



STATUTORY INSTRUMENTS.

S.I. No. 345 of 2016

EUROPEAN UNION (MAKING AVAILABLE ON THE MARKET OF
ELECTRICAL EQUIPMENT DESIGNED FOR USE WITHIN CERTAIN
VOLTAGE LIMITS) REGULATIONS 2016

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I, MARY MITCHELL O'CONNOR, Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) (as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007) and for the purpose of giving effect to Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014¹ and of giving further effect to Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008², hereby make the following regulations:

PART 1

GENERAL PROVISIONS

Citation and commencement

1. These Regulations may be cited as the European Union (Low Voltage Electrical Equipment) Regulations 2016.

Interpretation

2. (1) In these Regulations—

“authorised officer” means a person appointed under Regulation 24;

“authorised representative” means any natural or legal person established within the European Economic Area who has received a written mandate from a manufacturer to act on his behalf in relation to specified tasks;

“CE marking” means a marking by which the manufacturer indicates that the electrical equipment is in conformity with the applicable requirements set out in European Union harmonisation legislation providing for its affixing, in accordance with Regulation 18;

“Commission” means the Competition and Consumer Protection Commission;

“competent authority” means—

(a) in the State, the authority designated as competent authority under Regulation 3, or

¹OJ No. L 96, 29.3.2014, p. 357.

²OJ. No. L 218, 13.8.2008, p. 30.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 8th July, 2016.

(b) in another Member State, any authority or body designated as competent authority by that Member State for the purposes of the Directive;

“conformity assessment” means the process demonstrating whether the safety objectives referred to in Regulation 5 and set out in Annex I to the Directive relating to electrical equipment have been fulfilled;

“contravention notice” means a notice under Regulation 26;

“Directive” means Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014¹;

“Directive 2006/95/EC” means Directive 2006/95/EC of the European Parliament and of the Council of 12 December 2006 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits³;

“distributor” means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes electrical equipment available on the market;

“economic operator” means a manufacturer, authorised representative, importer or distributor;

“EU declaration of conformity” means the declaration of conformity provided for in Regulation 16;

“forfeiture order” means the order provided for in Regulation 25;

“harmonised standard” means harmonised standard as defined in paragraph (c) of point 1 of Article 2 of Regulation (EU) No. 1025/2012 of 25 October 2012⁴;

“importer” means any natural or legal person established within the European Economic Area who places electrical equipment from a third country on the market of the European Economic Area;

“making available on the market” means any supply of electrical equipment for distribution, consumption or use on the market of the European Economic Area in the course of a commercial activity, whether in return for payment or free of charge;

“manufacturer” means any natural or legal person who manufactures electrical equipment or has electrical equipment designed or manufactured, and markets that electrical equipment under his name or trade mark;

“market surveillance authority” means—

(a) in the State, the authority designated as market surveillance authority under Regulation 3, or

³OJ No. L 374, 27.12.2006, p. 10.

⁴OJ No. L 316, 14.11.2012, p. 12.

- (b) in another Member State, any authority or body designated as market surveillance authority by that Member State for the purposes of the Directive;

“measure” means, as the context requires, any enforcement action whatsoever taken under these Regulations and may include a forfeiture order, a prohibition notice, a contravention notice, or any notification thereof;

“Member State” means a state which is a contracting party to the Agreement on the European Economic Area signed in Oporto on 2 May 1992;

“Official Journal” means the Official Journal of the European Union;

“placing on the market” means the first making available of electrical equipment on the market of the European Economic Area;

“prohibition notice” means the notice provided for in Regulation 27;

“recall” means any measure aimed at achieving the return of electrical equipment that has already been made available to the end-user;

“Regulation (EC) No. 765/2008” means Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/932;

“technical specification” means a document that prescribes technical requirements to be fulfilled by electrical equipment;

“Union harmonisation legislation” means any European Union legislation harmonising the conditions for the marketing of products;

“withdrawal” means any measure aimed at preventing electrical equipment in the supply chain from being made available on the market.

(2) A word or expression which is used in these Regulations and which is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

(3) References to the repealed Directive 2006/95/EC in existing laws, regulations and administrative provisions of the State shall be construed as references to this Directive.

Designation of competent authority and market surveillance authority

3. For the purposes of the Directive and these Regulations the Commission is designated as—

- (a) the market surveillance authority in the State, and
- (b) the competent authority in the State.

Application

4. (1) Subject to paragraph (2), these Regulations apply to electrical equipment designed for use with a voltage rating of between 50 and 1000 V for alternating current and between 75 and 1500 V for direct current.

(2) These Regulations do not apply to electrical equipment and phenomena listed in Annex II to the Directive.

Making available on the market and safety objectives

5. A person shall not make available on the market any electrical equipment unless—

- (a) it has been constructed in accordance with good engineering practice in safety matters that apply in the European Union, including the safety objectives specified in Annex I to the Directive, and
- (b) it does not endanger the health and safety of persons and domestic animals, or property, when properly installed and maintained and used in applications for which it was made.

Supply of electricity

6. An electricity supply body shall not impose stricter safety requirements than the safety objectives referred to in Regulation 5 and set out in Annex I to the Directive for connection to the grid, or for the supply of electricity to users of electrical equipment.

PART 2

OBLIGATIONS OF ECONOMIC OPERATORS

Obligations of manufacturers

7. A manufacturer shall—

- (a) ensure that electrical equipment placed on the market by the manufacturer has been designed and manufactured in accordance with the safety objectives referred to in Regulation 5 and set out in Annex I to the Directive,
- (b) draw up the technical documentation referred to in Annex III to the Directive and carry out the conformity assessment procedure referred to in Annex III to the Directive or have it carried out,
- (c) in a case where compliance of the electrical equipment with the safety objectives referred to in Regulation 5 and set out in Annex I to the Directive has been demonstrated by the conformity assessment procedure carried out under paragraph (b)—
 - (i) draw up an EU declaration of conformity in accordance with Regulation 16, and

- (ii) affix a CE marking to the electrical equipment in accordance with Regulation 18 and Article 30 of Regulation (EC) No. 765/2008,
- (d) retain the technical documentation referred to in Annex III to the Directive and the EU declaration of conformity for 10 years after the electrical equipment has been placed on the market,
- (e) ensure that procedures are in place for series production to remain in conformity with these Regulations and that changes in product design or characteristics and changes in the harmonised standards referred to in Regulation 13 the international or national standards referred to in Regulations 14 and 15, or in other technical specifications by reference to which conformity of electrical equipment is declared, are adequately taken into account,
- (f) in a case where it is deemed appropriate with regard to the risks presented by electrical equipment and in order to protect the health and safety of consumers, carry out sample testing of electrical equipment made available on the market, investigate and, if necessary, keep a register of complaints, of non-conforming electrical equipment and electrical equipment recalls, and keep distributors informed of any such monitoring,
- (g) ensure that electrical equipment which the manufacturer has placed on the market bears a type, batch or serial number or other element allowing its identification, or, where the size or nature of the electrical equipment does not allow it, that the required information is provided on its packaging or in a document accompanying the electrical equipment,
- (h) indicate on the electrical equipment, in a language easily understood by end-users and the market surveillance authorities, the manufacturer's name, registered trade name or registered trade mark and the postal address at which the manufacturer can be contacted, which address shall indicate a single point of contact or, where it is not possible to do so on the electrical equipment, on its packaging or in a document accompanying the electrical equipment,
- (i) ensure that the electrical equipment is accompanied by instructions and safety information in a language which can be easily understood by consumers and other end-users and that such instructions and safety information as well as any labelling, are clear, understandable and intelligible,
- (j) in the case of electrical equipment which the manufacturer has placed on the market and which the manufacturer considers or has reason to believe is not in conformity with these Regulations—
 - (i) immediately take any corrective measures necessary to bring that electrical equipment into conformity with these Regulations, or to withdraw it, or recall it if appropriate, and

- (ii) where that electrical equipment presents a risk, immediately inform the competent authorities of the Member States in which the manufacturer made the electrical equipment available on the market to that effect and give details, in particular, of the non-compliance and of any corrective measures taken, and
- (k) further to a reasoned request from a competent authority—
 - (i) provide it with all the information and documentation in paper or electronic form necessary to demonstrate the conformity of the electrical equipment with these Regulations, in a language which can be easily understood by that authority, and
 - (ii) cooperate with that authority, at its request, on any action taken to eliminate the risk posed by the electrical equipment placed on the market by the manufacturer.

Authorised representatives

8. (1) A manufacturer may, by a written mandate, appoint an authorised representative.

(2) The obligations laid down in Regulation 7(a) and Regulation 7(b) shall not form part of the authorised representative's mandate.

(3) The authorised representative shall perform the tasks specified in the mandate received from the manufacturer which shall, at least, allow the authorised representative to—

- (a) keep the EU declaration of conformity and the technical documentation at the disposal of market surveillance authorities for 10 years after the electrical equipment has been placed on the market,
- (b) further to a reasoned request from a competent authority, provide that authority with all the information and documentation necessary to demonstrate the conformity of electrical equipment, and
- (c) cooperate with a competent authority, at its request, on any action taken to eliminate the risks posed by electrical equipment covered by the authorised representative's mandate.

Obligations of importers

9. (1) An importer shall not place electrical equipment on the market unless it complies with these Regulations.

(2) An importer shall—

- (a) before placing electrical equipment on the market, ensure that—
 - (i) the appropriate conformity assessment procedure under Annex III to the Directive has been carried out by the manufacturer,

- (ii) the manufacturer has drawn up the technical documentation,
 - (iii) the electrical equipment bears the CE marking and is accompanied by the required documents, and
 - (iv) the manufacturer has complied with the requirements set out in Regulation 7(*g*) and 7(*h*).
- (b) in a case where an importer considers or has reason to believe that electrical equipment is not in conformity with the safety objectives referred to in Regulation 5 and set out in Annex I to the Directive—
- (i) not place the electrical equipment on the market until it has been brought into conformity, and
 - (ii) where the electrical equipment presents a risk, inform the manufacturer and the market surveillance authorities to that effect,
- (c) indicate on the electrical equipment in a language which can be easily understood by end-users and market surveillance authorities, or where it is not possible to do so on the electrical equipment, in a document accompanying it, the importer's name, registered trade name or registered trade mark and the postal address at which the importer can be contacted,
- (d) ensure that the electrical equipment is accompanied by instructions and safety information in a language which can be easily understood by consumers and other end-users, as determined by the Member State concerned,
- (e) ensure that, while electrical equipment is under the importer's responsibility, its storage or transport conditions do not jeopardise its compliance with the safety objectives referred to in Regulation 5 and set out in Annex I to the Directive,
- (f) in a case where it is deemed appropriate with regard to the risks presented by electrical equipment, and in order to protect the health and safety of end-users, carry out sample testing of electrical equipment made available on the market, investigate and, if necessary, keep a register of complaints, of non-conforming electrical equipment and electrical equipment recalls, and shall keep distributors informed of any such monitoring,
- (g) in a case where an importer considers or has reason to believe that electrical equipment which the importer has placed on the market is not in conformity with these Regulations—
- (i) immediately take the corrective measures necessary to bring that electrical equipment into conformity, or withdraw it or recall it if appropriate, and

- (ii) where the electrical equipment presents a risk, an importer shall immediately inform the competent authorities of the Member States in which the importer made the electrical equipment available on the market to that effect, giving details, in particular of the non-compliance and of any corrective measures taken,
- (h) for 10 years after the electrical equipment has been placed on the market—
- (i) keep a copy of the EU declaration of conformity at the disposal of the market surveillance authorities, and
 - (ii) ensure that the technical documentation can be made available to those authorities, upon request, and
- (i) further to the reasoned request from a competent authority—
- (i) provide it with all the information and documentation in paper or electronic form necessary to demonstrate that conformity of electrical equipment in a language which can be easily understood by that authority, and
 - (ii) cooperate with that authority, at its request, on any action taken to eliminate the risks posed by electrical equipment which the importer has placed on the market.

Obligations of distributors

10. A distributor shall—

- (a) act with due care in relation to the requirements of these Regulations when making electrical equipment available on the market,
- (b) before making electrical equipment available on the market, verify that—
 - (i) the electrical equipment bears the CE marking,
 - (ii) the electrical equipment is accompanied by the required documents and by instructions and safety information in a language which can be easily understood by consumers and other end-users in the Member State in which the electrical equipment is to be made available on the market, and
 - (iii) the manufacturer has complied with the requirements set out in Regulation 7(g) and 7(h), and
 - (iv) the importer has complied with the requirements set out in Regulation 9(2)(c),

- (c) in a case where a distributor considers, or has reason to believe, that electrical equipment is not in conformity with the safety objectives referred to in Regulation 5 and set out in Annex I to the Directive—
 - (i) not make the electrical equipment available on the market until it has been brought into conformity, and
 - (ii) where the electrical equipment presents a risk, inform the manufacturer or the importer to that effect as well as the market surveillance authorities,
- (d) ensure that, while electrical equipment is under the distributor's responsibility, its storage or transport conditions do not jeopardise its compliance with the safety objectives referred to in Regulation 5 and set out in Annex I to the Directive,
- (e) in a case where a distributor considers or has reason to believe that electrical equipment which the distributor has made available on the market is not in conformity with these Regulations—
 - (i) make sure that the corrective measures necessary to bring that electrical equipment into conformity, to withdraw it or recall it, if appropriate, are taken, and
 - (ii) where that electrical equipment presents a risk, immediately inform the competent authorities of the Member States in which they made the electrical equipment available on the market to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken, and
- (f) further to a reasoned request from a competent authority—
 - (i) provide it with all the information and documentation in paper or electronic form necessary to demonstrate the conformity of that electrical equipment, and
 - (ii) cooperate with that authority, at its request, on any action taken to eliminate the risks posed by the electrical equipment which they have placed on the market.

Cases in which obligations of manufacturers apply to importers and distributors

11. An importer or distributor shall be considered a manufacturer for the purposes of these Regulations and shall be subject to the obligations of the manufacturer under Regulation 7, where that importer or distributor—

- (a) places electrical equipment on the market under the importer's or distributor's name or trade mark, or
- (b) modifies electrical equipment already placed on the market in such a way that compliance with these Regulations may be affected.

Identification of economic operators

12. An economic operator shall—

- (a) on request, identify to the market surveillance authorities any other economic operator—
 - (i) who has supplied the first named economic operator with electrical equipment, or
 - (ii) to whom the first named economic operator has supplied electrical equipment, and
- (b) be able to present the information referred to in paragraph (a) for 10 years after the first named economic operator has been supplied with the electrical equipment and for 10 years after the first named economic operator has supplied the electrical equipment.

PART 3

CONFORMITY OF THE ELECTRICAL EQUIPMENT

Presumption of conformity on the basis of harmonised standards

13. Electrical equipment which is in conformity with a harmonised standard or parts thereof the reference to which has been published in the Official Journal shall be presumed to be in conformity with the safety objectives referred to in Regulation 5 and set out in Annex I to the Directive covered by that standard or parts thereof.

Presumption of conformity on the basis of international standards

14. Where harmonised standards referred to in Regulation 13 have not been drawn up and published, for the purpose of making available on the market as referred to in Regulation 5 and for the purpose of free movement under Article 4 of the Directive, the competent authority in the State shall regard as compliant with the safety objectives referred to in Regulation 5 and set out in Annex I to the Directive, electrical equipment which complies with those of the safety provisions of international standards set out by the International Electrotechnical Commission, which have been subject to the publication procedure set down in paragraphs 2 and 3 of Article 13 of the Directive.

Presumption of conformity on the basis of national standards

15. Where harmonised standards referred to in Regulation 13 have not been drawn up and published and international standards referred to in Regulation 14 have not been published, for the purpose of making available on the market as referred to in Regulation 5 and for the purpose of free movement under Article 4 of the Directive, the competent authority in the State shall regard as compliant with the safety objectives referred to in Regulation 5 and set out in Annex I to the Directive, electrical equipment manufactured in accordance with the safety provisions of the standards in force in the Member State of manufacture, provided that a safety level equivalent to that required in the State is ensured.

EU declaration of conformity

16. (1) An EU declaration of conformity for electrical equipment shall—

- (a) state that the fulfilment of the safety objectives referred to in Regulation 5 and set out in Annex I to the Directive has been demonstrated,
- (b) have the model structure as set out in Annex IV to the Directive,
- (c) contain the elements specified in the relevant modules set out in Annex III to the Directive,
- (d) be continuously updated, and
- (e) be translated into the language or languages required in the Member State in which the electrical equipment is placed or made available on the market.

(2) Where electrical equipment is subject to more than one European Union act requiring an EU declaration of conformity, a single EU declaration of conformity shall be drawn up in respect of all such European Union acts. That declaration shall contain the identification of the European Union acts concerned, including their publication references.

(3) By drawing up an EU declaration of conformity a manufacturer shall assume responsibility for the compliance of the electrical equipment with the requirements laid down in the Directive and in these Regulations.

General principles of the CE marking

17. The CE marking on electrical equipment is subject to the general principles set out in Article 30 of Regulation (EC) No. 765/2008.

Rules and conditions for affixing the CE marking

18. (1) Subject to paragraph (2), before the electrical equipment is placed on the market, the CE marking shall be affixed, visibly, legibly and indelibly to the electrical equipment or to its data plate.

(2) Where it is not possible or warranted to affix the CE marking in accordance with paragraph (1) on account of the nature of the electrical equipment, before the electrical equipment is placed on the market, the CE marking shall be affixed to—

- (a) the packaging, and
 - (b) the accompanying documents.
- (3) A person shall not affix a CE marking—
- (a) in a manner that is in contravention of this Regulation, to electrical equipment which conforms with these Regulations, or

- (b) to electrical equipment which does not conform with these Regulations.

PART 4

MARKET SURVEILLANCE, CONTROL OF ELECTRICAL EQUIPMENT ENTERING THE MARKET AND SAFEGUARD PROCEDURE

Market surveillance and control of electrical equipment entering the market

19. The market surveillance authority in the State shall organise and carry out market surveillance of electrical equipment covered by these Regulations and control the entry into the State of electrical equipment covered by these Regulations in accordance with Articles 16 to 29 of Regulation (EC) No. 765/2008.

Procedure for dealing with electrical equipment presenting a risk at national level

20. (1) Where the market surveillance authority in the State has sufficient reason to believe that electrical equipment covered by these Regulations presents a risk to the health or safety of persons or domestic animals, or to property, it shall carry out an evaluation in relation to the electrical equipment concerned covering all relevant requirements laid down in these Regulations.

(2) The relevant economic operator shall cooperate as necessary with the market surveillance authority in the State in carrying out an evaluation under paragraph (1).

(3) Where, in the course of the evaluation referred to in paragraph (1), the market surveillance authority in the State finds that the electrical equipment does not comply with the requirements laid down in these Regulations, it shall—

(a) without delay require the relevant economic operator to take all appropriate corrective actions to bring the electrical equipment into compliance with those requirements, to withdraw the electrical equipment from the market, or to recall it within a reasonable period commensurate with the nature of the risk, as the authority decides, and

(b) apply the provisions of Article 21 of Regulation (EC) No. 765/2008 to the measures referred to in subparagraph (a).

(4) Where the market surveillance authority in the State considers that non-compliance is not restricted to the State, it shall inform the European Commission and the other Member States of the results of the evaluation and of the actions which it has required the economic operator to take.

(5) The relevant economic operator shall ensure that all appropriate corrective action is taken in respect of electrical equipment concerned that it has made available on the market throughout the European Economic Area.

(6) Where the relevant economic operator does not take adequate corrective action within the period referred to in paragraph (3)(a), the market surveillance authority in the State shall take all appropriate provisional measures to prohibit

or restrict the electrical equipment from being made available on the market in the State, to withdraw the electrical equipment from that market or to recall it.

(7) The market surveillance authority shall inform the European Commission and the other Member States, without delay, of any measures taken under paragraph (6) and shall—

- (a) include all available details, in particular the data necessary for the identification of the non-compliant electrical equipment, the origin of the electrical equipment, the nature of the alleged non-compliance and the risk involved, the nature and duration of the measures taken in the State, and the arguments put forward by the relevant economic operator, and
- (b) in particular, indicate whether the non-compliance is due to either—
 - (i) the failure of the electrical equipment to meet the safety objectives referred to in Regulation 5 and set out in Annex I to the Directive relating to the health or safety of persons or domestic animals or to property, or
 - (ii) shortcomings in the harmonised standards referred to in Regulation 13 or in the international or national standards referred to in Regulations 14 and 15 conferring a presumption of conformity.

(8) Where another Member State has initiated the procedure under Article 19 of the Directive, the market surveillance authority in the State shall, without delay, inform the European Commission and the other Member States—

- (a) of any measures adopted and any additional information at its disposal relating to the non-compliance of the electrical equipment concerned, or
- (b) of its objections, in the event of disagreement with the adopted measure of the other Member State.

(9) Where, within three months of receipt of the information referred to in paragraph (7), no objection has been raised by either a Member State or the European Commission in respect of a provisional measure taken by the market surveillance authority in the State, that measure shall be deemed to be justified.

(10) The market surveillance authority in the State shall ensure that appropriate restrictive measures, such as withdrawal of the electrical equipment from the market, are taken in respect of the electrical equipment concerned, without delay.

Safeguard procedure

21. (1) Where a national measure is considered justified by the European Commission in accordance with the procedure in paragraph 1 of Article 20 of

the Directive, the market surveillance authority in the State shall take the necessary measures to ensure that the non-compliant electrical equipment is withdrawn from the market in the State and shall inform the European Commission accordingly.

(2) Where a national measure is considered unjustified by the European Commission in accordance with the procedure in paragraph 1 of Article 20 of the Directive, the market surveillance authority in the State shall withdraw any measures it took under paragraph (6) or (10) of Regulation 20.

Compliant electrical equipment which presents a risk

22. (1) Where, having carried out an evaluation under Regulation 20(1), the market surveillance authority in the State finds that although electrical equipment is in compliance with these Regulations, it presents a risk to the health or safety of persons or to domestic animals or to property, it shall—

- (a) require the relevant economic operator to take all appropriate measures to ensure that the electrical equipment concerned, when placed on the market, no longer presents that risk, to withdraw the electrical equipment from the market or to recall it within a reasonable period, commensurate with the nature of the risk, as it may require, and
- (b) immediately inform the European Commission and the other Member States of all available details and in particular of—
 - (i) the data necessary for the identification of the electrical equipment concerned,
 - (ii) the origin and the supply chain of the electrical equipment,
 - (iii) the nature of the risk involved, and
 - (iv) the nature and the duration of the national measures taken.

(2) An economic operator shall ensure that the corrective action required under paragraph (1) is taken in respect of all electrical equipment concerned that the operator has made available on the market throughout the European Economic Area.

Formal non-compliance

23. (1) Without prejudice to Regulation 20, the market surveillance authority in the State shall require the relevant economic operator to put an end to the non-compliance concerned where it finds that—

- (a) the CE marking has been affixed in violation of Article 30 of Regulation (EC) No. 765/2008 or of Regulation 18,
- (b) the CE marking has not been affixed,
- (c) the EU declaration of conformity has not been drawn up,

- (d) the EU declaration of conformity has not been drawn up correctly,
- (e) technical documentation is either not available or not complete,
- (f) the information referred to in Regulation 7(h) or Regulation 9(2)(c) is absent, false or incomplete; or
- (g) any other administrative requirement provided for in Regulation 7 or Regulation 9 is not fulfilled.

(2) Where the non-compliance referred to in paragraph (1) persists, the market surveillance authority in the State shall take all appropriate measures to restrict or prohibit the electrical equipment being made available on the market or ensure that it is recalled or withdrawn from the market.

PART 5

POWERS OF THE MARKET SURVEILLANCE AUTHORITY

Authorised officers

24. (1) The market surveillance authority in the State may appoint such and so many persons as it thinks fit to be authorised officers for the purposes of compliance with these Regulations.

- (2) An authorised officer—
 - (a) shall be furnished with a warrant or certificate of his or her appointment, and
 - (b) when exercising any power conferred on him or her under these Regulations shall, if requested by any person thereby affected, produce the warrant or a copy of it to that person for inspection.
- (3) Subject to paragraph (7), an authorised officer may for the purpose of ensuring that these Regulations and the Directive are being complied with and where necessary and justified—
 - (a) at all reasonable times enter the premises of an economic operator, at which there are reasonable grounds to believe that electrical equipment to which these Regulations apply is being or has been manufactured, distributed, supplied or placed on the market or that records relating to the electrical equipment are kept, and search and inspect the premises or place and any electrical equipment or records found therein,
 - (b) secure for later inspection any premises or place or part of it in which such electrical equipment or records are kept or there are reasonable grounds for believing that such electrical equipment or records are kept,

- (c) require any person in charge of or employed in such premises or place to produce to the officer such books, documents or records (and in the case of such information in a non-legible form to reproduce it in a permanent legible form) that are in the person's power or control or to give to the officer such information as the officer may reasonably require in relation to any entries in such records,
- (d) inspect and take copies of or extracts from any such books, documents or records (including in the case of information in non-legible form a copy of or extract from such information in a permanent legible form),
- (e) remove and detain, where the officer has reasonable cause to suspect that there has been a contravention of these Regulations, the electrical equipment or records for such period as may be reasonable for further examination or until the conclusion of any legal proceedings,
- (f) as regards any electrical equipment or any article or substance used in the manufacture of electrical equipment the officer finds at or in a premises, require any person in charge of the premises, or any person who appears to the officer to be in possession of the electrical equipment or the article or substance, to supply without payment, for test, examination or analysis sufficient samples thereof,
- (g) cause any electrical equipment or any article or substance used in the manufacture of electrical equipment found at or in any premises which appears to the officer to present a serious risk to be destroyed or otherwise rendered inoperable where deemed necessary by the officer, or subjected to any process or test and where an authorised officer proposes to exercise this power in the case of electrical equipment or an article or substance used in the manufacture of electrical equipment found at or in any premises, the officer shall, if so requested by a person who at the time is present at or in and has responsibilities in relation to that premises, and if it is practicable and safe to do so, cause anything which is to be done by virtue of that power to be done in the presence of that person,
- (h) in relation to any electrical equipment or any article or substance used in the manufacture of electrical equipment found at a premises in accordance with subparagraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely to—
 - (i) examine or arrange for the examination of it and do to it anything which he or she has power to do under subparagraph (g),
 - (ii) ensure that it is not tampered with before the examination of it is completed, and
 - (iii) ensure that it is available for use as evidence in any proceedings,

- (i) require any person to afford the officer such facilities and assistance within the person's control or responsibilities as are reasonably necessary to enable the officer to exercise any of the powers conferred on an authorised officer under this Regulation, and
- (j) examine any procedure connected with the manufacture of electrical equipment.

(4) Before exercising the power conferred by paragraph (3)(g) in the case of any electrical equipment, article or substance, an authorised officer shall, in so far as it is reasonably practicable to do so, consult such persons as appear to him or her to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he or she proposes to do under that power.

(5) Where under the power conferred by paragraph (3)(h) an authorised officer takes possession of any electrical equipment, article or substance found at or in any premises, the officer shall, if it is practicable for him or her to do so, take a sample thereof and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(6) 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 from the District Court under paragraph (9) authorising such entry.

(7) Where an authorised officer in the exercise of the officer's powers under this Regulation is prevented from entering any premises, an application may be made to the District Court under paragraph (9) for a warrant authorising such entry.

(8) An authorised officer, where he or she considers it necessary, may be accompanied by a member of the Garda Síochána when performing any powers conferred on an authorised officer under this Regulation or seizing any product under a forfeiture order made under Regulation 25.

(9) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is information required by an authorised officer under this Regulation held on any premises or any part of any premises or there is electrical equipment which an authorised officer requires to inspect for the purposes of these Regulations or the Directive or that such inspection is likely to disclose evidence of a contravention of these Regulations, the judge may issue a warrant authorising an authorised officer, whether alone or accompanied by other authorised officers or members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter, if need be by reasonable force, the premises and exercise all or any of the powers conferred on an authorised officer under this Regulation.

(10) An application under paragraph (9) shall be made to the judge of the District Court in whose District Court District the premises is situated.

(11) A person shall not—

- (a) obstruct or interfere with an authorised officer in the exercise of the officer's powers under this Regulation,
- (b) without reasonable excuse fail to comply with a request from an authorised officer under this Regulation, or
- (c) make a statement to such officer which the person knows is false or misleading.

Forfeiture orders

25. (1) The market surveillance authority in the State may apply under this Regulation for an order for the forfeiture to that authority of any electrical equipment to which these Regulations apply on the grounds that the electrical equipment, when used in accordance with its intended purpose or under conditions which can be reasonably foreseen and when properly installed and maintained is liable to compromise the health and safety of users or that the electrical equipment does not otherwise conform to these Regulations.

(2) An application under this Regulation shall be made to the judge of the District Court in whose District Court District the person against whom the forfeiture order is sought resides or carries on business.

(3) Any forfeiture order may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

(4) Any electrical equipment the subject of a forfeiture order may be seized on behalf of the market surveillance authority by an authorised officer.

(5) Subject to paragraph (6), where any electrical equipment is forfeited under a forfeiture order it shall be destroyed in accordance with such directions as the District Court may give.

(6) On making a forfeiture order the District Court may, if it considers it appropriate to do so, direct that the electrical equipment to which the order relates shall (instead of being destroyed) be released to such person and on such conditions as the Court may specify.

(7) Where a forfeiture order is made or where the District Court refuses to make such an order, any person aggrieved may, within 21 days of the order or refusal, appeal to the judge of the Circuit Court in whose Circuit a forfeiture order has been made or refused.

(8) Where an appeal is made under paragraph (7), the appellant may make an application to the court to delay the coming into force of the order pending the determination of any appeal.

(9) On hearing of an appeal under paragraph (7), the Circuit Court may either confirm or vary the order, or allow the appeal.

(10) A decision of the Circuit Court on an appeal under paragraph (7) shall be final, save that, by leave of the Court an appeal from the decision shall lie to the High Court on a specified question of law.

Contravention notice

26. (1) An authorised officer who is of the opinion that an economic operator is contravening or has contravened any of the provisions of these Regulations may serve a contravention notice on the economic operator.

(2) A contravention notice—

(a) may be served on any person the authorised officer has reasonable grounds for believing is in a position to take the measures specified in the notice, and

(b) shall be served in accordance with the requirements of Regulation 31(1).

(3) A contravention notice shall—

(a) state that the authorised officer is of the opinion referred to in paragraph (1),

(b) state the reason for that opinion,

(c) identify the relevant provision, in respect of which that opinion is held,

(d) direct the economic operator to—

(i) remedy, by a date specified in the notice, the contravention or the matters occasioning that notice, or

(ii) remove the electrical equipment from the market, by a date specified in the notice that shall not be earlier than the end of the period within which an appeal may be made under paragraph (10),

(e) include information regarding the making of an appeal under paragraph (10) and the provisions of paragraph (7),

(f) include any other requirement that the market surveillance authority in the State considers appropriate, and

(g) be signed and dated by the market surveillance authority in the State.

(4) A contravention notice may include directions—

(a) as to the measures to be taken to remedy any contravention or matter to which the notice relates, or to otherwise comply with the notice, and

(b) to bring the notice to the attention of any person who may be affected by it or the public generally.

(5) A person on whom a contravention notice has been served who is of the opinion that the contravention notice has been complied with shall confirm in writing to the authorised officer concerned that the matters referred to in the notice have been so remedied.

(6) Where a person on whom a contravention notice has been served so confirms in writing in accordance with paragraph (5) that the matters referred to in the contravention notice have been remedied, the authorised officer concerned shall, on being satisfied that the matters have been so remedied, within one month of receipt of such confirmation, give notice to the person concerned of compliance with the contravention notice.

(7) Where an appeal under paragraph (10) is taken, and the contravention notice is not cancelled, the notice shall take effect on the later of—

(a) the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn, or

(b) the day specified in the notice.

(8) Where there is no appeal under paragraph (10), the contravention notice shall take effect on the later of—

(a) the end of the period for making an appeal, or

(b) the day specified in the notice.

(9) An authorised officer may—

(a) withdraw a contravention notice at any time, or

(b) where no appeal is made or pending under paragraph (10), extend the period specified under paragraph (3)(d).

(10) Where a contravention notice is served, any person aggrieved by the notice may, within 21 days of the service of the notice upon him or her, appeal to the judge of the District Court in whose District the notice was served.

(11) A person who appeals under paragraph (10) shall at the same time notify the market surveillance authority in the State of the appeal and the grounds for the appeal and the authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(12) Where an appeal is made under paragraph (10), the appellant may make an application to the Court to delay the coming into force of the notice pending the determination of any appeal.

(13) On hearing of an appeal under paragraph (10), the District Court may either confirm or vary the notice, or allow the appeal.

(14) A decision of the District Court on an appeal under paragraph (10) shall be final, save that, by leave of the Court an appeal from the decision shall lie to the High Court on a specified question of law.

Electrical equipment presenting a serious risk to persons — prohibition notice

27. (1) Where an authorised officer ascertains that electrical equipment, bearing a CE marking, accompanied by the EU declaration of conformity and used in accordance with its intended purpose or under conditions which can reasonably be foreseen and when properly installed and maintained, presents a serious risk, he or she—

- (a) shall, serve by notice in writing a prohibition notice, directing the person on whom it is served to do one or more of the following—
 - (i) withdraw the electrical equipment from the market,
 - (ii) refrain from making the electrical equipment available on the market, or
 - (iii) take such other measures that have the effect of restricting the free movement of the electrical equipment, and
 - (b) may take any other appropriate measures, including the seizing and removing of the electrical equipment from the market, to ensure compliance with these Regulations.
- (2) A prohibition notice—
- (a) may be served on any person the authorised officer has reasonable grounds for believing is in a position to take the measures specified in the notice, and
 - (b) shall be served in accordance with the requirements of Regulation 31(1).
- (3) A prohibition notice shall—
- (a) state that the authorised officer is of the opinion referred to in paragraph (1),
 - (b) state the reason for that opinion,
 - (c) specify the situation or activity in respect of which that opinion is held,
 - (d) where, in the opinion of the authorised officer, the activity involves a contravention, or likely contravention of any of these Regulations, specify the provision concerned,
 - (e) prohibit the carrying on of the activity concerned until the matters that give rise or are likely to give rise to the risk are remedied, and
 - (f) be signed and dated by the authorised officer.

- (4) A prohibition notice may include directions—
- (a) as to the measures to be taken to remedy any contravention or matter to which the notice relates, or to otherwise comply with the notice, and
 - (b) to bring the notice to the attention of any person who may be affected by it or the public generally.
- (5) A prohibition notice shall take effect—
- (a) when the notice is received by the person on whom it is served, or
 - (b) where an appeal is brought against the prohibition notice, on the day immediately following—
 - (i) the day on which the notice is confirmed on appeal or the appeal is withdrawn, or
 - (ii) the day specified in the notice, whichever occurs later.
- (6) A person on whom a prohibition notice has been served who is of the opinion that the matters referred to in the prohibition notice have been remedied by the date specified in the notice shall confirm in writing to the authorised officer that those matters have been so remedied.
- (7) Where a person on whom a prohibition notice has been served confirms in writing to the authorised officer in accordance with paragraph (6) that the matters referred to in the prohibition notice have been remedied, the authorised officers shall, on being satisfied that the matters have been so remedied, within one month of receipt of such confirmation, give notice to the person concerned of such compliance with the prohibition notice.
- (8) An authorised officer may at any time withdraw a prohibition notice if—
- (a) the authorised officer is satisfied that the situation or activity to which the notice relates no longer involves a serious risk to health or the environment, or
 - (b) the authorised officer is satisfied that the notice was issued in error or is incorrect in some material respect.
- (9) Where a prohibition notice is served, any person aggrieved by the notice may, within 21 days of the service of the notice upon him or her, appeal to the judge of the District Court in whose District the notice was served.
- (10) A person who—
- (a) brings an appeal under paragraph (9), or

- (b) applies for the suspension of the operation of a prohibition notice under paragraph (12), shall at the same time notify the market surveillance authority in the State of the appeal or the application, and the grounds for the appeal or application.

(11) Where an appeal is made under paragraph (9), the appellant may make an application to the court to delay the coming into force of the notice pending the determination of the appeal.

(12) On the hearing of an appeal under paragraph (9), the District Court may either confirm or vary the notice, or allow the appeal and, notwithstanding paragraph (5), may on the application of the appellant suspend the operation of the prohibition notice for such period as in the circumstances of the case the judge considers appropriate.

(13) A decision of the District Court on an appeal under paragraph (9) shall be final, save that, by leave of the Court an appeal from the decision shall lie to the High Court on a specified question of law.

Contravention of prohibition notice — application to High Court

28. (1) Where a person contravenes a prohibition notice, an authorised officer may apply *ex parte* to the High Court for an order prohibiting the continued contravention of the notice.

(2) The High Court may, upon an application under this Regulation, order the person on whom the prohibition notice concerned was served to cease doing such acts as the High Court directs.

Publication of information relating to contravention notices and prohibition notices

29. The market surveillance authority in the State may, in the interest of the protection of safety or health and in the consultation, where appropriate, with another competent authority, take such measures as it considers appropriate to bring to the attention of the public matters giving rise to any contravention notice or prohibition notice served under these Regulations.

Measures entailing refusal or restriction

30. (1) Where the market surveillance authority in the State takes any of the following measures—

(a) a measure referred to in Regulation 20, 22, 25 or 27, or

(b) any other measure under these Regulations, other than those referred to in Regulation 32, to prohibit or restrict the making available of electrical equipment on the market, or to withdraw electrical equipment from the market, the authority shall follow the procedures set out in this Regulation.

(2) A measure referred to in paragraph (1) shall be notified without delay to the person concerned, and the notification shall—

- (a) state the exact grounds on which the measure is based,
- (b) inform the person concerned of his or her right to make representations under paragraph (3) and of his right of appeal under these Regulations, and
- (c) explain the measures, and any time limits associated with them, that must be taken in order to remove the necessity for the prohibition or restriction.

(3) Subject to paragraph (4), a person concerned by a measure referred to in paragraph (1) shall have the opportunity to make representations to the market surveillance authority in the State in advance of the measure being taken.

(4) Where, due to the urgency of the measure referred to in paragraph (1), as justified in particular by public health, security or safety requirements, it is not possible to give the person concerned the opportunity to make representations in advance of the measure being taken, the market surveillance authority in the State shall give such opportunity, as soon as may be, thereafter.

(5) The market surveillance authority in the State may, where it considers it appropriate to do so, withdraw, or amend by a further notification in writing any notification given under this Regulation.

(6) A notification under this Regulation may require that the measures concerned be undertaken—

- (a) immediately, because of the urgency of the matter,
- (b) from a specified date,
- (c) by a specified date, or
- (d) between specified dates.

(7) A measure under this Regulation shall, subject to any delay on the coming into force thereof arising out of an appeal under these Regulations, take effect on the date specified therein.

(8) The market surveillance authority in the State may cause the European Commission to be notified of any measures taken pursuant to paragraph (1).

(9) A person shall comply with a measure under this Regulation, until the measure is annulled under these Regulations.

(10) Where a person fails to comply with a measure under this Regulation the market surveillance authority in the State may institute, in a court of competent jurisdiction, proceedings for an order requiring the person to comply with the terms of the measure.

Service

31. (1) Subject to paragraphs (2) and (3), a measure under Regulation 20, 22, 23(2), 25, 26 or 27 shall be addressed to the person concerned by name and may be given to the person in one of the following ways—

- (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,
- (d) where there is a facility for receiving the text of the notice by electronic means at the address at which the person carries on business or ordinarily resides, by transmitting the text of the notice by such means to such address, provided that the notice is also delivered in any of the other ways referred to in this paragraph, or
- (e) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the compliance notice relates to a premises, by delivering it to the premises or by affixing it in a conspicuous position on or near the premises.

(2) Where a measure under Regulation 20, 22, 23(2), 25, 26 or 27 is to be given to a person who is the owner or occupier of land or property and the name of the person cannot be ascertained by reasonable inquiry, it may be addressed to the person by using the words “the owner” or, as the case may require, “the occupier”.

(3) For the purposes of this Regulation, a company within the meaning of the Companies Acts 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.

Seizure and disposal of unsafe electrical equipment

32. (1) Notwithstanding Regulations 25 and 27, any electrical equipment that appears to an authorised officer to present a serious risk, may be seized and destroyed or otherwise disposed of by such person and in such manner and at such time and place as the authorised officer may direct, and the costs of seizure and disposal may be charged to the economic operator, manager of the premises or place where the electrical equipment was found, or the person having lawful possession of the electrical equipment at the time of seizure where known.

(2) In this Regulation “disposed of” includes any manner of disposal which in the opinion of the authorised officer will least endanger the public, and includes surrender of the electrical equipment to a member of the Garda Síochána, or

to any other competent agency or organisation for its destruction, or the certified return of the electrical equipment to the economic operator who manufactured, imported, distributed or supplied the electrical equipment, in order to remove it from the market, at the expense of the economic operator, manager, or person having lawful possession of the electrical equipment at the time of seizure, where known.

(3) An authorised officer, when taking a measure referred to in paragraph (1), shall notify the person concerned in writing, setting out—

- (a) the reasons for the seizure and disposal of the electrical equipment, and
- (b) the right of appeal under Regulation 33.

Right of appeal against certain measures

33. (1) A person aggrieved by a measure to which no other appeals procedure applies under these Regulations may, within 21 days of receipt of the measure, appeal to the appropriate court against the giving of the direction or taking of the measure.

(2) An appeal under this Regulation shall state the grounds on which the appeal is made and be made by written notice, which shall be lodged with the appropriate office of the court.

(3) A copy of the notice by which a person makes an appeal under this Regulation shall be given by him or her to the market surveillance authority in the State.

(4) Where an appeal is made under paragraph (1), the appellant may make an application to the court that the measure shall stand suspended until the appeal is determined or withdrawn.

(5) On the hearing of an appeal under this Regulation the appropriate court may either confirm or vary the measure or allow the appeal and make any other such order as it considers appropriate.

(6) In this Regulation “appropriate court” means—

- (a) in any case where the estimated value of the electrical equipment concerned does not exceed €15,000, or such other amount as may stand specified for the time being by law as that Court’s jurisdiction in tort, the District Court,
- (b) in any case where the estimated value of the electrical equipment concerned does not exceed €75,000, or such other amount as may stand specified for the time being by law as that Court’s jurisdiction in tort, the Circuit Court, and
- (c) in any case, the High Court.

(7) If, in relation to an appeal under this Regulation to the District Court, that court becomes of opinion during the hearing of the appeal that the value of the electrical equipment, the subject of the appeal, exceeds that court's jurisdiction in tort, it may, if it so thinks fit, transfer the appeal to the Circuit Court or the High Court, whichever it considers appropriate having regard to its opinion of the value of the electrical equipment.

(8) If, in relation to an appeal under this Regulation to the Circuit Court, that court becomes of opinion during the hearing of the appeal that the value of the electrical equipment, the subject of the appeal, exceeds that courts' jurisdiction in tort, it may, if it so thinks fit, transfer the appeal to the High Court.

(9) Paragraphs (6) and (7) are without prejudice to the jurisdiction of a court (being either the District Court or the Circuit Court) to determine an appeal under this Regulation in relation to which it was, at the time of the hearing of the appeal, the appropriate court.

(10) An appeal under this Regulation to the District Court shall be determined by the judge of the District Court for the District Court district in which the electrical equipment concerned was placed on the market or the appellant ordinarily resides.

(11) An appeal under this Regulation to the Circuit Court shall be determined by the judge of the Circuit Court for the circuit in which the electrical equipment concerned was placed on the market or the appellant ordinarily resides.

(12) A decision of the District Court on an appeal under this Regulation shall be final, save that, by leave of the Court an appeal from the decision shall lie to the High Court on a specified question of law.

(13) A decision of the Circuit Court on an appeal under this Regulation shall be final, save that, by leave of the Court an appeal from the decision shall lie to the High Court on a specified question of law.

(14) A decision of the High Court on an appeal under this Regulation shall be final, save that, by leave of the Court an appeal from the decision shall lie to the Court of Appeal on a specified question of law.

PART 6

OFFENCES AND PENALTIES

Offences and Penalties

34. (1) A person who contravenes these Regulations commits an offence and is liable—

- (a) on summary conviction, to a class A fine, or imprisonment for a term not exceeding 6 months or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 2 years or both.

(2) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of, or to be attributable to any 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 shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) 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.

(4) An offence under these Regulations may be prosecuted summarily by the market surveillance authority in the State.

(5) Where a person is convicted of an offence under these Regulations, the court may order the forfeiture to the market surveillance authority in the State of any electrical equipment to which the offence relates.

(6) Where an order is made under paragraph (5), the market surveillance authority in the State may for the purpose of giving effect to it seize and detain the electrical equipment where it has not already been seized under this Regulation.

(7) If a person is convicted of an offence under these Regulations the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the prosecutor the costs and expenses, measured by the court, reasonably incurred by the prosecutor in relation to the investigation, detection and prosecution of the offence, including costs incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees, consultants and advisers.

PART 7

TRANSITIONAL AND REVOCATION

Transitional

35. The making available on the market of electrical equipment which is in conformity with Directive 2006/95/EC and which was placed on the market before 20 April 2016 continues to be lawful.

Revocation

36. The following are revoked:

(a) The European Communities (Low Voltage Electrical Equipment) Regulations 1992 (S.I. No. 428 of 1992), and

(b) The European Communities (Low Voltage Electrical Equipment)
(Amendment) Regulations 1994 (S.I. No. 307 of 1994).



GIVEN under my Official Seal,
29 June 2016.

MARY MITCHELL O'CONNOR,
Minister for Jobs, Enterprise and Innovation.

EXPLANATORY NOTE

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

These Regulations transpose into Irish law Directive 2014/35/EU of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits. These Regulations also give further effect to Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93.

These Regulations do not impede the making available on the market of electrical equipment covered by Directive 2006/95/EC which is in conformity with that Directive and which was placed on the market before 20 April 2016.

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