

SCHEDULES

SCHEDULE 1

Sections 17 and 18.

SUPPLEMENTARY PROVISIONS IN CONNECTION WITH PROCEEDINGS FOR OFFENCES UNDER SECTIONS 17 AND 18(4)

Proceedings in England and Wales

- 1 (1) A person against whom proceedings are brought in England and Wales for an offence under section 17 or 18(4) of this Act is, upon information duly laid by him and on giving the prosecution not less than three clear days' notice of his intention, entitled to have any person to whose act or default he alleges that the contravention of that section was due brought before the court in the proceedings.
- (2) If, after the contravention has been proved, the original accused proves that the contravention was due to the act or default of that other person—
- (a) that other person may be convicted of the offence, and
 - (b) if the original accused further proves that he has used all due diligence to secure that section 17 or, as the case may be, 18(4) was complied with, he shall be acquitted of the offence.
- (3) Where an accused seeks to avail himself of the provisions of sub-paragraphs (1) and (2) above—
- (a) the prosecution, as well as the person whom the accused charges with the offence, has the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence, and
 - (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party to the proceedings.
- 2 (1) Where—
- (a) it appears that an offence under section 17 or 18(4) of this Act has been committed in respect of which proceedings might be taken in England and Wales against some person (referred to below in this paragraph as “the original offender”), and
 - (b) a person proposing to take proceedings in respect of the offence is reasonably satisfied—
 - (i) that the offence of which complaint is made was due to an act or default of some other person, being an act or default which took place in England and Wales, and
 - (ii) that the original offender could establish a defence under paragraph 1 of this Schedule,the proceedings may be taken against that other person without proceedings first being taken against the original offender.

Status: This is the original version (as it was originally enacted).

- (2) In any such proceedings the accused may be charged with, and on proof that the contravention was due to his act or default be convicted of, the offence with which the original offender might have been charged.
- 3 (1) Where proceedings are brought in England and Wales against a person (referred to below in this paragraph as “the accused”) in respect of a contravention of section 17 or 18(4) of this Act and it is proved—
- (a) that the contravention was due to the act or default of some other person, being an act or default which took place in Scotland, and
 - (b) that the accused used all due diligence to secure compliance with that section, the accused shall, subject to the provisions of this paragraph, be acquitted of the offence.
- (2) The accused is not entitled to be acquitted under this paragraph unless within seven days from the date of the service of the summons on him—
- (a) he has given notice in writing to the prosecution of his intention to rely upon the provisions of this paragraph, specifying the name and address of the person to whose act or default he alleges that the contravention was due, and
 - (b) he has sent a like notice to that person.
- (3) The person specified in a notice served under this paragraph is entitled to appear at the hearing and to give evidence and the court may, if it thinks fit, adjourn the hearing to enable him to do so.
- (4) Where it is proved that the contravention of section 17 or 18(4) of this Act was due to the act or default of some person other than the accused, being an act or default which took place in Scotland, the court must (whether or not the accused is acquitted) cause notice of the proceedings to be sent to the Secretary of State.

Proceedings in Scotland

- 4 (1) Where a contravention of section 17 or 18(4) of this Act committed by a person in Scotland (referred to in this sub-paragraph as “the original offender”) was due to the act or default of any other person, being an act or default which took place in Scotland then, whether or not proceedings are taken against the original offender, that other person may be charged with and convicted of the contravention and shall be liable on conviction to the same punishment as might have been inflicted on the original offender if he had been convicted of the contravention.
- (2) Where a person (referred to in this sub-paragraph as “the accused”) who is charged in Scotland with a contravention of section 17 or 18(4) of this Act proves to the satisfaction of the court—
- (a) that he used all due diligence to secure that the provision in question was complied with, and
 - (b) that the contravention was due to the act or default of some other person, the accused shall be acquitted of the contravention.

Proceedings in Great Britain

- 5 (1) Subject to the provisions of this paragraph, in any proceedings (whether in England and Wales or Scotland) for an offence under section 17 or 18(4) of this Act it shall be a defence for the accused to prove—

- (a) that he purchased the helmet or appliance in question as being of a type which—
 - (i) in the case of section 17, could be lawfully sold or offered for sale under that section, and
 - (ii) in the case of section 18(4), could be lawfully sold or offered for sale under section 18 as authorised for use in the manner in question, and with a written warranty to that effect, and
 - (b) that he had no reason to believe at the time of the commission of the alleged offence that it was not of such a type, and
 - (c) that it was then in the same state as when he purchased it.
- (2) A warranty is only a defence in any such proceedings if—
- (a) the accused—
 - (i) has, not later than three clear days before the date of the hearing, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and
 - (ii) has also sent a like notice of his intention to that person, and
 - (b) in the case of a warranty given by a person outside the United Kingdom, the accused proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in the warranty.
- (3) Where the accused is a servant of the person who purchased the helmet or appliance in question under a warranty, he is entitled to rely on the provisions of this paragraph in the same way as his employer would have been entitled to do if he had been the accused.
- (4) The person by whom the warranty is alleged to have been given is entitled to appear at the hearing and to give evidence and the court may, if it thinks fit, adjourn the hearing to enable him to do so.
- 6 (1) An accused who in any proceedings for an offence under section 17 or 18(4) of this Act wilfully applies to a helmet or, as the case may be, appliance a warranty not given in relation to that helmet or appliance is guilty of an offence.
- (2) A person who, in respect of a helmet or appliance sold by him, being a helmet or appliance in respect of which a warranty might be pleaded under paragraph 5 of this Schedule, gives to the purchaser a false warranty in writing, is guilty of an offence, unless he proves that when he gave the warranty he had reason to believe that the statements or description contained in it were accurate.
- (3) Where the accused in a prosecution for an offence under section 17 or 18 (4) of this Act relies successfully on a warranty given to him or his employer, any proceedings under sub-paragraph (2) above in respect of the warranty may, at the option of the prosecutor, be taken either—
- (a) before a court having jurisdiction in the place where the helmet or appliance, or any of the helmets or appliances, to which the warranty relates was procured, or
 - (b) before a court having jurisdiction in the place where the warranty was given.
- 7 In this Schedule, “appliance” means an appliance to which section 18 of this Act applies.