

SCHEDULES

SCHEDULE 5

INVESTIGATORY POWERS ETC.

PART 4

FURTHER POWERS EXERCISABLE BY DOMESTIC ENFORCERS AND EU ENFORCERS

Exercise of powers in this Part: domestic enforcers

- 19 (1) A domestic enforcer may exercise a power in this Part of this Schedule only for the purposes and in the circumstances mentioned in this paragraph in relation to that power.
- (2) A domestic enforcer may exercise any power in paragraphs 21 to 26 and 31 to 34 for the purpose of ascertaining compliance with the enforcer's legislation.
- (3) A domestic enforcer may exercise the power in paragraph 27 (power to require the production of documents) for either of the following purposes—
- (a) subject to sub-paragraph (4), to ascertain compliance with the enforcer's legislation;
 - (b) to ascertain whether the documents may be required as evidence in proceedings for a breach of, or under, the enforcer's legislation.
- (4) A domestic enforcer may exercise the power in paragraph 27 for the purpose mentioned in sub-paragraph (3)(a) only if an officer of the enforcer reasonably suspects a breach of the enforcer's legislation, unless—
- (a) the power is being exercised in relation to a document that the trader is required to keep by virtue of a provision of the enforcer's legislation, or
 - (b) the enforcer is a market surveillance authority within the meaning of Article 2(18) of the Regulation on Accreditation and Market Surveillance and the power is exercised for the purpose of market surveillance within the meaning of Article 2(17) of that Regulation.
- (5) A domestic enforcer may exercise the power in paragraph 28 (power to seize and detain goods) in relation to—
- (a) goods which an officer of the enforcer reasonably suspects may disclose (by means of testing or otherwise) a breach of the enforcer's legislation,
 - (b) goods which an officer of the enforcer reasonably suspects are liable to forfeiture under that legislation, and
 - (c) goods which an officer of the enforcer reasonably suspects may be required as evidence in proceedings for a breach of, or under, that legislation.

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- (6) A domestic enforcer may exercise the power in paragraph 29 (power to seize documents required as evidence) in relation to documents which an officer of the enforcer reasonably suspects may be required as evidence—
- (a) in proceedings for a breach of the enforcer’s legislation, or
 - (b) in proceedings under the enforcer’s legislation.
- (7) A domestic enforcer may exercise the power in paragraph 30 (power to decommission or switch off fixed installations)—
- (a) if an officer of the enforcer reasonably suspects a breach of the Electromagnetic Compatibility Regulations 2006 (SI 2006/3418), and
 - (b) for the purpose of ascertaining (by means of testing or otherwise) whether there has been such a breach.
- (8) For the purposes of the enforcement of the Estate Agents Act 1979—
- (a) the references in sub-paragraphs (2) and (3)(a) to ascertaining compliance with the enforcer’s legislation include ascertaining whether a person has engaged in a practice mentioned in section 3(1)(d) of that Act (practice in relation to estate agency work declared undesirable by the Secretary of State), and
 - (b) the references in sub-paragraph (4) and paragraphs 23(6)(a) and 32(3)(a) to a breach of the enforcer’s legislation include references to a person’s engaging in such a practice.

Exercise of powers in this Part: EU enforcers

- 20 (1) Any power in this Part of this Schedule which is conferred on an EU enforcer may be exercised by such an enforcer only for the purposes and in the circumstances mentioned in this paragraph in relation to that power.
- (2) If the condition in sub-paragraph (3) is met, an EU enforcer may exercise any power conferred on it by paragraphs 21 to 25 and 31 to 34 for any purpose relating to the functions that the enforcer has under Part 8 of the Enterprise Act 2002 in its capacity as a CPC enforcer under that Part.
- (3) The condition is that an officer of the EU enforcer reasonably suspects—
- (a) that there has been, or is likely to be, a Community infringement,
 - (b) a failure to comply with an enforcement order or an interim enforcement order made on the application of that enforcer,
 - (c) a failure to comply with an undertaking given under section 217(9) or 218(10) of the Enterprise Act 2002 following such an application, or
 - (d) a failure to comply with an undertaking given to that enforcer under section 219 of that Act.
- (4) An EU enforcer may exercise the power in paragraph 27 (power to require the production of documents) for either of the following purposes—
- (a) the purpose mentioned in sub-paragraph (2), if the condition in sub-paragraph (3) is met;
 - (b) to ascertain whether the documents may be required as evidence in proceedings under Part 8 of the Enterprise Act 2002.
- (5) An EU enforcer may exercise the power in paragraph 28 (power to seize and detain goods) in relation to goods which an officer of the enforcer reasonably suspects—

- (a) may disclose (by means of testing or otherwise) a Community infringement or a failure to comply with a measure specified in sub-paragraph (3)(b), (c) or (d), or
 - (b) may be required as evidence in proceedings under Part 8 of the Enterprise Act 2002.
- (6) An EU enforcer may exercise the power in paragraph 29 (power to seize documents required as evidence) in relation to documents which an officer of the enforcer reasonably suspects may be required as evidence in proceedings under Part 8 of the Enterprise Act 2002.

Power to purchase products

- 21 (1) An officer of an enforcer may—
- (a) make a purchase of a product, or
 - (b) enter into an agreement to secure the provision of a product.
- (2) For the purposes of exercising the power in sub-paragraph (1), an officer may—
- (a) at any reasonable time, enter premises to which the public has access (whether or not the public has access at that time), and
 - (b) inspect any product on the premises which the public may inspect.
- (3) The power of entry in sub-paragraph (2) may be exercised without first giving notice or obtaining a warrant.

Power to observe carrying on of business etc

- 22 (1) An officer of an enforcer may enter premises to which the public has access in order to observe the carrying on of a business on those premises.
- (2) The power in sub-paragraph (1) may be exercised at any reasonable time (whether or not the public has access at that time).
- (3) The power of entry in sub-paragraph (1) may be exercised without first giving notice or obtaining a warrant.

Power to enter premises without warrant

- 23 (1) An officer of an enforcer may enter premises at any reasonable time.
- (2) Sub-paragraph (1) does not authorise the entry into premises used wholly or mainly as a dwelling.
- (3) In the case of a routine inspection, the power of entry in sub-paragraph (1) may only be exercised if a notice has been given to the occupier of the premises in accordance with the requirements in sub-paragraph (4), unless sub-paragraph (5) applies.
- (4) Those requirements are that—
- (a) the notice is in writing and is given by an officer of the enforcer,
 - (b) the notice sets out why the entry is necessary and indicates the nature of the offence under paragraph 36 (obstruction), and
 - (c) there are at least two working days between the date of receipt of the notice and the date of entry.

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- (5) A notice need not be given if the occupier has waived the requirement to give notice.
- (6) In this paragraph “routine inspection” means an exercise of the power in sub-paragraph (1) other than where—
- (a) the power is exercised by an officer of a domestic enforcer who reasonably suspects a breach of the enforcer’s legislation,
 - (b) the officer reasonably considers that to give notice in accordance with sub-paragraph (3) would defeat the purpose of the entry,
 - (c) it is not reasonably practicable in all the circumstances to give notice in accordance with that sub-paragraph, in particular because the officer reasonably suspects that there is an imminent risk to public health or safety, or
 - (d) the enforcer is a market surveillance authority within the meaning of Article 2(18) of the Regulation on Accreditation and Market Surveillance and the entry is for the purpose of market surveillance within the meaning of Article 2(17) of that Regulation.
- (7) If an officer of an enforcer enters premises under sub-paragraph (1) otherwise than in the course of a routine inspection, and finds one or more occupiers on the premises, the officer must provide to that occupier or (if there is more than one) to at least one of them a document that—
- (a) sets out why the entry is necessary, and
 - (b) indicates the nature of the offence under paragraph 36 (obstruction).
- (8) If an officer of an enforcer enters premises under sub-paragraph (1) and finds one or more occupiers on the premises, the officer must produce evidence of the officer’s identity and authority to that occupier or (if there is more than one) to at least one of them.
- (9) An officer need not comply with sub-paragraph (7) or (8) if it is not reasonably practicable to do so.
- (10) Proceedings resulting from the exercise of the power under sub-paragraph (1) are not invalid merely because of a failure to comply with sub-paragraph (7) or (8).
- (11) An officer entering premises under sub-paragraph (1) may be accompanied by such persons, and may take onto the premises such equipment, as the officer thinks necessary.
- (12) In this paragraph—
- “give”, in relation to the giving of a notice to the occupier of premises, includes delivering or leaving it at the premises or sending it there by post;
- “working day” means a day other than—
- (a) Saturday or Sunday,
 - (b) Christmas Day or Good Friday, or
 - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the premises are situated.

Application of paragraphs 25 to 31

- 24 Paragraphs 25 to 31 apply if an officer of an enforcer has entered any premises under the power in paragraph 23(1) or under a warrant under paragraph 32.

Power to inspect products etc

- 25 (1) The officer may inspect any product on the premises.
- (2) The power in sub-paragraph (3) is also available to an officer of a domestic enforcer acting pursuant to the duty in section 27(1) of the Consumer Protection Act 1987 or regulation 10(1) of the General Product Safety Regulations 2005 (SI 2005/1803).
- (3) The officer may examine any procedure (including any arrangements for carrying out a test) connected with the production of a product.
- (4) The powers in sub-paragraph (5) are also available to an officer of a domestic enforcer acting pursuant to—
- (a) the duty in regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659) (“the “2006 Regulations”), or
 - (b) the duty in regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (SR 2011/331) (“the 2011 Regulations”).
- (5) The officer may inspect and take copies of, or of anything purporting to be—
- (a) a record of a kind mentioned in regulation 5(2) or 9(1), or
 - (b) evidence of a kind mentioned in regulation 9(3).
- (6) The references in sub-paragraph (5) to regulations are to regulations in the 2006 Regulations in the case of a domestic enforcer in Great Britain or the 2011 Regulations in the case of a domestic enforcer in Northern Ireland.
- (7) The powers in sub-paragraph (8) are also available to an officer of a domestic enforcer acting pursuant to the duty in regulation 37(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations 2006 (SI 2006/3418).
- (8) The officer may—
- (a) inspect any apparatus or fixed installation (as defined in those Regulations), or
 - (b) examine any procedure (including any arrangements for carrying out a test) connected with the production of apparatus.

Power to test equipment

- 26 (1) An officer of a domestic enforcer may test any weighing or measuring equipment—
- (a) which is, or which the officer has reasonable cause to believe may be, used for trade or in the possession of any person or on any premises for such use, or
 - (b) which has been, or which the officer has reasonable cause to believe to have been, passed by an approved verifier, or by a person purporting to act as such a verifier, as fit for such use.
- (2) Expressions used in sub-paragraph (1) have the same meaning—
- (a) as in the Weights and Measures Act 1985, in the case of a domestic enforcer in Great Britain;
 - (b) as in the Weights and Measures (Northern Ireland) Order 1981 (SI 1981/231 (NI 10)), in the case of a domestic enforcer in Northern Ireland.
- (3) The powers in sub-paragraph (4) are available to an officer of a domestic enforcer acting pursuant to—

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- (a) the duty in regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659) (“the 2006 Regulations”), or
 - (b) the duty in regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (SR 2011/331) (“the 2011 Regulations”).
- (4) The officer may test any equipment which the officer has reasonable cause to believe is used in—
- (a) making up packages (as defined in regulation 2) in the United Kingdom, or
 - (b) carrying out a check mentioned in paragraphs (1) and (3) of regulation 9.
- (5) The references in sub-paragraph (4) to regulations are to regulations in the 2006 Regulations in the case of a domestic enforcer in Great Britain or the 2011 Regulations in the case of a domestic enforcer in Northern Ireland.

Power to require the production of documents

- 27 (1) The officer may, at any reasonable time—
- (a) require a trader occupying the premises, or a person on the premises acting on behalf of such a trader, to produce any documents relating to the trader’s business to which the trader has access, and
 - (b) take copies of, or of any entry in, any such document.
- (2) The power in sub-paragraph (1) is available regardless of whether—
- (a) the purpose for which the documents are required relates to the trader or some other person, or
 - (b) the proceedings referred to in paragraph 19(3)(b) or 20(4)(b) could be taken against the trader or some other person.
- (3) That power includes power to require the person to give an explanation of the documents.
- (4) Where a document required to be produced under sub-paragraph (1) contains information recorded electronically, the power in that sub-paragraph includes power to require the production of a copy of the document in a form in which it can easily be taken away and in which it is visible and legible.
- (5) This paragraph does not permit an officer to require a person to create a document other than as described in sub-paragraph (4).
- (6) This paragraph does not permit an officer to require a person to produce any document which the person would be entitled to refuse to produce—
- (a) in proceedings in the High Court on the grounds of legal professional privilege, or
 - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.
- (7) In sub-paragraph (6) “communications” means—
- (a) communications between a professional legal adviser and the adviser’s client, or
 - (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.
- (8) In this paragraph “trader” has the same meaning as in Part 1 of this Act.

Power to seize and detain goods

- 28 (1) The officer may seize and detain goods other than documents (for which see paragraph 29).
- (2) An officer seizing goods under this paragraph from premises which are occupied must produce evidence of the officer's identity and authority to an occupier of the premises before seizing them.
- (3) The officer need not comply with sub-paragraph (2) if it is not reasonably practicable to do so.
- (4) An officer seizing goods under this paragraph must take reasonable steps to—
- (a) inform the person from whom they are seized that they have been seized, and
 - (b) provide that person with a written record of what has been seized.
- (5) If, under this paragraph, an officer seizes any goods from a vending machine, the duty in sub-paragraph (4) also applies in relation to—
- (a) the person whose name and address are on the vending machine as the owner of the machine, or
 - (b) if there is no such name and address on the machine, the occupier of the premises on which the machine stands or to which it is fixed.
- (6) In determining the steps to be taken under sub-paragraph (4), an officer exercising a power under this paragraph in England and Wales or Northern Ireland must have regard to any relevant provision about the seizure of property made by—
- (a) a code of practice under section 66 of the Police and Criminal Evidence Act 1984, or
 - (b) a code of practice under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341 (NI 12)),
- (as the case may be).
- (7) Goods seized under this paragraph (except goods seized for a purpose mentioned in paragraph 19(5)(b)) may not be detained—
- (a) for a period of more than 3 months beginning with the day on which they were seized, or
 - (b) where the goods are reasonably required to be detained for a longer period by the enforcer for a purpose for which they were seized, for longer than they are required for that purpose.

Power to seize documents required as evidence

- 29 (1) The officer may seize and detain documents.
- (2) An officer seizing documents under this paragraph from premises which are occupied must produce evidence of the officer's identity and authority to an occupier of the premises before seizing them.
- (3) The officer need not comply with sub-paragraph (2) if it is not reasonably practicable to do so.
- (4) An officer seizing documents under this paragraph must take reasonable steps to—
- (a) inform the person from whom they are seized that they have been seized, and
 - (b) provide that person with a written record of what has been seized.

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- (5) In determining the steps to be taken under sub-paragraph (4), an officer exercising a power under this paragraph in England and Wales or Northern Ireland must have regard to any relevant provision about the seizure of property made by—
- (a) a code of practice under section 66 of the Police and Criminal Evidence Act 1984, or
 - (b) a code of practice under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341 (NI 12)),
- (as the case may be).
- (6) This paragraph does not confer any power on an officer to seize from a person any document which the person would be entitled to refuse to produce—
- (a) in proceedings in the High Court on the grounds of legal professional privilege, or
 - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.
- (7) In sub-paragraph (6) “communications” means—
- (a) communications between a professional legal adviser and the adviser’s client, or
 - (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.
- (8) Documents seized under this paragraph may not be detained—
- (a) for a period of more than 3 months beginning with the day on which they were seized, or
 - (b) where the documents are reasonably required to be detained for a longer period by the enforcer for the purposes of the proceedings for which they were seized, for longer than they are required for those purposes.

Power to decommission or switch off fixed installations

- 30 (1) The power in sub-paragraph (2) is available to an officer of a domestic enforcer acting pursuant to the duty in regulation 37(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations 2006 (SI 2006/3418).
- (2) The officer may decommission or switch off any fixed installation (as defined in those Regulations) or part of such an installation.

Power to break open container etc

- 31 (1) The officer may, for the purpose of exercising any of the powers in paragraphs 28 to 30, require a person with authority to do so—
- (a) break open any container,
 - (b) open any vending machine, or
 - (c) access any electronic device in which information may be stored or from which it may be accessed.
- (2) Where a requirement under sub-paragraph (1) has not been complied with, the officer may, for the purpose of exercising any of the powers in paragraphs 28 to 30—
- (a) break open the container,
 - (b) open the vending machine, or

- (c) access the electronic device.
- (3) Sub-paragraph (1) or (2) applies if and to the extent that the exercise of the power in that sub-paragraph is reasonably necessary for the purposes for which that power may be exercised.
- (4) In this paragraph “container” means anything in which goods may be stored.

Power to enter premises with warrant

- 32 (1) A justice of the peace may issue a warrant authorising an officer of an enforcer to enter premises if satisfied, on written information on oath given by such an officer, that there are reasonable grounds for believing that—
- (a) condition A or B is met, and
 - (b) condition C, D or E is met.
- (2) Condition A is that on the premises there are—
- (a) products which an officer of the enforcer has power to inspect under paragraph 25, or
 - (b) documents which an officer of the enforcer could require a person to produce under paragraph 27.
- (3) Condition B is that, on the premises—
- (a) in the case of a domestic enforcer, there has been or is about to be a breach of the enforcer’s legislation,
 - (b) in the case of an EU enforcer, there has been or is about to be a Community infringement as defined in section 212 of the Enterprise Act 2002, or
 - (c) in the case of an EU enforcer, there has been a failure to comply with a measure specified in paragraph 20(3)(b), (c) or (d).
- (4) Condition C is that—
- (a) access to the premises has been or is likely to be refused, and
 - (b) notice of the enforcer’s intention to apply for a warrant under this paragraph has been given to the occupier of the premises.
- (5) Condition D is that it is likely that products or documents on the premises would be concealed or interfered with if notice of entry on the premises were given to the occupier of the premises.
- (6) Condition E is that—
- (a) the premises are unoccupied, or
 - (b) the occupier of the premises is absent, and it might defeat the purpose of the entry to wait for the occupier’s return.
- (7) In the application of this paragraph to Scotland—
- (a) the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to a sheriff, and
 - (b) the reference in that sub-paragraph to information on oath is to be read as a reference to evidence on oath.
- (8) In the application of this paragraph to Northern Ireland—
- (a) the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to a lay magistrate, and

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- (b) the reference in that sub-paragraph to written information is to be read as a reference to a written complaint.

Entry to premises under warrant

- 33 (1) A warrant under paragraph 32 authorises an officer of the enforcer to enter the premises at any reasonable time, using reasonable force if necessary.
- (2) A warrant under that paragraph ceases to have effect at the end of the period of one month beginning with the day it is issued.
- (3) An officer entering premises under a warrant under paragraph 32 may be accompanied by such persons, and may take onto the premises such equipment, as the officer thinks necessary.
- (4) If the premises are occupied when the officer enters them, the officer must produce the warrant for inspection to an occupier of the premises.
- (5) Sub-paragraph (6) applies if the premises are unoccupied or the occupier is temporarily absent.
- (6) On leaving the premises the officer must—
- (a) leave a notice on the premises stating that the premises have been entered under a warrant under paragraph 32, and
 - (b) leave the premises as effectively secured against trespassers as the officer found them.

Power to require assistance from person on premises

- 34 (1) If an officer of an enforcer has entered premises under the power in paragraph 23(1) or under a warrant under paragraph 32, the officer may require any person on the premises to provide such assistance or information as the officer reasonably considers necessary.
- (2) Sub-paragraph (3) applies if an officer of a domestic enforcer has entered premises under the power in paragraph 23(1) or under a warrant under paragraph 32 for the purposes of the enforcement of—
- (a) the Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659), or
 - (b) the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (SR 2011/331).
- (3) The officer may, in particular, require any person on the premises to provide such information as the person possesses about the name and address of the packer and of any importer of a package which the officer finds on the premises.
- (4) In sub-paragraph (3) “importer”, “package” and “packer” have the same meaning as in—
- (a) the Weights and Measures (Packaged Goods) Regulations 2006 (see regulation 2), in the case of a domestic enforcer in Great Britain, or
 - (b) the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (see regulation 2), in the case of a domestic enforcer in Northern Ireland.

Definitions for purposes of this Part

35 In this Part of this Schedule—

“goods” has the meaning given by section 2(8);

“occupier”, in relation to premises, means any person an officer of an enforcer reasonably suspects to be the occupier of the premises;

“premises” includes any stall, vehicle, vessel or aircraft;

“product” means—

- (a) goods,
- (b) a service,
- (c) digital content, as defined in section 2(9),
- (d) immovable property, or
- (e) rights or obligations.