Self-assessment

The UKCA conformity mark will replace the CE marking for electrical equipment placed on the UK market. Manufacturers selling equipment on the UK market can affix the new UKCA conformity mark before placing a product on the UK market.
CE marking based on self-declaration of conformity by the manufacturer is still possible, including when exporting to the EU. Manufacturers will be able to continue using the CE marking for equipment being placed on the UK market instead of the new UKCA marking for a time-limited period. The Government will engage with industry before making any decision on when this period will end.

It will be possible to affix both the UKCA marking and the CE marking to the same equipment on the basis of self-declaration. When exporting to the EU, the CE marking remains mandatory.

Rules around physically affixing the new UKCA conformity marking mirror those which currently apply for the application of the CE marking.

Further guidance on UKCA marking can be found here: https://www.gov.uk/government/publications/prepare-to-use-the-ukca-mark-after-brexit/using-the-ukca-marking-if-the-uk-leaves-the-eu-without-a-deal


10. Enforcement and penalties

In Great Britain, local authority trading standards, and in Northern Ireland, district councils are responsible for enforcing the 2016 Regulations as amended in relation to consumer goods.

For electrical equipment intended for workplace use, the Health and Safety Executive (HSE) http://www.hse.gov.uk/ is responsible for the enforcement of the Regulations in Great Britain. In Northern Ireland enforcement is the responsibility of the Health and Safety Executive for Northern Ireland (HSENI) https://www.hseni.gov.uk/

The Office of Nuclear Regulation is responsible for enforcing the regulations in respect of the equipment in nuclear sites: http://www.onr.org.uk/

In addition, the Secretary of State, or a person appointed to act on their behalf, has power to enforce the Regulations and RAMS (Regulation (EC 765/2008) which sets out requirements for market surveillance of products) as amended by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019.

The Regulations provide powers to market surveillance authorities to take action against economic operators for products that present a risk or are not in conformity with the Regulations, as set out in regulations 44 to 49. Economic operators are also required to co-operate with the enforcement authority and on request, must provide information and take action as appropriate.

The UK market surveillance authority (HSE, Local Authority Trading Standards, ONR) will take all appropriate measures to withdraw from the market or to prohibit or restrict the supply of products which may endanger the health and safety of persons, property or the environment.

Regulators’ Code

Local trading standards authorities must continue to have regard to the Regulators’ Code when developing the policies and operational procedures that guide their regulatory activities in this area. They should carry out their activities in a way that supports those they regulate to comply and grow, including choosing proportionate approaches that reflect risk.
In responding to non-compliance that they identify, regulators should clearly explain what the non-compliant item or activity is, the advice being given, actions required, or decisions taken, and the reasons for these. Unless immediate action is needed to prevent a serious breach, regulators should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent. The Secretary of State takes account of the provisions of both the Regulators’ Code and the Growth Duty in exercising his regulatory functions.

A link to the Regulator’s Code can be found here:

Penalties

A person committing an offence under the 2016 Regulations as amended is liable to a penalty. Penalties can include:

- a fine or prison sentence of up to three months or to both on summary conviction; or
- a fine or prison sentence of up to two years or both on conviction on indictment.

While it is a matter for the enforcement authority to decide whether prosecution is appropriate in each case, should a prosecution take place, it is at the discretion of the court to decide the penalties imposed on the offender.

11. Where to find guidance about Directive 2014/35/EU


The European Commission’s ‘Blue Guide’ aims to give a better understanding of EU product safety rules and to their application across different sectors and throughout the EU single market. You can view that here: http://ec.europa.eu/DocsRoom/documents/18027/

12. Glossary

- **Authorised Representative** – A person appointed in writing by a manufacturer to perform specific tasks for the manufacturer. Manufacturers remain ultimately responsible for ensuring these tasks are carried out properly. This includes persons who are based in the EU, the EEA or Switzerland, if they were appointed before the UK left the EU.

- **Declaration of conformity** – A document prepared by the manufacturer which must detail the following:
  - The specific electrical equipment to which the declaration is referring;
  - The name and address of the manufacturer and, where applicable, their authorised representative;

  This must be kept by the manufacturer for a period of ten years from the date on which the electrical equipment was placed on the market. This declaration must be made available to the enforcing authority upon request.

- **Distributor** – Any person in the UK supply chain, other than the manufacturer or the importer, who makes electrical equipment available on the UK market.
• **Enforcing Authority** – In Great Britain, for equipment in the use in the workplace, this is the Health and Safety Executive. For products for consumer use this is local weights and measures authorities. In Northern Ireland, for equipment in use in the workplace, this is the Health and Safety Executive Northern Ireland. For products for consumer use this is district councils. For nuclear sites in Great Britain, the Office for Nuclear Regulation is the enforcing authority.

• **Importer** - A person established in the UK who places electrical equipment from a country outside of the UK on the market. A person who before the UK left the EU distributed electrical equipment within the EU (including the UK) or from Switzerland is now an importer if they are bringing such equipment into the UK from another country (including EU Member States, the EEA or Switzerland).

• **Manufacturer** – A person who manufactures electrical equipment, or has electrical equipment designed or manufactured, and markets that equipment under their name or trademark.

• **UK Conformity Marking** – The UKCA (UK Conformity Assessed) marking is the new UK conformity marking used for certain goods being placed on the UK market, in place of the CE marking which is the conformity marking used in the European Union.