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

GAS APPLIANCES -
Regulation (EU) 2016/426 and the Gas Appliances (Enforcement) and
Miscellaneous Amendments Regulations 2018, both as amended by the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019

Guidance

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1. Introduction

Regulation (EU) 2016/426 sets out the essential requirements which must be met before appliances or fittings burning gaseous fuels can be placed on the UK market. The Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018 provides for the enforcement of Regulation (EU) 2016/426 in the UK.

The purpose of the legislation is to protect consumers and other end-users from unsafe products by requiring manufacturers to show how their products meet the ‘essential requirements’. The aim of Regulation (EU) 2016/426 is to lay down requirements for the design and manufacture of appliances or fittings burning gaseous fuels to ensure the health and safety of users, domestic animals and property.

This guidance is designed to help you understand how Regulation (EU) 2016/426 and the Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018 (collectively, the “Amended Gas Appliances Regulations” and individually the “2016 EU Regulation” and the “2018 Regulations” respectively) have been amended, now that the UK has left the EU, by the Product Safety and Metrology etc (Amendment etc.) (EU Exit) Regulations 2019 (“the 2019 Amendment Regulations”).

2. Legislative Background

The Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018 were enacted to provide for the enforcement in the UK of Regulation (EU) 2016/42 in the UK. The EU Withdrawal Act 2018 preserves the both sets of regulation in UK law 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 Amended Gas Appliances Regulations do not change the scope of products that are regulated.

(1) The 2019 Amended Gas Appliances Regulations apply to:
   a) appliances burning gaseous fuels used for cooking, refrigeration, air-conditioning, space heating, hot water production, lighting and washing and also forced draught burners and heating bodies to be equipped with such burners;
   b) fittings which are regulating, controlling or safety devices and sub-assemblies thereof intended to be incorporated into appliances or assembled to constitute appliances.

(2) The Amended Gas Appliances Regulations do not apply to appliances specifically designed:
   (a) for use in industrial processes carried out on industrial premises;
   (b) for use on aircrafts and railways;
   (c) for research purposes for temporary use in laboratories.

An appliance is considered to be ‘specifically designed’ when the design is only intended to address a specific need for a specific process or use.
The Amended Gas Appliances Regulations do not apply to gas appliances and fittings placed on the market before 21 April 2018 and such products remain regulated under the Gas Appliances (Safety) Regulations 1995 as amended by the 2019 Amendment Regulations (the “1995 Regulations”).

4. Requirements

The essential requirements that apply are still those listed in Annex I of the 2016 EU Regulation and which apply to gas appliances and fittings as appropriate. All gas appliances and fittings within scope must still undergo a conformity assessment procedure in accordance with Article 14 to demonstrate compliance with the essential requirements.

5. Obligations of manufacturers

A manufacturer is a person who has a gas appliance or fitting manufactured, or has a gas appliance or fitting designed or manufactured, and markets that gas appliance or fitting under their name or trademark or uses the appliance for their own purpose.

The obligations of manufacturers of gas appliances and fittings include:

1. Before placing gas appliances or fittings on the market or when using for their own purposes, the manufacturer must ensure that it has been designed and manufactured in accordance with the applicable essential requirements. These are set out in Annex I to the 2016 EU Regulation. The manufacturer 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, and affix to the product the UKCA conformity, or for a time limited period the CE marking marking to the product.

3. Manufacturers must keep the declaration of conformity up to date and must keep it and the technical documentation for 10 years after their gas appliance or the fitting has been placed on the market.

4. Manufacturers must ensure that procedures are in place for series production to remain in conformity. When deemed appropriate regarding risk presented by an appliance, they must carry out sample testing, investigate and, if necessary keep register of complaints of non-conforming appliances and fittings and recalls of such appliances and fittings, and keep distributors of any such monitoring. They must ensure that all gas appliances and fittings placed on the market bears a type and serial or batch number, the manufacturer’s name, registered trade name or registered trade mark and postal address (as well as other inscriptions). Where the size or nature of the gas appliance or the fitting does not allow this, then it may be provided on the packaging or accompanying documentation.

5. The manufacturer must ensure that the gas appliance is accompanied by instructions and safety information as set out in point 1.5 of Annex I to the 2016 EU Regulation. The instructions must be clear, legible and in easily understandable English.
7. The manufacturer must ensure that the fitting is accompanied by the declaration of conformity containing, among other things, instructions for incorporation or assembly, adjustment, operation and maintenance in accordance with point 1.7 of Annex I of the 2016 EU Regulation. This must be clear, legible and in easily understandable English. However, where a large number of fittings are delivered to a single user, the batch or consignment concerned may be accompanied by a single copy of the declaration of conformity.

8. Where they believe that an appliance or fitting which they have placed on the market is not in conformity, manufacturers must immediately take corrective measures to bring that appliance or fitting into conformity, to withdraw it or recall it if appropriate. They must also inform the enforcement authority of any corrective measures taken. They must also co-operate with enforcement authorities and provide all necessary information and documentation to the enforcement authority in the UK following any requests. They must also cooperate with the enforcement authority, at its request, on any action taken to eliminate the risks posed by appliances or fittings which they have placed on the market.

6. 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 prior to the UK leaving the EU continue to be recognised as authorised representatives by the UK to act in the UK for the purposes of the Amended Gas Appliances Regulations. However, any new 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 therefore continue to use the same authorised representative.

No UK-based authorised representatives are recognised under EU law. This means they cannot carry out tasks on the manufacturer’s behalf for appliances and fittings being placed on the EU market. Therefore, a manufacturer exporting appliances and fittings to the EU, who wishes to appoint an authorised representative to carry out tasks for them in respect of those products, must appoint an authorised representative based in the EU.

The mandate shall at least allow the authorised representative to perform the following tasks:

a) keeping the declaration of conformity and the technical documentation at the disposal of the market surveillance authority in the UK for 10 years after the gas appliance has been placed on the market;

b) further to a reasoned request from the enforcement authority in the UK, providing that authority with all the information and documentation necessary to demonstrate the conformity of the gas appliance;

c) cooperating with the enforcement authority in the UK, at its request, on any action taken to eliminate the risks posed by appliances or fittings covered by the authorised representative’s mandate.
An authorised representative must comply with all the duties, imposed on the manufacturer under the 2016 EU Regulation, that they are appointed for and mandated by the manufacturer to perform. A manufacturer remains responsible for the proper performance of any obligations the authorised representative performs on their behalf.

As far as those duties are concerned as well as penalties for failure to comply with those duties any references in the 2016 EU Regulation and the 2018 Regulations to the manufacturer are to be taken as a reference to the authorised representative.

7. Obligations of importers

An importer is a person or business based in the UK who places appliances and fittings on the UK market from a country outside the UK. This means that UK businesses which used to act as a ‘distributor’ legally become an ‘importer’ if they place products 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 those UK operators who import products from the EEA or Switzerland to provide their details on the accompanying documentation as an alternative to placing them on the product itself.

The EU does not have any such transitional provision – in the absence of this, appliances and fittings being 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 a gas appliance on the market, an importer must ensure that the appropriate conformity assessment procedures referred to in Article 14 have been carried out by the manufacturer. This means that the gas appliance must comply with the essential requirements set out in Annex I of the 2016 EU Regulation. They must ensure that the manufacturer has drawn up technical documentation and the Declaration of Conformity; the gas appliance bears the UKCA or, for a time limited period the CE marking; and is accompanied by required documents and information.

2. Before placing a fitting on the market, importers must ensure that the appropriate conformity assessment procedure referred to in Article 14 of the 2016 EU Regulation has been carried out by the manufacturer. They must ensure that the manufacturer has drawn up the technical documentation, that the fitting bears the UKCA or (for a time limited period) the CE marking and is accompanied by a copy of the declaration of conformity containing, among other things, instructions for incorporation or assembly, adjustment, operation and maintenance in accordance with point 1.7 of Annex I of the 2016 EU Regulation, and that the manufacturer has given the required information as out in Article 7(5) and (6) of the 2016 EU Regulation.
3. When deemed appropriate regarding risk presented by an appliance, the importer must carry out sample testing, investigate and, if necessary, keep a register of complaints of non-conforming appliances and fittings and recalls of such appliances and fittings, and keep distributors informed of any such monitoring.

4. Importers must indicate on the relevant appliance or fitting their name, registered trade name or registered trade mark and postal address. Where this is not possible it may be provided on the packaging or accompanying documentation.

[Note that this obligation to indicate information on an appliance or fitting does not apply where the importer has set out such information on the packaging and either: (i) it is not possible to indicate that information on the appliance or fitting; or (ii) the importer has imported the appliance or fitting from an EEA state and places it on the market within the period of 18 months beginning with the day the UK left the EU.]

5. The importer must keep a copy of the Declaration of Conformity and technical documentation for a period of 10 years after the gas appliance or the fitting has been placed on the market.

6. The importer must ensure that gas appliances or fittings under their responsibility are safely stored and transported in such a way that does not jeopardise conformity with the essential requirements.

7. Where they have reason to believe that the gas appliance or a fitting they have placed on the market is not in conformity with the 2016 EU Regulation, the importer must immediately take the corrective measures necessary to bring that appliance or fitting into conformity, to withdraw it or recall it, if appropriate. Furthermore, where the appliance or the fitting presents a risk, importers shall immediately inform the enforcement authority in the UK to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.

8. The importer must also cooperate with and provide all necessary information and documentation to the enforcement authority in the UK following any requests. They must also cooperate with the enforcement authority, at its request, on any action taken to eliminate the risks posed by appliances or fittings which they have placed on the market.

8. Obligations of distributors

UK businesses which were distributors of goods 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 7 above. The same applies to distributors of goods from the EEA and Switzerland.

The obligations of distributors include:

1. Before making a gas appliance or fittings available on the market, a distributor takes due care to ensure that it is in conformity with the 2016 EU Regulation.

2. Before making an appliance available on the market, a distributor must ensure that it bears the UKCA or (for a time limited period) the CE marking; is accompanied by required instructions and information that are clear, legible and in easily understandable English; and that the manufacturer and importer have complied with their obligations as to required labelling.
3. Before making a fitting available on the market, distributors must ensure that the fitting bears the UKCA or (for a time limited period) the CE marking; is accompanied by a copy of the declaration of conformity containing, among other things, instructions for incorporation or assembly, adjustment, operation and maintenance in accordance with point 1.7 of Annex I of the 2016 EU Regulation, in easily understandable English; and that the manufacturer and the importer have complied with the requirements as to required labelling.

4. The distributor must ensure that gas appliances or the fittings under their responsibility are safely stored and transported in such a way that does not jeopardise its conformity with the essential requirements.

5. Where they have reason to believe that the gas appliance or the fitting they have made available on the market are not in conformity with the 2016 EU Regulation, the distributor must make sure that the corrective measures necessary to bring that appliance or fitting into conformity, to withdraw it or recall it, if appropriate, are taken. Furthermore, where the appliance or the fitting presents a risk, distributors shall immediately inform the enforcement authority in the UK to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.

6. Distributors must also cooperate with and provide all necessary information and documentation to the enforcement authority in the UK following any requests. They must also cooperate with the enforcement authority, at its request, on any action taken to eliminate the risks posed by appliances or fittings which they have placed on the market.

9. **Transitional arrangements**

   **‘Deeming’ provision**

   Appliances and fittings which have undergone full conformity assessment under the equivalent EU requirements and bear the CE conformity marking will be deemed compliant with the UK legislation and can be placed on the UK market as if they had been UK conformity marked.

   The UK continues to recognise the competency of EU recognised conformity assessment bodies (notified bodies) to assess products for the UK market. Products assessed by an EU recognised notified body prior to the UK leaving the EU do not need reassessment before being placed on the UK market. This means that, for a time-limited period, products assessed by an EU recognised notified body can be placed on the UK market. (For the status of UK notified bodies please see section 10 below).

   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.

   As referred to in Section 3 above, the 2018 Regulations do not apply to gas appliances and fittings placed on the market before 21 April 2018 and such products remain regulated under the Gas Appliances (Safety) Regulations 1995 (the “1995 Regulations”). The 1995 Regulations have been broadly amended by the 2019 Amendment Regulations to fix any deficiencies that arose from the UK leaving the EU (such as references to EU institutions).
10. UK Conformity Mark

Assessment through third-party organisations:

The UKCA conformity mark will replace the CE marking for appliances and fittings placed on the UK market which have been assessed by a UK approved body. In all other cases, manufacturers will be able to continue using the CE marking for products 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.

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

Self-assessment:

CE marking based on self-declaration of conformity by the manufacturer is still possible, including when exporting to the EU.

Manufacturers selling appliances and fittings on the UK market can alternatively affix the new UKCA conformity marking before placing a product on the UK market. It will also be possible to affix both the UKCA marking and the CE marking to the same product on the basis of self-declaration. When exporting to the EU, the CE marking remains mandatory, when it is required.

Placing CE marked goods on the UK market:

Goods that meet EU regulatory requirements, including those with a CE marking, which have been assessed by an EU recognised conformity assessment body or which have been self-declared can still be placed on the UK market for a time-limited period. ‘EU-recognised’ does not include UK approved bodies. Manufacturers which have had their products assessed by EU recognised bodies are obliged to use the CE marking and cannot use the UKCA marking, with one small exception set out below.

Testing Certificates:

Where conformity assessment is a 2-stage process, it is possible for products to have an EU-type-examination certification (1st stage) followed by a UK declaration by the manufacturer or third party of the production process under the responsibility of a UK Approved Body (2nd stage). Such equipment and protective systems should have the UKCA conformity mark followed by the UK Approved Body Number.

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

Gas appliances exported to the EU Single Market must comply with the 2016 EU Regulation.

11. Approved Bodies

The UK has established a new framework for UK based bodies to assess appliances and fittings against UK rules. The existing active UK notified bodies have been granted new UK ‘approved body’ status and are listed on a new UK database. There is no need for existing notified bodies to seek re-accreditation in order to benefit from UK approved body status. These approved bodies have been given a 4-digit approved body number.
Approved bodies can assess appliances and fittings for the UK market against UK essential requirements (which are substantially the same as EU essential requirements).

Approved bodies are conformity assessment bodies which were notified bodies before the UK left the EU or have been approved by the Secretary of State to carry out the procedures for conformity assessment and certification for the UK market as set out in the 2016 EU Regulation as amended.

Approved bodies must be established in the UK and be independent of the manufacturer. Approved bodies must examine the technical documentation and supporting evidence in respect of an appliance or fitting to assess the adequacy of the technical design.

Where an approved body finds that essential requirements have not been met by a manufacturer, they must not issue a certificate of conformity and they must require the manufacturer to take corrective measures.

A list of UK approved bodies can be found [link to be added].

12. Enforcement

As set out in the 2018 Regulations as amended, for gas appliances intended for workplace use, or for use otherwise than at work in non-domestic premises, or made available to persons at a place where they may use the appliances or fittings provided for their own use there, the Health and Safety Executive (HSE) 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).

In Great Britain trading standards authorities, and in Northern Ireland district councils, are responsible for enforcing the Regulations in relation to gas appliances or fittings for private use or consumption (other than in circumstances subject to the remit of HSE/HSENI).

Where the gas appliances are intended to be used exclusively or primarily on relevant nuclear sites (as defined in Regulation 3(4) of the 2018 Regulations as amended), the Office for Nuclear Regulation (http://www.onr.org.uk/) is responsible for enforcing these Regulations.

The 2018 Regulations as amended provide the power to enforcement authorities to take action against economic operators for gas appliances and fittings that present a risk or are not in conformity with the 2016 EU Regulation as amended. There are requirements on economic operators to co-operate with the enforcement authority as appropriate on request.

The 2018 Regulations also provide powers to the Secretary of State to enforce the 2018 Regulations as amended, the 2016 EU Regulation as amended and RAMS (Regulation (EC) 765/2008 as retained in UK legislation after the UK left the EU, which sets out requirements for market surveillance of products)).

The UK market surveillance authority will take all appropriate measures to withdraw from the market, to prohibit or to restrict the supply of gas appliances (and fittings) which may endanger the health and safety of persons, property or the environment.
Regulators’ Code

Market surveillance 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 Regulators’ Code can be found here:

Penalties

A person committing an offence under the 2018 Regulations may be liable to a penalty. Penalties can include a fine or a prison sentence of up to three months for the most serious offences. It is matter for the enforcement authority to decide whether prosecution is appropriate in each case taking into account the circumstances of the case and the enforcement authority’s own policies, operational procedures and practices in line with the Regulators’ Code. Should a prosecution take place, it is at the discretion of the court to decide the penalties imposed on the offender.

13. Where to find out more about EU Regulation 2016/426

EU Regulation 2016/426 was directly applicable in UK law before the UK left the EU but it is EU legislation. It has been retained in UK law and adapted for the UK in the form of the 2016 EU Regulation (as defined above). As a result, while the general principles may be the same, there may be differences between EU Regulation 2016/426 as applied in the EU and the 2016 EU Regulation as applied after the UK left the EU.

You can find further and more detailed guidance on EU Regulation 2016/426 here:

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

14. Glossary

- Approved Bodies – A conformity assessment body which has been approved by the Secretary of State or was a UK based ‘Notified Body’ prior to the UK leaving the EU.
• **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 can include persons who are based in the EU, the EEA or Switzerland, if they were appointed and mandated before the UK left the EU.

• **Declaration of conformity** – A document prepared by the manufacturer which must detail, among other things, the following:
  o The specific product to which the declaration is referring;
  o 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 gas appliance 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 a gas appliance available on the UK market.

• **Enforcing Authority** – In Great Britain, for gas appliances in the use in the workplace, this is the Health and Safety Executive. For gas appliances for consumer use this is Local Authority Trading Standards. In Northern Ireland, for gas appliances in use in the workplace, this is the Health and Safety Executive Northern Ireland. For gas appliances for consumer use in Northern Ireland this is district councils. The Secretary of State is also an enforcing authority.

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

• **Manufacturer** – A person who manufactures a gas appliance or has a gas appliance designed or manufactured and markets that gas appliance 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.