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## SCHEDULES

### SCHEDULE 2

Section 5(3).

#### ENFORCEMENT

##### *Preliminary*

1 In this Schedule—

" enforcement authority " means the Secretary of State, any person on whom a duty is imposed by or under section 5 of this Act and any other person by whom that duty may be discharged in pursuance of arrangements made by virtue of any enactment;

" officer ", in relation to an enforcement authority, means a person authorised in writing by the authority to assist the authority in performing such a duty as aforesaid or, where the authority is the Secretary of State, to assist him in enforcing relevant provisions ;

" premises " includes any place, any stall, and any ship, aircraft and other vehicle of any kind; and

" relevant provisions " means provisions of safety regulations or a prohibition order or a prohibition notice.

##### *Purchases*

2 An enforcement authority shall have power to purchase goods, and to authorise any of its officers to purchase goods on behalf of the authority, for the purpose of ascertaining whether any relevant provisions are being complied with.

##### *Powers to enter premises and to inspect and seize goods*

3 An officer of an enforcement authority may, at all reasonable hours and on production, if required, of his credentials, exercise the following powers, that is to say—

- (a) he may, for the purpose of ascertaining whether any relevant provisions have been contravened, inspect any goods and enter any premises other than premises used only as a dwelling ;
- (b) he may, for the purpose of ascertaining whether an offence under section 2(2) of this Act has been committed, examine any procedure (including any arrangements for carrying out a test) connected with the production of goods;
- (c) if he has reasonable cause to suspect that relevant provisions have been contravened he may, for the purpose of ascertaining whether the provisions have been contravened, require any person carrying on a business or employed in connection with a business to produce any books or documents relating to the business and may take copies of, or of any entry in, any such book or document;

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- (d) if he has reasonable cause to believe that relevant provisions have been contravened, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the provisions have been contravened ;
- (e) he may seize and detain any goods (including documents) which he has reason to believe may be required as evidence in proceedings for an offence under section 2 of this Act or under section 3 of this Act so far as it relates to prohibition orders and prohibition notices ;
- (f) he may, for the purpose of exercising his powers under sub-paragraph (d) or (e) above to seize goods, but only if and to the extent that it is reasonably necessary in order to secure that relevant provisions are complied with, require any person having authority to do so to break open any container and, if that person does not comply with the requirement, he may do so himself.

4 An officer seizing any goods or documents in the exercise of his powers under the preceding paragraph shall inform the person from whom they are seized that the officer has seized them.

5 If a justice of the peace on sworn information in writing—

- (a) is satisfied that there is reasonable ground to believe either—
  - (i) that any goods (including books and documents) which an officer of an enforcement authority has power under paragraph 3 of this Schedule to inspect are on any premises and that their inspection is likely to disclose evidence that relevant provisions have been contravened, or
  - (ii) that relevant provisions have been or are being or are about to be contravened on any premises ; and
- (b) is also satisfied either—
  - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this paragraph has been given to the occupier, or
  - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise an officer of an enforcement authority to enter the premises, if need be by force.

In the application of this paragraph to Scotland " justice of the peace " shall be construed as including a sheriff.

6 An officer entering any premises by virtue of this Schedule may take with him such other persons and such equipment as may appear to him necessary ; and on leaving any premises which he has entered by virtue of a warrant under the preceding paragraph he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

7 If any person discloses to any person—

- (a) any information obtained by him in premises which he has entered by virtue of this Schedule ; or
- (b) any information obtained by him in pursuance of this Schedule ;

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he shall, unless the disclosure was made for the purposes of proceedings for a breach of duty mentioned in section 6(1) of this Act and does not disclose a secret manufacturing process or trade secret or was made as mentioned in paragraphs (a) to (e) of section 4(3) of this Act or in compliance with a direction under section 5(4) of this Act or was of publicised information, be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years and a fine and, on summary conviction, to a fine of an amount not exceeding the statutory maximum.

8 If any person who is not an officer of an enforcement authority purports to act as such under this Schedule he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

9 Nothing in this Schedule shall be taken to compel the production by a barrister, advocate or solicitor of a document containing a privileged communication made by or to him in that capacity or to authorise the taking of possession of any such document which is in his possession.

#### *Obstruction*

10 Any person who—

- (a) wilfully obstructs an officer of an enforcement authority acting in pursuance of this Schedule ; or
- (b) wilfully fails to comply with any requirement properly made to him by such an officer under this Schedule ; or
- (c) without reasonable cause fails to give such an officer so acting any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under this Schedule,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200.

11 If any person, in giving any such information as is mentioned in the preceding paragraph, makes any statement which he knows is false in a material particular or recklessly makes a statement which is false in a material particular he shall be guilty of an offence and liable on conviction on indictment to a fine and on summary conviction to a fine of an amount not exceeding the statutory maximum.

12 Nothing in this Schedule shall be construed as requiring a person to answer any question or give any information if to do so might incriminate the person or the person's spouse.

#### *Tests*

13 Where any goods seized or purchased by an officer in pursuance of this Schedule are submitted to a test, then—

- (a) if the goods were seized, the officer shall inform the person mentioned in paragraph 4 of this Schedule of the result of the test;
- (b) if the goods were purchased and the test leads to the institution of proceedings for an offence under section 2 of this Act or under section 3 of this Act so far as it relates to prohibition orders and prohibition notices, the officer shall inform the person from whom the goods were purchased of the result of the test;

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and the officer shall, where as a result of the test such proceedings are instituted against any person, allow him to have the goods tested if it is reasonably practicable to do so.

- 14 The Secretary of State may by regulations provide that any test of goods seized or purchased by or on behalf of an enforcement authority in pursuance of this Schedule shall, in such cases as are specified in the regulations—
- (a) be carried out at the expense of the authority in a manner so specified and by a person specified in or determined under the regulations ; or
  - (b) be carried out either as mentioned in sub-paragraph (a) above or by the authority in a manner specified in the regulations.

#### *Compensation*

- 15 Where, in the exercise of his powers under this Schedule, an officer of an enforcement authority seizes and detains any goods and their owner suffers loss by reason thereof or by reason that the goods, during the detention, are lost or damaged or deteriorate, then unless the owner is convicted of an offence under section 2 of this Act or under section 3 of this Act so far as it relates to prohibition orders and prohibition notices in relation to the goods, the authority shall be liable to compensate him for the loss so suffered.
- 16 Any disputed question as to the right to or the amount of any compensation payable under the preceding paragraph shall be determined by arbitration and, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.