

The new Gas Appliances Regulation (GAR):

Obligations for importers

A BSI Whitepaper



Importing gas appliances or fittings into Europe?

Make sure they're legal and safe

Under new EU law, companies importing or distributing gas appliances and fittings will have joint responsibility with manufacturers for consumer safety. This is a significant change, designed to stem the flow of unsafe products from countries outside the jurisdiction of the European courts. It's good news for consumers and other end users, but what does it mean for companies? This paper explains the new rules and discusses their practical implications.

Introduction

On April 21 2018, the EU Gas Appliances Regulation (GAR) comes into force. GAR replaces the EU's Gas Appliances Directive (GAD), part of national law in EU member states and the 'exiting' UK. Like its predecessor, it covers appliances burning gaseous fuels for cooking, heating, hot water production, refrigeration, lighting and washing, and fittings such as controls and safety devices, and excludes products designed for use in industrial processes. Unlike its predecessor, it applies not only to manufacturers but also to importers and distributors.

Unusually, the Regulation becomes law in one 'fell swoop'. It's not being phased in; there is no transition period. It will be illegal for an importer to place a non-compliant appliance or fitting on the EU market or an associated free trade area from April 21st, 2018 — with immediate effect. Importers and distributors need to prepare now.

The purpose of this paper is to help companies understand the new rules and their practical implications. Before going into the detail of the changes though, it's worth considering why the

European Commission, the EU's law-making body, decided to change in the first place.

Essentially, the rationale seems to be that imported gas appliances and fittings pose the biggest risks to consumers and other end users (for example, chefs and kitchen staff), and that intervention is needed to make sure they're safe.

This idea is supported by data from The European Rapid Alert System for dangerous non-food products (Rapex). Essentially an information exchange between member states, Rapex exists to detect and report hazardous products and prevent their spread throughout Europe. A trawl through its website reveals that a staggering 85% of gas appliances removed from the market come from outside the EU, a figure massively disproportionate to the market share of imported appliances.

The problem for national authorities and consumers has been that manufacturers based outside the EU are outside the jurisdiction of European courts and so not subject to the GAD. The Commission have taken the view that the way to solve it and to prevent hazardous

appliances and fittings putting people at risk, is to make importers more vigilant.

This is a sensible position in our view, but what exactly is the EU's risk mitigation strategy?

A summary of Article 9 of the GAR, 'Obligations of importers' and of what it means for companies follows. It should be emphasised that this summary does not relate to re-sellers of own-brand gas appliances such as the UK's John Lewis. Under the GAR, these companies will have the same legal status as manufacturers and will be subject to the same rules as them. Information on changes to requirements for manufacturers can be found on the BSI website.



Importers' new obligations

Essentially, the GAR makes importers and manufacturers jointly responsible for the safety of gas appliances and fittings (and of those who use them). The result is that importers have new legal obligations. These can be condensed into eight key points.

1. Importers will need to make sure that 'appropriate conformity assessment procedures' have been carried out by manufacturers; taking their word for it is no longer going to be an option.

What will 'making sure' involve?

The importer will need to check that the manufacturer has completed both stages of the two-part process required by GAR — type examination plus surveillance. (It is thought that many non-EU manufacturers had been skipping the latter.) This is the base position though. The diligent importer will not only ask to see the relevant documentation but also check it carefully. A number of questions will need to be asked to make sure certificates etc. are valid and genuine. (See the panel below.)

What's absolutely clear is that importers cannot simply rely on the CE Mark as a sign something is

fit for sale. The requirements for CE Marking vary by directive. In some cases (generally those where a product is inherently lower risk), manufacturers are allowed to self-certify. The CE Mark then could amount to little more than a declaration from an unscrupulous manufacturer that a product meets the minimum legal requirements. Even where the CE Mark is independently verified, care should be taken to ensure any certificates are valid.

2. Importers will need to indicate on the appliance or the fitting their name, registered trade name or registered trade mark, and the postal address at which they can be contacted. Or, where that is not possible, on its packaging or in a document accompanying the appliance. The contact details need to be in a language easily understood by consumers and other end users, and by the market surveillance authorities.

This is a clear signal that those who imported a product will be accountable to the authorities should there be problems later.

3. Importers need to ensure that the appliance or fitting is accompanied by instructions and safety information, in a language that can be easily understood by consumers and other end users, as determined by the member state concerned.

Inadequate instructions for installation and use are one of the biggest problems we see at BSI when dealing with potentially unsafe products on the market. In the gas industry, this is particularly true of portable leisure and camping products. These products are generally set up by consumers themselves, without advice or help from a professional installer or engineer. Too often, we see instructions for assembly and use, that make little sense and are difficult to follow. They may contain each of the very specific warnings required by the standard, but presented in a way that laypeople wouldn't understand. What constitutes 'adequate ventilation', for example?

Importers can check instructions make sense — perhaps by trying to assemble a product themselves before placing it on the market — and that safety warnings don't render the product unfit for purpose. Instructions that preclude, for example, the use of a certain type of pan on an outdoor stove might suggest said stove is poorly designed and unmarketable.

Presentation, format and readability are important, too. Instructions in five or six different languages squeezed on to a single page of A4 do not, in our

view, meet the 'easily understood' requirement. When buying from manufacturers, importers should specify a minimum font size appropriate for their intended users (older people need larger fonts) and make sure that safety warnings are differentiated by the use of larger fonts, bold text, etc.

4. Importers should ensure that storage or transport conditions do not jeopardise a product's compliance with the essential requirements set out in Annex I of the GAR.

This means doing more than making sure the packaging protects the product adequately; storage temperature and humidity are important too. The diligent importer will check with the manufacturer to make sure its warehousing conditions are right and that they won't adversely affect products.

5. When deemed proportionate to the risks presented by an appliance, importers must carry out sample testing, investigate, and if necessary, keep a register of complaints, of non-conforming appliances and fittings and recalls of such appliances and fittings, and keep distributors informed of any such monitoring.

If importers have doubts, or are unsure about the safety of a product, they now have a duty to carry out sample testing to investigate the problem. They can do this by carrying out the testing themselves, or by asking an independent third party for help.



In our view, the important thing is to arrange this testing independently of the manufacturer and the Notified Body that tested the product originally, as this avoids any conflict of interest.

The difficulty for importers is that manufacturers may sometimes introduce design changes that mean the product no longer complies with the relevant directives and the Regulation. The original test certificate may be genuine — but it may no longer be valid.

We would recommend getting to know the manufacturer (while maintaining a professional distance, of course) and the way they work.

Importers should ask:

- Can I trust the manufacturer not to make design changes without telling me? What's covered by the supply contract?
- Can I trust the manufacturer to check the impact of design changes on conformity?
- Do I need to do some testing of my own or at least inspect batches (perhaps comparing the current product with a reference sample that is known to be compliant) before allowing them to be shipped out?
- Can I trust the Notified Body that has been involved in the testing and the production surveillance? Can I influence the choice of body to be one that I do trust?

The importer will need to use their own judgment to decide the right course of action to take; the more they know about the manufacturer, the more informed their decision will be. A carefully drafted contract that includes the need to keep the importer informed of product changes and their implications for conformity will also be a key factor in the management of risk.

6. Importers who consider, or have reason to believe that an appliance or a fitting they have placed on the market does not conform to the GAR should



immediately take the measures necessary to correct this or, if necessary, to withdraw or recall the product. Furthermore, where the appliance or the fitting presents a risk, importers should immediately inform the competent national authorities of the member states in which the appliance or fitting is being sold, giving details, in particular, of the non-compliance and of any corrective measures taken.

Put more simply, if the importer knows (through, for example, its own testing) that the product does not comply with the GAR, it has a duty to act — withdrawing it, recalling it or modifying it as appropriate. It also has the same duty as manufacturers to inform the authorities if it becomes aware it has supplied a product that presents a risk.

7. Importers must, for 10 years after the appliance or the fitting has been placed on the market, keep a copy of the EU declaration of conformity at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities upon request.

In practical terms, this means importers need to keep records of all they have done. This will enable them to demonstrate 'due diligence' at some point in the future.

8. Importers must, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of an appliance or a fitting in a language that can be easily understood by that authority. That information and documentation may be provided in paper or electronic form. They must co-operate with that

authority, at its request, on any action taken to eliminate the risks posed by appliances or fittings they have placed on the market.

Importers' records need to be in English and available for the authorities to inspect. Usually, the better the state of the documentation (the more up-to-date, comprehensive, accessible and clear it is), the quicker the inspection.

Conclusion

The changes to the law are significant and mean additional work and documentation for importers, who will have to 'upskill' and adjust to their new role. However, they will ultimately work in the interests of companies as well as consumers and end users. They present the opportunity for importers to forge closer links with manufacturers to avoid the costs of recalls and reputational damage. Importers' role in safety and consumer protection has been 'elevated', and they may, in some cases, be able to re-negotiate contracts with suppliers.

The obligations vary by product and, in some cases, the checks that need to be performed will be more complex and time-consuming than in others. Advice from a knowledgeable third party may be necessary to help importers navigate the rules. Overall, though, GAR is a positive step that will help rein in rogue exporters — and safeguard responsible companies.

The first organization in the UK to become a Notified Body under the GAR, BSI is able to support current and new clients in meeting their obligations under the new law. For further information and advice, please get in touch with us. We provide services tailored to the needs of our clients and practical solutions that help them develop their businesses.

Please contact us, our team will be happy to help you

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Documentation checklist

The manufacturer should be able to produce paperwork to prove their products comply with the Regulation and the relevant EU Directives. Note the word 'prove'. Importers should be on the look-out for out-of-date and otherwise invalid documents — and they should beware of fakes and forgeries. There have been several cases of companies in Asia passing themselves off as Notified Bodies; their certificates are worthless.

There are two types of document to ask for: the EU Declaration of Conformity; more specific documents required by GAR. In both cases, the importer will need to be rigorous.

EU Declaration of Conformity (DoC):

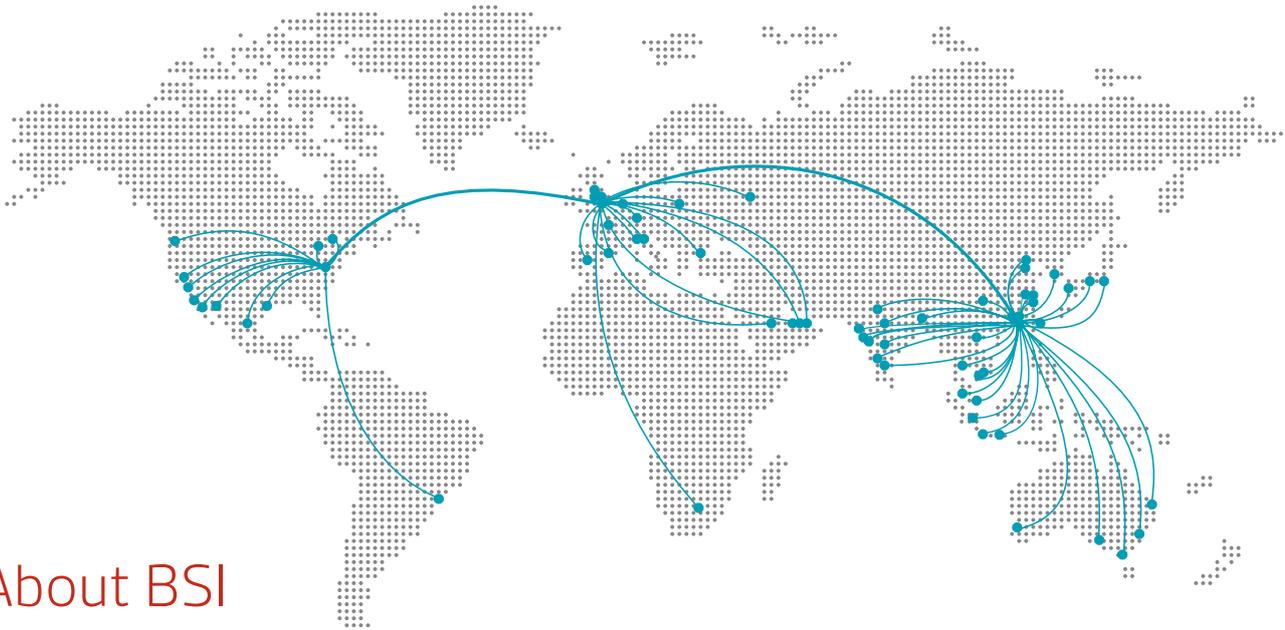
The importer should ask:

- Is the manufacturing company name correct?
- Has the declaration been signed by the right person — i.e. someone of the right kind of 'rank' and authority?
- Is it dated appropriately? Old certificates for newly designed products should ring alarm bells.
- Does it cover the specific product being supplied? It should relate directly to the particular product, not a similar product in the same range.
- Does it cover all the EU Directives that reasonably apply to the product?
- Has the product been tested for conformity to the right and the most recent standards? There are multiple product standards for multiple products, and they are updated over time. The BSI website is a very useful source of information on the 'state' of EU and other standards.

GAR-Specific Documents:

The importer should ask:

- Do the type examination and surveillance certificates both exist, do they cover the product being supplied, are they consistent with the DoC?
- Is the company issuing each certificate actually a Notified Body authorised to do so? (A quick check via NANDO, the database of Notified Bodies – available online should provide the answer.)
- Are the certificates actually genuine? The Notified Body will be able to verify them — through, for example, a phone call or email exchange. In some cases, it may even be possible for the importer to upload a PDF of the certificate to the website of the Notified Body so it can check it for tampering. Companies such as BSI have online databases and can provide this service.
- Are the technical standards used to show compliance appropriate and are they up-to-date? The importer should challenge the manufacturer to justify themselves if out-of-date standards are being used. Again, useful information is available on the BSI website.
- Is the CE Mark on the appliance correctly sized and does it include the number of the Notified Body performing surveillance (and is this consistent with the certificate supplied)?



About BSI

We are the business standards company that equips businesses with the right tools and solutions to turn best-practice standards into habits of excellence. With over 4,000 staff worldwide, we help our clients drive performance, manage risk and grow sustainably.

Founded in 1901 we were the world's first National Standards Body. Now over a century later, we're globally recognized as a champion in best practice. We have been and still are responsible for originating many of the world's most commonly used standards and publish nearly 2,700 standards every year. These standards are developed to address the most pressing issues of today. They also cover various industry sectors, including Aerospace, Automotive, Built Environment, Food, Healthcare, IT and Fire.

All our standards are underpinned by a collaborative and rigorous approach perfected over decades. We always work closely with industry experts, government bodies, trade associations, businesses of all sizes and consumers to develop standards that drive excellence.

We currently work with over 80,000 clients in 172 countries worldwide to help them adopt and cultivate continuous habits of best practice. We also train our clients and provide them with practical implementation guidance, as well as a comprehensive suite of compliance tools. And to ensure our clients get the very best service, we're also independently assessed and accredited globally by ANAB (ANSI-ASQ National Accreditation Board) and 26 other accreditation bodies throughout the world, including UKAS (United Kingdom Accreditation Service).

Our reach is global and we play a key role within the International Organization for Standardization (ISO). As one of the founding members, we help make sure international standards developed address today and tomorrow's business and social needs, while delivering real benefits to an organization and all its stakeholders.

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