

**EUROPEAN INTERNAL MARKET**

Government Response  
Document to the BIS  
Public Consultation Document  
on the Draft Market Surveillance  
and CE Marking (Regulation  
(EC) No. 765/2008) Regulations

FEBRUARY 2012

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# 1. Executive Summary

This document is in response to the Department for Business, Innovation and Skills' public consultation document issued on 31 March 2010 on the draft Market Surveillance and CE Marking (Regulation (EC) No 765/2008) Regulations. These Regulations were originally intended to implement certain requirements from EU Regulations (EC) No 765/2008 concerning the market surveillance (enforcement) of products. The consultation set out at that time that following BIS consultations with enforcement authorities and relevant Government Departments, specific legislative measures would be introduced in order to fully comply with Regulation 765/2008.

These measures related to providing certain UK enforcement authorities (notably the Health and Safety Executive, the Health and Safety Executive NI, the Medicines and Healthcare products Regulatory Agency and the Office of the Rail Regulator) with the ability to recall, withdraw, prohibit, restrict, destroy or render inoperable products on the grounds of their non-compliance with EU harmonisation legislation, including risks to health and safety. In addition, it was proposed to prohibit the misuse of Her Majesty's Revenue and Customs' information shared by them with those authorities responsible for enforcing product safety legislation. The Regulations also made a consequential amendment to the General Product Safety Regulations 2005 (SI 2005/1803) and miscellaneous unconnected amendments to three other instruments.

However, there are significant elements from the March 2010 consultation document which we are not proceeding with.

Many of the EU Directives across which Regulation (EC) No 765/2008 operates are currently either in the process of being revised or are planned to be revised via the "Alignment Package" under the EU's New Legislative Framework and other measures primarily to ensure consistency of implementation processes and market surveillance powers. We will therefore be required to implement the Regulation 765/2008 provisions for each Directive when transposing them.

Following careful consideration, the Government has therefore concluded that it should implement the required powers as each Directive is revised to align with the New Legislative Framework, rather than introduce the measures beforehand. This means that most of the above mentioned market surveillance measures will be implemented in the UK as part of the transposition process for the revised EU legislation.

With regard to the CE marking provisions, we also concluded that for all practical purposes the rules in individual product specific legislation together with existing general legislation, i.e. the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008, should address the misuse of CE marking satisfactorily. We believe that this is the appropriate way forward, and one which proceeds down the alternative to regulation route.

These changes to the original draft Regulations means that we are only proceeding with part of the original draft Regulations in the March 2010 consultation. The new draft only contains the provisions to safeguard HMRC information from misuse, which was previously Part 3 of the original draft Regulations, and the Miscellaneous provisions. The

disclosure of information measures will ensure that when HMRC shares its data with market surveillance authorities it cannot be used for any other purposes, and lays down sanctions for contraventions.

The new draft Regulations also contain the previous Part 5 of the original draft Regulation which makes a related change to the General Product Safety Regulations 2005 and minor unrelated changes to the Electromagnetic Compatibility Regulations 2006 and to the Personal Protective Equipment Regulations 2002. It also makes an amendment to the Pyrotechnic Articles (Safety) Regulations 2010.

We are therefore going to make the Regulations in the form of a new draft. As the scope of the proposed Regulations has changed so too has the title which will now be “The Customs Disclosure of Information and Miscellaneous Amendments Regulations 2012”. The draft Regulations are currently being finalised and will be laid in Parliament to take effect in due course.

## 2. Background

The purpose of the March 2010 consultation was to gauge views and information on the likely effects of implementation on United Kingdom business, consumers, enforcement authorities and other interested parties (such as health care professionals) in the context of market surveillance in the UK.

The market surveillance provisions within Regulation (EC) No 765/2008 on Accreditation and Market Surveillance (RAMS) are part of a broad package of measures, entitled the New Legislative Framework (NLF) for the marketing of products. RAMS applied from 1 January 2010 and created a minimum European framework for how the market surveillance of products benefiting from the free movement of goods in the EU (enforcement and related activities) should be undertaken by member states in order to provide a high level of protection of public interests such as the protection of consumers and business users and health and safety. Such enforcement also helps protect businesses from unfair competition from those products that fail to comply with the mandatory requirements.

Further details of the NLF and RAMS are given on the BIS website

<http://www.bis.gov.uk/policies/business-sectors/environmental-and-technical-regulations/technical-regulations/ec-product-directives>

We carried out a detailed analysis of the relevant national legislation to assess whether the UK’s market surveillance regime was compatible with the RAMS provisions. We concluded that there was no need for a major overhaul of the UK legislation.

As explained in the Executive Summary, we have taken the decision after careful consideration that as most of the Directives across which EU Regulation 765/2008 applies are due for revision (mainly through the “Alignment Package”) we will therefore implement the Regulation’s market surveillance provisions individually for each Directive when transposing them into UK law.

The “Alignment Package” is a suite of EU Proposals to align nine product safety or performance EC Directives. The nine Proposals are:

Simple Pressure Vessels Directive: 2009/105/EC;

"ATEX" Directive: 94/9/EC (Equipment for Use in Explosive Atmospheres); Pyrotechnic Articles Directive: 2007/23/EC ;

Civil Explosives Directive: 93/15/EEC;

Electromagnetic Compatibility Directive: 2004/108/EC;

Low Voltage Electrical Equipment Directive: 2006/95/EC;

Measuring Instruments Directive: 2004/22/EC;

Non-Automatic Weighing Instruments Directive: 2009/23/EEC (previously Directive 1990/384/EC);

Lifts Directive: 1995/16/EC.

We have produced a public consultation document on the UK’s approach and implementation of the Alignment Package. Further details of the Alignment Package can be found on the following BIS link [Alignment Package Consultation Document](#)

We do though continue to propose to legislate to safeguard HM Revenue and Customs information from misuse by enforcement agencies with new access to this information as a result of the new information gateway provided by RAMS.

With regard to the CE marking provisions, RAMS provides that “CE marking” shall be affixed only to products where it is required by specific EU legislation. During our public consultation exercise there were seven written responses to the questions on the protection of CE marking, and its enforcement regime. Amongst these responses there were two dissenting voices on the misuse of CE marking from two representative organisations. They both argue that the CE marking measures protecting against misuse of the mark are unnecessary on the grounds that existing UK legislation, ie the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) and the Business Protection from Misleading Marketing Regulations 2008 (SI 2008/1276) could be used to the same effect. In addition, they were not in favour of the use of variable monetary penalties.

We gave very careful consideration to the arguments put forward in light of our proposals and the existing legislation which protects CE marking against misuse. We considered the views expressed in conjunction with the views received from other respondents on this issue and gave careful consideration to all the comments received.

We have concluded that the above existing UK legislation should address the misuse of CE marking satisfactorily.

Our legislative proposals are in line with the Government’s Regulatory principles. The UK is required to implement RAMS. RAMS does not require transposition into UK law as it is a directly applicable European Union measure. This means that it automatically applies in the UK, and other Member States, from 1 January 2010. Under the Government’s new “One In One Out” rule, which took effect from 1 September 2010, when Government Departments seek to introduce new regulations which impose costs on business, they will have to identify current regulations with an equivalent value that can be removed. However EU measures are exempt from the one in one out rule for the foreseeable future.

In accordance with the Government’s better regulation policy we have provided that the provisions which implement RAMS by providing protection for information disclosed by HMRC are to be reviewed after five years and every five years thereafter. The review will have to be published. In the light of the review the Secretary of State will decide whether the Regulations should be kept as they are, amended or scrapped.

We have ensured that other parts of the RAMS provisions have been brought in through administrative means. These provisions relate to co-ordination, programme planning and information exchange obligations (with one exception relating to the protection of information belonging to HM Revenue and Customs or the UK Border Agency (‘Customs authorities’) from misuse by market surveillance authorities).

In addition, RAMS also places key obligations on Member States such as ensuring Market Surveillance Authorities have powers to require documentary information on the products in question, to enter business premises, and to take necessary samples of the products. We consider that the UK’s implementing legislation in the relevant areas make these powers available, in which case no further legislation is needed.

### 3. Responses Received

The consultation process, which took the form of a consultation document was made available through the BIS website.

The consultation posed 18 questions about the draft Regulations, including the Impact Assessment. A total of nine responses were received (see Annex A for details of the respondents) and they are broken down as follows:-

Small to Medium Enterprise	0
Representative Organisation	2
Trade Union	0
Trade Association	5
Test House	1
Other (ie consultant or private individual)	1

As part of our consultation process, we held meetings with stakeholders and also held a public meeting in June 2010 which was attended by some 25 people representing mainly business interests.

Although we are not now going to proceed with the enforcement and CE marking provisions for the reasons given, for transparency purposes, we have listed the questions posed in the consultation process and an analysis of the responses received.

## 4. Summary of Responses

The following analysis of the responses received to the consultation is focused on the questions posed in the consultation document. The Government responses to the points raised are set out following each question.

### **ENFORCEMENT NOTICES, RECALL NOTICES AND FORFEITURE (PART 2 OF THE DRAFT REGULATIONS)**

**Question 1 – Do you agree that new enforcement powers in relation to actions to recall, withdraw, prohibit, destroy or render inoperable business products on the grounds of health and safety, serious risk or non compliance with EU Harmonisation legislation should be conferred on these enforcement authorities (principally HSE, HSENI, Department of Justice (NI), ORR and MHRA)?**

#### **Analysis of responses**

The majority of respondents supported the proposals to confer new enforcement powers on the relevant authorities as described, i.e. HSE, HSENI, Department of Justice (NI), ORR and MHRA, which would enable them to have the ability to recall, withdraw, prohibit, destroy or render inoperable business products on the grounds of serious risk or non compliance with EU Harmonisation legislation. The general consensus was that the new enforcement powers would be beneficial to the United Kingdom's market surveillance system. One trade association felt that to have market surveillance and not being able to carry out intervention and enforcing action would be inconsistent.

Amongst the responses received to this question, one trade association disagreed with the proposals on the new enforcement powers. They did recognise that in certain circumstances i.e. where it has been demonstrated that a certain product or process has a high probability of causing significant harm to people, enforcement bodies should be able to stop any further such products being placed on the market or require the economic operator to initiate product recall. However, their view was that these measures can have serious financial repercussions for companies if they are subsequently found to be unwarranted or disproportionate. They therefore favoured an adjudication and compensation system and that it is for Courts to decide whether it is warranted and proportionate to initiate a product for recall, to withdraw products from the market.

In addition, they also considered that once goods are destroyed or rendered inoperable, they lose their value. They would therefore like such powers to rest with the courts. However they also recognise that in some circumstances destruction or rendering

inoperable may be the only option. Financial loss must be recoverable via the Courts if it is proven that the MSA acted unreasonably.

**Question 2- Do you have any particular concerns which the new powers of enforcement will bring to you, or businesses generally?**

**Analysis of responses**

There were four responses to this question. Three trade associations supported our proposals. They did not view them as being a hindrance to business, or their sector. One added that in their view enforcement in the UK is generally undertaken in a pragmatic way, with the emphasis on conformity and not enforcement to “make an example” of a person. The association would like this approach to be maintained. They also suggested that MSAs should have the power to impose fines and that any monies received should go to central Government funds and not to the MSA directly.

**Question 3 - Do you agree that we follow the same mechanism to provide for an advisory opinion as in the GPSR, i.e. that the Chartered Institute of Arbitrators should be the appropriate body?**

**Analysis of responses**

There were four responses to this question. Two respondents supported the proposal to follow the same mechanism to provide for an advisory opinion as in the GPSR. One of two respondents, a trade association, who favoured this mechanism, added that in their consultation on enforcement of the Eco design and Energy Labelling Regulations Defra proposed that appeals be made to the General Regulatory Chamber of the First-tier Tribunal. As this body was not set up when the GPSR first came into operation, the respondent suggested that it could possibly provide an alternative for consideration.

We note these comments but believe that there is a difference between the advisory opinion and the appeals process and as such the First-tier Tribunal would not fulfil the same function as the Institute.

Two respondents did not support the proposal. A representative organisation viewed the mechanism as unworkable based on experiences with the General Product Safety Regulations 2005. Another trade association commented that from their experience organisations, including suppliers and manufacturers, will only take notice of “legal enforcement”. They raised concerns that “Arbitration” is generally only an advisory process and would therefore like to see a more enforcing tribunal similar to that for prohibition notices served by HSE/LA. This would ensure that suppliers/manufacturers comply with the decision.

**Question 4 - If you do not agree, which body/organisation do you think would be more appropriate and why?**

**Analysis of responses**

There was one response to this question. A representative organisation disagreed that a body or organisation was needed on the grounds that alternative dispute mechanisms elsewhere means that the whole system is unnecessary.

**Question 5 - Do you foresee any particular difficulties, generally, or affecting your business sector, with this procedure?**

**Analysis of responses**

Two trade associations did not foresee any particular difficulties. However, one of the respondents suggested that they would like to see the scheme reviewed 2 years after implementation to make sure it is “fit for purpose”. On the other hand a representative organisation thought that business would not use it because it was not cost effective because they do not get their costs back even if they win.

**Question 6 - Can you suggest an alternative procedure ? If so what merits do you think this would this bring?**

**Analysis of responses**

Three trade associations responded to this question. They reiterated their earlier responses expressed under Questions 3 and 5 that consideration be made for appeals to the General Regulatory Chamber of the First-tier Tribunal and that the scheme be reviewed 2 years after implementation to make sure it is “fit for purpose”.

**Question 7 - Do you foresee any particular difficulties which the new powers to order forfeiture and destruction will bring to the relevant enforcement authorities or to businesses generally?**

**Analysis of responses**

There were four responses to this question. The majority did not see any difficulties which the new powers to order forfeiture and destruction will bring to the relevant enforcement authorities or to businesses generally. In common with their comments to earlier questions, one trade association would like to see the scheme reviewed 2 years after implementation to make sure it is “fit for purpose”. Whilst agreeing to the proposals, another trade association commented that forfeiture orders should be seen as a last resort and only be used in extreme cases, possibly to unique installations and/or processes. Also they should be used where the item cannot be made safe for use.

One trade association maintained that forfeiture orders should rest with the courts to decide whether it is warranted and proportionate to initiate forfeiture.

**DISCLOSURE OF INFORMATION (PART 3 OF THE DRAFT REGULATIONS)**

**Question 8 - Do you agree that information disclosed by HMRC and customs officials should be protected from onward disclosure other than in the limited circumstances outlined?**

**Recap of the draft Regulations**

RAMS creates a legal gateway with direct effect for the disclosure of customs information. Gateway in this instance means a “gateway” for information to flow from the UK Customs authorities (HMRC/UKBA) to the Market Surveillance Authorities (e.g. Local Authorities, HSE etc) so that they can enforce EU legislation (covering products) at the borders of the EU. This information can be disclosed to an MSA to allow them to take action in respect of non compliant imported goods.

The draft Regulations protects HMRC information from wrongful onward disclosure. This is because HMRC has a statutory duty of confidentiality that covers all information it holds in connection with its functions. To ensure that HMRC information lawfully disclosed to another body is similarly protected, HMRC requires that any information provided by them through an information-sharing gateway is protected by a criminal sanction for wrongful onward disclosure. The draft Market Surveillance Regulation therefore provides this protection.

### **Analysis of the responses**

There were six responses to the proposal. The majority view was that they had no objections to the proposals. All of the respondents saw the value of sharing information whilst protecting restricted information disclosed by HMRC and customs officials.

Whilst supporting the proposals, one trade association put forward the view that the phrase “details should remain confidential unless disclosure is required in due process of law” should be used. The association stated that this would prevent the media from seeking information from HMRC. It would also prevent and protect HMRC from unwarranted disclosure which would result in compensation claims.

We believe that our proposals offer sufficient protection for HMRC’s information from unwarranted disclosure and that it does offer HMRC protection from those seeking information for their own purposes.

One representative organisation did not agree with the proposals on disclosure of information. Their view was that if the information is protected it will not help communication between local authorities and HMRC on enforcement issues.

We do not agree on this point and consider that our proposals will help to facilitate communication between local authorities and HMRC on enforcement issues.

### **Government Conclusions**

We conclude that our proposals are framed in a proportionate way to protect HMRC’s information in line with that department’s policy on information gateways.

**Question 9 - Do you agree that there should be a penalty regime in place in cases where information is disclosed in breach of these provisions?**

### **Recap of the draft Regulations**

The draft Regulations provide that where restricted information is disclosed to an enforcement authority by the Secretary of State, or the Customs Authorities, the

Commissioners or HMRC officers, it is an offence for an enforcement authority or any other person who receives it to disclose it, unless for the purposes for which it was originally lawfully disclosed or for the purposes of market surveillance in respect of a product. If any person is found guilty of an offence of unlawful onward disclosure, they may be liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both. They may be liable on conviction on indictment to a fine or to imprisonment for a period not exceeding two years or both.

### **Analysis of the responses**

There were five responses to this question. Three trade associations and one representative organisation did not object to the proposals. However, one representative organisation did object in line with the response to the previous question.

### **Government Conclusions**

We are pleased that our proposals have largely been met with approval. We will therefore proceed with our proposals on disclosure of HMRC information.

## **CE MARKING (PART 4 OF THE DRAFT REGULATIONS)**

**Question 10 - Do you agree with the provisions to protect CE marking against misuse/improper affixing of it on products that are not subject to legislation with the CE marking requirements?**

### **Analysis of the responses**

There were eight responses to this question. Five trade associations and one test house were supportive of our proposals. As mentioned in the Executive Summary, two representative organisations were opposed to the proposals, although they agreed that the improper use of any legal mark should be discouraged.

They both argue that the CE marking measures protecting against misuse of the mark are unnecessary on the grounds that existing UK legislation can be used to address such misuse, ie the Consumer Protection from Unfair Trading Regulations and the Business Protection from Misleading Marketing Regulations suffice. Their view was that either of these legislative measures would provide a better resolution to the issue of misuse of CE marking.

In addition the representative organisations were not in favour of an element of the CE marking enforcement regime in relation to variable monetary penalties. They did not favour enforcement bodies deciding on the appropriate amount because they prefer conventional criminal proceedings in a magistrate's court to civil penalties.

### **Government Conclusions**

We have considered the arguments put forward very carefully, in light of our proposals and the existing legislation which protects consumers and businesses from unfair trading and misleading marketing. We considered the views expressed in conjunction with the views

received from other respondents on this issue and considered carefully all the comments received.

We have concluded that the Consumer Protection from Unfair Trading Regulations and the Business Protection from Misleading Marketing Regulations will adequately address the misuse of CE marking. Not creating a new prohibition in this area is in line with the Government's reducing regulation policy. We therefore agree with the respondents that this is the appropriate way forward, and one which will be supported by the enforcement authorities. We have therefore revised the draft Regulations to delete the CE marking provisions.

Although we are not now going to proceed with the CE marking provisions for the reasons given, for transparency purposes, we have also listed the rest of the questions on CE marking, eg its enforcement regime and an analysis of the responses received.

**Question 11 - Do you agree that the absence of CE marking protection can give those manufacturers a competitive advantage in affixing CE marking over other such suppliers who correctly are not applying the CE marking?**

#### **Analysis of the responses**

There were eight responses to this question. Five trade associations, two representative organisations and one test house agreed with the question. One trade association considered that the application of the CE marking provides a level playing field and therefore normalises the cost for all economic operators. However, another trade association, whilst being in favour of the proposal stated that their products are covered by one or more CE marking Directives and it is therefore not a significant problem for their members. A representative organisation provided a cautious response that the answer is technically yes, but in practice it is very difficult to evidence statistically.

**Question 12 - Do you agree that there should be a variable monetary penalty regime?**

#### **Analysis of the responses**

There were eight responses to this question. Five trade associations, one test house and two representative organisations agreed to the proposals but three were conditional in their replies. One felt that whilst the proposals were consistent with the approach being proposed under the Regulatory Enforcement Sanctions Act 2008 by Defra on the Eco-design of Energy using Products (EuP) Directive 2005, any monies received should go to central Government funds and not the Market Surveillance Authority directly. Another trade association favoured that penalties be a monetary penalty only which should be proportionate to the value of the products that are illegal with a minimum penalty eg £5,000. The association argued that, for example, a large shipment of products which is worth tens of thousands of pounds, a £5,000 penalty is not a sufficient enough deterrent. One other trade association also raised concerns that the maximum penalty of £5,000 was not a sufficiently large deterrent.

Two representative organisations did not support the proposals. One considered that the proposals will introduce an inconsistency of approach and that businesses would not be in

favour. The organisation added that having a variable monetary penalty in place not exceeding £5,000 would present difficulties when deciding what is appropriate and proportionate to the individual breach. They queried whether there are any benefits to the enforcers and that it could be argued that there is no extra benefit. They also stated that because the breach would be a civil one there are no powers to find out how many items the company has bought sold or made a profit.

Another had a number of concerns. They believed that if the CE marking proposals are introduced, it would lead to lack of uniformity of enforcement as many authorities would be unwilling or unable through lack of resources to adopt costly legal measures to enable them to administer a penalty notice regime, both setting up appeal mechanisms and enforcing non payment through the civil court. They also believed that the issuing of a penalty notice does not have the same deterrent effect as a criminal offence as the associated publicity can give out a useful message within trade sectors.

### **Question 13 - Do you agree that £5,000 should be an appropriate maximum penalty?**

#### **Analysis of the responses**

There were eight responses to this question. The majority of the respondents agreed to the proposals that £5,000 should be an appropriate maximum penalty. However, two of those that agreed did so with caveats. One trade association felt that the penalty should be automatically revised in line with the maximum penalty set up by a Magistrates Court. Another trade association stated consideration should be given to increasing the £5,000 maximum penalty proposed in light of experience as it may not be a sufficiently large deterrent. Two respondents did not agree with the proposals. One trade association, whilst agreeing in principle, considered that a maximum of £5,000 was not a sufficiently large deterrent and therefore would not provide a scaled penalty based on the seriousness of the offence. One representative organisation did not favour variable monetary penalties on the grounds that it introduces an inconsistency approach which businesses would not support. The organisation asserted that with a variable monetary penalty not exceeding £5,000 it would be difficult to decide what is appropriate and proportionate to the individual breach.

### **Question 14 - On the basis that appeals would be made to the First-tier Tribunal do you think there is any reason why in most cases appeals against the imposition of monetary penalties could not be dealt with on the basis of the papers rather than by an oral hearing?**

#### **Analysis of the responses**

There were four responses to this question. Three trade associations agreed with the proposals. One of which stated that the aim should be that the costs of prosecution are minimised. Another trade association put forward the view that the appeals process should be simplified as far as possible to reduce unnecessary expense and effort. The association therefore believed that the option should be given to the supplier/manufacturer to submit their case in papers or by oral hearing, noting that the latter would be more expensive on costs. One representative organisation did not support the proposals but were not specific as to the reasons for their objections.

## **MISCELLANEOUS (PART 5 OF THE DRAFT REGULATIONS)**

### **Question 15 - Do you agree with our view that the GPSR should be amended?**

#### **Recap of the draft provision**

The draft Regulation amends the General Product Safety Regulations to provide for a longer period of ten days, rather than seven days as currently provided for in the GPSR, before enforcement authorities can take action to recall a product.

Whilst we have taken the view that the powers in the GPSR (for recall/withdrawal) are sufficient to implement the RAMS provisions (for prohibition/withdrawal/ recall) in so far as harmonised consumer safety legislation is concerned, there are differing time limits between GPSR and RAMS before enforcement authorities take action to recall a product. However it is important to point out that neither period applies where urgent action is required.

Under Article 21 of RAMS, Market Surveillance Authorities have to give economic operators the opportunity to be heard, prior to any restrictive measures being taken, and this should be within an appropriate period of not less than 10 days (except in cases of urgency). This only applies to restrictive measures taken in pursuance of harmonisation legislation. However, the GPSR (Reg 15(4)(c)) provides for a notice period of '...not less than seven days...!.

Our view is that if we do not amend the GPSR to provide for the longer period of ten days for the pre-action dialogue with the economic operator we would be operating a two tier system which could be confusing for the enforcement authorities and businesses. E.g. there would be a 7 day period for non-harmonised consumer goods but a 10 day period for harmonised consumer goods. This is because Market Surveillance Authorities would be obliged to give 10 days because of the direct applicability of the RAMS Regulations. We therefore, believe that GPSR should be amended.

#### **Analysis of the responses**

There were four responses to this question. Two trade associations and one representative organisation were positive on the proposals. However, one representative organisation agreed that the GPSR should be amended but not to alter the timescales as proposed.

#### **Government Conclusion**

We propose to amend GPSR as set out above.

### **Question 16 - If you do not agree, what concerns do you have regarding a time limit of 10 days for economic operators to be heard?**

#### **Analysis of the responses**

There was one response to this question. A trade association considered that a 10 day period may not be practicable in some cases. For example, if a restrictive measure is

notified to a retailer then it may take several days for the information to be communicated to the manufacturer or importer. The association felt that therefore the MSA should have the duty to directly contact the manufacturer in addition to any other economic operator they believe is relevant.

We note this point. We are sympathetic to this view expressed but consider that GPSR should be amended to provide for a ten day period which is in line with the legal requirement in RAMS.

**Question 17 - Do you agree with our assessment of the costs and benefits for the UK of these provisions as set out in the consultation impact assessments? Please provide any available evidence to support your view?**

### **Analysis of the responses**

There was one response to this question. A trade association did not believe that the provisions would add a significant burden to either the enforcing authorities or business.

## **5. Next Steps**

We will be laying the revised Regulation in Parliament in due course. Details will also be published on the BIS website.

Contact details for further information on the Customs Disclosure of Information and Miscellaneous Amendments Regulations 2011

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## **6. Annex A - List of Respondents**

Association of Manufacturers of Domestic Appliances

Bureau Veritas

EMC Test Labs Association

Heating and Hotwater Industry Council

Local Government Regulation

Safety Assessment Federation

Jim Spinks (Independent Advisor on Consumer Policy and Market Surveillance)

Trading Standards Institute

Wood Panel Industries Federation

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