



STATUTORY INSTRUMENTS.

S.I. No. 340 of 2023

EUROPEAN UNION (TWO- OR THREE- WHEEL VEHICLES AND QUADRICYCLES) (MARKET SURVEILLANCE) REGULATIONS 2023

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EUROPEAN UNION (TWO- OR THREE- WHEEL VEHICLES AND QUADRICYCLES) (MARKET SURVEILLANCE) REGULATIONS 2023

I, EAMON RYAN, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving full effect to Regulation (EU) No. 168/2013 of the European Parliament and of the Council of 15 January 2013¹, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Two- or Three- Wheel Vehicles and Quadricycles) (Market Surveillance) Regulations 2023.
- (2) These Regulations come into operation on 1 July 2023.

Interpretation

2. (1) In these Regulations—

“approval authority” means the National Standards Authority of Ireland appointed under Regulation 4(1) of the Regulations of 2015 as the approval authority;

“authorised officer” means a person appointed by the MSA under Regulation 4(1) as an authorised officer;

“economic operator” has the meaning assigned to it in Article 3(51) of the EU Regulation;

“EU Regulation” means Regulation (EU) No. 168/2013 of the European Parliament and of the Council of 15 January 2013¹—

- (a) supplemented by Commission Delegated Regulation (EU) No 134/2014 of 16 December 2013², and
- (b) amended by Regulation (EU) 2019/129 of the European Parliament and of the Council of 16 January 2019³, and Regulation (EU) 2020/1694 of the European Parliament and of the Council of 11 November 2020⁴;

“manufacturer” has the meaning assigned to it in Article 3(47) of the EU Regulation;

“MSA” means the Road Safety Authority appointed under Regulation 3(1) as the market surveillance authority;

¹ OJ L 060 2.3.2013, p. 52

² OJ L 53, 21.2.2014, p. 1

³ OJ L 30, 31.1.2019, p. 106

⁴ OJ L 381, 13.11.2020, p. 4

“Regulations of 2015” means European Union (Two or Three Wheel Motor Vehicles and Quadricycles Type-Approval) Regulations 2015 (S. I. No. 614 of 2015).

(2) A word or expression that is used in these Regulations and which is also used in the EU Regulation has, unless the contrary intention appears, the same meaning in these Regulations as it has in the EU Regulation.

Market surveillance authority

3. (1) The Road Safety Authority is appointed as the market surveillance authority, competent in matters concerning market surveillance in accordance with the EU Regulation.

(2) The MSA shall perform the functions conferred upon it by the EU Regulation and these Regulations.

(3) For the purposes of performing any of its functions under the EU Regulation or these Regulations, the MSA may—

- (a) provide and maintain places where tests and inspections of vehicles, components, separate technical units, systems and parts and equipment may be carried out and may provide and maintain apparatus for carrying out such tests and inspections, and
- (b) subject to such terms and conditions as the MSA may specify consistent with the EU Regulation and these Regulations—
 - (i) appoint and engage any person, within the State or otherwise, from that other person’s own premises or otherwise, to assist the MSA in performing any of its functions under the EU Regulation or these Regulations, and
 - (ii) appoint and engage any consultant or adviser to assist the MSA in the performance of any of its functions as the market surveillance authority.

Authorised officers

4. (1) The MSA may appoint a person to be an authorised officer for the purpose of the EU Regulation and these Regulations.

(2) An authorised officer shall be furnished with a warrant of his or her appointment as an authorised officer.

(3) When exercising a power conferred on him or her under this Regulation, an authorised officer shall, if requested by a person thereby affected, produce the warrant of his or her appointment, or a copy of it, to that person and a form of personal identification.

(4) An appointment under paragraph (1) may be revoked at any time by the MSA.

(5) An authorised officer may, for the purpose of ensuring that the EU Regulation and these Regulations are being complied with, do any of the following:

- (a) require any economic operator to produce the type-approval certificate or certificate of conformity to the authorised officer in respect of any vehicle, system, component or separate technical unit;
- (b) enter at any reasonable time any premises or place, at which there are reasonable grounds to believe that any vehicle, system, component, separate technical unit, parts or equipment to which the EU Regulation or these Regulations applies or apply are or are likely to be found, and search and inspect the premises or place and such vehicle, system, component, separate technical unit, parts or equipment found there and any type-approval certificates, certificates of conformity, books, documents, records, computers or media relating to the type-approval, placing on the market, making available on the market or entry into service of any such vehicle, system, component, separate technical unit, parts or equipment;
- (c) secure for later inspection any premises or place or part of it in which any such vehicle, system, component, separate technical unit, parts or equipment or any type-approval certificates, certificates of conformity, books, documents, records, computers or media relating to the type-approval, placing on the market, making available on the market or entry into service of any such vehicle, system, component, separate technical unit, parts or equipment are kept or there are reasonable grounds for believing that such are kept;
- (d) require any person in charge of, or employed in, the premises or place to produce to him or her any books, documents, records, computers or media relating to the type-approval, placing on the market, making available on the market or entry into service of any vehicle, system, component, separate technical unit, parts or equipment which are in the person's power or control (and in the case of such information in a non-legible form to reproduce it in a legible form) and to give to him or her such information as the authorised officer may reasonably require in relation to any entries in such books, documents or records;
- (e) inspect and take extracts from or make copies of any such books, documents, records, computers or media (including, in the case of information in a non-legible form, a copy of or extract from such information in a legible form);
- (f) remove and retain such books, documents, records, computers or media for such period as may be reasonable for further examination;
- (g) require any person in charge of, or employed in, the premises or place to maintain such books, documents, records, computers or

media for such period of time, as may be reasonable, as he or she directs;

- (h) require any person who appears to the authorised officer to be in a position to facilitate access to documents or records stored in any data equipment or computer, or which can be accessed by the use of that data equipment or computer, to give the authorised officer all reasonable assistance in relation to the operation of the data equipment or computer or access to the records stored in it, including by:
 - (i) providing the documents or records to the authorised officer in a form in which they can be taken and in which they are, or can be made, legible and comprehensible,
 - (ii) giving to the authorised officer any password necessary to make the documents or records concerned legible and comprehensible, or
 - (iii) otherwise enabling the authorised officer to examine the documents or records in a form in which they are legible and comprehensible;
- (i) require any person in charge of, or employed in, the premises or place to give him or her any information which he or she may reasonably require relating to the type-approval, placing on the market, making available on the market or entry into service of any vehicle, system, component, separate technical unit, parts or equipment;
- (j) take without payment of compensation any necessary samples of any vehicle, system, component, separate technical unit, parts or equipment;
- (k) carry out or have carried out on the sample so taken such analyses, examinations, tests and inspections as he or she considers necessary or expedient.

(6) Where an authorised officer in exercise of his or her powers under this Regulation is prevented from entering any premises or place, an application may be made under paragraph (8) for a warrant to authorise such entry.

(7) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling, unless he or she has obtained a warrant under paragraph (8) authorising such entry.

(8) If, on the sworn information of an authorised officer, a judge of the District Court is satisfied that there are reasonable grounds for suspecting that information required by an authorised officer for the purpose of the EU Regulation or these Regulations is held at any premises or any place, the judge may issue a warrant authorising an authorised officer, accompanied, if appropriate, by other authorised officers and members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant, if so requested, to enter those premises or that place, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer under this Regulation.

Compliance notice

5. (1) The MSA may serve on an economic operator a notice (“compliance notice”) where it is of the opinion that the economic operator is contravening or has contravened or is failing to comply or has failed to comply with a provision of the EU Regulation specifying the contravention or failure concerned and requiring the provider to take such measures as are specified in the notice, or within such period as may be specified in the notice, for the purposes of complying with the notice, which shall not be earlier than the expiration of the period within which an appeal can be brought under paragraph (4).

(2) A compliance notice may include directions as to the measures to be taken to remedy the alleged contraventions set out in the notice.

(3) Where the MSA proposes to serve a compliance notice, the MSA shall first notify the economic operator in question in writing of the MSA’s intention to serve the compliance notice and the economic operator may, within 14 days, make representations to the MSA who shall consider them.

(4) Where the MSA decides, having considered any representations made to it under paragraph (3), to serve a compliance notice and so serves it, and where the economic operator in question is aggrieved by the compliance notice, then that economic operator may, within the period of 14 days beginning on the day on which the notice is served on it, appeal to the High Court against the notice and in determining the appeal the judge may if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm, with or without modification, or cancel, the notice. The decision of the court is final other than on a point of law which lies to the Court of Appeal.

(5) An economic operator who appeals against a compliance notice shall at the same time notify the MSA of the appeal and the grounds for appeal and the MSA shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(6) Where an appeal against a compliance notice is taken, the notice shall take effect on the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(7) Where no appeal is taken against a compliance notice, the notice shall take effect on the expiration of the period during which such an appeal may be taken or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(8) The MSA may withdraw a compliance notice at any time before the date specified in it. The MSA may extend or further extend that date at any time when an appeal against the notice is not pending.

(9) An economic operator on whom a compliance notice is served under this Regulation who fails to comply with the notice commits an offence and is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €250,000.

Offences

6. (1) An economic operator who fails to comply with—
 - (a) an obligation imposed on the operator under the Chapter II, or
 - (b) a substantive requirement under Chapter III,of the EU Regulation commits an offence and is liable—
 - (i) on summary conviction, to a class A fine, or
 - (ii) on conviction on indictment, to a fine not exceeding €250,000.
- (2) A manufacturer who fails to comply with Article 34 of Chapter VI or Chapter VIII of the EU Regulation commits an offence and is liable on summary conviction to a class A fine.
- (3) A manufacturer who fails to provide—
 - (a) technical information under Chapter XIV, or
 - (b) access to repair and maintenance information under Chapter XV,of the EU Regulation commits an offence and is liable—
 - (i) on summary conviction, to a class A fine, or
 - (ii) on conviction on indictment, to a fine not exceeding €50,000.
- (4) A manufacturer who fails to comply with the obligations of a manufacturer regarding the environmental performance of vehicles under Chapter II or regarding the propulsion performance of vehicles under Chapter III of Commission Delegated Regulation (EU) No 134/2014 of 16 December 2013² commits an offence and is liable—
 - (a) on summary conviction, to a class A fine, or
 - (b) on conviction on indictment, to a fine not exceeding €250,000.
- (5) A person who for the purposes of the EU Regulation—
 - (a) makes a false declaration during approval procedures or procedures leading to a recall under the EU Regulation,
 - (b) falsifies test results for type approval,
 - (c) withholds data or technical specifications which could lead to recall, refusal or withdrawal of type approval under the EU Regulation,
 - (d) uses a defeat device in contravention of Article 19 of the EU Regulation,
 - (e) refuses to provide access to information required by the approval authority or the MSA for the purposes of the EU Regulation, or
 - (f) being an economic operator, makes available on the market vehicles, systems, components or separate technical units subject to approval without such approval or falsifies documents or markings with that intention,

commits an offence and is liable—

- (i) in the case of a contravention of paragraph (a), (b), (c) or (e), on summary conviction to a class A fine, or
- (ii) in the case of a contravention of paragraph (d) or (f)—
 - (I) on summary conviction, to a class A fine, or
 - (II) on conviction on indictment, to a fine not exceeding €100,000.

Offence body corporate

7. (1) Where an offence under these Regulations is committed by a body corporate and is proven to have been so committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, commits an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Summary proceedings

8. Proceedings for an offence under these Regulations may be brought and prosecuted summarily by the MSA or (other than under Regulation 5(9)) the approval authority.

Review

9. (1) Any person who is aggrieved by a decision of the MSA or the approval authority made under the EU Regulation may request the authority concerned to review the decision.

(2) On a review under this Regulation, the MSA or the approval authority—

- (a) shall have the same powers and duties as it has on an application for consideration of the application of the relevant kind,
- (b) may hold an inquiry in connection with the review, and
- (c) may appoint an assessor for the purpose of assisting with the review or inquiry.

(3) A review under this Regulation shall be made by notice, as appropriate, to the MSA or the approval authority which shall be lodged with the authority not later than 14 days from the date on which notice of the decision in respect of which the review is sought was given.

(4) A person, whether a member of the MSA or the approval authority or employed by that authority or otherwise, shall not—

(a) undertake or participate in undertaking a review or inquiry under this Regulation, or

(b) act as an assessor in a review or an inquiry under this Regulation, if he or she has—

(i) made or participated in the making of any decision by the authority,

(ii) made any recommendation or report to the authority or to any person concerned with the making of such decision, or

(iii) been in receipt of information not publicly available,

in the context of the decision that is the subject of the review.

(5) The MSA or the approval authority may confirm, annul or vary the decision made by it that is the subject of the review, including by the addition, deletion or modification of a condition.

(6) The MSA or the approval authority shall cause its decision on a review and the reasons for making that decision to be notified to the applicant.

Service of notices

10. (1) Subject to paragraph (2), any notice or other document required or authorised under the EU Regulation or these Regulations to be given to any person by the MSA or the approval authority shall be addressed to the person concerned by name and may be given –

(a) by delivering it to the person,

(b) by leaving it at the address at which the person carries on business or ordinarily resides or, in the case in which an address for service has been furnished, at that address,

(c) by sending it by post in a prepaid registered letter to the address at which the person carries on business or ordinarily resides or, in a case in which an address for service has been furnished, to that address, or

(d) by electronic communication, if the person concerned has agreed to service of notices by such means, provided that there is a facility for confirming receipt of the electronic communication and that such receipt has been confirmed.

(2) For the purposes of this Regulation, a company within the meaning of the Companies Act 2014 (No. 38 of 2014) shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(3) Where a notice or other document has been sent to a person in accordance with paragraph (1)(c), it is deemed to have been duly served on or given to the person on the third working day after the day on which it was so sent.

Amendment of Regulations of 2015

11. The Regulations of 2015 are amended—

(a) in Regulation 6, by substituting for paragraph (2) the following:

“(2) A person who contravenes paragraph (1) commits an offence and is liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

(3) Proceedings for an offence under this Regulation may be brought and prosecuted summarily by the RSA or the Approval Authority.”,

and

(b) in Regulation 8, by deleting paragraphs (1), (2) and (4).



L.S.

GIVEN under my Official Seal,
28 June, 2023.

EAMON RYAN,
Minister for Transport.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation)

These Regulations give effect to Regulation (EU) No. 168/2013 in respect of market surveillance and amend S. I. 614/2015. These Regulations also appoint the Road Safety Authority as the market surveillance authority, competent in matters concerning market surveillance in accordance with the EU Regulation.

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