

## SCHEDULE

Regulation 8

### ENFORCEMENT OF REGULATIONS 5, 6 AND 7

1. This Schedule shall have effect for the purposes of providing for the enforcement of regulations 5(1), 6(1) and 7(1), and in this Schedule, each such provision is hereinafter referred to as a “relevant provision”.

2.—(1) It shall be the duty of the following authorities to enforce the relevant provisions—

- (a) in Great Britain, a local weights and measures authority; and
- (b) in Northern Ireland, the Department of Enterprise, Trade and Investment.

(2) The Secretary of State may enforce the relevant provisions.

(3) In this Schedule—

“enforcement authority” means any person who is, pursuant to the provisions of this paragraph, authorised to enforce the relevant provisions; and

“local weights and measures authority” has the meaning given by section 69 of the Weights and Measures Act 1985<sup>M1</sup>.

#### Marginal Citations

**M1** 1985 c. 72.

3.—(1) An enforcement authority shall have the power, for the purposes of ascertaining whether any equipment which is required to comply with a relevant provision does in fact so comply, to make, or authorise an officer of that authority to make, any purchase of equipment.

(2) Where—

- (a) any equipment purchased pursuant to this paragraph by or on behalf of an enforcement authority is submitted to a test;
- (b) the test leads to the bringing of forfeiture proceedings in respect of that equipment or equipment of the same description pursuant to paragraph 7 or 8 below; and
- (c) the enforcement authority is requested to do so and it is practicable for that authority to comply with the request,

the enforcement 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 apparatus tested.

(3) In this paragraph, “purchase” includes, where equipment is only available to rent, renting, and where consumer equipment capable of descrambling digital television signals is only made available by a method otherwise than by way of sale or rent, obtaining such equipment by that method, and cognate expressions shall be construed accordingly.

4.—(1) Subject to paragraph 5 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 purposes of ascertaining whether there has been a contravention of a relevant provision—

- (a) inspect any equipment and enter any premises other than premises occupied only as a person’s residence; or

- (b) examine any procedure connected with the production of any equipment.
- (3) If the officer has reasonable grounds for suspecting that there has been breach of a relevant provision, he may for the purpose of ascertaining (by testing or otherwise) whether there has been any such breach, or for the purposes of bringing proceedings for forfeiture under paragraph 8 or 9, seize and detain any equipment.
- (4) The officer may seize and detain—
  - (a) any document, record or information or any other thing which he has reasonable grounds for believing may be required—
    - (i) as evidence in proceedings for forfeiture under paragraph 8 or 9; or
    - (ii) by the authorities of a member State other than the United Kingdom for the purposes of the exercise of their functions with regard to the Universal Service Directive;
  - (b) any equipment which he has reasonable grounds for suspecting may be liable to be forfeited.
- (5) The officer may, for the purposes of the exercise of his powers under subparagraph (3) or (4) above to seize any equipment, any document, record or information 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 subparagraph (a) above in relation to the container has not been complied with.
- (6) In this paragraph, “Universal Service Directive” means Directive [2002/22/EC](#) of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services <sup>M2</sup>.

**Marginal Citations**

**M2** O.J. No. L 108, 24.4.2002, p. 51.

- 5.—(1) An officer seizing any equipment, document, record or information or any other thing under paragraph 4 above shall inform the person from whom it is seized that such equipment, document, record or information or other thing has 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, document, record or information or any other thing which any officer has power to inspect under paragraph 4 above is on any premises (which may be premises occupied only as a person’s residence) and that such inspection is likely to disclose evidence that there has been a contravention of a relevant provision; 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 an intention to apply for a warrant under this subparagraph 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 4 above or a warrant under subparagraph (2) of this paragraph may take with him such other persons and such equipment as may appear to him to be necessary.

(4) On leaving any premises which a person is authorised to enter by a warrant under subparagraph (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 4 above is submitted to a test, the officer shall inform the person mentioned in subparagraph (1) of this paragraph of the result of the test and, if—

- (a) proceedings are brought in respect of a contravention of a relevant provision for the forfeiture of the equipment concerned; 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 has an interest in the equipment to have the equipment tested.

(6) In the application of this paragraph to Scotland, the reference in subparagraph (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 subparagraph (2) above to any information on oath shall be construed as references to any complaint on oath.

6. Nothing in paragraph 4 or 5 above shall be taken to authorise the taking of any action in relation to any equipment which has been sold or rented out or otherwise made available as the case may be to any person who has physically taken delivery of the equipment; but—

- (a) this is without prejudice to the taking of any other action authorised by this Schedule in relation to such equipment by an enforcement authority or an officer of such authority; and
- (b) nothing in this Schedule shall prevent a person to whom equipment has been sold, rented out or otherwise made available from taking any action or bringing any proceedings which he might otherwise take or bring.

7.—(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 such item 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 for forfeiture have been brought in England and Wales or Northern Ireland; or
- (b) where no such proceedings have been brought, by way of complaint to a magistrates' court.

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

- (a) that proceedings for the forfeiture of the equipment under paragraph 8 or 9 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) Subparagraphs (1) to (3) apply to Scotland with the substitution for references to the magistrates' court of references to the sheriff; and application to the sheriff is by way of summary application.

(5) 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 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>M3</sup> or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>M4</sup>).

(6) In Scotland appeal shall lie—

- (a) to the sheriff principal from the decision of the sheriff; and
- (b) with leave of the sheriff principal, to the Court of Session from the decision of the sheriff principal.

#### Marginal Citations

**M3** 1980 c. 43.

**M4** S.I. 1981/1675 (N.I. 26); article 22 was amended by the [Criminal Justice and Police Act 2001 \(c. 16\)](#), [section 70](#) and Schedule 2, paragraph 13.

**8.—**(1) Where in England and Wales or Northern Ireland any equipment has been seized and detained by an officer of an enforcement authority pursuant to paragraph 4, an officer of that authority may apply to a justice of the peace [<sup>F1</sup>acting in] the [<sup>F1</sup>local justice area] in which the equipment was seized (referred to below in this paragraph as the relevant [<sup>F1</sup>local justice area]) to initiate proceedings for forfeiture of the equipment under this paragraph.

(2) An application under this paragraph must be made within the period of six months beginning with the date on which the equipment to which it relates was seized.

(3) A justice of the peace to whom an application under this paragraph is made may issue a summons to any person appearing to him to be the owner of or otherwise interested in any equipment to which the application relates requiring him to appear on a day specified in the summons before a magistrates' court [<sup>F2</sup>acting in the relevant local justice area] to show cause why the equipment should not be forfeited.

(4) In addition to the person summoned, any other person claiming to be the owner of or otherwise interested in any equipment to which an application under this paragraph relates shall be entitled to appear before the court on the day specified in the summons to show cause why it should not be forfeited.

(5) Where any equipment is brought before a magistrates' court in proceedings under this paragraph the court can only order forfeiture to the enforcement authority if—

- (a) the court is satisfied that the equipment contravenes the relevant provision;
- (b) any person summoned under subparagraph (3) appears before the court, or service of the summons is proved; and
- (c) the court is satisfied that there is no good reason why it should not order forfeiture.

(6) Where in any proceedings under this paragraph an order is made for the forfeiture of any equipment, any person who appeared, or who was entitled to appear, to show cause against the making of the order may appeal to the Crown Court.

(7) No order for the forfeiture of any equipment made under this paragraph shall take effect—

- (a) until the end of the period of twenty-one days after the day on which the order is made; or
- (b) if appeal proceedings are brought in respect of the order within that period (whether by way of appeal to the Crown Court or by way of case stated for the opinion of the High Court), until the conclusion of those proceedings.

(8) If a magistrates' court does not order forfeiture of any equipment brought before it in proceedings under this paragraph the court may if it thinks fit order the person on whose application the proceedings were initiated to pay such costs as the court thinks reasonable to any person who has appeared before the court to show cause why the equipment should not be forfeited; and costs ordered to be paid under this subparagraph shall be enforceable as a civil debt.

(9) Any equipment ordered to be forfeited under this paragraph may be disposed of by the enforcement authority concerned in such manner as it thinks fit.

(10) This paragraph has effect notwithstanding anything in section 140 of the Magistrates' Courts Act 1980 or article 58 of the Magistrates' Courts (Northern Ireland) Order 1981 (disposal of non-pecuniary forfeitures).

(11) In the application of this paragraph to Northern Ireland references to a <sup>F3</sup>local justice area shall be read as references to a petty sessions district.

(12) This paragraph applies to England and Wales and Northern Ireland only.

- F1** Words in Sch. para. 8(1) substituted (1.4.2005) by The Courts Act 2003 (Consequential Provisions) (No. 2) Order 2005 (S.I. 2005/617), art. 1, Sch. para. 218(a)
- F2** Words in Sch. para. 8(3) substituted (1.4.2005) by The Courts Act 2003 (Consequential Provisions) (No. 2) Order 2005 (S.I. 2005/617), art. 1, Sch. para. 218(b)
- F3** Words in Sch. para. 8(11) substituted (1.4.2005) by The Courts Act 2003 (Consequential Provisions) (No. 2) Order 2005 (S.I. 2005/617), art. 1, Sch. para. 218(c)

**9.—**(1) Where in Scotland any equipment has been seized and detained by an officer of an enforcement authority pursuant to paragraph 4 above, the enforcement authority may apply to the sheriff for forfeiture of the equipment under this paragraph.

(2) An application to the sheriff under subparagraph (1) shall be made by summary application and must be made within the period of six months beginning with the date on which the equipment to which it relates was seized.

(3) Where an application is made under this paragraph and the sheriff is satisfied that the equipment breaches the relevant provision, the sheriff shall order the equipment to be forfeited to the enforcement authority concerned, unless cause is shown why the equipment should not be forfeited.

(4) Any equipment ordered to be forfeited under this paragraph may be disposed of by the enforcement authority concerned in such manner as it thinks fit.

(5) This paragraph applies to Scotland only.

**10.—**(1) Where an application is made for the forfeiture of any equipment in respect of any matters which appear to the court or sheriff as the case may be to be matters which it is in the power of any person to remedy who appears or who is entitled to appear to show cause why such equipment should not be forfeited, the court or sheriff may, instead of ordering the equipment to be forfeited, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.

**Changes to legislation:** There are currently no known outstanding effects for the The Advanced Television Services Regulations 2003, SCHEDULE. (See end of Document for details)

(2) The time fixed by an order under subparagraph (1) may be extended or further extended by order of the court or sheriff on an application made before the end of that time as originally fixed or as extended under this subparagraph as the case may be.

**11.—**(1) This paragraph applies where a court or sheriff as the case may be makes an order under paragraph 8, 9 or 10.

(2) The court or sheriff may (in addition to any other order it may make as to costs) order the person appearing to be the owner of or otherwise interested in the equipment or from whom the equipment was seized, to reimburse the enforcement authority for any expenditure which has been or may be incurred by that authority—

- (a) in investigating the contravention, and, without prejudice to the generality of the foregoing, in having the equipment tested; or
- (b) in connection with any seizure or detention of the equipment by or on behalf of the authority.

**12.—**(1) Whilst nothing in these Regulations shall be taken as providing that a contravention of a relevant provision constitutes a criminal offence, sections 15, 16, 20 and 21 of the Police and Criminal Evidence Act 1984 <sup>M5</sup> shall apply to the exercise by an officer of an enforcement authority of the powers conferred by this Schedule as they apply to a constable.

(2) This paragraph applies to England and Wales only.

**Marginal Citations**

**M5** 1984 c. 60.

**13.—**(1) Whilst nothing in these Regulations shall be taken as providing that a contravention of a relevant provision constitutes a criminal offence, articles 17, 18, 22 and 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989 <sup>M6</sup> shall apply to the exercise by an officer of an enforcement authority of the powers conferred by this Schedule as they apply to a constable.

(2) This paragraph applies to Northern Ireland only.

**Marginal Citations**

**M6** S.I. 1989/1341 (N.I. 12).

**14.** In this Schedule—

“document, record or information” includes any computer disk or other electronic, magnetic or electromagnetic means upon which the document, record or information is or is reasonably believed to be stored;

“equipment” means—

- (a) in relation to the enforcement of regulation 5, consumer equipment capable of descrambling digital television signals;
- (b) in relation to the enforcement of regulation 6, an analogue television set;
- (c) in relation to the enforcement of regulation 7, a digital television set;

“forfeiture” means forfeiture under paragraph 7 above, and “forfeited” shall be construed accordingly; and

“premises” includes any place and, in particular, includes—

**Changes to legislation:** There are currently no known outstanding effects for the The Advanced Television Services Regulations 2003, SCHEDULE. (See end of Document for details)

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or movable structure,

and in this definition, “offshore installation” has the meaning given to it in Great Britain by regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995<sup>M7</sup> and in Northern Ireland by regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations (Northern Ireland) 1995<sup>M8</sup>.

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**Marginal Citations**

**M7** [S.I. 1995/738](#).

**M8** [S.R. \(N.I.\) 1995 No. 340](#).

**Changes to legislation:**

There are currently no known outstanding effects for the The Advanced Television Services Regulations 2003, SCHEDULE.