Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2018 No. 389

CONSUMER PROTECTION
HEALTH AND SAFETY

The Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018

Made - - - -	*20th March 2018*
Laid before Parliament	*21st March 2018*
Coming into force - -	*21st April 2018*

The Secretary of State is a Minister designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] ("the 1972 Act") in relation to measures relating to safety as regards appliances burning gaseous fuels.

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act 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.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A [F3] of Schedule 2 to, the 1972 Act.

F1 S.I. 1991/755. See article 2 of, and the Schedule to this Order.

F2 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). 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).

F3 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.

PART 1

Preliminary

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018 and come into force on 21st April 2018.

(2) In these Regulations—

"the 1974 Act" means the Health and Safety at Work etc. Act 1974 [F4];

"the 1978 Order" means the Health and Safety at Work (Northern Ireland) Order 1978 [F5];

"the 1987 Act" means the Consumer Protection Act 1987 [F6];

"the 1995 Regulations" means the Gas Appliances (Safety) Regulations 1995 [F7];

"district council" means a district council within the meaning of the Local Government Act (Northern Ireland) 1972 [F8];

"EU Regulation 2016/426" means Regulation (EU) 2016/426 [F9] of the European Parliament and of the Council on appliances burning gaseous fuels, repealing Council Directive 2009/142/EC[F10], as amended from time to time;

"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) No 339/93[F11], as amended from time to time;

"risk" means a risk which may result in harm to the health or safety of persons, domestic animals or property, if an appliance or fitting is used in a normal and predictable manner; and

"weights and measures authority" means a local weights and measures authority within the meaning set out in section 69 of the Weights and Measures Act 1985 [F12].

(3) In these Regulations a reference to—

(a) a numbered regulation, paragraph or Schedule is a reference to the regulation, paragraph or Schedule as numbered in these Regulations unless otherwise stated;

(b) an Article, paragraph of an Article or Annex is a reference to the Article, paragraph of an Article or Annex as numbered in EU Regulation 2016/426;

(c) a "relevant economic operator" in relation to an appliance or fitting means an economic operator with obligations in respect of that appliance or fitting under EU Regulation 2016/426; and

(d) an "enforcement authority" is to be construed in accordance with regulation 4.

(4) Expressions and words used in these Regulations which are used in EU Regulation 2016/426 have the same meaning as in EU Regulation 2016/426.

F4 1974 c.37.
F5 S.I. 1978/1039 (N.I. 9).
F6 1987 c.43.
F7 S.I. 1995/1629 as amended by S.I. 2012/1815 and the Protection of Freedoms Act 2012, Schedule 2, Part 3 and Schedule 10, Part 2.
F8 1972 Chapter 9.
F9 OJ No L81, 31.3.2016, p.99.
F10 OJ No L330, 16.12.2009, p.10.
F11 OJ No L 218, 13.8.2008, p.30.
F12 1985 c.72; section 69 was amended by the Local Government (Wales) Act 1994 (c.19), **section 66** and Schedule 16, paragraph 75; the Local Government etc. (Scotland) Act 1994 (c.39), **section 180** and Schedule 13, paragraph 144; and the Statute Law (Repeals) Act 1989 (c.43) Schedule 1, Part 1.

Application, transitional provisions, savings and revocation

2.—(1) These Regulations apply to appliances and fittings placed on the market on or after 21st April 2018.

(2) These Regulations do not apply to—

(a) appliances specifically designed for the uses and purposes specified in Article 1(3); or

(b) appliances and fittings which fall within Article 1(4).

(3) Nothing in these Regulations prevents the showing of appliances or fittings at trade fairs, exhibitions, demonstrations or the like, which are not in compliance with the provisions of EU Regulation 2016/426, provided that a visible sign clearly indicates that such appliances or fittings do not comply with those provisions and that they are not for sale until they are made compliant.

(4) The 1995 Regulations continue to apply, as if they had not been revoked, to appliances and fittings placed on the market before 21st April 2018, and in any such case the consequential amendments made by Schedule 5 do not apply.

(5) The 1995 Regulations are revoked save to the extent required to give effect to paragraph (4).

PART 2

Market Surveillance and Enforcement

Designation of market surveillance authorities

3.—(1) The market surveillance authority is—

(a) in the case of appliances or fittings for private use or consumption (other than that referred to in paragraph (2)(b))—

(i) in Great Britain, within its area, a weights and measures authority; and

(ii) in Northern Ireland, within its area, a district council;

(b) in the case of appliances or fittings for use or operation in the circumstances set out in paragraph (2)—

(i) subject to paragraph (3), in Great Britain, the Health and Safety Executive; and

(ii) in Northern Ireland, the Health and Safety Executive for Northern Ireland.

(2) The circumstances referred to in paragraphs (1)(b) are where the appliances or fittings are designed—

(a) for use or operation, whether exclusively or not, by persons at work; or

(b) for use, otherwise than at work, in non-domestic premises made available to persons at a place where they may use the appliances or fittings provided for their own use there.

(3) In so far as these Regulations apply to appliances and fittings intended exclusively or primarily for use on relevant nuclear sites, the market surveillance authority is the Office for Nuclear Regulation.

(4) In paragraph (3) "relevant nuclear site" means a site which is—

(a) a GB nuclear site (within the meaning given in section 68 of the Energy Act 2013 [F13]);

(b) an authorised defence site (within the meaning given in regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998 [F14]); or

(c) a new nuclear build site (within the meaning given in regulation 2A of those Regulations [F15]).

F13 2013 c.32.

F14 S.I. 1998/494 amended by S.I. 2014/469. There are other amendments not relevant to these Regulations.

F15 Regulation 2A was inserted by S.I. 2014/469 and amended by S.I. 2015/51 (regulation 38, Schedule 5).

Enforcement Authorities

4.—(1) Subject to paragraph (2), EU Regulation 2016/426, these Regulations and RAMS (in its application to appliances and fittings) must be enforced by the market surveillance authority.

(2) Notwithstanding paragraph (1), the Secretary of State may enforce EU Regulation 2016/426, these Regulations and RAMS (in its application to appliances and fittings).

(3) In Scotland only the Lord Advocate may commence proceedings for an offence under these Regulations.

Enforcement Powers

5.—(1) Schedule 1 makes provision for enforcement powers under the 1987 Act where the enforcement authority is—

(a) a weights and measures authority;

(b) a district council; or

(c) the Secretary of State.

(2) Schedule 2 makes provision for enforcement powers under the 1974 Act where the enforcement authority is the Health and Safety Executive or the Office for Nuclear Regulation.

(3) Schedule 3 makes provision for enforcement powers under the 1978 Order where the enforcement authority is the Health and Safety Executive for Northern Ireland.

(4) In addition to the powers available to an enforcement authority by virtue of paragraph (1), (2) or (3), as appropriate, the enforcement authority may use the powers in Schedule 4 (compliance, withdrawal and recall notices).

Notification to the Secretary of State of enforcement action etc

6. A market surveillance authority must immediately notify the Secretary of State of any action taken by it, evaluation made or other opinion formed by it, or other matter within its knowledge which is required by Article 37(4) to be communicated to the Commission or the other member States.

Offences

7.—(1) It is an offence for an economic operator to contravene the requirements and obligations set out in—

(a) Article 7 (obligations of manufacturers);

(b) Article 9 (obligations of importers);

(c) Article 10 (obligations of distributors);

(d) Article 12 (identification of economic operators);

(e) Article 17 (rules and conditions for affixing the CE marking); and

(f) Article 18 (inscriptions).

(2) It is an offence for an economic operator to fail to—

(a) cooperate with;

(b) provide information to; and

(c) comply with any of the requirements of, the market surveillance authority acting under Article 37.

(3) It is an offence for an economic operator to fail to take the action required under—

(a) Article 39 (compliant appliance or fitting which presents a risk); or

(b) Article 40 (formal non-compliance).

(4) It is an offence for a person—

(a) to intentionally obstruct an enforcement authority acting in the execution or enforcement of EU Regulation 2016/426;

(b) without reasonable cause, to fail to give such an enforcement authority any assistance or information which that authority may reasonably require for those purposes;

(c) to knowingly or recklessly furnish to such an enforcement authority any information knowing it to be false or misleading in a material particular; or

(d) to fail to produce a document or record for such an enforcement authority when required to do so.

(5) Proceedings must not be commenced against an economic operator under paragraph (1), (2) or (3) if the economic operator has been given a time period within which to comply or take action, and that time period has not expired.

Penalties

8.—(1) Except for a person who falls within paragraph (3), a person guilty of an offence under these Regulations is liable—

(a) on summary conviction—

(i) in England and Wales, to a fine or imprisonment for a term not exceeding three months, or to both;

(ii) in Scotland and Northern Ireland, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding three months, or to both;

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or to both.

(2) A person who falls within paragraph (3) is liable on summary conviction—

(a) in England and Wales, to a fine or imprisonment for a term not exceeding three months, or to both;

(b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding three months or to both.

(3) A person falls within this paragraph, if that person is guilty of an offence under—

(a) regulation 7(1)(a) by contravening the requirement in Article 7(3) (failing to keep the technical documentation and the EU declaration of conformity for 10 years); or

(b) regulation 7(1)(b) by contravening the requirement in Article 9(8) (failing to keep a copy of the EU declaration of conformity for 10 years and failing to make that document and the technical documentation available to the market surveillance authority on request).

Defence of due diligence

9.—(1) In proceedings for an offence under these Regulations, 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.