

## STATUTORY INSTRUMENTS

# 2017 No. 737

## The Recreational Craft Regulations 2017

### PART 2

#### PLACING PRODUCTS ON THE MARKET

##### MISCELLANEOUS

#### Prohibition on improper use of [<sup>F1</sup>UK] marking **E+W+S**

- 40.**—(1) An economic operator must not affix the [<sup>F2</sup>UK] marking to a product unless—
- the economic operator is the manufacturer; and
  - 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 [<sup>F2</sup>UK] marking.
- (3) An economic operator must not affix to a product any other marking if the visibility, legibility and meaning of the [<sup>F2</sup>UK] marking would be impaired as a result.

#### Extent Information

- E1** This version of this provision extends to England and Wales and Scotland only; a separate version has been created for Northern Ireland only

#### Textual Amendments

- F1** Word in [reg. 40](#) heading substituted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), [reg. 1](#), [Sch. 28 para. 22](#) (with [Sch. 28 para. 41](#)) (as amended by [S.I. 2020/676](#), [regs. 1\(1\), 2](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F2** Word in [reg. 40](#) substituted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), [reg. 1](#), [Sch. 28 para. 22](#) (with [Sch. 28 para. 41](#)) (as amended by [S.I. 2020/676](#), [regs. 1\(1\), 2](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

#### Commencement Information

- I1** [Reg. 40](#) in force at 3.8.2017, see [reg. 1](#)

#### Prohibition on improper use of CE marking **N.I.**

- 40.**—(1) An economic operator must not affix the CE marking to a product unless—
- the economic operator is the manufacturer; and
  - 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.

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**Extent Information**

**E2** This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales and Scotland only

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**Commencement Information**

**I2** Reg. 40 in force at 3.8.2017, see [reg. 1](#)

**[<sup>F3</sup>Obligations that are met by complying with obligations in the Directive**

**40A.—**(1) In this regulation—

- (a) any reference to an Article or an Annex is a reference to an Article of or Annex to the Directive;
- (b) “CE marking” has the meaning given in Article 3(28);
- (c) “harmonised standard” has the meaning given in Article 3(20).

(2) For the purposes of this regulation, references to the requirements set out in Article 4(1) and Annex I are to be read as if they include a requirement that the owner's manuals referred to in point 2.5 of Part A of Annex I and point 4 of Part B of that Annex must be in English (instead of in a language or languages which can be easily understood by consumers and other end-users, as determined by the member State concerned).

(3) Where a product meets the requirements set out in Article 4(1) and Annex I—

- (a) the requirements of regulation 6(a) and (b) are to be treated as being satisfied;
- (b) regulation 2(2)(a) applies subject to the modification set out in paragraph (15)(c).

(4) Subject to paragraphs (8) and (9), paragraph (5) applies where, before placing a product on the market, the manufacturer—

- (a) ensures that the product has been designed and manufactured in accordance with the requirements set out in Article 4(1) and Annex I;
- (b) draws up the technical documentation in accordance with Article 25;
- (c) carries out the conformity assessment procedure applicable to the product in accordance with Articles 19 to 22 and 24 or has it carried out;
- (d) ensures that the technical documentation and any other records and correspondence relating to the conformity assessment procedures are prepared in or translated into English;
- (e) affixes a CE marking to the product in accordance with Articles 16 to 18;
- (f) draws up an EU declaration of conformity in accordance with Article 15; and
- (g) ensures that the EU declaration of conformity is prepared in or translated into English.

(5) Where this paragraph applies—

- (a) the requirements of regulations 8, 9 and 10(1), (2), (3) and (5) are to be treated as being satisfied;
- (b) regulations 10(4), 11, 12(2), 39(3) and 40 apply subject to the modifications set out in paragraph (15);

- (c) Part 3 (except for regulations 43(2) and (3) and 48) does not apply;
  - (d) regulation 71 does not apply.
- (6) Subject to paragraphs (8) and (9), paragraph (7) applies where, before placing a product on the market, the importer ensures that—
- (a) the conformity assessment procedure applicable to the product in accordance with Articles 19 to 22 and 24 has been carried out;
  - (b) the manufacturer has drawn up the technical documentation in accordance with Article 25; and
  - (c) the product bears the CE marking in accordance with Articles 16 to 18.
- (7) Where this paragraph applies—
- (a) the requirements of regulation 19(1)(a), (b) and (c)(i) are to be treated as being satisfied;
  - (b) regulations 18, 19(2), 20, 23 and 25 apply subject to the modifications set out in paragraph (15).
- (8) This paragraph applies where there is no designated standard or part of a designated standard that corresponds exactly to a harmonised standard or part of a harmonised standard referred to in Article 14.
- (9) Where paragraph (8) applies, paragraphs (4)(c) and (6)(a) of this regulation are to be read as requiring—
- (a) in respect of products referred to in Article 20(1)(b)(i), one of the conformity assessment procedures (combination of procedures) referred to in the second indent of Article 20(1)(b)(i);
  - (b) in respect of exhaust emissions for products referred to in points (d) and (e) of Article 2(1), one of the conformity assessment procedures (or combinations of procedures) referred to in Article 21(b);
  - (c) in respect of noise emissions for products referred to in Article 22(1)—
    - (i) the conformity assessment procedure referred to in Article 22(1)(b); or
    - (ii) where applicable in accordance with Article 22(1)(c), one of the conformity assessment procedures referred to in Article 22(1)(c);
  - (d) in respect of noise emissions for products referred to in Article 22(2), the conformity assessment procedure referred to in Article 22(2)(b).
- (10) Paragraph (11) applies where, before making a product available on the market, the distributor ensures that the product bears the CE marking in accordance with Articles 16 to 18.
- (11) Where this paragraph applies—
- (a) the requirement of regulation 28(1)(a)(i) is to be treated as being satisfied;
  - (b) regulations 19(2) (which contains the definition of “required documents” for the purposes of regulation 28), 29 and 30 apply subject to the modifications set out in paragraph (15).
- (12) Paragraph (13) applies where the private importer—
- (a) ensures before putting a product into service that the product has been designed and manufactured in accordance with the requirements set out in Article 4(1) and Annex I; and
  - (b) ensures that the name and postal address of the notified body that carried out the conformity assessment procedure applicable to the product in accordance with Articles 19 to 22 and 24 is marked on the product.
- (13) Where this paragraph applies, the requirements of regulation 36(1)(a) and 36(4) are to be treated as being satisfied.

(14) Where, before placing a product on the market or putting a product into service, a person applies the procedure referred to in Article 23 to the product, the requirements of regulation 43 are to be treated as being satisfied.

(15) The modifications referred to in paragraphs (3)(b), (5)(b), (7)(b) and (11)(b) are that—

- (a) any reference to “declaration of conformity” is to be read as a reference to the EU declaration of conformity;
- (b) any reference to “designated standard” is to be read as a reference to a harmonised standard;
- (c) any reference to “essential requirements” is to be read as a reference to the requirements set out in Article 4(1) and Annex I (as modified by paragraph (2));
- (d) any reference to “UK marking” is to be read as a reference to the CE marking;
- (e) any reference to “relevant conformity assessment procedure” is to be read as a reference to the conformity assessment procedures that apply to the product in accordance with Articles 19 to 22 and 24;
- (f) any reference to “technical documentation” is a reference to the technical documentation referred to in Article 25.]

#### Textual Amendments

**F3** Regs. 40A-40D inserted (E.W.S.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 28 para. 23** (with Sch. 28 para. 41) (as amended by S.I. 2020/676, regs. 1(1), 2; S.I. 2020/1460, reg. 1(4), **Sch. 3 para. 20(5)**); 2020 c. 1, **Sch. 5 para. 1(1)**

#### [<sup>F3</sup>Conformity assessment procedure obligation which is met by complying with the Directive

**40B.**—(1) In this regulation any reference to an Article or an Annex is a reference to an Article of or Annex to the Directive.

(2) Paragraph (3) applies where—

- (a) Articles 20 or 21 provide that the conformity assessment procedure referred to as Module B in those Articles may be carried out in relation to a product; and
- (b) prior to the manufacture of a product, the manufacturer ensures that—
  - (i) the product has been designed in accordance with the essential requirements set out in Annex I to the Directive;
  - (ii) the conformity assessment procedure referred to as Module B in Articles 20 and 21 has been carried out in relation to that product, in accordance with those Articles and with Article 24(1).

(3) Where this paragraph applies—

- (a) the requirement in regulation 42 to apply the conformity assessment procedure referred to in regulations 44 and 45 as Module B is to be treated as being satisfied in relation to that product;
- (b) any reference to “relevant conformity assessment procedure” in regulations 9, 10(1), 19(1)(a), 36(4), 40(1)(b) and 53(b) is to be read as including the conformity assessment procedure referred to in Articles 20, 21 and 24 as Module B; and
- (c) any reference to “technical documentation” in regulations 9(b), 11, 19(1)(b), 25(b) and 36(3) is to be read as including the technical documentation relating to the design of the product referred to in Article 25 of the Directive;

- (d) the reference to “approved body” in regulation 36(4) is to be read as the body that undertook the conformity assessment procedure referred to as Module B in Articles 20 or 21.]

#### Textual Amendments

- F3** Regs. 40A-40D inserted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), reg. 1, **Sch. 28 para. 23** (with Sch. 28 para. 41) (as amended by [S.I. 2020/676](#), regs. 1(1), **2**; [S.I. 2020/1460](#), reg. 1(4), **Sch. 3 para. 20(5)**); 2020 c. 1, **Sch. 5 para. 1(1)**

#### [<sup>F3</sup> Expiry of regulations 40A and 40B

**40C.**—(1) Subject to paragraph (2), regulation 40A ceases to have effect at the end of the period of [<sup>F4</sup>four years] beginning with IP completion day.

(2) Notwithstanding the expiry of regulation 40A—

- (a) any product which was placed on the market pursuant to regulation 40A may continue to be made available on the market on or after the expiry of regulation 40A;
- (b) any obligation to which a person was subject under regulation 40A in respect of a product placed on the market pursuant to regulation 40A continues to have effect after the expiry of regulation 40A, in respect of that product.

(3) Subject to paragraph (4), regulation 40B ceases to have effect at the end of the period of [<sup>F5</sup>four years] beginning with IP completion day.

(4) Where a conformity assessment procedure has been completed pursuant to regulation 40B in relation to a product prior to the expiry of regulation 40B, regulation 40B continues to apply in respect of that product where—

- (a) the manufacturer arranges for the EU-Type examination certificate and any annexes to be transferred to an approved body;
- (b) the approved body referred to in sub-paragraph (a) accepts responsibility for the EU-Type examination certificate; and
- (c) the approved body issues a Type-examination certificate relying, or relying in part, on any examinations or tests undertaken prior to the issue of the EU-Type examination certificate.

(5) In paragraph (4) “EU-Type examination certificate” means a certificate issued after the conformity assessment procedure referred to as Module B in Articles 20 and 21 of the Directive has been carried out in relation to that product, in accordance with Article 24(1) of the Directive.]

#### Textual Amendments

- F3** Regs. 40A-40D inserted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/696\)](#), reg. 1, **Sch. 28 para. 23** (with Sch. 28 para. 41) (as amended by [S.I. 2020/676](#), regs. 1(1), **2**; [S.I. 2020/1460](#), reg. 1(4), **Sch. 3 para. 20(5)**); 2020 c. 1, **Sch. 5 para. 1(1)**

- F4** Words in [reg. 40C\(1\)](#) substituted (31.12.2022) by [The Product Safety and Metrology \(Amendment and Transitional Provisions\) Regulations 2022 \(S.I. 2022/1393\)](#), regs. 1(1), 2, **Sch. 1**

- F5** Words in [reg. 40C\(3\)](#) substituted (31.12.2022) by [The Product Safety and Metrology \(Amendment and Transitional Provisions\) Regulations 2022 \(S.I. 2022/1393\)](#), regs. 1(1), 2, **Sch. 1**

### [<sup>F3</sup>Qualifying Northern Ireland Goods

**40D.**—(1) Where paragraph (2) applies a product is to be treated as being in conformity with Part 2.

(2) This paragraph applies where—

(a) a product—

- (i) is in conformity with Part 2, as that Part applies in Northern Ireland; and
- (ii) is qualifying Northern Ireland goods; and

(b) an importer has complied with the obligations set out in paragraph (3).

(3) The obligations referred to in paragraph (2)(b) are that, before placing the product on the market, the importer—

(a) complies with regulation 21;

(b) ensures that—

- (i) the relevant conformity assessment procedure has been carried out in relation to the product;
- (ii) the manufacturer has drawn up the technical documentation; and
- (iii) the product bears the CE marking.

(4) In this regulation—

“CE marking” has the meaning given to it in regulation 2(1), as it applies in Northern Ireland;

“qualifying Northern Ireland goods” has the meaning given to it in regulations made under section 8C(6) of the European Union (Withdrawal) Act 2018;

“relevant conformity assessment procedure” has the meaning given to it in regulation 2(1), as it applies in Northern Ireland;

“technical documentation” has the meaning given to it in regulation 2(1), as it applies in Northern Ireland. ]

#### Textual Amendments

**F3** Regs. 40A-40D inserted (E.W.S.) (31.12.2020) by [The Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/696), reg. 1, **Sch. 28 para. 23** (with Sch. 28 para. 41) (as amended by S.I. 2020/676, regs. 1(1), 2; S.I. 2020/1460, reg. 1(4), **Sch. 3 para. 20(5)**); 2020 c. 1, **Sch. 5 para. 1(1)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Recreational Craft Regulations 2017, MISCELLANEOUS.