1990 No. 172

HEALTH AND SAFETY

Self-Propelled Industrial Trucks (EEC Requirements) Regulations (Northern Ireland) 1990

Made	*11th May 1990*
Coming into operation . .	*2nd July 1990*

The Department of Economic Development being a Department designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to measures and technical requirements in respect of the manufacture and marketing of lifting and mechanical handling appliances and their components, in exercise of the powers conferred on it by that section and of every other power enabling it in that behalf, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Self-Propelled Industrial Trucks (EEC Requirements) Regulations (Northern Ireland) 1990 and shall come into operation on 2nd July 1990.

Interpretation

2.—(1) In these Regulations—

"approved body" means a body appointed by the Department under regulation 4;

"certificate of conformity" means a certificate that the truck specified in the certificate conforms in all respects to the requirements of the Special Directive and (if the truck was manufactured on or after 18th July 1989) the Commission Directive;

"Commission Directive" means Commission Directive 89/240/EEC which adapts the Special Directive to the requirements of technical progress(**c**);

"conformity mark" means the mark of conformity referred to in regulation 7;

"Department" means the Department of Economic Development;

"EEC technical requirements" means the technical requirements referred to in Annex I of the Special Directive;

(a) S.I. 1987/926

(b) 1972 c. 68; section 2 is subject to Schedule 2 to that Act and is to be read with S.I. 1984/703 (N.I. 3) and S.R. 1984 No. 253.

(c) OJ No. L100, 12.4.89, p. 1

"EEC tests" means the tests and inspections for trucks in Annex I of the Special Directive and (if the truck was manufactured on or after 18th July 1989) in the Annex of the Commission Directive;

"the Framework Directive" means Council Directive 84/528/EEC on the approximation of the laws of the Member States relating to common provisions for lifting and mechanical handling appliances(**a**);

"manufacturer" means the manufacturer or his authorised representative established in the Community;

"market" means supply by way of sale, lease, hire or hire-purchase, whether as principal or agent for another;

"the Special Directive" means Council Directive 86/663/EEC on the approximation of the laws of the Member States relating to self-propelled industrial trucks(**b**);

"truck" means a self-propelled industrial truck, that is, any wheeled vehicle, other than those running on rails, the capacity of which does not exceed 10,000 kilograms, or which in the case of tractors has a draw-bar pull of less than 20,000 newtons, that is designed to carry, tow, push, lift, stack or tier in racks any kind of load and is controlled by an operator who either walks with the vehicle or rides on a specially arranged driving platform which is either fixed to the chassis of the vehicle or can be raised, but excluding those vehicles specified in Schedule 1.

(2) The Interpretation Act (Northern Ireland) 1954(**c**), except section 20(2) and (3), shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Marketing of trucks

3.—(1) A person shall not on or after 6th August 1990 market any truck manufactured on or after that date unless a certificate of conformity has been issued in respect of that truck and a conformity mark has been placed thereon in accordance with these Regulations or under the law of Great Britain or of a Member State other than the United Kingdom.

(2) Where a person ("the ostensible supplier") markets any truck by supplying the same to another ("the customer") under a hire-purchase agreement, conditional sale agreement or credit sale agreement, and the ostensible supplier:—

(*a*) carries on the business of financing the acquisition of goods by others by means of such agreements; and

(*b*) in the course of that business acquired his interest in the truck supplied to the customer as a means of financing its acquisition by the customer from a third person ("the effective supplier")

the effective supplier and not the ostensible supplier shall be treated for the purpose of this regulation as marketing the truck to the customer and any duty

(**a**) OJ No. L300, 19.11.84, p. 72
(**b**) OJ No. L384, 31.12.86, p. 12
(**c**) 1954 c. 33 (N.I.)

imposed by these Regulations on those who market any truck shall accordingly fall on the effective supplier and not on the ostensible supplier.

(3) Where a person ("the ostensible supplier") markets any truck by supplying the same to another ("the customer") under a lease, and the ostensible supplier:—

(*a*) has not previously granted any lease to the customer in respect of that truck; and

(*b*) carries on the business of financing the use of goods by others by means of leases; and

(*c*) in the course of that business acquired his interest in the truck supplied to the customer for the purpose of financing its provision to the customer by a third person ("the effective supplier") and

(*d*) he or his agent either

(i) has not had physical possession of the truck; or

(ii) has had physical possession of the truck only for the purpose of passing it to the customer; and

(*e*) he or his agent has not modified, overhauled, repaired or restored the truck;

then the effective supplier and not the ostensible supplier shall be treated for the purposes of this regulation as marketing the truck to the customer and any duty imposed by these Regulations on those who market any truck shall accordingly fall on the effective supplier and not on the ostensible supplier.

(4) Where—

(*a*) paragraph (3) has applied in respect of a lease; and

(*b*) the ostensible supplier grants a further lease of the truck to the same customer; and

(*c*) the truck has remained in the physical possession of the customer since he took possession of it under the first lease; and

(*d*) the truck has not at any time been modified, overhauled, repaired or restored by or on behalf of the ostensible supplier;

then no duty shall be imposed by these Regulations on the ostensible supplier in relation to the supply by way of that further lease.

Appointment of approved bodies

4. The Department may appoint a body or bodies of persons in accordance with the conditions of the Framework Directive and subject to such conditions as it shall think fit—

(*a*) to carry out in accordance with regulation 6 EEC tests on any truck; and

(*b*) to do such other things as may be required or permitted under or in connection with these Regulations.

EEC Tests

5. EEC tests shall be carried out—

(*a*) by the manufacturer to the extent that he satisfies the Department that he possesses the necessary means to enable him to do so; or

(*b*) by an approved body on application by the manufacturer under regulation 6; or

(*c*) by an approved body appointed under the law of Great Britain on application by the manufacturer under the law of Great Britain.

Testing by approved body

6.—(1) A manufacturer may make an application in writing to an approved body requesting the approved body to carry out on payment of the prescribed fee such of the EEC tests as the applicant may specify, accompanied by an information document in the form set out in Schedule 2.

(2) Where the approved body is satisfied on application made to it under paragraph (1) and, after carrying out the EEC tests in respect of which the application was made that the results of any of those tests do not satisfy the requirements of Annex 1 of the Special Directive and, in the case of a truck manufactured on or after 18th July 1989, of the Annex of the Commission Directive in respect of those tests, it shall so inform the applicant in writing stating its reasons and also inform him of his right to apply for a review of the decision under regulation 9.

(3) The prescribed fee payable under paragraph (1) shall be equal to the sum of:—

(*a*) the costs of the approved body of and in connection with the functions carried out or to be carried out by it under the Regulations ("the relevant service"); and

(*b*) an amount on account of profit which is reasonable in the circumstances having regard to—

(i) the character and the extent of the work done or to be done by the approved body in providing the relevant service, and

(ii) the commercial rate normally charged on account of profit for that work or similar work.

Certificate of conformity and conformity mark

7. Where a manufacturer is satisfied that a truck conforms in all respects to the requirements of the Special Directive and (if the truck was manufactured on or after 18th July 1989) the Commission Directive he shall issue a certificate of conformity in the form set out in Schedule 3 that such truck does so conform and shall place on the truck a clearly visible, legible and indelible conformity mark in the form set out in Schedule 4.

Conformity checks

8.—(1) The Department may from time to time carry out in Northern Ireland checks of any truck in respect of which a certificate of conformity has been issued under these Regulations or under the law of Great Britain or of a Member State other than the United Kingdom to ascertain whether it has been manufactured to conform in all respects with the requirements of the Special Directive and (if the truck was manufactured on or after 18th July 1989) the Commission Directive.

(2) For the purpose of assisting the Department to carry out such checks every manufacturer shall in respect of each truck for which he issues a certificate of conformity retain from the date of issue of that certificate proper records, including documentary evidence showing the EEC tests that have been carried out in respect of that truck or any truck of the same type and that the EEC technical requirements have been complied with, and shall produce them to the Department on request.

(3) If the Department, after checking a truck under paragraph (1), is satisfied that it has not been manufactured in conformity with the requirements of the Special Directive and (if the truck was manufactured on or after 18th July 1989) the Commission Directive or that proper records have not been kept in accordance with paragraph (2), it may give notice to the manufacturer specifying the matters mentioned in paragraph (5).

(4) If the Department is notified that a truck in respect of which a certificate of conformity has been issued has not been manufactured in conformity with the requirements of the Special Directive and (if the truck was manufactured on or after 18th July 1989) the Commission Directive or that proper records have not been kept in accordance with paragraph (2), it may give notice to the manufacturer specifying the matters mentioned in paragraph (5).

(5) The following matters shall be specified in a notice given under paragraph (3) or (4)—

(*a*) the respects in which a truck does not conform with the requirements of the Special Directive or the Commission Directive, or in which proper records have not been kept; and either

(*b*) that unless steps are taken which ensure that the truck or any truck of the same type does so conform or that proper records are kept within a specified period any such truck shall not be marketed, or as the case may be shall be withdrawn from the market, and the obligation under regulation 7 to issue further certificates of conformity with respect to that truck or any truck of the same type and to place conformity marks thereon will be suspended or withdrawn; or

(*c*) if the Department thinks fit, that any such truck shall not be marketed, or as the case may be shall be withdrawn from the market, or that any such obligation shall be suspended, with immediate effect.

(6) If the Department decides that a truck shall not be marketed, or as the case may be shall be withdrawn from the market, or that any such obligation should be suspended or withdrawn it shall immediately give notice of the decision to the manufacturer.

(7) A notice under this regulation shall specify the date on which it is to take effect and shall specify the grounds for the decision.

Review

9.—(1) A person who is aggrieved by a decision given by an approved body under regulation 6(2) may, in accordance with paragraphs (2) and (3), apply to the Department to review the decision and on such application the Department—