

## SCHEDULE 13

Regulation 17

### ENFORCEMENT

#### Enforcement authorities

1.—<sup>F1</sup>(1) The Secretary of State must enforce these Regulations and in carrying out this duty may appoint any person to act on behalf of the Secretary of State, and “enforcement authority” is to be construed accordingly.]

(2) Nothing in these Regulations shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

#### Textual Amendments

**F1** Sch. 13 para. 1(1) substituted (1.4.2015) by [The Noise Emission in the Environment by Equipment for use Outdoors \(Amendment\) Regulations 2015 \(S.I. 2015/98\)](#), regs. 1, 2(3)

#### Test purchases

2.—(1) An enforcement authority shall have power, for the purpose of ascertaining whether any equipment complies with the requirements of regulation 7 to make, or to authorise an officer of the authority to make, any purchase of equipment.

(2) Where—

- (a) any equipment purchased under this paragraph by or on behalf of any enforcement authority is submitted to a test; and
- (b) the test leads to—
  - (i) the bringing of proceedings for an offence under regulation 18 in relation to the equipment or the forfeiture of equipment of the same description under paragraph 13 or 14 below; or
  - (ii) the serving of a suspension notice in respect of any equipment; 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 equipment was purchased or any person who is a party to the proceedings or has an interest in any equipment to which the notice relates to have the equipment tested.

#### Powers of search etc.

3.—(1) Subject to paragraph 4 below, a duly authorised officer of an enforcement authority may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by the following provisions of this paragraph.

(2) The officer may, for the purpose of ascertaining whether there has been a contravention of any of the requirements of regulation 7—

- (a) inspect any equipment and enter any premises other than premises occupied only as a person’s residence; or
- (b) examine any procedure (including any arrangements for carrying out a test) connected with the production of any equipment.

(3) If the officer has reasonable ground for suspecting that there has been a contravention of any of the requirements of regulation 7, he may for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain any equipment.

(4) The officer may seize and detain—

(a) any equipment, any document, record or information which the officer may require production of under paragraph 8 below, or any other thing, which he has reasonable grounds for believing may be required as evidence in proceedings for an offence under these Regulations, or

(b) any equipment which he has reasonable grounds for suspecting may be liable to be forfeited under paragraphs 13 and 14 below.

(5) The officer may, for the purpose of the exercise of his powers under sub-paragraphs (3) or (4) above to seize any equipment, any document or record or any other thing—

(a) require any person having authority to do so to open any container; and

(b) himself open or break open any such container where a requirement made under paragraph (a) above in relation to the container has not been complied with.

### **Provisions supplemental to paragraph 3**

4.—(1) An officer seizing any equipment, records, documents, information or other thing under paragraph 3 above shall inform the person from whom they are seized that such equipment, records or other thing have been so seized.

(2) If a justice of the peace—

(a) is satisfied by any written information on oath that there are reasonable grounds for believing either—

(i) that any equipment, documents, records, information or other thing which any officer has power to inspect under paragraph 3 above are on any premises and that their inspection is likely to disclose evidence that there has been a contravention of any of the requirements of regulation 7 of these Regulations; or

(ii) that such a contravention has taken place, is taking place or is about to take place on any premises; and

(b) is also satisfied by any such information 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 one month, authorise any officer of an enforcement authority to enter the premises, if need be by force.

(3) An officer entering any premises by virtue of paragraph 3 above or a warrant under sub-paragraph (2) of this paragraph may take with him such other persons and such equipment as may appear to him necessary.

(4) On leaving any premises which a person is authorised to enter by a warrant under sub-paragraph (2) of this paragraph, that person shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(5) Where any equipment seized by an officer under paragraph 3 above is submitted to a test, the officer shall inform the persons mentioned in sub-paragraph (1) of this paragraph of the result of the test and, if—

(a) proceedings are brought for an offence in respect of a contravention in relation to any equipment of any provision of these Regulations or for the forfeiture of any relevant equipment under paragraphs 13 and 14 below, or a suspension notice is served in respect of any equipment; and

(b) the officer is requested to do so and it is practicable to comply with the request,

the officer shall allow any person who is a party to the proceedings or, as the case may be, has an interest in the equipment to which the notice relates to have the equipment tested.

(6) In the application of this paragraph to Scotland, the reference in sub-paragraph (2) above 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.

(7) In the application of this paragraph to Northern Ireland, the references in sub-paragraph (2) above to any information on oath shall be construed as references to any complaint on oath.

### **Appeals against detention of equipment**

5.—(1) Any person having an interest in any equipment, document, record, information or other thing which is for the time being detained under any provision of this Schedule by an enforcement authority or by an officer of such an authority may apply for an order requiring the equipment 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 and Northern Ireland—

(i) for an offence under regulation 18; or

(ii) for the forfeiture of the equipment under paragraph 13 below;

(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) On an application under this paragraph to a magistrates' court or to the sheriff, an order requiring equipment to be released shall be made only if the court or sheriff is satisfied—

(a) that proceedings—

(i) for an offence under regulation 18 in respect of the equipment; or

(ii) for the forfeiture of the equipment under paragraph 13 or 14 below, have not been brought or, having been brought, have been concluded without the equipment being forfeited; and

(b) where no such proceedings have been brought, that more than six months have elapsed since the equipment was seized.

(4) Any person aggrieved by an order made under this regulation 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 the county court;

and an order so made may contain such provision as appears to the court 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<sup>F2</sup> of article 146 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F3</sup> (statement of case)).

#### Textual Amendments

**F2** 1980 c. 43.

**F3** S.I. 1981/1675 (N.I. 26).

#### Suspension notices

6.—(1) Where an enforcement authority has reasonable grounds for suspecting that regulation 7 has been contravened, the authority may serve a notice ("a suspension notice") in relation to equipment prohibiting the person on whom it is served, for such period ending not more than six months after the date of the notice as is specified therein, from placing on the market or putting into service the equipment without the consent of that authority.

(2) A suspension notice served by an enforcement authority in respect of any equipment shall—

- (a) describe the equipment to which it relates in a manner sufficient to identify it;
- (b) set out the grounds on which the authority suspects that regulation 7 has been contravened; and
- (c) state that, and the manner in which, the person on whom the notice is served may appeal against the notice under paragraph 7 below.

(3) A consent given by an enforcement authority for the purposes of a suspension notice may impose such conditions on the doing of anything for which the consent is required as that authority considers appropriate.

(4) A suspension notice may require the person on whom it is served to keep the enforcement authority which served the notice informed of the whereabouts throughout the period during which the notice has effect of any of the equipment in which that person has an interest.

(5) Where a suspension notice has been served on any person in respect of any equipment, no further such notice shall be served on that person in respect of the same equipment unless—

- (a) proceedings against that person for an offence under regulation 18; or
- (b) proceedings for the forfeiture of the equipment under paragraph 13 or 14 below, are pending at the end of the period specified in the first-mentioned notice.

#### Appeals against suspension notices

7.—(1) Any person having an interest in any equipment in respect of which a suspension notice is for the time being in force may apply for an order setting aside the notice.

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

- (a) in England and Wales or Northern Ireland—
  - (i) to any magistrates' court in which proceedings have been brought—
    - (aa) for an offence under regulation 18; or
    - (bb) for the forfeiture of the equipment under paragraph 13 below; or
  - (ii) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or
- (b) in Scotland, by summary application to the sheriff.

(3) On an application under this paragraph to a magistrates' court in England and Wales or Northern Ireland the court shall make an order setting aside the suspension notice only if the court is satisfied that there has been no contravention in relation to the equipment of the requirements of regulation 7.

(4) On an application under this paragraph to the sheriff he shall make an order setting aside the suspension notice only if he is satisfied that at the date of making the order—

- (a) proceedings for an offence under regulation 18; or
- (b) proceedings for the forfeiture of the equipment under paragraph 14 below,

have not been brought or, having been brought, have been concluded.

(5) Any person aggrieved by an order made under this [F4paragraph] 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 or Wales, to the Crown Court;
- (b) in Northern Ireland, to the county court;

and an order so made may contain such provision as appears to the court 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 or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

#### Textual Amendments

- F4** Word in [Sch. 13 para. 7\(5\)](#) substituted (3.1.2002) by [The Noise Emission in the Environment by Equipment for use Outdoors \(Amendment\) Regulations 2001 \(S.I. 2001/3958\)](#), regs. 1, **2(4)**

#### Power to require production of documents and information etc. **E+W+S**

**8.** An officer of an enforcement authority may, for the purposes of exercising his functions under this Schedule, require—

- (a) any person who is required by regulation 7(4) to retain [F5a] declaration of conformity during the period in which that person is required to retain that document, to produce such document;
- (b) any person who is in possession of [F5a] declaration of conformity, or of a copy of such document, at any time to produce it;
- (c) any person, to produce such technical documentation relating to such equipment as are in his possession or under his control; or
- (d) any person, to give him such information as he may reasonably require,

and such officer may inspect any thing which he may require to be produced under this paragraph, and take a copy thereof or of any part thereof.

#### Extent Information

- E1** This version of this provision extends to England and Wales and Scotland only; a separate version has been created for Northern Ireland only

### Textual Amendments

- F5** Word in Sch. 13 para. 8 substituted (E.W.S.) (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 8 para. 27 (with Sch. 8 para. 14) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

### Power to require production of documents and information etc. **N.I.**

**8.** An officer of an enforcement authority may, for the purposes of exercising his functions under this Schedule, require—

- (a) any person who is required by regulation 7(4) to retain an EC declaration of conformity during the period in which that person is required to retain that document, to produce such document;
- (b) any person who is in possession of an EC declaration of conformity, or of a copy of such document, at any time to produce it;
- (c) any person, to produce such technical documentation relating to such equipment as are in his possession or under his control; or
- (d) any person, to give him such information as he may reasonably require,

and such officer may inspect any thing which he may require to be produced under this paragraph, and take a copy thereof or of any part thereof.

### Extent Information

- E2** This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales and Scotland only

### Contravention of a suspension notice

**9.** Any person who contravenes a suspension notice shall be guilty of an offence.

### False information

**10.** Any person who, in giving any information which he is required to give under paragraph 8(c) or (d) above—

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

shall be guilty of an offence.

### Obstruction etc. of officers of enforcement authorities etc.

**11.** Any person who—

- (a) intentionally obstructs any officer of an enforcement authority who is acting in pursuance of any provision of this Schedule;
- (b) intentionally fails or refuses to comply with any requirement made of him by any officer of an enforcement authority under any provision of this Schedule;
- (c) without reasonable cause fails or refuses to give any officer of an enforcement authority who is so acting any other assistance which the officer may reasonably require of him for the purposes of the exercise of the officer's functions under any provision of this Schedule,

shall be guilty of an offence.

### **Extension of time for bringing summary proceedings**

**12.** In England and Wales or Northern Ireland, a magistrates' court may try an information in respect of an offence committed under these Regulations if the information is laid within twelve months from the time when the offence is committed, and in Scotland summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.

### **Forfeiture: England and Wales and Northern Ireland**

**13.—(1)** An enforcement authority in England and Wales or Northern Ireland may apply under this paragraph for an order for the forfeiture of any equipment on the grounds that there has been a contravention in relation thereto of regulation 7.

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

- (a) where proceedings have been brought in a magistrates' court in respect of an offence in relation to the equipment under regulation 18;
- (b) where an application with respect to some or all of the equipment has been made to a magistrates' court under paragraph 5 or 7 above, to that court; and
- (c) where no application for the forfeiture of the equipment has been made under paragraph (a) or (b) above, by way of complaint to a magistrates' court.

(3) On an application under this paragraph the court shall make an order for the forfeiture of the equipment only if it is satisfied that there has been a contravention in relation thereto of regulation 7.

(4) For the avoidance of doubt it is hereby declared that a court may infer for the purposes of this paragraph that there has been a contravention in relation to any equipment of regulation 7 if it is satisfied that that provision has been contravened in relation to equipment which is representative of that equipment (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) Any person aggrieved by an order made under this paragraph by a magistrates' court, or by a decision of such 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 the 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 an order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

(6) Subject to sub-paragraph (7) below, where any equipment is forfeited under this paragraph it shall be destroyed in accordance with such directions as the court may give.

(7) On making an order under this paragraph a magistrates' court may, if it considers it appropriate to do so, direct that the equipment to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person—

- (a) does not supply the equipment to any person otherwise than—
  - (i) to a person who carries on a business of buying equipment of the same description as the first mentioned equipment and repairing or reconditioning it; or
  - (ii) as scrap (that is to say, for the value of materials included in the equipment rather than for the value of the equipment itself); and

- (b) complies with any order to pay costs or expenses (including any order under paragraph 15 below) which has been made against that person in the proceedings for the order of forfeiture.

### **Forfeiture: Scotland**

**14.**—(1) In Scotland an order for forfeiture of any relevant equipment in relation to which there has been a contravention of regulation 7 may be made by the sheriff—

- (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995 <sup>F6</sup>; or
- (b) where a person is convicted of any offence in respect of any such contravention, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under sub-paragraph (1)(a) above shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the equipment to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the equipment should not be forfeited.

(3) Service under sub-paragraph (2) above shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.

(4) Any person upon whom a notice is served under sub-paragraph (2) above and any other person claiming to be the owner of, or otherwise to have an interest in, the equipment to which an application under this paragraph relates shall be entitled to appear at the hearing of the application to show cause why the equipment should not be forfeited.

(5) The sheriff shall not make an order following the application under sub-paragraph (1)(a) above—

- (a) if any person on whom notice is served under sub-paragraph (2) above does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under sub-paragraph (2) above has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The sheriff shall make an order under this paragraph only if he is satisfied that there has been a contravention in relation to the equipment of regulation 7.

(7) For the avoidance of doubt it is hereby declared that the sheriff may infer for the purposes of this paragraph that there has been a contravention in relation to any equipment of regulation 7 if he is satisfied that that provision has been contravened in relation to equipment which is representative of that equipment (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(8) Where an order for the forfeiture of any equipment is made following an application by the procurator-fiscal under sub-paragraph (1)(a) above, any person who appeared, or was entitled to appear, to show cause why it should not be forfeited may, within 21 days of the making of the order, appeal to the High Court by Bill of Suspension on the ground of an alleged miscarriage of justice; and section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under this paragraph as it applies to a stated case under Part X of that Act.

(9) An order following an application under sub-paragraph (1)(a) above shall not take effect—

- (a) until the end of the period of 21 days beginning with the day after the day on which the order is made; or
- (b) if an appeal is made under sub-paragraph (8) above within that period, until the appeal is determined or abandoned.

- (10) An order under sub-paragraph (1)(b) shall not take effect—
- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995; or
  - (b) if an appeal is made within that period, until the appeal is determined or abandoned.

(11) Subject to sub-paragraph (12) below, equipment forfeited under this paragraph shall be destroyed in accordance with such directions as the sheriff may give.

(12) If he thinks fit, the sheriff may direct the equipment to be released to such person as he may specify, on condition that that person does not supply it to any person otherwise than—

- (a) to a person who carries on a business of buying equipment of the same description as the first-mentioned equipment and repairing or reconditioning it; or
- (b) as scrap (that is to say, for the value of materials included in the equipment rather than for the value of the equipment itself).

#### Textual Amendments

F6 1995 c. 46.

#### Recovery of expenses of enforcement

15.—(1) This paragraph applies where a court—

- (a) convicts a person of an offence under regulation 18; or
- (b) makes an order under paragraph 13 or 14 above for the forfeiture of any equipment.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted or, as the case may be, any person having an interest in the equipment the subject of the order for forfeiture, to reimburse an enforcement authority for any expenditure which has been or may be incurred by that authority—

- (a) in investigating the offence, and, without prejudice to the generality of the foregoing, in having the equipment tested;
- (b) in connection with any seizure or detention of the equipment by or on behalf of the authority; or
- (c) in connection with any compliance by that authority with directions given by the court for the purposes of any order for the forfeiture of the equipment.

#### Service of documents etc.

16.—(1) Any document required or authorised by this Schedule to be served on a person may be so served—

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

(2) For the purposes of sub-paragraph (1) above, and for the purposes of section 7 of the Interpretation Act 1978<sup>F7</sup> (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—

**Changes to legislation:** There are currently no known outstanding effects for the The Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001, SCHEDULE 13. (See end of Document for details)

- (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.

**Textual Amendments**

F7 1978 c. 30.

**Savings for certain privileges**

17.—(1) Nothing in this Schedule shall be taken as requiring any person to produce any documents or records if he would be entitled to refuse to produce those documents or 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 documents or records which are in the possession of a person who would be so entitled.

(2) Nothing in this Schedule shall be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person's spouse.

**Savings for action taken under other enactments**

18. Nothing in this Schedule shall be construed as preventing the taking of any action in respect of any relevant equipment under the provisions of any other enactment.

**Changes to legislation:**

There are currently no known outstanding effects for the The Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001, SCHEDULE 13.