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CONSUMER PROTECTION

The Recreational Craft Regulations 2016

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The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in respect of measures relating to craft intended for recreational purposes.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for certain references to provisions of EU instruments to be construed as references to those provisions as amended from time to time.

(a) S.I. 1995/2983.

(b) 1972 c 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51).

The Secretary of State, in exercise of the powers conferred by section 2(2) of and paragraph 1A of Schedule 2(a) to the European Communities Act 1972, makes the following Regulations.

PART 1 GENERAL

Citation and commencement

1.— These Regulations may be cited as the Recreational Craft Regulations 2016 and come into force on [*****2016] (“the commencement date”).

Interpretation

2.—(1) In these Regulations—

“the 1987 Act” means the Consumer Protection Act 1987(b);

“accreditation” has the meaning set out in point 10 of Article 2 of RAMS (as amended from time to time);

“accreditation certificate” means a certificate, issued by the United Kingdom Accreditation Service (a company limited by guarantee incorporated in England and Wales under number 03076190) or a national accreditation body of another Member State, attesting that a conformity assessment body meets the notified body requirements;

“adaptor” means a person who adapts an engine for use in watercraft;

“authorised representative” means any person appointed in accordance with regulation 39;

“CE marking” means a marking which takes the form set out in Annex II of RAMS (as amended from time to time);

“Commission” means the Commission of the European Union;

“components” means the components of watercraft listed in Schedule 2 when placed on the EU market separately and when intended for installation in watercraft;

“conformity assessment” means the process demonstrating whether the essential requirements relating to a product have been fulfilled;

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

the “Directive” means Directive 2013/53/EU of the European Parliament and of the Council on recreational craft and personal watercraft repealing Directive 94/25/EC(c);

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

“district council” means a district council within the meaning of the Local Government Act (Northern Ireland) 1972(d);

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

“engine family” means the manufacturer’s grouping of engines which, through their design, have similar exhaust or noise emission characteristics;

“essential requirements” means the requirements set out in Regulation 6;

“EU” means the European Union;

(a) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008.

(b) 1987 c.43.

(c) OJ No L 354, 28.12.2013, p90.

(d) 1972 c.9

“EU declaration of conformity” means the declaration required to be drawn up in accordance with regulation 10(1)(a) (EU declaration of conformity and CE marking);

“harmonised standard” has the meaning set out in paragraph (c) of Article 2(1) of Regulation (EU) No 1025/2012 of the European Parliament and of the Council on European Standardisation^(a) (as amended from time to time);

“hull length” means the length of the hull measured in accordance with the harmonised standard;

“importer” means any person who—

- (a) is established within the EU, and
- (b) places a product from a third country on the EU market;

“major craft conversion” means a conversion of a watercraft which—

- (a) changes the means of propulsion of the watercraft;
- (b) involves a major engine modification; or
- (c) alters the watercraft to such an extent that it may not meet the applicable essential requirements;

“major engine modification” means the modification of a propulsion engine which—

- (a) could potentially cause the engine to exceed the emissions limits set out in part B of Schedule 1; or
- (b) increases the rated power of the engine by more than 15%;

“making available on the market” means any supply for distribution, consumption or use on the EU market in the course of a commercial activity, whether in return for payment or free of charge and related expressions must be construed accordingly;

“manufacturer” means a person who—

- (a) manufactures a product or has such a product designed or manufactured; and
- (b) markets that product under his name or trademark;

“market surveillance authority” has the meaning set out in regulation 68(1) (designation of market surveillance authorities);

“means of propulsion” means the method by which the watercraft is propelled;

“national accreditation body” means national accreditation body as defined in point 11 of Article 2 of RAMS) (as amended from time to time);

the “notified body requirements” means the requirements set out in Schedule 11;

“notified body” means—

- (a) a notified body within the meaning set out in regulation 55 (notified bodies); or
- (b) a notified body under the laws of any other Member State where that body is established;

“partly completed craft” means a craft the construction of which needs to be completed before the craft can be made available on the market or put into service in conformity with Part 2 of these Regulations;

“personal watercraft” means a watercraft intended for sports and leisure purposes of less than 4 metres in hull length which uses a propulsion engine having a water jet pump as its primary source of propulsion and designed to be operated by a person or persons sitting, standing or kneeling on, rather than within the confines of, a hull;

“placing on the market” means the first making available of a product on the EU market, and related expressions are to be construed accordingly;

(a) OJ No L 316, 14.11.2012, p.12.

“private importer” means a person established within the EU who imports in the course of a non-commercial activity a watercraft from a third country into the EU with the intention of putting it into service for his own use;

“product” has the meaning given to it in Regulation 3.

“propulsion engine” means any spark or compression ignition, internal combustion engine used directly or indirectly for propulsion purposes;

“putting into service” means the first use of a product in the EU market by its end-user;

“RAMS” means Regulation (EC) 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) 339/97(a);

“recall” means any measure aimed at achieving the return of a watercraft that has already been made available to the end-user and related expressions must be construed accordingly;

“recreational craft” means any watercraft of any type, excluding personal watercraft, intended for sports and leisure purposes of hull length from 2.5 metres to 24 metres, regardless of the means of propulsion;

“relevant conformity assessment procedure” means a conformity assessment procedure referred to in Regulation 42;

“Small or Medium-sized Enterprise” has the same meaning as defined in Commission Recommendation 2003/361/EC(b);

“technical documentation” has the meaning given in regulation 9 (technical documentation and conformity assessment);

“watercraft” means any recreational craft or personal watercraft;

“watercraft built for own use” means any watercraft predominantly built by its future user for his own use; and

“withdrawal” means any measure aimed at preventing a watercraft in the supply chain from being made available on the market and related expressions must be construed accordingly.

(2) In these Regulations, a reference to a product being “in conformity with Part 2” means that—

- (a) the product is in conformity with the essential requirements;
- (b) each economic operator has complied with the obligations imposed on them by Part 2 of these Regulations which must be satisfied at or before the time at which the product is made available on the market.

(3) In these Regulations, except regulation 34 (monitoring) and Schedule 1, “risk” means a risk to—

- (a) human health;
- (b) the safety of consumers; or
- (c) the environment.

Scope

3.—(1) In these Regulations, “product” means any product that falls within paragraph (2), except and insofar as it is excluded by regulation 4.

(2) Subject to regulation 4 (exclusions) these Regulations apply to the following products—

- (a) recreational craft and partly completed recreational craft;
- (b) personal watercraft and partly completed personal watercraft;

(a) OJ No L 218, 13.8.2008, p.30.

(b) OJ No L 124, 20.5.2003, p.36.

- (c) components listed in Schedule 2 (components of watercraft) when placed on the EU market separately;
- (d) propulsion engines which are installed or specifically intended for installation on or in watercraft;
- (e) propulsion engines installed on or in watercraft that are subject to a major engine modification;
- (f) watercraft that have been subject to major craft conversion.

(3) A watercraft that can also be used for charter or for sports and leisure training is covered by these Regulations when it is placed on the EU market for recreational purposes.

Exclusions

4.—(1) The design and construction requirements set out in Part A of Schedule 1 do not apply to the following watercraft—

- (a) watercraft intended solely for racing, including rowing racing boats and training boats, labelled as such by the manufacturer;
- (b) canoes and kayaks designed to be propelled solely by human power, gondolas and pedalos;
- (c) surfboards designed to be propelled by wind and to be operated by a person or persons standing;
- (d) other surfboards;
- (e) original historical watercraft and individual replicas thereof designed before 1950 built predominantly with the original materials and labelled as such by the manufacturer;
- (f) experimental watercraft, unless they are placed on the EU market;
- (g) watercraft built for own use, provided that such watercraft are not subsequently placed on the EU market for a period of five years beginning with the date on which the watercraft was put into service;
- (h) watercraft specifically intended to be crewed and to carry passengers for commercial purposes, without prejudice to regulation 3(2), regardless of the number of passengers;
- (i) submersibles;
- (j) air cushion vehicles;
- (k) hydrofoils;
- (l) external combustion steam powered watercraft, fuelled by coal, coke, wood, oil or gas;
- (m) amphibious vehicles, i.e. wheeled or track-laying motor vehicles, which are able to operate both on water and on solid land.

(2) The exhaust emission requirements set out in Part B of Schedule 1 do not apply to the following propulsion engines—

- (a) propulsion engines installed or specifically intended for installation in the following products—
 - (i) watercraft intended solely for racing and labelled as such by the manufacturer;
 - (ii) experimental watercraft, provided that they are not placed on the Union market
 - (iii) watercraft specifically intended to be crewed and to carry passengers for commercial purposes, without prejudice to regulation 3(2) regardless of the number of passengers;
 - (iv) submersibles;
 - (v) air cushion vehicles;
 - (vi) hydrofoils;
 - (vii) amphibious vehicles, i.e. wheeled or track-laying motor vehicles, which are able to operate on water and on solid land;

- (b) original historical propulsion engines and individual replicas thereof, which are based on a pre-1950 design, not produced in series and fitted on watercraft referred to in regulation 4(1)(e) or regulation 4(1)(h) above;
 - (c) propulsion engines built for own use provided that such engines are not subsequently placed on the Union market for a period of five years beginning with the date on which the watercraft was put into service.
- (3) The noise emission requirements referred to in Part C of Schedule 1 do not apply to—
- (a) all watercraft referred to in regulation 4(2); and
 - (b) watercraft built for own use, provided that they are not placed on the Union market for a period of five years beginning with the date on which the watercraft was put into service.

Exhibition at trade fairs

5. Nothing in these Regulations prevents the showing of a watercraft which does not comply with Part 2 of these Regulations at a trade fair, exhibition or demonstration, provided that a visible sign clearly indicates —

- (a) that the product is not in conformity with Part 2 of these Regulations; and
- (b) that the product will not be made available on the market or be put into service until it has been brought into conformity.

PART 2

PLACING PRODUCTS ON THE UNION MARKET

Essential requirements

6. A person may only make a product available on the market or put it into service if that product—

- (a) complies with the requirements in Schedule 1; and
- (b) does not endanger the health and safety of persons, property or the environment when correctly maintained and used in accordance with its intended purpose.

Making available and putting into service

7.—(1) A person may make available or put into service in the United Kingdom —

- (a) any watercraft complying with the requirements of Part 2;
- (b) a partly completed watercraft where the manufacturer or importer declares that they are intended to be completed by others in accordance with Schedule 3 (declaration by manufacturer or importer of partly completed watercraft);
- (c) any component which complies with the requirements of Part 2 and which is intended to be incorporated into any watercraft in accordance with the declaration completed by a manufacturer or importer in accordance with Schedule 3;
- (d) any of the following propulsion engines—
 - (i) engines, whether or not installed in watercraft, that comply with the requirements in this Part 2;
 - (ii) engines installed in watercraft and type-approved in accordance with Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the

emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery (a), which comply with—

- (aa) stage III A or stage III B or stage IV emission limits for C1 engines, used in other applications than the propulsion of inland waterway vessels, locomotives and railcars, as provided for in point 4.1.2 of Annex 1 of 97/68/EC Directive; and
- (bb) these Regulations, with the exclusion of the exhaust emission requirements set out in Part B of Schedule 1;
- (iii) engines installed in watercraft and type-approved in accordance with Regulation (EC) No 595/2009(b) on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC complying with these Regulations, with the exclusion of the exhaust emission requirements set out in Part B of Schedule 1.

(2) Nothing in these Regulations prevents the making available in the United Kingdom of any partly-completed watercraft where the manufacturer or the importer has declared, in accordance with Schedule 3, that the craft complies with the essential requirements at this stage in its construction and that the craft will be completed by others in full compliance with these Regulations.

(3) Where an engine is adapted for installation in a watercraft, a person who so adapts that engine must—

- (a) make a declaration, in accordance with Schedule 3, that the adapted engine will continue to meet the emission requirements of either Directive 97/68/EC or Regulation 595/2009, when installed in accordance with the installation instructions the have provided; and
- (b) take full account of the data and other information available from the manufacturer, so that, when the adapted engine is installed in accordance with the installation instructions the adaptor provides, the adapted engine continues to meet the exhaust emission requirements in either the Directive or the Regulation referred to in paragraph (a), whichever is referred to in the declaration submitted in accordance with Schedule 3.

MANUFACTURERS

Duty to ensure watercraft comply with the essential requirements

8. Before placing a product on the market, a manufacturer must ensure that it has been designed and manufactured in accordance with the essential requirements.

Technical documentation and conformity assessment

9.—(1) Before placing a product on the market a manufacturer must—

- (a) have a relevant conformity assessment procedure carried out; and
- (b) draw up—
 - (i) the technical documentation referred to in Schedule 9; and
 - (ii) any other technical documentation required as part of the relevant conformity assessment procedure to demonstrate the means used by the manufacturer to ensure that the product complies with the essential requirements.

(a) OJ No L 59. 27.2.1998, p.1.
(b) OJ No L 188, 18.7.2009, p.1.

(2) The technical documentation that is prepared in accordance with paragraph (1)(b) must ensure that the design construction, operation and assessment of conformity can be clearly understood by a notified body.

EU declaration of conformity and CE marking

10.—(1) Where the conformity of a product with the essential requirements has been demonstrated by a relevant conformity assessment procedure, the manufacturer must, before placing the product on the market—

- (a) draw up the EU declaration of conformity in accordance with regulation 53 (EU declaration of conformity); and
- (b) affix the CE marking to the product in accordance with regulation 54 (CE marking).

(2) The EU declaration of conformity must follow the format set out in Schedule 4 (EU Declaration of conformity), and be translated into a language required by the Member State where the partly completed craft will be made available or put into service, unless paragraph (3) applies.

(3) If an EU declaration of conformity relates to a partly completed craft, that declaration must follow the format set out in Schedule 3 and be translated into a language required by the Member State where the partly completed craft will be made available or put into service.

(4) The manufacturer must keep the EU declaration of conformity up-to-date.

(5) Where a product is subject to more than one EU instrument requiring a declaration of conformity to be drawn up, the manufacturer must draw up a single declaration of conformity, which—

- (a) identifies all of the applicable EU instruments; and
- (b) includes references to the publication of those EU instruments in the Official Journal of the European Union.

Duty of Manufacturers to retain technical documentation and EU declaration of conformity

11. A manufacturer must keep the technical documentation and the EU declaration of conformity drawn up in respect of a product for a period of 10 years beginning with the day on which the product is placed on the market.

Compliance procedures for series production

12.—(1) The manufacturer of a product which is manufactured by series production must ensure that, before placing the product on the market, procedures are in place to ensure that any product so manufactured will be in conformity with their obligations under this Part.

(2) In doing so, the manufacturer must take adequate account of—

- (a) any changes in the design or characteristics of a product; and
- (b) any changes in the harmonised standard or in another technical specification by reference to which the EU declaration of conformity of the product was drawn up.

Duty of Manufacturers to ensure products are marked

13.—(1) Before placing a product on the market, a manufacturer must indicate on the product—

- (a) a type, batch or serial number; or
- (b) another element which identifies them as the manufacturer of the product;

(2) Where, in the case of a component, it is not possible to indicate the information on the component because of the size or nature of the component, the manufacturer must provide the information specified in paragraph(1)—

- (a) on the packaging; or

- (b) in a document accompanying the component.

Duty to provide information

14.—(1) Before placing a product on the market, a manufacturer must ensure that the product is marked with—

- (a) the manufacturer's name;
- (b) their registered trade name or registered trade mark; and
- (c) an address, which is the single point at which they can be contacted.

(2) Where it is not possible to provide the information referred to in paragraph (1) on the product that information must be provided—

- (a) on the packaging;
- (b) or in a document accompanying the product.

Instructions and safety information

15.—(1) When placing a product on the market, a manufacturer must ensure that it is accompanied by instructions and safety information in a language which can be easily understood by consumers and other end-users in the Member State in which the product is to be made available to such consumers and other end-users.

(2) When the product is being made available to consumers and other end-users in the United Kingdom, the language which can be easily understood by consumers and other end-users is English.

Duty to take action in respect of product placed on the market which are considered not to be in conformity

16.—(1) A manufacturer who considers or has reason to believe that a product that it has placed on the market is not in conformity with the requirements of this Part, that manufacturer must immediately take the corrective measures necessary to—

- (a) bring the product into conformity;
- (b) withdraw the product from the EU market; or
- (c) recall it.

(2) Where the product presents a risk, the manufacturer must immediately inform the competent authorities in any Member State in which the manufacturer has made the product available on the market of the risk, giving details of—

- (a) the reason why the product is not considered to be in conformity; and
- (b) any corrective measures taken.

Provision of information and co-operation

17.—(1) A manufacturer must, following a reasoned request from an enforcement authority, provide it with all of the information and documentation necessary to demonstrate the conformity of the product with the requirements of this Part.

(2) The information and documentation referred to in paragraph (1) must be in a language that can be easily understood by the enforcement authority.

(3) The manufacturer must, at the request of the enforcement authority, co-operate with the authority on any action taken to eliminate the risks posed by a product that the manufacturer has placed on the market.

IMPORTERS

Prohibition on placing products on the market

18. An importer must not place a product on the market unless it complies with the essential requirements.

Requirements that must be satisfied before an importer places a product on the market

19.—(1) Before placing a product on the market an importer must ensure that—

- (a) a relevant conformity assessment has been carried out by the manufacturer;
- (b) the manufacturer has drawn up the technical documentation ;
- (c) the product—
 - (i) bears the CE marking; and
 - (ii) is accompanied by the required documents; and;
- (d) the manufacturer has complied with the requirements of regulations 13 (manufacturers duty to ensure products are marked) and 14 (duty to provide information).

(2) In paragraph (1)(c)(ii) “required documents” means—

- (a) the European Declaration of conformity referred to in regulation 53 (EU declaration of conformity); and
- (b) the owner’s manual referred to in Schedule 1.

Duty not to place a product on the market where an importer suspects that it is not in conformity

20.—(1) Where an importer believes or has reason to believe that a product is not in conformity with the essential requirements, the importer must not place the product on the market.

(2) Where a product presents a risk, the importer must inform the manufacturer and the market surveillance authorities of that risk.

Importers duty to ensure products are marked

21.—(1) Before placing a product on the market, an importer must indicate on the product—

- (a) the importers name, registered trade name or registered trade mark; and
- (b) the address at which they can be contacted.

(2) Where, in the case of components, it is not possible to indicate the information specified in paragraph (1) on the component, the importer must indicate that information—

- (a) on the packaging; or
- (b) in a document accompanying the component.

Instructions and safety information

22.—(1) When placing a product on the market, an importer must ensure that it is accompanied by instructions and safety information in a language which can be easily understood by consumers and other end-users in the Member State in which the product is to be made available to such consumers and other end-users.

(2) When the product is being made available to consumers and other end-users in the United Kingdom, the language which can be easily understood by consumers and other end-users is English.

Storage and transport: Importers

23. An importer must ensure that, while a product is the importer's responsibility, its storage or transport conditions do not jeopardise its conformity with the essential requirements.

Duty to take action in respect of product placed on the market which are considered not to be in conformity

24.—(1) An importer who considers or has reason to believe that a product that they have placed on the market is not in conformity with Part 2 must immediately take the corrective measures necessary to—

- (a) bring the product into conformity;
- (b) to withdraw the product from the Union market; or
- (c) recall it, if appropriate.

(2) Where the product presents a risk, the importer must immediately inform the competent authorities of any other Member State in which the importer has made the product available on the market of the risk, giving details of—

- (a) the reason or reasons why the product is not considered to be in conformity with Part 2; and
- (b) any corrective measures taken.

Importers duty to retain technical documentation and EU declaration of conformity

25. An importer must, for the period of 10 years beginning on the day on which the product is placed on the market—

- (a) keep a copy of the EU declaration of conformity at the disposal of the enforcement authorities; and
- (b) ensure that the technical documentation relating to that product can be made available to the enforcing authorities upon request.

Provision of information and co-operation: Importers

26.—(1) An importer must, following a reasoned request from an enforcement authority, provide it with all of the information and documentation necessary to demonstrate the conformity of the product with Part 2 .

(2) The information and documentation referred to in paragraph (1) must be in a language that can be easily understood by the enforcement authority.

(3) The importer must, at the request of the enforcement authority, co-operate with that authority on any action taken to eliminate the risks posed by a product that they or the manufacturer have placed on the market.

DISTRIBUTORS

Duty to act with due care

27. When making a product available on the market, a distributor must act with due care to ensure the conformity of that product with Part 2.

Making available on the market

28.—(1) Before making a product available on the market, a distributor must verify that—

- (a) the product—
 - (i) bears the CE marking;
 - (ii) is accompanied by the required documents;

- (iii) is accompanied by the instructions and safety information referred to in regulation 22 (instructions and safety information); and
- (b) the manufacturer has complied with the requirements of—
 - (i) regulation 13 (manufacturers duty to ensure products are marked); and
 - (ii) regulation 14 (duty to provide information); and
- (c) the importer has complied with the requirements of regulation 21 (importers duty to ensure that products are marked).

(2) For the purposes of this regulation “required documents” has the same meaning as in regulation 19(2) (requirements that must be satisfied before an importer places a product on the market).

Duty not to place a product on the market where a distributor suspects that it is not in conformity

29.—(1) Where a distributor considers or has reason to believe that a product is not in conformity with the essential requirements, the distributor must not place the product on to the market.

(2) Where a product presents a risk, the distributor must inform the manufacturer or importer, and the market surveillance authorities of that risk.

Storage and transport: Distributors

30. A distributor must ensure that, while a product is the distributor’s responsibility, its storage or transport conditions do not jeopardise its conformity with the essential requirements.

Duty to take action in respect of watercraft placed on the market which are considered not to be in conformity

31.—(1) A distributor who considers or has reason to believe that a product that the distributor has made available on the market is not in conformity with Part 2 must ensure that corrective measures necessary are taken to—

- (a) bring the product into conformity;
- (b) to withdraw the product from the Union market; or
- (c) recall it.

(2) Where the product presents a risk, the distributor must immediately inform the competent authorities of any other Member State in which the distributor has made the product available on the market of the risk, giving details of—

- (a) the reason or reasons why the product is not considered to be in conformity; and
- (b) any corrective measures taken.

Provision of information and co-operation: Distributors

32.—(1) A distributor must, following a reasoned request from an enforcement authority, provide it with all of the information and documentation necessary to demonstrate the conformity of the product with Part 2.

(2) The information and documentation referred to in paragraph (1) must be in a language that can be easily understood by the enforcement authority.

(3) The distributor must, at the request of the enforcement authority, co-operate with the authority on any action taken to eliminate the risks posed by a product that they have placed on the market.

IMPORTERS AND DISTRIBUTORS

Cases in which the obligations of manufacturers apply to importers and distributors

33. An importer or a distributor who—

- (a) places a product on the market under their own name or trademark; or
- (b) modifies a product already placed on the market in such a way that it may affect whether the product is in conformity with Part 2

will be treated as the manufacturer of that product for the purposes of these Regulations and they will need to comply with the obligations of a manufacturer set out in this Part.

MANUFACTURERS AND IMPORTERS

Monitoring

34.—(1) Where appropriate with regard to the risks presented by the product to the health and safety of consumers the manufacturer or the importer must carry out monitoring to protect the health and safety of consumers by—

- (a) carrying out sample testing of a product made available on the market;
- (b) investigate any complaint that a product is not in conformity with Part 2; and
- (c) keep a register of—
 - (i) complaints;
 - (ii) products that are not in conformity; and
 - (iii) the recall of any product.

(2) The manufacturer or the importer must keep distributors informed of monitoring carried out under this regulation.

(3) The manufacturer must keep an entry made in the register for a period of at least 10 years beginning on the day on which the obligation arose.

Translation of EU declaration of conformity

35.—(1) Before making a product available on the market, an economic operator must ensure that the EU declaration of conformity is prepared in, or translated into, the language required by the Member State in which it is to be made available on the market.

(2) Where the product is to be made available on the market in the United Kingdom, the language required is English.

PRIVATE IMPORTERS

Private importers

36.—(1) If a manufacturer has not complied with their obligations under this Part, a private importer must ensure, before putting a product into service, that—

- (a) the product has been designed and manufactured in accordance with the essential requirements; and
- (b) the obligations of the manufacturer under the following regulations have been met or carried out in relation to the product—
 - (i) regulation 9 (technical documentation and conformity assessment);
 - (ii) regulation 10 (EU declaration of conformity and CE marking);
 - (iii) regulation 11 (duty to retain technical documentation and EU declaration of conformity);

- (iv) regulation 22 (instructions and safety information); and
- (v) regulation 26 (provision of information and co-operation).

(2) Where the technical documentation is not available from the manufacturer, a private importer must have this documentation drawn up using appropriate expertise.

(3) The private importer must ensure that the name and postal address of the notified body that carried out the relevant conformity assessment procedure in relation to the product under regulation 9(1)(a) is marked on the product.

Identification of economic operators

37.—(1) An economic operator (“E”) who receives a request from the market surveillance authority before the end of the relevant period, must, within such period as the authority may specify, identify to the authority—

- (a) any economic operator who has supplied E with a product; and
- (b) any economic operator to whom E has supplied a product.

(2) The relevant period is—

- (a) for information under paragraph (1)(a), a period of 10 years beginning on the day on which E was supplied with the product;
- (b) for information under paragraph (1)(b) a period of 10 years beginning on the day on which E supplied the product.

Obligations on private importers to identify economic operators

38.—(1) A private importer who receives a request from the market surveillance authority before the end of the relevant period, must, within such period as the market surveillance authority may specify, identify to the market surveillance authority any economic operator who has supplied them with a product.

(2) The relevant period is a period of 10 years beginning on the day on which the private importer was supplied with a product.

AUTHORISED REPRESENTATIVES

Authorised representatives

39.—(1) A manufacturer may by written mandate, appoint a person established in the EU as their authorised representative to perform specified tasks on their behalf.

(2) A manufacturer who has appointed an authorised representative to perform on their behalf a task under these Regulations remains responsible for the proper performance of that task.

(3) The mandate must allow the authorised representative to do at least the following in relation to a product covered by the mandate—

- (a) keep a copy of—
 - (i) the EU declaration of conformity; and
 - (ii) the technical documentation referred to in regulation 9 (technical documentation and conformity assessment)

at the disposal of the enforcing authorities, for a period of 10 years beginning on the day on which the watercraft is placed on the market;

- (b) provide, following a reasoned request from a market surveillance authority, all of the information and documentation necessary to demonstrate the conformity of a product with the essential requirements; and
- (c) co-operate with the competent national authorities, upon their request, on any action to eliminate the risks posed by a watercraft covered by their mandate.

(4) The obligations laid down in regulation 8 (duty to ensure watercraft comply with essential requirements) and regulation 9 (technical documentation and conformity assessment) must not form part of an authorised representative's mandate.

(5) An authorised representative must comply with all the duties imposed on the manufacturer in relation to each obligation under these Regulations that the representative is appointed by the mandate to perform and accordingly—

- (a) as far as those duties are concerned, as well as the penalties for failure to comply with those duties, a reference in these Regulations to the manufacturer (except in this regulation) is to be taken as including a reference to the authorised representative; and
- (b) if the authorised representative contravenes or fails to comply with any of those duties, the authorised representative may be proceeded against as though the authorised representative were the manufacturer.

MISCELLANEOUS

Prohibition on improper use of CE marking

40.—(1) An economic operator must not affix the CE marking to a product unless—

- (a) the economic operator is the manufacturer; and
- (b) the conformity of the product with the essential requirements has been demonstrated by the relevant conformity assessment procedure.

(2) An economic operator must not affix to a product a marking, sign or inscription which is likely to mislead any other person as to the meaning or form of the CE marking.

(3) An economic operator must not affix to a product any other marking if the visibility, legibility and meaning of the CE marking would be impaired as a result.

PART 3

CONFORMITY OF THE PRODUCT AND CONFORMITY ASSESSMENT PROCEDURES

Presumption of conformity

41.—(1) A product which is in conformity with a harmonised standard (or part of such a standard) the reference to which has been published in the Official Journal of the European Union is to be presumed to be in conformity with the essential requirements covered by that standard (or that part of that standard).

(2) The presumption in paragraph (1) is rebuttable.

Applicable conformity assessment procedures

42. Before placing a product on the market the manufacturer must apply the conformity assessment procedures set out in the modules set out in Annex II of Decision 768/2008 and referred to in regulations 44 (design and construction) to 47 (noise emissions watercraft).

Duty to carry out the post construction assessment

43.—(1) Before putting a product into service a private importer must apply the procedure referred to in regulation 48 (post construction assessment) to that product if the manufacturer of the product has not already carried out the conformity assessment for the product concerned.

(2) A person must apply the procedure referred to in regulation 48 before putting into service or making available on the market—

- (a) a propulsion engine or watercraft which has had a major modification or conversion thereof; or
- (b) a watercraft which has had a change in its intended purpose so that it falls within scope of these Regulations.

(3) A person must apply the procedure referred to in regulation 48 before placing a watercraft built for own use onto the market if this placement is before the end of the five-year period beginning with the day on which the watercraft was put into service.

Design and Construction

44.—(1) With regard to the design and construction of recreational craft, the following conformity assessment procedures set out in Annex II of Decision 768/2008/EC apply—

- (a) for design categories A and B referred to in paragraph 1 of Part A of Schedule 1—
 - (i) for recreational craft of hull length from 2.5 metres to less than 12 metres, any of the following modules—
 - (aa) Module A1 (internal production control plus supervised product testing);
 - (bb) Module B (EU type-examination) together with Module C (conformity to type based on internal production control), Module D (conformity to type based on quality assurance of the production process), Module E (conformity to type based on quality product assurance) or Module F (conformity to type based on product verification);
 - (cc) Module G (conformity based on unit verification);
 - (dd) Module H (conformity based on full quality assurance);
 - (ii) for recreational craft of hull length from 12 metres to less than 24 metres, any of the following modules—
 - (aa) Module B (EU type-examination) together with Module C (conformity to type based on internal production control), Module D (conformity to type based on quality assurance of the production process), Module E (conformity to type based on quality product assurance) or Module F (conformity to type based on product verification);
 - (bb) Module G (conformity based on unit verification);
 - (cc) Module H (conformity based on full quality assurance);
- (b) for design category C referred to in paragraph 1 of Part A of Schedule 1—
 - (i) for recreational craft of hull length from 2.5 metres to less than 12 metres where the harmonised standards relating to paragraphs 3.2 and 3.3 of part 1 of Schedule 1 are complied with, any of the following modules—
 - (aa) Module A (internal production control);
 - (bb) Module A1 (internal production control plus supervised product testing);
 - (cc) Module B (EU type-examination together with Module C (conformity to type based on internal production control), Module D (conformity to type based on quality assurance of the production process), Module E (conformity to type based on quality product assurance) or Module F (conformity to type based on product verification);
 - (dd) Module G (conformity based on unit verification);
 - (ee) Module H (conformity based on full quality assurance);
 - (ii) for recreational craft of hull length from 2.5 metres to less than 12 metres where the harmonised standards relating to paragraphs 3.2 and 3.3 of Part A of Schedule 1 are not complied with, any of the following modules—
 - (aa) Module A1 (internal production control plus supervised testing);

- (bb) Module B (EU type-examination) together with Module C (conformity to type based on internal production control), Module D (conformity to type based on quality assurance of the production process), Module E (conformity to type based on quality product assurance) or Module F (conformity to type based on product verification);
 - (cc) Module G (conformity based on unit verification);
 - (dd) Module H (conformity based on full quality assurance);
- (iii) for recreational craft of hull length from 12 metres to 24 metres, any of the following modules—
- (aa) Module B (EU type-examination) together with Module C (conformity to type based on internal production control), Module D (conformity to type based on quality assurance of the production process), Module E (conformity to type based on quality product assurance) or Module F (conformity to type based on product verification);
 - (bb) Module G (conformity based on unit verification);
 - (cc) Module H (conformity based on full quality assurance);
- (c) for design category D referred to in paragraph 1 of Part A of Schedule 1 for recreational craft of hull length of 2.5 metres to 24 metres, any of the following modules—
- (i) Module A (internal production control);
 - (ii) Module A1 (internal production control plus supervised testing);
 - (iii) Module B (EU type-examination together with Module C (conformity to type based on internal production control), Module D (conformity to type based on quality assurance of the production process), Module E (conformity to type based on quality product assurance) or Module F (conformity to type based on product verification);
 - (iv) Module G (conformity based on unit verification);
 - (v) Module H (conformity based on full quality assurance).
- (2) With regard to the design and construction of personal watercraft, any of the following procedures set out in Annex II to Decision 768/2008/EC apply—
- (a) Module A (internal production control);
 - (b) Module A1 (internal production control plus supervised testing);
 - (c) Module B (EU type-examination together with Module C conformity to type based on internal production control), Module D (conformity to type based on quality assurance of the production process), Module E (conformity to type based on quality product assurance) or Module F (conformity to type based on product verification);
 - (d) Module G (conformity based on unit verification);
 - (e) Module H (conformity based on full quality assurance).
- (3) With regard to design and construction of components any of the following procedures set out in Annex II to Decision 768/2008/EC apply—
- (a) Module B (EU type-examination together with Module C conformity to type based on internal production control), Module D (conformity to type based on quality assurance of the production process), Module E (conformity to type based on quality product assurance) or Module F (conformity to type based on product verification);
 - (b) Module G (conformity based on unit verification);
 - (c) Module H (conformity based on full quality assurance).

Exhaust emissions

45.—(1) With regard to exhaust emissions, for products referred to in regulation 3(1)(d) and (e), the engine manufacturer must apply the following procedures set out in Annex II to Decision 768/2008/EC—

- (a) where the tests are conducted using the harmonised standard, any of the following modules—:
 - (i) Module B (EU type-examination together with Module C (conformity to type based on internal production control), Module D (conformity to type based on quality assurance of the production process), Module E (conformity to type based on quality product assurance) or Module F (conformity to type based on product verification);
 - (ii) Module G (conformity based on unit verification);
 - (iii) Module H (conformity based on full quality assurance);
- (b) where the tests are conducted without using the harmonised standard, any of the following modules:
 - (i) Module B (the EU type-examination) together with module C1 (conformity to type based on internal production control plus supervised product testing);
 - (ii) Module G (conformity based on unit verification).

Noise emissions: recreational craft

46.—(1) The manufacturer must apply the relevant procedures in paragraphs (2) to (4) as set out in Annex II to Decision 768/2008/EC with regard to the noise emissions for recreational craft with—

- (a) stern drive propulsion engines without integral exhausts or inboard propulsion engine installations; and
- (b) stern drive propulsion engines without integral exhausts or inboard propulsion engine installations which are subject to major craft conversion and are subsequently placed on the market within the period of 5 years from the day in which that conversion took place.

(2) Where tests are conducted using the harmonised standard for noise measurement, any of the following modules apply—

- (a) Module A1 (internal production plus supervised product testing);
- (b) Module G (conformity based on unit verification);
- (c) Module H (conformity based on full quality assurance).

(3) Where tests are conducted without using the harmonised standard for noise measurement, Module G (conformity based on unit verification) applies.

(4) Where the Froude number of power displacement ratio method is used for assessment, any of the following modules apply —

- (a) Module A (internal production control);
- (b) Module G (conformity based on unit verification);
- (c) Module H (conformity based on full quality assurance).

Noise emissions: personal watercraft

47. (1) The personal watercraft or engine manufacturer must apply the relevant procedure in paragraphs (2) to (3) as set out in Annex II to Decision 768/2008/EC, with regard to noise emissions for—

- (a) personal watercraft and outboard propulsion engines; and
- (b) stern drive propulsion engines with integral exhausts intended for installation on recreational craft.

(2) Where the tests are conducted using the harmonised standard for noise measurement, any of the following modules apply—

- (a) Module A1 (internal production control plus supervised product testing);
- (b) Module G (conformity based on unit verification);
- (c) Module H (conformity based on full quality assurance).

(3) Where the tests are conducted without using the harmonised standard for noise measurement, Module G (conformity based on unit verification) applies.

Requirements of the post-construction assessment

48. A post construction assessment must be carried out in accordance with the process set out in Schedule 5.

SUPPLEMENTARY REQUIREMENTS FOR CERTAIN CONFORMITY ASSESSMENTS

Conformity assessments carried out under Module B (EU-type examination)

49.—(1) Where an economic operator has a conformity assessment carried out on a product under Module B (EU-type examination) of Annex II to Decision 768/2008/EC in relation to a product, the conformity assessment must be carried out in the manner set out in Schedule 10.

(2) A production type may cover several versions of the assessed product, if—

- (a) the differences between the versions of the product do not affect the level of safety and the other requirements concerning the performance of the product; and
- (b) the different versions of the product are referred to in the corresponding EU-type examination certificate, if necessary, by means of amendments to the original certificate.

(3) For the purposes of this regulation—

“production type” means an examination of the adequacy of the technical design of the watercraft through examination of the technical documentation specified in paragraph 3 of Schedule 10 and a specimen watercraft that is representative of the completed watercraft that is to be or has been produced by the manufacturer.

Conformity assessments carried out under Module A1 (internal production control plus supervised product testing)

50. (1) Where an economic operator has a conformity assessment carried out on a product under Module A1 (internal production control plus supervised product testing) of Annex II to Decision 768/2008/EC—

- (a) the product checks must be carried out on at least one, but preferably several watercraft that are representative of the watercraft that is to be or has been produced by the manufacturer; and
- (b) the requirements set out in Schedule 6 apply.

(2) The possibility, referred to in modules A1 and C1 of Annex II of Decision 768/2008, of using an accredited in-house body to perform a conformity assessment under those modules is not applicable in relation to watercraft.

Conformity assessments carried out under Module F (conformity to type based on product verification)

51. Where an economic operator has a conformity assessment carried out on a product under Module F (conformity to type based on product verification) of Annex II to Decision 768/2008/EC, the procedure set out in Schedule 7 applies.

Conformity assessments carried out under Module C (conformity to type based on internal production control)

52.—(1) This regulation applies where —

- (a) an economic operator has a conformity assessment carried out on a watercraft under Module C (conformity to type based on internal production control) of Annex II of Decision 768/2008/EC;
- (b) module C is used to assess the conformity of the product with the exhaust emission requirements of the regulations; and
- (c) the manufacturer is not working under a relevant quality system as described in module H of Annex II to Decision 768/2008/EC.

(2) A notified body chosen by the manufacturer must carry out product checks as required by module C or have them carried out at random intervals to be determined by the notified body, in order to verify the quality of the internal checks on the product carried out under the manufacturer's own checking measures.

(3) When the quality level appears unsatisfactory or when it seems necessary to verify the validity of the data presented by the manufacturer, the procedure set out in Schedule 8 applies.

EU declaration of conformity

53. The EU declaration of conformity for a product must—

- (a) state that the product complies with the essential requirements;
- (b) contain the elements specified in regulations 44 to 47 for the relevant conformity assessment in respect of the product; and
- (c) be set out in accordance with the model structure set out in Schedule 4.

CE marking

54.—(1) The CE marking must be affixed visibly, legibly and indelibly to the product.

(2) Where it is not possible or warranted, on account of the nature of a component to affix the CE marking in accordance with paragraph (1), the CE marking must be affixed to—

- (a) the packaging; and
- (b) the accompanying documents.

(3) Where the product referred to in paragraph (1)—

- (a) is a watercraft, the CE marking must be affixed to the watercraft builder's plate and mounted separately from the watercraft identification number;
- (b) is a propulsion engine, the CE marking must be affixed on the engine.

(4) The CE marking must be followed by the identification number of the notified body where—

- (a) that body is involved in the production control phase of the conformity assessment under Modules A (internal production control), A1 (internal production control plus supervised product testing) or C (conformity to type based on internal production control) set out in Annex II of Decision 768/2008; or
- (b) where a post construction assessment set out in Schedule 5 of these Regulations is being used.

(5) The identification number of the notified body must be affixed—

- (a) by the notified body itself; or
- (b) under the instructions of the notified body by the manufacturer.

PART 4

NOTIFICATION OF CONFORMITY ASSESSMENT BODIES

Notified bodies

55. A notified body is a conformity assessment body which the Secretary of State has designated as a notified body in accordance with regulation 57 (designation of notified bodies) and notified to the European Commission and the other Member States as a notified body in accordance with regulation 60 (notification).

Right to perform the activities of a notified body

56. A notified body is able to perform the activities of a notified body set out in Schedule 11 (requirements for notified bodies) provided that no objections are raised by the European Commission or the other Member States—

- (a) within two weeks of a notification being made, where an accreditation certificate is used; or
- (b) within two months of a notification, where accreditation is not used.

Designation of notified bodies

57. The Secretary of State may designate a conformity assessment body as a notified body if—

- (a) the conformity assessment body has submitted an application in accordance with regulation 58 (application for designation as a notified body); and
- (b) the Secretary of State is satisfied that the conformity assessment body meets the requirements in Schedule 11 (requirements for notified bodies).

Application for designation as a notified body

58. When making an application to the Secretary of State for designation as a notified body, a conformity assessment body must ensure that the application is accompanied by—

- (a) a description of—
 - (i) the conformity assessment activities;
 - (ii) the conformity assessment modules set out in Annex II of Decision 768/2008; and
 - (iii) each product in relation to which that conformity assessment body claims to be competent;
- (b) an accreditation certificate issued by the United Kingdom Accreditation Service (a company limited by guarantee incorporated in England and Wales under number 03076190) attesting that the conformity assessment body fulfils the requirements in Schedule 11 (requirements for notified bodies); or
- (c) where an accreditation certificate is not available, documentary evidence necessary to allow the Secretary of State to verify, recognise and regularly monitor the conformity assessment body's compliance with the notified body requirements set out in Schedule 11.

Presumption of conformity of notified bodies

59.—(1) Where a conformity assessment body demonstrates its conformity with the criteria laid down in a harmonised standard (or part of such a standard), the reference of which has been published in the Official Journal of the European Union, the Secretary of State is to presume that the conformity assessment body meets the notified body requirements covered by that standard (or part of that standard).

- (2) The presumption in paragraph (1) is rebuttable.

Notification

60.—(1) The Secretary of State must notify the European Commission and the other Member States of any conformity assessment body that is designated as a notified body in accordance with regulation 57 (designation of notified bodies).

(2) A notification under paragraph (1) must include—

- (a) details of—
 - (i) the conformity assessment activities;
 - (ii) the conformity assessment modules; and
 - (iii) each product in relation to which that conformity assessment body claims to be competent;
- (b) an accreditation certificate issued by the United Kingdom Accreditation Service (a company limited by guarantee incorporated in England and Wales under number 03076190) attesting that the conformity assessment body fulfils the requirements in Schedule 11 (requirements for notified bodies); or
- (c) where a certificate is not available, documentary evidence which attests to—
 - (i) the conformity assessment body's competence; and
 - (ii) the arrangements in place to ensure that the conformity assessment body will be monitored regularly to ensure that it continues to satisfy the requirements in Schedule 11.

Monitoring of notified bodies

61. The Secretary of State must monitor each notified body with a view to verifying that the notified body—

- (a) continues to meet the notified body requirements set out in Schedule 11 (requirements for notified bodies);
- (b) complies with any condition to which its designation as a notified body by the Secretary of State is subject; and
- (c) carries out its functions in accordance with these Regulations.

Authorisation of the United Kingdom Accreditation Service

62. The Secretary of State may authorise the United Kingdom Accreditation Service (a company limited by guarantee incorporated in England and Wales under number 03076190) to carry out the following activities on behalf of the Secretary of State—

- (a) assessing applications for designation as a notified body made under regulation 58 (application for designation as a notified body); and
- (b) the monitoring of notified bodies required by regulation 61 (monitoring of notified bodies).

Changes to notifications

63.—(1) Where the Secretary of State determines that a notified body no longer meets the requirements in Schedule 11 (requirements for notified bodies) or that it is failing to fulfil its obligations under these Regulations, the Secretary of State must, as appropriate, restrict, suspend or withdraw the notification in respect of that notified body.

(2) When deciding whether to restrict, suspend or withdraw a notification under paragraph (1), the Secretary of State must have regard to the seriousness of the failure of the notified body to meet the notified body requirements set out in Schedule 11 or to fulfil its obligations under these Regulations.

(3) Where the Secretary of State takes action under paragraph (1), the Secretary of State must immediately inform the Commission and the other Member States.

(4) Where the Secretary of State has taken action under paragraph (1), or where the notified body has ceased its activity, the notified body must—

- (a) on the request of the Secretary of State, transfer its files (including the register which it maintains under paragraph 5 of Schedule 12 (operational obligations of notified bodies)) to another notified body or to the Secretary of State; or
- (b) ensure that its files are kept available for the Secretary of State and enforcing authorities for a period equal to that specified in paragraphs 5 and 6 of Schedule 12.

Operational requirements of notified bodies

64. When a notified body carries out a relevant conformity assessment procedure, it must do so in accordance with Schedule 12 (operational obligations of notified bodies).

Subsidiaries and contractors

65.—(1) Where a notified body subcontracts specific tasks connected with conformity assessment, or has such tasks carried out by a subsidiary, the tasks are only to be treated as having been carried out by a notified body for the purposes of regulations 44 to 47 where the conditions in paragraphs (2) and (3) are satisfied.

(2) The notified body must—

- (a) ensure that the subcontractor or subsidiary meets the notified body requirements; and
- (b) inform the Secretary of State accordingly.

(3) The notified body must have obtained the agreement of the client economic operator to the use of a subcontractor or subsidiary.

(4) Where a notified body subcontracts specific tasks connected with conformity assessment, or has such tasks carried out by a subsidiary, the notified body must, for a period of 10 years beginning on the day on which the tasks are carried out, keep at the disposal of the Secretary of State the documentation concerning—

- (a) the assessment of the qualifications of the subcontractor or the subsidiary; and
- (b) the conformity assessment activities carried out by the subcontractor or subsidiary.

(5) When monitoring a notified body in accordance with regulation 61 (monitoring of notified bodies), the Secretary of State must treat the notified body as responsible for the tasks performed by a subcontractor or subsidiary, wherever the subcontractor or subsidiary is established.

Appeal against a change to a notification

66.—(1) Where the Secretary of State intends to restrict, suspend or withdraw a notification in accordance with regulation 63 (changes to notifications) the Secretary of State must give notice in writing to the notified body concerned that its notification will be restricted, suspended or withdrawn.

(2) A written notice provided in accordance with paragraph (1) must—

- (a) state the date on which the notice is issued;
- (b) state of the reasons why the notification is being restricted, suspended or withdrawn;
- (c) state the date on which the restriction, suspension or withdrawal of the notification is to take effect;
- (d) where a notification has been restricted or suspended, state what the effect of that restriction or suspension is upon the notified body;
- (e) inform the notified body of its right to make representations to the Secretary of State, in writing, within 14 days of the date on the notice, against this decision.

(3) Where a notified body submits written representations to the Secretary of State, the Secretary of State will respond to those representations within 21 days of the date on which those representations are received, stating whether, having considered those representations, the notice issued under paragraph (1) will be modified or withdrawn.

Information to be provided by a notified body to the Secretary of State

67.—(1) A notified body must inform the Secretary of State in writing of—

- (a) any refusal, restriction, suspension or withdrawal of a conformity assessment certificate;
- (b) any circumstances affecting the scope of and conditions for notification; and
- (c) any request for information which the notified body has received from a market surveillance authority regarding conformity assessment activities.

(2) A notified body must, following a request from the Secretary of State, inform the Secretary of State in writing of any conformity assessment activities performed within the scope of their notification provided under paragraph (1) and any other activity performed, including cross-border activities and subcontracting.

(3) A notified body must provide to other notified bodies that carry out conformity assessment activities covering the same products any relevant information on issues relating to negative and, on request, positive conformity assessment results.

PART 5

MARKET SURVEILLANCE AND ENFORCEMENT

Designation of market surveillance authorities

68.—(1) The market surveillance authority is

- (a) within their area in Great Britain, the weights and measures authority; and
- (b) in Northern Ireland, every district council.

Enforcement

69.(1)The market surveillance authority must enforce these Regulations and RAMS (in its application to products covered by these Regulations).

(2) The Secretary of State, or a person appointed on behalf of the Secretary of State to act on behalf of the Secretary of State, may enforce these Regulations and RAMS (in its application to products covered by these Regulations).

(3) Before taking action under paragraph (2), the Secretary of State or the person appointed by the Secretary of State to act on the Secretary of State's behalf, must notify the relevant market surveillance authority.

(4) In Scotland, only the Lord Advocate may prosecute an offence under these Regulations.

Enforcement powers

70.—(1) These Regulations constitute safety provisions under section 27(1) of the 1987 Act and accordingly Schedule 13 of these Regulations has effect.

(2) In addition to the powers available to a market surveillance authority under paragraph (1) the market surveillance authority may use the powers set out in Schedule 14 (compliance, withdrawal and recall notices).

Evaluation of a product presenting a risk

71. Where the market surveillance authority has sufficient reason to believe that a product presents a risk, that authority must carry out an evaluation of that product in order to determine whether the product satisfies the requirements of Part 2 of these Regulations.

Enforcement action in respect of products that are not in conformity and which present a risk

72.—(1) Where in the course of the evaluation referred to in regulation 71 (evaluation of product presenting a risk), a market surveillance authority finds that the product does not comply with the requirements of Part 2 of these Regulations it must, without delay, require a relevant economic operator to—

- (a) take the appropriate corrective action to bring the product into conformity with those requirements within a prescribed period;
- (b) withdraw the product within such a period as the enforcement authority will prescribe; or
- (c) recall the product within the prescribed period.

(2) The market surveillance authority must inform the notified body that carried out the conformity assessment in relation to the product of—

- (a) the respect in which the product is not in conformity with Part 2 ; and
- (b) the actions which the market surveillance authority requires the relevant economic operator to take to bring the product into conformity with Part 2.

(3) Where the market surveillance authority considers that the failure of a product to conform with the requirements referred to in paragraph (1) is not restricted to products that have been placed or made available on the market in the United Kingdom, it must notify the Secretary of State of—

- (a) the results of the evaluation; and
- (b) the actions which it has required the economic operator to take under paragraph (2)(b).

(4) Where the Secretary of State receives notice from a market surveillance authority under paragraph (3), or otherwise considers that the failure of a product to conform with the requirements referred to in paragraph (1) is not restricted to the United Kingdom, the Secretary of State must inform the European Commission and the other Member States of—

- (a) the results of the evaluation; and
- (b) the actions which the market surveillance authority has required the economic operator to take under paragraph (2)(b).

(5) Where the relevant economic operator does not take adequate corrective action within the prescribed period, the market surveillance authority must take appropriate measures to—

- (a) prohibit or restrict the product being made available on the market in the United Kingdom;
- (b) withdraw the product from the United Kingdom market; or
- (c) recall the product.

(6) Where the market surveillance authority takes measures under paragraph (5), it must notify the Secretary of State of those measures without delay.

(7) Where the Secretary of State receives a notice under paragraph (6), or takes measures under paragraph (5), the Secretary of State must notify the European Commission and the other Member States without delay.

(8) The notices referred to in paragraphs (6) and (7) must include details about the product and, in particular—

- (a) the information necessary to identify the product that is not in conformity;

- (b) the origin of the product;
 - (c) the nature of—
 - (i) the failure of the product to conform with the requirements of Part 2 of these Regulations;
 - (ii) the alleged risk; and
 - (d) the corrective measures taken and their duration;
 - (e) the arguments put forward by the economic operator;
 - (f) whether the failure of the product to conform with the requirements of Part 2—
 - (i) the failure of the product to meet the requirements of that Part and Schedule 1 relating to risk; or
 - (ii) shortcomings in the harmonised standards referred to in regulation 41 (presumption of conformity) which confer a presumption of conformity.
- (9) In this regulation, “prescribed period” means a period which is—
- (a) prescribed by the market surveillance authority; and
 - (b) reasonable and commensurate with the nature of the risk presented by the product.

EU Safeguard procedure

73.—(1) Where another Member State has initiated the procedure under Article 44 of the Directive (as amended from time to time), the market surveillance authority must, without delay, inform the Secretary of State of—

- (a) Any measures taken by the market surveillance authority in respect of the product; and
- (b)

Any additional information which the market surveillance authority has at its disposal relating to the lack of conformity of the product.

(2) Where another Member State has initiated the procedure under Article 44 of the Directive (as amended from time to time), the Secretary of State must, without delay, inform the Commission and the other Member State of—

- (a) any measures taken by a market surveillance authority in respect of the product;
- (b) any additional information which an market surveillance authority has at its disposal relating to the lack of conformity with the product; and
- (c) any objections the Secretary of State may have to the measures taken by the Member State initiating the procedure.

(3) Where a measure taken by another Member State in respect of a product is considered justified under Article 44(7) of the Directive (as amended from time to time), the market surveillance authority must ensure that appropriate measures, such as withdrawal, are taken in respect of the product without delay.

(4) Where a measure taken by another Member State in respect of a product is considered justified by the Commission under Article 44(1) of the Directive (as amended from time to time), the market surveillance authority must take the necessary measures to ensure that the product is withdrawn from the market in Great Britain.

(5) Where the market surveillance authority has taken action under paragraphs (3) or (4), it must inform the Secretary of State.

(6) Where the Secretary of State receives a notice under paragraph (5), the Secretary of State must inform the Commission of the action taken.

(7) If a measure taken by the market surveillance authority pursuant to regulation 72 is considered unjustified by the Commission under Article 44(1) of the Directive (as amended from time to time), the market surveillance authority must withdraw that measure.

Enforcement action in respect of formal non-compliance

74.—(1) Where a market surveillance authority makes one of the following findings relating to a product—

- (a) the CE marking—
 - (i) CE marking has not been affixed; or
 - (ii) has been affixed in violation of regulation 40 (prohibition on improper use of CE marking) or regulation 54 (CE marking);
- (b) the EU declaration of conformity or the declaration referred to in Schedule 3—
 - (i) has not been drawn up; or
 - (ii) has not been drawn up correctly;
- (c) the technical documentation is either not available or is incomplete;
- (d) the information set out in regulation 14 (duty to provide information) and regulation 21 (importers duty to ensure products are marked) is absent, false or incomplete;
- (e) that there has been non-compliance with any other administrative requirement referred to —
 - (i) in the case of the manufacturer or their authorised representative in regulations 8 to 17;
 - (ii) in the case of the importer in regulations 18 to 26;
 - (iii) in the case of a distributor in regulations 27 to 32; and
 - (iv) in the case of a private importer in regulations 36 to 38

it must require the relevant economic operator or private importer to put an end to the non-compliance concerned within a specified period.

(2) Where the non-compliance referred to in paragraph (1) persists, the market surveillance authority must take appropriate measures to—

- (a) restrict or prohibit the product being made available on the market;
- (b) ensure that the product is recalled or withdrawn from the market; or
- (c) in the case of a product imported by a private importer for their own use, that that product is prohibited or restricted.

Restrictive measures

75. When enforcing these Regulations, a market surveillance authority must comply with the requirements of Article 21 of RAMS (as amended from time to time) in relation to any measure to—

- (a) prohibit or restrict a product from being made available on the EU market;
- (b) withdraw a product from the EU market; or
- (c) recall a product.

Offences

76.—(1) It is an offence for a person to contravene or fail to comply with any requirement of —

- (a) regulation 6;
- (b) regulations to 16;
- (c) regulation 17(3);
- (d) regulations 20 to 25;
- (e) regulation 26(3);
- (f) regulations 27 to 31;

- (g) regulation 32(3);
- (h) regulation 34;
- (i) regulation 36;
- (j) regulation 39(4) (b) or (c);, or
- (k) regulation 40.

(2) It is an offence for any person to contravene or fail to comply with any requirement of a withdrawal or recall notice served on that person by a market surveillance authority under these Regulations

(3)

Penalties

77.—(1) Any person who is guilty of an offence under regulation 76 (offences) is liable on summary conviction—

- (a) in England and Wales—
 - (i) to imprisonment for a term not exceeding 3 months;
 - (ii) a fine; or
 - (iii) to both.
- (b) in Scotland and Northern Ireland—
 - (i) to imprisonment for a term not exceeding 3 months; or
 - (ii) a fine not exceeding level 5 on the standard scale; or
 - (iii) to both.

Defence of due diligence

78.—(1) Subject to paragraph (2), (4) and (6), in proceedings for an offence under regulation 76 (offences) it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under paragraph (1) which involves a third party allegation unless P has—

- (a) served a notice in accordance with paragraph (3); or
- (b) obtained the leave of the court.

(3) The notice must—

- (a) give any information in P’s possession which identifies or assists in identifying the person who—
 - (i) committed the act or default; or
 - (ii) supplied the information on which P relied.
- (b) be served on the person bringing the proceedings not less than 7 clear days before—
 - (i) in England, Wales and Northern Ireland, the hearing of the proceedings;
 - (ii) in Scotland, the trial diet.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied upon the information, having regard in particular—

- (a) to the steps that P took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether P had any reason to disbelieve the information.

(5) In this regulation, “third party allegation” means an allegation that the commission of the offence was due—

- (a) to the act or default of another person; or
 - (b) to reliance on information supplied by another person.
- (6) This regulation does not apply in respect of proceedings for offences under regulation 77 (offences incurring a civil penalty).

Liability of persons other than the principal offender

79.—(1) Where the commission by one person (“X”) of an offence under these Regulations is due to anything which another person (“Y”) did or failed to do in the course of business, Y is guilty of an offence and may be proceeded against and punished, whether or not proceedings are taken against X.

(2) Where a body corporate is commits an offence, a “relevant person” is also guilty of the offence where the body corporate’s offence was committed—

- (a) with the consent or connivance of the relevant person; or
- (b)

as a result of the negligence of the relevant person

(3) In paragraph (2), “relevant person” means—

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b)

in relation to a body corporate managed by its members, a member of that body corporate performing managerial functions;

(c) in relation to a Scottish partnership, a partner; or

(d) a person purporting to act as a person described in sub-paragraphs (a), (b) or (c).

Service of documents

80.—(1) Any document required or authorised by these Regulations to be served on a person may be served by—

- (a) delivering it to that person in person;
- (b) leaving it at that person’s proper address; or
- (c) sending it by post or electronic means to that person’s proper address.

(2) In the case of a body corporate, a document may be served on a director of that body.

(3) In the case of a partnership, a document may be served on a partner or a person having control or management of the partnership business.

(4) For the purposes of this regulation, “proper address” means—

- (a) in the case of a body corporate or its director—
 - (i) the registered or principal office of that body; or
 - (ii) the email address of the secretary or clerk of that body;
- (b) in the case of a partnership, a partner or person having control or management of the partnership business—
 - (i) the principal office of the partnership; or
 - (ii) the email address of a partner or person having that control or management;
- (c) in any other case, a person’s last known address, which includes an email address.

(5) If a person to be served with a document has specified an address in the United Kingdom (other than that person’s proper address) at which that person or someone on that person’s behalf will accept service, that address must also be treated as that person’s proper address.

(6) In this regulation, “partnership” includes a Scottish partnership.

Recovery of expenses of enforcement

81.—(1) This regulation applies where a person commits an offence under regulation 76 (offences).

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person to reimburse the enforcement authority for any expenditure which the enforcement authority has incurred in investigating the offence.

Action by market surveillance authority

82.—(1) A market surveillance authority may take action which an economic operator could have been required to take by a notice served under these Regulations where the conditions for serving such a notice are met and either—

- (a) the market surveillance authority has been unable to identify any economic operator on whom to serve such a notice; or
- (b) the economic operator on whom such a notice has been served has failed to comply with it; or
- (c) a Scottish partnership on whom such a notice has been served has failed to comply with it.

(2) If the enforcement authority takes action as a result of the condition in paragraph (1)(b) or (1)(c) being met, the authority may recover from the economic operator, as a civil debt, any costs or expenses reasonably incurred by the enforcement authority in taking the action.

(3) A civil debt recoverable under paragraph (2) may be recovered summarily—

- (a) in England and Wales by way of a complaint pursuant to section 58 of the Magistrates' Courts Act 1980;
- (b) in Northern Ireland in proceedings under article 62 (debt proceedings) of the Magistrates Courts (Northern Ireland) Order 1981^(a).

(4) In this Regulation, “notice” means a notice served under Schedule 14.

Appeals against notices

83.—(1) An application for an order to vary or set aside the terms of a notice served under these Regulations may be made—

- (a) by the economic operator on whom the notice has been served; and
- (b) by a person having an interest in the product in respect of which the notice has been served, unless the notice is a recall notice.

(2) An application must be made before the end of the period of 21 days beginning with the day on which the notice was served.

(3) The appropriate court may only make an order setting aside a notice served under these Regulations if satisfied that the product to which the notice relates is in conformity with Part 2 and does not present a risk.

(4) On an application under paragraph (1) to vary the terms of a notice served under these Regulations, the appropriate court may vary the terms of the notice as it considers appropriate.

(5) In this regulation—

- (a) the “appropriate court” is to be determined in accordance with regulation 86 (appropriate court for appeals against notices); and
- (b) “notice” means any notice served in accordance with regulation 70 (enforcement powers)

(a) S.I. 1981/1675.

Appropriate court for appeals against notices

84.—(1) In England and Wales or Northern Ireland, the appropriate court for the purposes of regulation 83 (appeals against notices) is—

- (a) the court in which proceedings have been brought in relation to the product for an offence under regulation 76 (offences);
- (b) in any other case, a magistrates' court.

(2) In Scotland, the appropriate court for the purposes of regulation 83 is the sheriff of the sherriffdom in which the person making the appeal resides or has a registered principal office;

(3) A person aggrieved by an order made by a magistrates' court in England and Wales or Northern Ireland pursuant to an application under regulation 83 (appeals against notices), or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the crown court;
- (b) in Northern Ireland, to the county court.

Time limit for commencement of proceedings

85.—(1) Subject to paragraph (4), in England and Wales, an information relating to an offence under regulation 76 that is triable by a magistrates' court may be so tried if it is laid within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(2) Subject to paragraph (4), in Scotland—

- (a) summary proceedings for an offence under regulation 76 (offences) may be commenced before the end of 12 months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to the Lord Advocate's knowledge; and
- (b) section 136(3) of the Criminal Procedure (Scotland) Act 1995^(a) (time limit for certain offences) applies for the purpose of this paragraph as it applies for the purpose of that section.

(3) Subject to paragraph (4), in Northern Ireland, summary proceedings for an offence under regulation 76 may be instituted within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the knowledge of the prosecutor;

(4) No proceedings may be brought more than 3 years after the commission of the offence.

(5) For the purposes of this regulation a certificate of the prosecutor (or in Scotland, the Lord Advocate) as to the date on which the evidence referred to paragraphs (1), (2) or (3) came to light, is conclusive evidence.

Compensation

86.—(1) Where a market surveillance authority serves a relevant notice in respect of a product, the market surveillance authority is liable to pay compensation to a person having an interest in the product for any loss or damage suffered by reason of the notice if both of the conditions in paragraph (2) are met.

(2) The conditions are that—

- (a) the product in respect of which the relevant notice was served neither—
 - (i) presents a risk; nor
 - (ii) contravenes any requirement of these Regulations; and
- (b) the exercise of the power to serve the relevant notice was not attributable to neglect or default by a relevant economic operator.

(a) 1995 c.46.

(3) In this regulation, “relevant notice” means a notice served in accordance with Schedule 14.

PART 6 MISCELLANEOUS

Amendment to the Consumer Rights Act 2015

87. In paragraph 10 of Schedule 5 to the Consumer Rights Act 2015(a) at the appropriate place insert “regulation 70 of the Recreational Craft Regulations 2016;”.

Amendment to the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004

88.—(1) The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004 (b) is amended as follows—

(a)

in Schedule 1 (specified subordinate legislation)—

(i) for the words “The Recreational Craft Regulations 1996 insofar as not revoked by the Recreational Craft Regulations 2004” substitute “The Recreational Craft Regulations 2004 insofar as not revoked by the Recreational Craft Regulations 2016”; and

(ii)

after the above substitution, insert “The Recreational Craft Regulations 2016”.

Amendment to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007

89.—(1) The Legislative and Regulatory Reform (Regulatory Functions) Order 2007(c) is amended as follows.

(2) In Part 3 of the Schedule, under the heading “public health and safety” for the entry “The Recreational Craft Regulations 2004” substitute “The Recreational Craft Regulations 2016”.

Amendment to the Co-ordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009

90.—(1) The Co-ordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order(d) is amended as follows.

(2) In Part 4 of Schedule 1, for the entry “The Recreational Craft Regulations 2004” substitute “The Recreational Craft Regulations 2016”.

Review

91.—(1) The Secretary of State will from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(a) c.15.

(b) S.I. 2004/693. Regulation 3(a) inserts a reference to the Recreational Craft Regulations 2004 into the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004 . The purpose of this amendment is to substitute the reference to the 2004 regulations with a reference to the 2016 regulations.

(c) S.I. 2007/3544.

(d) S.I. 2009/699.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive is implemented in other member States.

(3) The report must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved by a system that imposes less regulation.

(4) The first report under this regulation must be published on or before [insert date] 2021.

(5) Reports under this regulation will be published at intervals not exceeding 5 years from the date in subsection (4).

Transitional provisions

92.—(1) Nothing in these Regulations prevents the making available on the market of a watercraft which—

- (a) is in conformity with the requirements of Directive 94/25/EC on the approximation of laws, regulations and administrative provisions of the Member States relating to recreational craft^(a); and
- (b) was placed on the market before the commencement date.

(2) Nothing in these Regulations prevents the making available on the market or the putting into service of outboard SI (Spark Ignition) propulsion engines with power equal to less than 15kW which comply with the stage 1 exhaust emission limits laid down in point 2.1 of Part B of Annex 1 of the Directive which were—

- (a) manufactured by small and medium-sized enterprises; and
- (b) placed on the market before 18th January 2020.

Revocations and savings

93.—(1) The Recreational Craft Regulations 1996^(b) are revoked save as regard their application to—

- (a) any watercraft that was placed on the market or put into service prior to 1st January 2005; and
- (b) the appointment or termination of appointment of any notified body for the purposes of those Regulations.

(2) The Recreational Craft Regulations 2004^(c) are revoked save as regards their application to—

- (a) any watercraft that was placed on the market or put into service prior to the commencement date; and
- (b) the appointment or termination of appointment of any notified body for the purposes of those Regulations.

Name
Parliamentary Under Secretary of State

(a) OJ No L 164, 30.6.1994, p.15.
(b) S.I. 1996/1353 (as amended by S.I. 1998/116).
(c) S.I. 2004/1464

Date

Department for Business, Energy and Industrial Strategy

SCHEDULE 1

(Annex 1 of the Directive)

Regulations 6 and 7

ESSENTIAL REQUIREMENTS

A. Essential requirements for the design and construction of products referred to in Article 2(1)

1. WATERCRAFT DESIGN CATEGORIES

Design category	Wind force (Beaufort scale)	Significant wave height (H 1/3, metres)
A	exceeding 8	exceeding 4
B	up to, and including, 8	up to, and including, 4
C	up to, and including, 6	up to, and including, 2
D	up to, and including, 4	up to, and including, 0,3

Explanatory notes:

- A. A recreational craft given design category A is considered to be designed for winds that may exceed wind force 8 (Beaufort scale) and significant wave height of 4 m and above but excluding abnormal conditions, such as storm, violent storm, hurricane, tornado and extreme sea conditions or rogue waves.
- B. A recreational craft given design category B is considered to be designed for a wind force up to, and including, 8 and significant wave height up to, and including, 4 m.
- C. A watercraft given design category C is considered to be designed for a wind force up to, and including, 6 and significant wave height up to, and including, 2 m.
- D. A watercraft given design category D is considered to be designed for a wind force up to, and including, 4 and significant wave height up to, and including, 0,3 m, with occasional waves of 0,5 m maximum height.

Watercraft in each design category must be designed and constructed to withstand the parameters in respect of stability, buoyancy, and other relevant essential requirements listed in this Annex, and to have good handling characteristics.

2. GENERAL REQUIREMENTS

2.1. Watercraft identification

Each watercraft shall be marked with an identification number including the following information:

- (1) country code of the manufacturer,
- (2) unique code of the manufacturer assigned by the national authority of the Member State,
- (3) unique serial number,
- (4) month and year of production,
- (5) model year.

Detailed requirements for the identification number referred to in the first paragraph are set out in the relevant harmonised standard.

2.2. Watercraft builder's plate

Each watercraft shall carry a permanently affixed plate mounted separately from the watercraft identification number, containing at least the following information:

- (a) manufacturer's name, registered trade name or registered trade mark, as well as contact address;

- (b) CE marking, as provided for in Article 18;
- (c) watercraft design category in accordance with Section 1;
- (d) manufacturer's maximum recommended load derived from point 3.6 excluding the weight of the contents of the fixed tanks when full;
- (e) number of persons recommended by the manufacturer for which the watercraft was designed.

In the case of post-construction assessment, the contact details and the requirements referred to in point (a) shall include those of the notified body which has carried out the conformity assessment.

2.3. **Protection from falling overboard and means of reboarding**

Watercraft shall be designed to minimise the risks of falling overboard and to facilitate reboarding. Means of reboarding shall be accessible to or deployable by a person in the water unaided.

2.4. **Visibility from the main steering position**

For recreational craft, the main steering position shall give the operator, under normal conditions of use (speed and load), good all-round visibility.

2.5. **Owner's manual**

Each product shall be provided with an owner's manual in accordance with Article 7(7) and Article 9(4). That manual shall provide all the information necessary for safe use of the product drawing particular attention to set up, maintenance, regular operation, prevention of risks and risk management.

3. INTEGRITY AND STRUCTURAL REQUIREMENTS

3.1. **Structure**

The choice and combination of materials and its construction shall ensure that the watercraft is strong enough in all respects. Special attention shall be paid to the design category in accordance with Section 1, and the manufacturer's maximum recommended load in accordance with point 3.6.

3.2. **Stability and freeboard**

The watercraft shall have sufficient stability and freeboard considering its design category in accordance with Section 1 and the manufacturer's maximum recommended load in accordance with point 3.6.

3.3. **Buoyancy and flotation**

The watercraft shall be constructed as to ensure that it has buoyancy characteristics appropriate to its design category in accordance with Section 1 and the manufacturer's maximum recommended load in accordance with point 3.6. All habitable multihull recreational craft susceptible of inversion shall have sufficient buoyancy to remain afloat in the inverted position.

Watercraft of less than 6 metres in length that are susceptible to swamping when used in their design category shall be provided with appropriate means of flotation in the swamped condition.

3.4. **Openings in hull, deck and superstructure**

Openings in hull, deck(s) and superstructure shall not impair the structural integrity of the watercraft or its weather tight integrity when closed.

Windows, port lights, doors and hatch covers shall withstand the water pressure likely to be encountered in their specific position, as well as point loads applied by the weight of persons moving on deck.

Through hull fittings designed to allow water passage into the hull or out of the hull, below the waterline corresponding to the manufacturer's maximum recommended load in accordance with point 3.6, shall be fitted with a means of shutoff which shall be readily accessible.

3.5. **Flooding**

All watercraft shall be designed so as to minimise the risk of sinking.

Where appropriate, particular attention shall be paid to:

- (a) cockpits and wells, which should be self-draining or have other means of keeping water out of the watercraft interior;
- (b) ventilation fittings;
- (c) removal of water by pumps or other means.

3.6. **Manufacturer's maximum recommended load**

The manufacturer's maximum recommended load (fuel, water, provisions, miscellaneous equipment and people (in kilograms)) for which the watercraft was designed, shall be determined in accordance with the design category (Section 1), stability and freeboard (point 3.2) and buoyancy and flotation (point 3.3).

3.7. **Life raft stowage**

All recreational craft of design categories A and B, and recreational craft of design categories C and D longer than 6 metres shall be provided with one or more stowage points for a life raft (life rafts) large enough to hold the number of persons the recreational craft was designed to carry as recommended by the manufacturer. Life raft stowage point(s) shall be readily accessible at all times.

3.8. **Escape**

All habitable multihull recreational craft susceptible of inversion shall be provided with viable means of escape in the event of inversion. Where there is a means of escape provided for use in the inverted position, it shall not compromise the structure (point 3.1), the stability (point 3.2) or buoyancy (point 3.3) whether the recreational craft is upright or inverted.

Every habitable recreational craft shall be provided with viable means of escape in the event of fire.

3.9. **Anchoring, mooring and towing**

All watercraft, taking into account their design category and their characteristics, shall be fitted with one or more strong points or other means capable of safely accepting anchoring, mooring and towing loads.

4. **HANDLING CHARACTERISTICS**

The manufacturer shall ensure that the handling characteristics of the watercraft are satisfactory with the most powerful propulsion engine for which the watercraft is designed and constructed. For all propulsion engines, the maximum rated engine power shall be declared in the owner's manual.

5. **INSTALLATION REQUIREMENTS**

5.1. **Engines and engine compartments**

5.1.1. *Inboard engine*

All inboard mounted engines shall be placed within an enclosure separated from living quarters and installed so as to minimise the risk of fires or spread of fires as well as hazards from toxic fumes, heat, noise or vibrations in the living quarters.

Engine parts and accessories that require frequent inspection and/or servicing shall be readily accessible.

The insulating materials inside the engine compartment shall not sustain combustion.

5.1.2. *Ventilation*

The engine compartment shall be ventilated. The ingress of water into the engine compartment through openings must be minimised.

5.1.3. *Exposed parts*

Unless the engine is protected by a cover or its own enclosure, exposed moving or hot parts of the engine that could cause personal injury shall be effectively shielded.

5.1.4. *Outboard propulsion engine starting*

Every outboard propulsion engine fitted on any watercraft shall have a device to prevent the engine being started in gear, except:

- (a) when the engine produces less than 500 Newton's (N) of static thrust;
- (b) when the engine has a throttle limiting device to limit thrust to 500 N at the time of starting the engine.

5.1.5. *Personal watercraft running without driver*

Personal watercraft shall be designed either with an automatic propulsion engine cut-off or with an automatic device to provide reduced speed, circular, forward movement when the driver dismounts deliberately or falls overboard.

5.1.6. Tiller-controlled outboard propulsion engines shall be equipped with an emergency stopping device which can be linked to the helmsman.

5.2. **Fuel system**

5.2.1. *General*

The filling, storage, venting and fuel-supply arrangements and installations shall be designed and installed so as to minimise the risk of fire and explosion.

5.2.2. *Fuel tanks*

Fuel tanks, lines and hoses shall be secured and separated or protected from any source of significant heat. The material the tanks are made of and their method of construction shall be in accordance with their capacity and the type of fuel.

Petrol fuel tank spaces shall be ventilated.

Petrol fuel tanks shall not form part of the hull and shall be:

- (a) protected against fire from any engine and from all other sources of ignition;
- (b) separated from living quarters.

Diesel fuel tanks may be integral with the hull.

5.3. **Electrical system**

Electrical systems shall be designed and installed so as to ensure proper operation of the watercraft under normal conditions of use and shall be such as to minimise risk of fire and electric shock.

All electrical circuits, except engine starting circuits supplied from batteries, shall remain safe when exposed to overload.

Electric propulsion circuits shall not interact with other circuits in such a way that either would fail to operate as intended.

Ventilation shall be provided to prevent the accumulation of explosive gases which might be emitted from batteries. Batteries shall be firmly secured and protected from ingress of water.

5.4. **Steering system**

5.4.1. *General*

Steering and propulsion control systems shall be designed, constructed and installed in order to allow the transmission of steering loads under foreseeable operating conditions.

5.4.2. *Emergency arrangements*

Every sailing recreational craft and single-propulsion engine non-sailing recreational craft with remote-controlled rudder steering systems shall be provided with emergency means of steering the recreational craft at reduced speed.

5.5. **Gas system**

Gas systems for domestic use shall be of the vapour-withdrawal type and shall be designed and installed so as to avoid leaks and the risk of explosion and be capable of being tested for leaks. Materials and components shall be suitable for the specific gas used to withstand the stresses and exposures found in the marine environment.

Each gas appliance intended by the manufacturer for the application for which it is used shall be so installed in accordance with the manufacturer's instructions. Each gas-consuming appliance must be supplied by a separate branch of the distribution system, and each appliance must be controlled by a separate closing device. Adequate ventilation must be provided to prevent hazards from leaks and products of combustion.

All watercraft with a permanently installed gas system shall be fitted with an enclosure to contain all gas cylinders. The enclosure shall be separated from the living quarters, accessible only from the outside and ventilated to the outside so that any escaping gas drains overboard.

In particular, any permanently installed gas system shall be tested after installation.

5.6. **Fire protection**

5.6.1. *General*

The type of equipment installed and the layout of the watercraft shall take account of the risk and spread of fire. Special attention shall be paid to the surroundings of open flame devices, hot areas or engines and auxiliary machines, oil and fuel overflows, uncovered oil and fuel pipes and routing of electrical wiring in particular away from heat sources and hot areas.

5.6.2. *Fire-fighting equipment*

Recreational craft shall be supplied with fire-fighting equipment appropriate to the fire hazard, or the position and capacity of fire-fighting equipment appropriate to the fire hazard shall be indicated. The craft shall not be put into service until the appropriate fire-fighting equipment is in place. Petrol engine compartments shall be protected by a fire extinguishing system that avoids the need to open the compartment in the event of fire. Where fitted, portable fire extinguishers shall be readily accessible and one shall be so positioned that it can easily be reached from the main steering position of the recreational craft.

5.7. **Navigation lights, shapes and sound signals**

Where navigation lights, shapes and sound signals are fitted, they shall comply with the 1972 COLREG (The International Regulations for Preventing Collisions at Sea) or CEVNI (European Code for Interior Navigations for inland waterways) Regulations as appropriate.

5.8. **Discharge prevention and installations facilitating the delivery ashore of waste**

Watercraft shall be constructed so as to prevent the accidental discharge of pollutants (oil, fuel, etc.) overboard.

Any toilet fitted in a recreational craft shall be connected solely to a holding tank system or water treatment system.

Recreational craft with installed holding tanks shall be fitted with a standard discharge connection to enable pipes of reception facilities to be connected with the recreational craft discharge pipeline.

In addition, any through-the-hull pipes for human waste shall be fitted with valves which are capable of being secured in the closed position.

B. Essential requirements for exhaust emissions from propulsion engines

Propulsion engines shall comply with the essential requirements for exhaust emissions set out in this Part.

1. PROPULSION ENGINE IDENTIFICATION

1.1. Each engine shall be clearly marked with the following information:

(a) engine manufacturer's name, registered trade name or registered trade mark and contact address; and, if applicable, the name and contact address of the person adapting the engine;

(b) engine type, engine family, if applicable;

(c) a unique engine serial number;

(d) CE marking, as provided for in Article 18.

1.2. The marks referred to in point 1.1 must be durable for the normal life of the engine and must be clearly legible and indelible. If labels or plates are used, they must be attached in such a manner that the fixing is durable for the normal life of the engine, and the labels/plates cannot be removed without destroying or defacing them.

1.3. The marks must be secured to an engine part necessary for normal engine operation and not normally requiring replacement during the engine life.

1.4. The marks must be located so as to be readily visible after the engine has been assembled with all the components necessary for engine operation.

2. EXHAUST EMISSION REQUIREMENTS

Propulsion engines shall be designed, constructed and assembled so that when correctly installed and in normal use, emissions shall not exceed the limit values obtained from point 2.1, Table 1 and point 2.2, Tables 2 and 3:

2.1. Values applying for the purposes of Article 55(2) and Table 2 of point 2.2:

Table 1

Type	Carbon monoxide $CO = A + B/P_N^n$			Hydrocarbons $HC = A + B/P_N^n$			Nitrogen oxides NO_x	Particulates PT
	A	B	n	A	B	n		
Two-stroke spark ignition	150,0	600,0	1,0	30,0	100,0	0,75	10,0	Not applicable
Four-stroke spark ignition	150,0	600,0	1,0	6,0	50,0	0,75	15,0	Not applicable
Compression ignition	5,0	0	0	1,5	2,0	0,5	9,8	1,0

Where A, B and n are constants in accordance with the table, P_N is the rated engine power in kW.

2.2. Values applying from 18 January 2016:

Table 2

Exhaust emission limits for compression ignition (CI) engines ()**

Swept Volume SV (L/cyl)	Rated Engine Power P_N (kW)	Particulates PT (g/kWh)	Hydrocarbons + Nitrogen Oxides HC + NO _x (g/kWh)
SV < 0,9	$P_N < 37$	The values referred to in table 1	
	$37 \leq P_N < 75$ (*)	0,30	4,7
	$75 \leq P_N < 3\,700$	0,15	5,8
0,9 ≤ SV < 1,2	$P_N < 3\,700$	0,14	5,8
1,2 ≤ SV < 2,5		0,12	5,8
2,5 ≤ SV < 3,5		0,12	5,8
3,5 ≤ SV < 7,0		0,11	5,8

(*) Alternatively, compression-ignition engines with rated engine power at or above 37 kW and below 75 kW and with a swept volume below 0,9 L/cyl shall not exceed a PT emission limit of 0,20 g/kWh and a combined HC + NO_x emission limit of 5,8 g/kWh.

(**) Any compression-ignition engine shall not exceed a Carbon monoxide (CO) emission limit of 5,0 g/kWh.

Table 3

Exhaust emission limits for spark ignition (SI) engines

Type of engine	Rated Engine Power P_N (kW)	Carbon monoxide CO (g/kWh)	Hydrocarbons + Nitrogen Oxides HC + NO _x (g/kWh)
Stern-drive and inboard engines	$P_N \leq 373$	75	5
	$373 < P_N \leq 485$	350	16
	$P_N > 485$	350	22
Outboard engines and PWC engines	$P_N \leq 4,3$	$500 - (5,0 \times P_N)$	30
	$4,3 < P_N \leq 40$	$500 - (5,0 \times P_N)$	$15,7 + \left(\frac{50}{P_N^{0,9}} \right)$
	$P_N > 40$	300	$15,7 + \left(\frac{50}{P_N^{0,9}} \right)$

2.3. Test cycles:

Test cycles and weighting factors to be applied:

The following requirements of ISO standard 8178-4:2007 shall be used, taking into account the values set out in the table below.

For variable speed CI engines test cycle E1 or E5 shall be applied or alternatively, above 130 kW, test cycle E3 may be applied. For variable speed SI engines test cycle E4 shall be applied.

Cycle E1, Mode number	1	2	3	4	5
Speed	Rated speed		Intermediate speed		Low-idle speed
Torque, %	100	75	75	50	0
Weighting factor	0,08	0,11	0,19	0,32	0,3
Speed	Rated speed		Intermediate speed		Low-idle speed
Cycle E3, Mode number	1	2	3	4	
Speed, %	100	91	80	63	
Power, %	100	75	50	25	
Weighting factor	0,2	0,5	0,15	0,15	
Cycle E4, Mode number	1	2	3	4	5
Speed, %	100	80	60	40	Idle
Torque, %	100	71,6	46,5	25,3	0
Weighting factor	0,06	0,14	0,15	0,25	0,40
Cycle E5, Mode number	1	2	3	4	5
Speed, %	100	91	80	63	Idle
Power, %	100	75	50	25	0
Weighting factor	0,08	0,13	0,17	0,32	0,3

Notified bodies may accept tests carried out on the basis of other tests cycles as specified in a harmonised standard and as applicable for the engine duty cycle.

2.4. Application of the propulsion engine family and choice of parent propulsion engine

The engine manufacturer shall be responsible for defining those engines from his range which are to be included in an engine family.

A parent engine shall be selected from an engine family in such a way that its emissions characteristics are representative for all engines in that engine family. The engine incorporating those features that are expected to result in the highest specific emissions (expressed in g/kWh), when measured on the applicable test cycle, should normally be selected as the parent engine of the family.

2.5. Test fuels

The test fuel used for exhaust emission testing shall meet the following characteristics:

Petrol Fuels

Property	RF-02-99 Unleaded		RF-02-03 Unleaded	
	min	max	min	max
Research Octane Number (RON)	95	—	95	—
Motor Octane Number (MON)	85	—	85	—
Density at 15 °C (kg/m ³)	748	762	740	754
Initial boiling point (°C)	24	40	24	40
Mass fraction of sulphur (mg/kg)	—	100	—	10

Petrol Fuels				
Property	RF-02-99 Unleaded		RF-02-03 Unleaded	
	min	max	min	max
Lead content (mg/l)	—	5	—	5
Reid vapour pressure (kPa)	56	60	—	—
Vapour pressure (DVPE) (kPa)	—	—	56	60

Diesel Fuels				
Property	RF-06-99		RF-06-03	
	min	max	min	max
Cetane number	52	54	52	54
Density at 15 °C (kg/m ³)	833	837	833	837
Final boiling point (°C)	—	370	—	370
Flash point (°C)	55	—	55	—
Mass fraction of sulphur (mg/kg)	To be reported	300 (50)	—	10
Mass fraction of ash (%)	To be reported	0,01	—	0,01

Notified bodies may accept tests carried out on the basis of other tests fuel as specified in a harmonised standard.

3. DURABILITY

The manufacturer of the engine shall supply engine installation and maintenance instructions, which if applied should mean that the engine in normal use will continue to comply with the limits set out in points 2.1 and 2.2 throughout the normal life of the engine and under normal conditions of use.

This information shall be obtained by the engine manufacturer by use of prior endurance testing, based on normal operating cycles, and by calculation of component fatigue so that the necessary maintenance instructions may be prepared by the manufacturer and issued with all new engines when first placed on the market.

The normal life of the engine is as follows:

- (a) For CI engines: 480 hours of operation or 10 years, whichever occurs first;
- (b) For SI inboard or stern drive engines with or without integral exhaust:
 - (i) for the engine category $P_N \leq 373$ kW: 480 hours of operation or 10 years, whichever occurs first,
 - (ii) for engines in the category $373 < P_N \leq 485$ kW: 150 hours of operation or three years, whichever occurs first,
 - (iii) for the engine category $P_N > 485$ kW: 50 hours of operation or one year, whichever occurs first;
- (c) personal watercraft engines: 350 hours of operation or five years, whichever occurs first;
- (d) outboard engines: 350 hours of operation or 10 years, whichever occurs first

4. OWNER'S MANUAL

Each engine shall be provided with an owner's manual in a language or languages which can be easily understood by consumers and other end-users, as determined by the Member State in which the engine is to be marketed.

The owner's manual shall:

- (a) provide instructions for the installation, use and maintenance needed to assure the proper functioning of the engine to meet the requirements of Section 3 (Durability);
- (b) specify the power of the engine when measured in accordance with the harmonised standard.

C. Essential requirements for noise emissions

Recreational craft with inboard or stern drive engines without integral exhaust, personal watercraft and outboard engines and stern drive engines with integral exhaust shall comply with the essential requirements for noise emissions set out in this Part.

1. NOISE EMISSION LEVELS

- 1.1. Recreational craft with inboard or stern drive engines without integral exhaust, personal watercraft and outboard engines and stern drive engines with integral exhaust shall be designed, constructed and assembled so that noise emissions shall not exceed the limit values in the following table:

Rated Engine Power (single engine) in kW	Maximum Sound Pressure Level = L_{pASmax} in dB
$P_N \leq 10$	67
$10 < P_N \leq 40$	72
$P_N > 40$	75

where P_N = rated engine power in kW of a single engine at rated speed and L_{pASmax} = maximum sound pressure level in dB.

For twin-engine and multiple-engine units of all engine types an allowance of 3 dB may be applied.

- 1.2. As an alternative to sound measurement tests, recreational craft with inboard engine configuration or stern drive engine configuration, without integral exhaust, shall be deemed to comply with the noise requirements set out in point 1.1 if they have a Froude number of $\leq 1,1$ and a Power to Displacement ratio of ≤ 40 and where the engine and exhaust system are installed in accordance with the engine manufacturer's specifications.
- 1.3. 'Froude number' F_n shall be calculated by dividing the maximum recreational craft speed V (m/s) by the square root of the waterline length lwl (m) multiplied by a given gravitational acceleration constant, g , of $9,8 \text{ m/s}^2$.

$$F_n = \frac{V}{\sqrt{(g \cdot lwl)}}$$

'Power to Displacement ratio' shall be calculated by dividing the rated engine power P_N (in kW) by the recreational craft's displacement D (in tonnes)

$$\text{Power to Displacement ratio} = \frac{P_N}{D}$$

2. OWNER'S MANUAL

For recreational craft with inboard engine or stern drive engines without integral exhaust and personal watercraft, the owner's manual required under point 2.5 of Part A, shall include information necessary to maintain the recreational craft and exhaust system in a condition that, insofar as is practicable, will ensure compliance with the specified noise limit values when in normal use.

For outboard engines and stern drive engines with integral exhaust, the owner's manual required under Section 4 of Part B shall provide the instructions necessary to maintain the engine in a condition, that insofar as is practicable, will ensure compliance with the specified noise limit values when in normal use.

3. DURABILITY

The provisions on the durability in Section 3 of Part B shall apply mutatis mutandis to the compliance with the requirements on noise emissions set out in Section 1 of this part.

SCHEDULE 2
(Annex II of the Directive)

Regulation 3

COMPONENTS OF WATERCRAFT

- (1) Ignition-protected equipment for inboard and stern drive petrol engines and petrol tank spaces;
- (2) Start-in-gear protection devices for outboard engines;
- (3) Steering wheels, steering mechanisms and cable assemblies;
- (4) Fuel tanks intended for fixed installations and fuel hoses;
- (5) Prefabricated hatches, and port lights.

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SCHEDULE 3

Regulation XX

(Annex III of the Directive)

DECLARATION BY THE MANUFACTURER OR THE IMPORTER OF THE PARTLY COMPLETED WATERCRAFT (ARTICLE 6(2))

The declaration by the manufacturer or the importer established in the Union referred to in Article 6(2) shall contain the following:

- (a) the name and address of the manufacturer;
- (b) the name and address of the representative of the manufacturer established in the Union or, if appropriate, of the person responsible for the placing on the market;
- (c) a description of the partly completed watercraft;
- (d) a statement that the partly completed watercraft complies with the essential requirements that apply at this stage of construction; this shall include references to the relevant harmonised standards used, or references to the specifications in relation to which compliance is declared at this stage of construction; furthermore, it is intended to be completed by other legal or natural persons in full compliance with this Directive.

SCHEDULE 4

Regulations 10 and 53

(Annex IV of the Directive)

EU DECLARATION OF CONFORMITY No xxxxx

1. No xxxxx (Product: product, batch, type, or serial number):
2. Name and address of the manufacturer or his authorised representative [The authorised representative must also give the business name and address of the manufacturer] or the private importer.
3. This declaration of conformity is issued under the sole responsibility of the manufacturer or the private importer or the person referred to in Article 19(3) or (4) of Directive 2013/53/EU.
4. Object of the declaration (identification of product allowing traceability. It may include a photograph, where appropriate):
5. The object of the declaration described in point 4 is in conformity with the relevant Union harmonisation legislation:
6. References to the relevant harmonised standards used or references to the other technical specifications in relation to which conformity is declared:
7. Where applicable, the notified body ... (name, number) performed ... (description of intervention) and issued the certificate:
8. Identification of the person empowered to sign on behalf of the manufacturer or his authorised representative
9. Additional information:

The EU declaration of conformity shall include a statement of the propulsion engine manufacturer and that of the person adapting an engine in accordance with points (b) and (c) of Article 6(4) that:

- (a) when installed in a watercraft, in accordance with the installation instructions accompanying the engine, the engine will meet:
 - (i) the exhaust emission requirements of this Directive;
 - (ii) the limits of Directive 97/68/EC as regards engines type-approved in accordance with Directive 97/68/EC which are in compliance with stage III A, stage III B or stage IV emission limits for CI engines used in other applications than propulsion of inland waterway vessels, locomotives and railcars, as provided for in point 4.1.2 of Annex I to that Directive; or
 - (iii) the limits of Regulation (EC) No 595/2009 as regards engines type-approved in accordance with that Regulation.

The engine must not be put into service until the watercraft into which it is to be installed has been declared in conformity, if so required, with the relevant provision of this Directive.

If the engine has been placed on the market during the additional transitional period provided for in Article 55(2), the EU declaration of conformity shall contain an indication thereof.

Signed for and on behalf of:

(place and date of issue)

(name, function) (signature)

(Annex V of the Directive)

EQUIVALENT CONFORMITY BASED ON POST-CONSTRUCTION ASSESSMENT (MODULE PCA)

1. Conformity based on post-construction assessment is the procedure to assess the equivalent conformity of a product for which the manufacturer has not assumed the responsibility for the product's conformity with this Directive, and whereby a natural or legal person referred to in Article 19(2), (3) or (4) who is placing the product on the market or putting it into service under his own responsibility is assuming the responsibility for the equivalent conformity of the product. This person shall fulfill the obligations laid down in points 2 and 4 and ensure and declare on his sole responsibility that the product concerned, which has been subject to the provisions of point 3, is in conformity with the applicable requirements of this Directive.
2. The person who is placing the product on the market or putting it into service shall lodge an application for a post-construction assessment of the product with a notified body and must provide the notified body with the documents and technical file enabling the notified body to assess the conformity of the product with the requirements of this Directive and any available information on the use of the product after its first putting into service.

The person who is placing such a product on the market or putting it into service shall keep these documents and information at the disposal of the relevant national authorities for 10 years after the product has been assessed on its equivalent conformity in accordance with the post-construction assessment procedure.

3. The notified body shall examine the individual product and carry out calculations, tests and other assessments, to the extent necessary to ensure that the equivalent conformity of the product with the relevant requirements of this Directive is demonstrated.

The notified body shall draw up and issue a certificate and a related report of conformity concerning the assessment carried out and shall keep a copy of the certificate and related report of conformity at the disposal of the national authorities for 10 years after it has issued these documents.

The notified body shall affix its identification number next to the CE marking on the approved product or have it affixed under its responsibility.

In case the assessed product is a watercraft, the notified body shall also have affixed, under his responsibility, the watercraft identification number as referred to in point 2.1 of Part A of Annex I, whereby the field for the country code of the manufacturer shall be used to indicate the country of establishment of the notified body and the fields for the unique code of the manufacturer assigned by the national authority of the Member State to indicate the post-construction assessment identification code assigned to the notified body, followed by the serial number of the post-construction assessment certificate. The fields in the watercraft identification number for the month and year of production and for the model year shall be used to indicate the month and year of the post-construction assessment.

4. CE marking and EU declaration of conformity
 - 4.1. The person who is placing the product on the market or putting it into service shall affix the CE marking and, under the responsibility of the notified body referred to in Section 3, the latter's identification number to the product for which the notified body has assessed and certified its equivalent conformity with the relevant requirements of this Directive.
 - 4.2. The person who is placing the product on the market or putting it into service shall draw up an EU declaration of conformity and keep it at the disposal of the national authorities for 10 years after the date the post-construction assessment certificate has been issued. The declaration of conformity shall identify the product for which it has been drawn up.

A copy of the EU declaration of conformity shall be made available to the relevant authorities upon request.

- 4.3. In the case the assessed product is a watercraft, the person who is placing the watercraft on the market or putting it into service shall affix to the watercraft the builder's plate described in point 2.2 of Part A of Annex I, which shall include the words 'post-construction assessment', and the watercraft identification number described in point 2.1 of Part A of Annex I, in accordance with the provisions set out in Section 3.
5. The notified body shall inform the person who is placing the product on the market or putting it into service of his obligations under this post-construction assessment procedure.

SCHEDULE 6

Regulation 49

(Annex VI of the Directive)

SUPPLEMENTARY REQUIREMENTS WHEN INTERNAL PRODUCTION CONTROL PLUS SUPERVISED PRODUCTION TESTS SET OUT IN MODULE A1 IS USED (ARTICLE 24(2))

Design and construction

On one or several watercrafts representing the production of the manufacturer one or more of the following tests, equivalent calculation or control shall be carried out by the manufacturer or on his behalf:

- (a) test of stability in accordance with point 3.2 of Part A of Annex I;
- (b) test of buoyancy characteristics in accordance with point 3.3 of Part A of Annex I.

Noise emissions

For recreational craft fitted with inboard or stern drive engines without integral exhaust and for personal watercraft, on one or several watercraft representing the production of the watercraft manufacturer, the sound emission tests defined in Part C of Annex I shall be carried out by the watercraft manufacturer, or on his behalf, under the responsibility of a notified body chosen by the manufacturer.

For outboard engines and stern drive engines with integral exhaust, on one or several engines of each engine family representing the production of the engine manufacturer, the sound emission tests defined in Part C of Annex I shall be carried out by the engine manufacturer, or on his behalf, under the responsibility of a notified body chosen by the manufacturer.

Where more than one engine of an engine family is tested, the statistical method described in Annex VII shall be applied to ensure conformity of the sample.

SCHEDULE 7

Regulations 45 to 47

(Annex VII of the Directive)

CONFORMITY OF PRODUCTION ASSESSMENT FOR EXHAUST AND NOISE EMISSIONS

1. For verifying the conformity of an engine family, a sample of engines shall be taken from the series. The manufacturer shall decide the size (n) of the sample, in agreement with the notified body.
2. The arithmetical mean X of the results obtained from the sample shall be calculated for each regulated component of the exhaust and noise emission. The production of the series shall be deemed to conform to the requirements ('pass decision') if the following condition is met:

$$X + k \cdot S \leq L$$

S is standard deviation, where:

$$S^2 = \sum (x - X)^2 / (n - 1)$$

X = the arithmetical mean of the results obtained from the sample

x = the individual results obtained from the sample

L = the appropriate limit value

n = the number of engines in the sample

k = statistical factor depending on n (see table below)

n	2	3	4	5	6	7	8	9	10
k	0,973	0,613	0,489	0,421	0,376	0,342	0,317	0,296	0,279
n	11	12	13	14	15	16	17	18	19
k	0,265	0,253	0,242	0,233	0,224	0,216	0,210	0,203	0,198

If $n \geq 20$ then $k = 0,860/\sqrt{n}$.

SCHEDULE 8

Regulation 52

(Annex VIII of the Directive)

SUPPLEMENTARY PROCEDURE TO BE APPLIED UNDER CONFORMITY TO TYPE BASED ON INTERNAL PRODUCTION CONTROL (MODULE C)

In the cases referred to in Article 24(5) when the quality level appears unsatisfactory, the following procedure shall apply:

An engine is taken from the series and subjected to the test described in Part B of Annex I. Test engines shall have been run in, partially or completely, in accordance with the manufacturer's specifications. If the specific exhaust emissions of the engine taken from the series exceed the limit values in accordance with Part B of Annex I, the manufacturer may ask for measurements to be done on a sample of engines taken from the series and including the engine originally taken. To ensure the conformity of the sample of engines with the requirements of this Directive, the statistical method described in Annex VII shall be applied.

SCHEDULE 9

Regulation 9

(Annex IX of the Directive)

TECHNICAL DOCUMENTATION

The technical documentation referred to in Article 7(2) and Article 25 shall, as far as it is relevant for the assessment, contain the following:

- (a) A general description of the type;
 - (b) Conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, and other relevant data;
 - (c) Descriptions and explanations necessary for the understanding of said drawings and schemes and the operation of the product;
 - (d) A list of the standards referred to in Article 14, applied in full or in part, and descriptions of the solutions adopted to fulfil the essential requirements when the standards referred to in Article 14 have not been applied;
 - (e) Results of design calculations made, examinations carried out and other relevant data;
 - (f) Test reports, or calculations namely on stability in accordance with point 3.2 of Part A of Annex I and on buoyancy in accordance with point 3.3 of Part A of Annex I;
 - (g) Exhaust emissions test reports demonstrating compliance with Section 2 of Part B of Annex I;
 - (h) Sound emissions test reports demonstrating compliance with Section 1 of Part C of Annex I.
-

SCHEDULE 10

Regulation 49

EU-type examination

1. For the purposes of regulation 40, the conformity assessment carried out in accordance with Module B will be carried out in the manner set out in paragraphs 2, 3 and 4.

2. The conformity assessment must include an assessment of the adequacy of the technical design of the watercraft through examination of the technical documentation specified in paragraph 3, plus examination of specimens, representative of the production envisaged, of one or more critical parts of the watercraft (combination of production type and design type).

3. The conformity assessment must include an assessment of the adequacy of the following technical documentation—

- (a) conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.
- (b) descriptions and explanations necessary for the understanding of those drawings and schemes and the operation of the watercraft
- (c) a list of the harmonised standards and/or other relevant technical specifications the references of which have been published in the *Official Journal of the European Union*, applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements of the legislative instrument where those harmonised standards have not been applied. In the event of partly applied harmonised standards, the technical documentation shall specify the parts which have been applied
- (d) results of design calculations made, examinations carried out, etc.; and
- (e) test reports
- (f) the supporting evidence for the adequacy of the technical design solution. This supporting evidence shall mention any documents that have been used, in particular where the relevant harmonised standards and/or technical specifications have not been applied in full. The supporting evidence shall include, where necessary, the results of tests carried out by the appropriate laboratory of the manufacturer, or by another testing laboratory on his behalf and under his responsibility.

4. The technical documentation must include a general description of the watercraft.

Requirements of notified bodies

1. A conformity assessment body must be established under national law and have legal personality.

2. A conformity assessment body must be a third-party body independent of the organisation or the watercraft it assesses.

3. A body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of products which it assesses may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered such a body.

4. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment must not be the—

- (a) designer;
- (b) manufacturer;
- (c) supplier;
- (d) installer;
- (e) purchaser;
- (f) owner;
- (g) user; or
- (h) maintainer

of the watercraft which the conformity assessment body assesses, nor the representative body of any of these persons.

5. Nothing in paragraph 4 of this schedule will preclude the use of assessed products that are necessary for the operations of the conformity assessment body or the use of such products for personal purposes.

6. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment must not be directly involved in the—

- (a) design or manufacture;
- (b) marketing;
- (c) installation;
- (d) use of maintenance

of the watercraft, or represent the persons engaged in those activities.

7. A conformity assessment body must not engage in any activity, including consultancy services that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified.

8. Conformity assessment bodies will ensure that the activities of their subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.

9. Conformity assessment bodies and their personnel will carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and will be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in the results of those activities.

10. A conformity assessment body must be capable of carrying out the conformity assessment tasks assigned to it by regulation 42 (applicable conformity assessment procedures) to 52 (conformity assessments carried out under module C (conformity to type based on internal production control)) and in relation to which it has been notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its responsibility.

11. At all times and for each conformity assessment procedure and each kind or category of products in relation to which it has been notified, a conformity assessment body must have at its disposal, the necessary—

- (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment activities;
- (b) descriptions of procedures in accordance with which conformity assessment is carried out ensuring the transparency and ability of reproduction of those procedures;
- (c) policies and procedures in place to distinguish between tasks that it carries out as a notified body and other activities;
- (d) procedures for the performance of activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the technology of the watercraft in question and the mass or serial nature of the production process; and
- (e) means to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and must have access to all necessary equipment and facilities to perform these activities.

12. The personnel responsible for carrying out the conformity assessment activities must have—

- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
- (b) satisfactory knowledge of the requirements of the assessments that they carry out and adequate authority to carry out those assessments

Operational requirements of notified bodies

1. Notified bodies must carry out conformity assessments in accordance with the conformity assessment procedures provided for in regulations 42 (applicable conformity assessment procedures) to 52 (conformity assessments carried out under module C (conformity to type based on internal production control)).

2. Conformity assessments must be carried out in a proportionate manner, avoiding unnecessary burdens for economic operators and private importers. Conformity assessment bodies must perform their activities taking due account of the size of an undertaking the sector in which it operates, its structure, the degree of complexity of the watercraft technology in question and the mass or serial nature of the production process.

3. Conformity assessment bodies must respect the degree of rigour and level of protection required for the compliance of the watercraft with the Directive.

4. Where a notified body finds that the requirements of regulation 6 (essential requirements) and Schedule 1 or the corresponding harmonised standards have not been met by the manufacturer or a private importer, that body will require that manufacturer or private importer to take appropriate corrective measures and will not issue a conformity assessment certificate until the appropriate corrective measures have been taken.

5. Where, in the course of the monitoring of the conformity of the watercraft following the issue of a conformity assessment certificate, a notified body finds that a watercraft is no longer in compliance, it will require the manufacturer to take appropriate corrective measures and will suspend or withdraw the conformity assessment certificate if necessary.

6. Where corrective measures are not taken or do not have the required corrective effect, the notified body will restrict, suspend or withdraw any conformity assessment certificates as appropriate.

SCHEDULE 13

Enforcement and investigatory powers conferred on the enforcement authority and the market surveillance authority

Enforcement powers under the 1987 Act

1. For the purposes of enforcing these Regulations, the following sections of the 1987 Act apply subject to the modifications in paragraph 2—

- (a) section 13 (prohibition notices and notices to warn);
- (b) section 14 (suspension notices);
- (c) section 16 (forfeiture: England and Wales and Northern Ireland);
- (d) section 17 (forfeiture: Scotland);
- (e) section 18 (power to obtain information);
- (f) section 19 (interpretation of Part II);
- (g) section 29 (powers of search etc);
- (h) section 30 (provisions supplemental to s 29);
- (i) section 31 (powers of customs officer to detain goods);
- (j) section 33 (appeals against detention of goods);
- (k) section 34 (compensation for seizure and detention);
- (l) section 35 (recovery of expenses of enforcement);
- (m) section 37 (power of Commissioners for Revenue and Customs);
- (n) section 42 (Reports, etc.);
- (o) section 45 (interpretation);
- (p) section 46(1) (meaning of “supply”);
- (q) Schedule 2 (prohibition notices and notices to warn).

Modifications to the 1987 Act

2. The sections of the 1987 Act referred to in paragraph 1 are to apply as if—

- (a) in section 13—
 - (i) in subsection (1), for “unsafe” on each occasion that it appears, there were substituted “non-compliant”;
 - (ii) in subsection (1), “relevant” were omitted on each occasion that it appears;
 - (iii) in subsection (2), the words from “; and the Secretary of State may” to the end were omitted;
 - (iv) in subsection (4), the words “3 months” were substituted for the words “6 months”
 - (v) subsections (5) to (7) were omitted;
- (b) in section 14—
 - (i) in subsection (1), after “any safety provision has been contravened in relation to the goods”, there were inserted “or that such goods present a risk”;
 - (ii) in subsection (2)(b), after “any safety provision has been contravened in relation to the goods”, there were inserted “or that such goods present a risk”;
 - (iii) in subsection (2)(c), “under section 15 below” were omitted;
 - (iv) subsections (6) to (8) were omitted;

- (c) in section 16—
 - (i) in subsection (1), after “a contravention in relation to the goods of a safety provision” there were inserted “or that such goods present a risk”;
 - (ii) in subsection (3), after “a contravention in relation to the goods of a safety provision” there were inserted “or that such goods present a risk”;
 - (iii) after subsection (4), there were inserted—

“(4A) A court may infer for the purposes of this section that any goods present a risk, if it is satisfied that such a risk is presented by goods which are representative of those goods (whether by reason of being of the same design or part of the same consignment or batch or otherwise).”;
- (d) in section 17—
 - (i) in subsection (1), after “a contravention of a safety provision”, there were inserted “or where the goods present a risk”;
 - (ii) in subsection (6), after “a contravention in relation to those goods of a safety provision” there were inserted “or that those goods present a risk”;
 - (iii) after subsection (7), there were inserted—

“(7A) The Sheriff may infer for the purposes of this section that any goods present a risk, if satisfied that such a risk is presented by goods which are representative of those goods (whether by reason of being of the same design or part of the same consignment or batch or otherwise).”;
- (e) in section 18, subsections (3) and (4) were omitted;
- (f) in section 29—
 - (i) in subsection (4)(a), after “any contravention of any safety provision in relation to the goods” there were inserted “or whether the goods present a risk”;
 - (ii) in subsection (4)(b), after “any such contravention” there were inserted “or whether the goods present a risk”;
- (g) in section 30—
 - (i) at the end of subsection (2)(a)(ii), for “and” there were substituted “or”;
 - (ii) after subsection (2)(a)(ii), there were inserted—

“(iii) that any goods which any officer has power to inspect under section 29 are on any premises and their inspection is likely to demonstrate that they present a risk; and”;
 - (iii) subsections (5), (7) and (8) were omitted;
- (h) in section 31(1), for “Part II of this Act”, there were substituted “the 2016 Regulations”;
- (i) in section 34—
 - (i) omit the word “and” at the end of subsection (1)(a); and
 - (ii) after that subsection, insert—

“(aa) the goods do not present a risk.”;
- (j) in section 37(1), for “Part II of this Act”, there were substituted “the 2016 Regulations”;
- (k) in section 42—
 - (i) subsections (1), (2) and (5) were omitted;
 - (ii) in subsection (3)—
 - (aa) the words from “and every person” to “section 27 above” were omitted; and
 - (bb) the words “under that section or by that person by virtue of any such regulations” were substituted “under the 2016 Regulations”;
- (l) in section 45(1)—

- (i) the definitions of “conditional sale agreement”, “gas”, “motor vehicle”, “personal injury”, “subordinate legislation” and “substance” were omitted;
- (ii) before the definition of “aircraft”, there were inserted—
““2016 Regulations” means the Recreational Craft Regulations 2016”;
- (iii) for the definition of “enforcement authority” there were substituted—
““enforcement authority” means an enforcement authority as defined in regulation 2(1) of the 2016 Regulations;”;
- (iv) for the definition of “goods” there were substituted—
““goods” means products or within the scope of the 2016 Regulations;”;
- (v) after the definition of “modifications” there were inserted—
““non-compliant” in relation to any goods means that—
(a) a safety provision has been contravened in relation to the goods; or
(b) the goods present a risk;”;
- (vi) after the definition of “premises”, there were inserted—
““present a risk” means present a risk within the meaning set out in regulation 2(3) of the 2016 Regulations;”;
- (vii) for the definition of “safety provision” there were substituted—
““safety provision” means any provision of the 2016 Regulations”; and
- (viii) for the definition of “safety regulations” there were inserted—
““safety regulations” means the 2016 Regulations;”;
- (m) in section 46(1), omit “and, in relation to gas or water, those references shall be construed as including references to providing the service by which the gas or water is made available for use”; and
- (n) in Schedule 2—
 - (i) for “unsafe”, on each occasion that it appears, there were substituted “non-compliant”; and
 - (ii) for “safe” , on each occasion that it appears, there were substituted “not non-compliant”.

SCHEDULE 14

Compliance notices, withdrawal notices and recall notices

Compliance notice

1. An enforcement authority may serve a compliance notice on a relevant economic operator in respect of product if the authority has reasonable grounds for believing that there is non-compliance.
2. A compliance notice must—
 - (a) require the relevant economic operator on which it is served to—
 - (i) end the non-compliance within such period as may be specified in the notice; or
 - (ii) provide evidence, within such period as may be specified in the notice, demonstrating to the satisfaction of the enforcement authority that the non-compliance has not in fact occurred; and
 - (b) warn the economic operator that, if the non-compliance persists or if satisfactory evidence has not been produced under sub-paragraph (a) within the period specified in the notice, further action may be taken in respect of the product or any product of the same type made available on the market by that relevant economic operator.
3. A compliance notice may include directions as to the measures to be taken by the economic operator to secure compliance, including different ways of securing compliance.
4. Subject to paragraph (5), an enforcement authority may revoke or vary a compliance notice by serving a notification on the economic operator.
5. An enforcement authority may not vary a compliance notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

Withdrawal notice

6. An enforcement authority may serve a withdrawal notice on a relevant economic operator in respect of product if the authority has reasonable grounds for believing that—
 - (a) the product has been made available on the market; and
 - (b) there is non-compliance.
7. A withdrawal notice must prohibit the relevant economic operator from making the product available on the market without the consent of the enforcement authority.
8. A withdrawal notice may require the relevant economic operator to take action to alert end-users to any risk presented by the product.
9. A withdrawal notice may require the relevant economic operator to keep the enforcement authority informed of the whereabouts of any product referred to in the notice.
10. A consent given by the enforcement authority pursuant to a withdrawal notice, may impose such conditions on the making available on the market as the enforcement authority considers appropriate.
11. Subject to paragraph (7), an enforcement authority may revoke or vary a withdrawal notice by serving a notification on the economic operator.
12. An enforcement authority may not vary a withdrawal notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

Recall notice

13. The enforcement authority may serve a recall notice on a relevant economic operator in respect of product if the authority has reasonable grounds for believing that—

- (a) the product has been made available to end-users; and
- (b) there is non-compliance.

14. A recall notice must require the relevant economic operator to use reasonable endeavours to organise the return of the product from end-users to the relevant economic operator or another person specified in the notice.

15. A recall notice may—

- (a) require the recall to be effected in accordance with a code of practice;
- (b) require the relevant economic operator to—
 - (i) contact end-users in order to inform them of the recall, to the extent that it is practicable to do so;
 - (ii) publish a notice in such form and such manner as is likely to bring to the attention of end-users any risk the product poses and the fact of the recall; or
 - (iii) make arrangements for the collection or return of the product from end-users or its disposal; or
- (c) impose such additional requirements on the relevant economic operator as are reasonable and practicable with a view to achieving the return of the product.

16. In determining what requirements to include in a recall notice, the enforcement authority must take into consideration the need to encourage distributors and end-users to contribute to its implementation.

17. A recall notice may only be issued by the enforcement authority where—

- (a) other action which it may require under these Regulations would not suffice to address the non-compliance;
- (b) the action being undertaken by the relevant economic operator is unsatisfactory or insufficient to address the non-compliance;
- (c) the enforcement authority has given not less than 10 days' notice to the relevant economic operator of its intention to serve such a notice; and
- (d) the enforcement authority has taken account of any advice obtained under sub-paragraph (6).

18. A relevant economic operator which has received notice from the enforcement authority of an intention to serve a recall notice may at any time prior to the service of the recall notice require the authority to seek the advice of such person as the Institute determines on the questions of—

- (a) whether there is non-compliance; and
- (b) whether the issue of a recall notice would be proportionate.

19. Sub-paragraphs (5)(b), (c) and (d) do not apply in the case of product presenting a serious risk requiring, in the view of the enforcement authority, urgent action.

20. Where a relevant economic operator requires the enforcement authority to seek advice under sub-paragraph (6), that relevant economic operator is to be responsible for the fees, costs and expenses of the Institute and of the person appointed by the Institute to advise the enforcement authority.

21. In this regulation, “Institute” means the charitable organisation with registered number 803725 and known as the Chartered Institute of Arbitrators.

22. A recall notice served by the enforcement authority may require the relevant economic operator to keep the authority informed of the whereabouts of product to which the recall notice relates, so far as the relevant economic operator is able to do so.

23. Subject to paragraph (12), an enforcement authority may revoke or vary a recall notice by serving a notification on the economic operator.

24. An enforcement authority may not vary a recall notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

Interpretation

25. In this Schedule, “non-compliance” means that the product—

- (a) presents a risk; or
- (b) is not in conformity with Part 2 or RAMS (in its application to product).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations transpose Directive 2013/53/EU of the European Parliament and of the Council of 20th November 2013 on recreational watercraft and personal watercraft (OJ No L 354, 28.12.2013 p.90) (“the Directive”). The Directive repeals and replaces Directive 1994/25/EC as amended by Directive 2003/44/EC which was implemented in the United Kingdom by the Recreational Craft Regulations 1996 (S.I. 1996/1353) (as amended by S.I. 1998/116). These Regulations revoke and replace S.I. 1996/1353.

Regulation 3 sets out the application of the Regulations to watercraft and personal watercraft and components (defined in regulation 2) subject to the exemptions set out in regulation 4.

Part 2 sets out the obligations of on persons placing a watercraft on the market. Regulation 6 provides that any person who places a watercraft on the market or puts it into service ensures that it complies with the essential requirements set out in Schedule 1 to these Regulations and does not endanger the health and safety of persons, property or the environment.

Regulations 8 to 17 set out the obligations that are specific to manufacturers. Manufacturers must ensure that watercraft have been designed and manufactured to comply with the essential requirements including the requirements set out in Schedule 1 to these Regulations. The Regulations impose obligation on manufactures to carry out conformity assessments; draw up technical documentation, draw declaration of conformity and affix the CE marking, labelling the equipment and ensuring it is accompanied by instructions and safety information and retention of documentation. Manufacturers must also take monitor compliance in the case of series production. Regulation 16 places a duty on manufacturers immediately take corrective action where the manufacturer considers or has reason to believe that a watercraft placed on the market may not conform. The obligations imposed on the manufacturer’s authorised representative are set out in regulation 39.

Regulations 18 to 26 set out the obligations that are specific to importers. These obligations include ensuring that they are not placing on the market watercraft which is not in conformity with the essential requirements, checking that the manufacturer has carried out a relevant conformity assessment procedure and labelled the craft correctly. Regulation 23 requires importers to ensure that storage and transport conditions do not jeopardise conformity with the essential requirements. Regulation 24 places a duty on importers to immediately take corrective action where the manufacturer considers or has reason to believe that a watercraft placed on the market may not conform.

Regulations 27 to 32 set out the obligations that are specific to distributors. These obligations include ensuring that they are not placing on the market watercraft which is not in conformity with

the essential requirements and that storage and transport conditions do not jeopardise conformity with the essential requirements.

Regulations 33 provides that an importer or distributor who places a watercraft on the market under their own trade mark or who modifies a watercraft such that it may affect conformity is to be treated as the manufacturer for the purposes of these Regulations.

Regulations 36 imposes obligations on a private importer where the manufacturer of a watercraft has not complied with the obligations on manufacturer.

Regulations 37 and 38 set out requirements to identify the economic operator who supplied the watercraft.

Regulation 40 prohibits the improper use of the CE mark.

Part 3 sets out the product and conformity assessment procedures.

Part 4 sets out provisions concerning notification and monitoring of the bodies which carry out conformity assessment procedures under the Regulations.

Part 5 sets out provisions for market surveillance and enforcement of these Regulations. Regulation 68 identifies the market surveillance authority which has an obligation to enforce the Regulations. Regulation 70 and Schedules 13 and 14 provide for the enforcement powers which the enforcing authorities are to have. Regulation 76 provides for the contravention of certain provisions of these Regulations to be an offence. Regulation 77 sets out the penalties that are to apply for offences under these Regulations. Regulation 83 sets out provision for appeals against notices served under these Regulations.

Part 6 deals with the power of a notified body to charge a fee and sets out a review provision, transitional provisions, revocations.

A transposition note and full impact assessment of the impact that these Regulations will have on the costs of business, the voluntary sector and the public sector are available from the Single Market Product Safety Team, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET and are also published with the Explanatory Memorandum alongside these Regulations on www.legislation.gov.uk.