

SCHEDULE 5

Regulation 14(2)

OFFENCES, ENFORCEMENT AND OTHER MATTERS

PART I

PROVISIONS AS TO OFFENCES

Offences and penalties

- 1.—(1) It shall be an offence to contravene—
regulation 4 (suppliers' duties in respect of labels);
regulation 5 (suppliers' duties in respect of information notices);
regulation 8 (suppliers' duties in respect of technical documentation);
regulation 9 (dealers' duty in respect of displayed appliances);
regulation 10 (dealers' duty in respect of information notices);
regulation 12 (printed communications);
regulation 13 (misleading information);
paragraph 5 of this Schedule (obstruction of authorised officers);
paragraph 11(8) of this Schedule (prohibition of purported search and seizure by unauthorised person); or
paragraph 15(1) of this Schedule (restrictions on disclosure of information).
- (2) A person guilty of the offence of contravening paragraph 15(1) shall be liable, on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine.
- (3) A person guilty of any other offence specified in sub-paragraph (1) shall be liable on summary conviction to a fine not exceeding the statutory maximum.

Prosecution of offences

- 2.—(1) Proceedings for an offence under these Regulations shall not be instituted—
(a) in England and Wales, except by an enforcement authority; and
(b) in Northern Ireland, except by or on behalf of the enforcement authority or the Director of Public Prosecutions for Northern Ireland.
- (2) Proceedings for an offence under these Regulations, other than proceedings for an offence under paragraph 15(1), shall not be instituted—
(a) unless there has been served on the person charged a notice in writing of the date and nature of the offence alleged and, where the proceedings are in respect of one or more appliances of the same model tested on the same occasion under paragraph 10(3) (testing of purchased or seized appliances), of the results of the tests of all those appliances; or
(b) unless the said notice was served before the expiration of the period of thirty days beginning with the date when evidence which the person proposing to institute the proceedings considers is sufficient to justify a prosecution for the offence came to his knowledge; or
(c) after the expiration of the period—
(i) of twelve months beginning with the date mentioned in paragraph (a) above, or

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- (ii) of three months beginning with the date mentioned in paragraph (b) above, whichever first occurs.
- (3) For the purposes of sub-paragraph (2)—
 - (a) a certificate of a person who institutes proceedings for an offence mentioned in that sub-paragraph which states that evidence came to his knowledge on a particular date shall be conclusive of that fact;
 - (b) a document purporting to be a certificate of such a person and to be signed by him or on his behalf shall be presumed to be such a certificate unless the contrary is proved; and
 - (c) such a certificate shall not be received in evidence—
 - (i) unless the party against whom it is to be given in evidence has been served with a copy thereof not less than seven clear days before the hearing; or
 - (ii) if that party has, not less than three clear days before the hearing, served on the other party a notice requiring the attendance of the person issuing the certificate.
- (4) For the purposes of any proceedings for an offence in Scotland—
 - (a) sub-paragraph (2) shall apply as if the word “instituted” read “brought”;
 - (b) sub-paragraph (2)(b) shall apply as if the words “which the person proposing to institute the proceedings considers is sufficient to justify a prosecution for the offence came to his knowledge” read “sufficient in the opinion of the procurator fiscal to justify proceedings came to his knowledge”;
 - (c) sub-paragraph (3)(a) shall apply as if the words “a person who institutes” read “the procurator fiscal who brings”;
 - (d) sub-paragraph (3)(b) shall apply as if the words “such a person” read “the procurator fiscal”; and
 - (e) sub-paragraph (3)(c) shall apply as if the word “hearing” read “trial diet”.

Defences

3.—(1) In proceedings against a person for an offence under these Regulations, it shall be a defence for that person to show that he believed that these Regulations did not apply and he had no reasonable grounds for believing that these Regulations might apply.

(2) Subject to sub-paragraphs (3) to (5), in proceedings against a person for an offence under these Regulations it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(3) Where in any proceedings (which in Scotland include the trial diet) against any person for such an offence the defence provided for by sub-paragraph (2) involves an allegation that the commission of the offence was due—

- (a) to the act or default of another, or
- (b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings (or, in Scotland, the trial diet) he has served a notice under sub-paragraph (4) on the person bringing the proceedings.

(4) A notice under this sub-paragraph shall give such information identifying or assisting in the identification of the person who is alleged to have committed the act or default or to have given the information as is in the possession of the person serving the notice at the time he serves it.

(5) A person shall not be entitled to rely on the defence provided by sub-paragraph (2) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to whether he had any reason to disbelieve the information, and
- (b) in the case of a supplier, to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information.

Liability of a person other than the principal offender

4.—(1) Where the commission by any person of an offence under these Regulations is due to an act or default committed by some other person in the course of any business of his, that other person shall be guilty of the offence and may be proceeded against and punished by virtue of this sub-paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of sub-paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, sub-paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) Where a Scottish partnership is guilty of an offence under these Regulations (including where it is so guilty by virtue of sub-paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner in the partnership, he, as well as the partnership, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

PART II

PROVISIONS AS TO ENFORCEMENT

Obstruction of authorised officers

5.—(1) A person shall not—

- (a) intentionally obstruct a duly authorised officer of an enforcement authority acting in pursuance of any provision of these Regulations; or
- (b) intentionally fail to comply with any requirement properly made to him by such an officer under any provision of these Regulations; or
- (c) without reasonable cause fail to give any such officer of an enforcement authority who is so acting any other assistance or information which he may reasonably require of him for the purposes of the exercise of the officer's functions under any provision of these Regulations.

(2) A person shall not, in giving any information which is required of him by virtue of sub-paragraph (1)(c)—

- (a) make any statement which he knows is false in a material particular; or
- (b) recklessly make a statement which is false in a material particular.

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Explanation of suggested remedial action

6.—(1) Subject to paragraph 8 (application of paragraphs 6 and 7 to other interested persons), where a duly authorised officer of an enforcement authority expresses to any person any opinion as to what remedial action should be taken by that person in respect of a contravention of these Regulations, then, if that person so requests, the officer—

- (a) shall as soon as practicable give to him a written notice which satisfies the requirements of sub-paragraph (2); and
 - (b) shall not take any enforcement action against him until after the end of the period of 21 days beginning with the giving to him of the notice.
- (2) A notice satisfies the requirements of this sub-paragraph if it—
- (a) explains what constitutes the failure to observe these Regulations;
 - (b) states the nature of the remedial action which in the officer's opinion should be taken, and explains why and within what period; and
 - (c) states the nature of the enforcement action which could be taken and states whether there is a right to make representations before, or a right of appeal against, the taking of such action.

Right to make representations

7.—(1) This paragraph shall not apply to the making of an application to a justice of the peace or, in Scotland, a sheriff for a warrant of entry under paragraph 11(4) (application for warrant of entry to premises) or to the entering of premises by authority of a warrant granted in pursuance of such an application.

(2) Subject to sub-paragraph (1) and to paragraph 8 (application of paragraphs 6 and 7 to other interested persons), before taking any enforcement action under these Regulations against any person, an enforcement authority or, as the case may be, a duly authorised officer of an enforcement authority—

- (a) shall give to the person a written notice stating—
 - (i) that the authority or the officer is considering taking the action and the reasons why it or he is considering it; and
 - (ii) that the person may, within the period of not less than 14 clear days following the date of giving to him of the notice, make written representations to that officer or another duly authorised officer of the authority or, if he so requests, make oral representations to the officer or another duly authorised officer of the authority in the presence of an independent third person who shall be appointed by the authority; and
- (b) shall consider any representations which are duly made and not withdrawn.

Application of paragraphs 6 and 7 to other interested persons

8.—(1) Where—

- (a) a third person will or may be required to meet or make a significant contribution towards the cost of observing the restriction or complying with the requirement or condition; or
- (b) the enforcement action which may be or has been taken specifically relates to any appliance or record which is to be or has been supplied by a third person,

paragraphs 6 and 7 shall apply also in relation to that person.

Power of enforcement authority to require technical documentation

9. Where an enforcement authority has reason to suspect that the information given on a label or in an information notice is incorrect, the authority may require the supplier of the appliance, to which the label or information notice refers, to furnish to the authority such technical documentation within the meaning of regulation 8 (suppliers' duties in respect of technical documentation) as the authority considers appropriate.

Test purchases

10.—(1) An enforcement authority shall have power, for the purpose of ascertaining whether any provision of these Regulations has been contravened, to purchase, or to authorise an officer of the authority to purchase, any appliance.

(2) Where—

- (a) an appliance purchased under this paragraph by or on behalf of an enforcement authority is submitted to a test; and
- (b) the test leads to the bringing of proceedings in respect of an offence under these Regulations; and
- (c) the authority is requested to do so and it is practicable for the authority to comply with the request,

the authority shall allow the person from whom the appliance was purchased or any person who is a party to the proceedings or has an interest in the appliance to have the appliance tested.

(3) A test of an appliance purchased under this paragraph, or seized and detained under paragraph 11 (power to enter premises and seize and detain appliances etc), shall be carried out in accordance with the test procedures of the harmonised standards.

Power to enter premises and inspect, seize and detain appliances etc

11.—(1) A duly authorised officer of an enforcement authority may, at all reasonable hours and on—

- (a) identifying himself and producing authority in writing from the enforcement authority which appointed him for the exercise by him of powers conferred on the authority by these Regulations, and
- (b) stating the purpose of his actions and his grounds for undertaking them,

exercise any of the powers set out in sub-paragraph (2).

(2) The powers referred to in sub-paragraph (1) are—

- (a) he may, for the purpose of ascertaining whether an offence under these Regulations has been committed, inspect any appliance and enter any premises other than premises used only as a dwelling;
- (b) if he has reasonable cause to suspect that an offence under these Regulations has been committed, he may, for the purpose of ascertaining whether it has been committed, require any person carrying on or employed in connection with a business to produce any records relating to the appliance or appliances in question and he may take copies of, or of any entry in, the same;
- (c) if he has reasonable cause to suspect that an offence under these Regulations has been committed, he may seize and detain any appliances for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
- (d) he may seize and detain any appliances or records which he has reason to believe may be required as evidence in proceedings for an offence under these Regulations;

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- (e) he may, for the purpose of exercising his powers of seizure under this sub-paragraph, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of these Regulations are duly observed, require any person having authority to do so to break open any container and, if that person does not comply with the requirement or if there is no person present having authority to open it, he may do so himself.
- (3) For the purposes of paragraphs (b) and (d) of sub-paragraph (2), the officer may require information stored electronically to be made available to him in printed form.
- (4) If a justice of the peace is satisfied by any written information on oath—
 - (a) that there are reasonable grounds for believing either—
 - (i) that any appliances or records, which a duly authorised officer has power under this paragraph to inspect, copy, seize or require to be produced, are on any premises and that their inspection, copying, seizure or production is likely to disclose evidence of the commission of an offence under these Regulations; or
 - (ii) that any offence under these Regulations has been, is being or is about to be committed on any premises; and
 - (b) 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 sub-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.
- (5) An officer entering any premises by authority of a warrant granted under sub-paragraph (4) shall, if the occupier is present, give to the occupier or, if the occupier is temporarily absent, leave in a prominent place on the premises or appropriate part of the premises a notice in writing—
 - (a) summarising the officer's powers of seizure and detention of appliances and records under this paragraph;
 - (b) explaining that compensation may be payable for damage caused in entering premises and seizing and removing appliances and records therefrom, and giving the address to which an application for compensation should be directed; and
 - (c) indicating at which office of the enforcement authority and within which hours a copy of these Regulations is available to be consulted.
- (6) An officer entering any premises by virtue of this paragraph 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 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) An officer exercising any power of seizure and detention under this paragraph shall as soon as practicable give to the person, against whom the power has been exercised, a written notice—
 - (a) stating precisely what has been so seized and detained; and
 - (b) explaining where, within what period and on what grounds an appeal against such detention may be brought under paragraph 12 (appeals against detention), and whether the things detained would be released while an appeal were pending.
- (8) A person who is not a duly authorised officer of an enforcement authority shall not purport to act as such under this paragraph.

(9) In the application of this paragraph to Scotland, the reference in sub-paragraph (4) to a justice of the peace shall include a reference to a sheriff and the references to written information on oath shall be construed as references to evidence on oath.

(10) In the application of this paragraph to Northern Ireland, the references in sub-paragraph (4) to any information on oath shall be construed as references to any complaint on oath.

Appeals against detention of appliances etc

12.—(1) Any person having an interest in any appliances or records which are for the time being detained under paragraph 11 (power to enter premises and seize and detain appliances etc) by an enforcement authority or by a duly authorised officer of an enforcement authority may apply for an order requiring the appliances or records to be released to him or to another person.

(2) An application under this paragraph may be made—

- (a) to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland for an offence in respect of a contravention of any provision of these Regulations in relation to the appliances or records;
- (b) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or
- (c) in Scotland, by summary application to the sheriff.

(3) A magistrates' court or the sheriff shall not make an order under sub-paragraph (1) unless the court or sheriff is satisfied—

- (a) that proceedings have not been brought for an offence in respect of a contravention of any provision of these Regulations in relation to the appliances or records; and
- (b) where no such proceedings have been brought, that more than twelve months have elapsed since the seizure was carried out.

(4) Any person aggrieved by an order made under this paragraph by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, to a county court;

and an order so made 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 (including any application under section 111 of the Magistrates' Courts Act 1980⁽¹⁾ or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)⁽²⁾).

Compensation for loss etc of appliances or records seized

13.—(1) Where a duly authorised officer of an enforcement authority exercises any power under paragraph 11 (power to enter premises and seize and detain appliances etc) to seize and detain any appliances or records, the enforcement authority shall be liable to pay compensation to any person having an interest in the appliances or records in respect of any loss or damage caused by the exercise of the power if—

- (a) there has been no contravention of any provision of these Regulations in relation to the appliances or records; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(1) 1980 c. 43.

(2) S.I.1981/1675 (N.I. 26).

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(2) Any disputed question as to the right to or the amount of any compensation payable under this paragraph shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

Recovery of expenses of enforcement

14.—(1) This paragraph shall apply where a court convicts a person of an offence in respect of a contravention of any provision of these Regulations in relation to any appliances or records.

(2) The court may (in addition to any other order it may make as to costs and expenses) order the person convicted to reimburse an enforcement authority for any expenditure which has been or may be incurred by that authority in connection with any seizure or detention by or on behalf of the authority of the appliances or records.

PART III

MISCELLANEOUS AND SUPPLEMENTAL

Restrictions on disclosure of information

15.—(1) Subject to the following provisions of this paragraph, a person shall not disclose any information—

- (a) which was obtained by him in consequence of its being given to any person in compliance with any requirement imposed by these Regulations; or
- (b) which consists in a secret manufacturing process or trade secret and was obtained by him in consequence of the exercise by any person of any power or duty conferred by these Regulations.

(2) Sub-paragraph (1) shall not apply to a disclosure of information if the information is publicised information or the disclosure is made—

- (a) for the purpose of facilitating the exercise of a relevant person's functions under these Regulations or any enactment or subordinate legislation mentioned in sub-paragraph (3);
 - (b) in pursuance of a Community obligation;
 - (c) in connection with the investigation of any criminal offence or for the purposes of any civil or criminal proceedings; or
 - (d) in pursuance of regulation 3 of the Environmental Information Regulations 1992⁽³⁾.
- (3) The enactments and subordinate legislation referred to in sub-paragraph (2)(a) are—
- (a) the Trade Descriptions Act 1968⁽⁴⁾;
 - (b) Parts II and III and section 125 of the Fair Trading Act 1973⁽⁵⁾;
 - (c) the relevant statutory provisions within the meaning of Part I of the Health and Safety at Work etc Act 1974⁽⁶⁾ or within the meaning of the Health and Safety at Work (Northern Ireland) Order 1978⁽⁷⁾;
 - (d) the Weights and Measures Act 1985⁽⁸⁾;

(3) S.I. 1992/3240.

(4) 1968 c. 29.

(5) 1973 c. 41.

(6) 1974 c. 37.

(7) S.I. 1978/1039 (N.I. 9); to which there are amendments not relevant to these Regulations.

(8) 1985 c. 72.

- (e) the Weights and Measures (Northern Ireland) Order 1981⁽⁹⁾;
 - (f) the Consumer Protection Act 1987⁽¹⁰⁾;
 - (g) the Consumer Protection (Northern Ireland) Order 1987⁽¹¹⁾;
 - (h) the Electrical Equipment (Safety) Regulations 1994⁽¹²⁾;
 - (i) any subordinate legislation made for the purpose of securing compliance with the Directive of the Council of the European Communities, dated 10th September 1984 (No.84/450/EEC), on the approximation of laws, regulations and administrative provisions of the member States concerning misleading advertising⁽¹³⁾; and
 - (j) the United Kingdom Ecolabelling Board Regulations 1992⁽¹⁴⁾.
- (4) In sub-paragraph (2)(a) the reference to a person’s functions shall include a reference to any function of making, amending or revoking any regulations or order.
- (5) In this paragraph—
- “publicised information” means any information which has been disclosed in any civil or criminal proceedings; and
- “relevant person” means any of the following, that is to say—
- (a) a Minister of the Crown, Government department or Northern Ireland department;
 - (b) the Director General of Fair Trading;
 - (c) the Health and Safety Executive;
 - (d) an enforcement authority;
 - (e) any person who is charged with enforcing any of the enactments and subordinate legislation referred to in sub-paragraph (3);
 - (f) the United Kingdom Ecolabelling Board.

Savings for certain privileges

16. Save for paragraph 9 (power of enforcement authority to require technical documentation), nothing in these Regulations shall be taken as requiring any person—

- (a) to produce any records if he would be entitled to refuse to produce those records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, that they contain a confidential communication made by or to an advocate or solicitor in that capacity, or as authorising any person to take possession of any records which are in the possession of a person who would be so entitled; or
- (b) to answer any question or give any information if to do so would incriminate that person or that person’s spouse.

Saving for civil rights

17. A contract for the supply of an appliance shall not be void or unenforceable by reason only of a contravention of any provision of these Regulations.

⁽⁹⁾ S.I. 1981/231 (N.I. 10); to which there are amendments not relevant to these Regulations.

⁽¹⁰⁾ 1987 c. 43.

⁽¹¹⁾ S.I. 1987/2049 (N.I. 12); to which there are amendments not relevant to these Regulations.

⁽¹²⁾ S.I. 1994/3260.

⁽¹³⁾ OJ No. L250, 19.9.84, p.17.

⁽¹⁴⁾ S.I. 1992/2383.

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Service of documents etc

18.—(1) Any document required or authorised by virtue of these Regulations to be served on a person may be so served—

- (a) by delivering it to him or leaving it at his proper address or by sending it by post to him at that address; or
- (b) if the person is a body corporate, by serving it in accordance with paragraph (a) on the secretary or clerk of that body; or
- (c) if the person is a partnership, by serving it in accordance with that sub-paragraph on a partner or on a person having control or management of the partnership business.

(2) For the purposes of sub-paragraph (1), and for the purposes of section 7 of the Interpretation Act 1978⁽¹⁵⁾ (which relates to the service of documents by post) in its application to that paragraph, the proper address of any person on whom a document is to be served by virtue of these Regulations shall be his last known address except that—

- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate;
- (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership;

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

Reports etc

19.—(1) It shall be the duty of the Secretary of State at least once in every five years to lay before each House of Parliament a report on the exercise during the period to which the report relates of the functions which under these Regulations are exercisable by enforcement authorities.

(2) The Secretary of State may from time to time prepare and lay before each House of Parliament such other reports on the exercise of those functions as he considers appropriate.

(3) Every enforcement authority shall, whenever the Secretary of State so directs, make a report to the Secretary of State on the exercise of the functions exercisable by that authority under these Regulations.

(4) A report under sub-paragraph (3) shall be in such form and shall contain such particulars as are specified in the direction of the Secretary of State.

(15) 1978 c. 30.