

## SCHEDULE 5

Regulation 20

### ENFORCEMENT

#### *General duties of enforcement authorities*

1. Except as specified in paragraph 3, it shall be the duty of the Health and Safety Executive to make adequate arrangements for the enforcement of these Regulations in Great Britain in relation to machinery and partly completed machinery for use at work.

2. Except as specified in paragraph 3, it shall be the duty of every local weights and measures authority in Great Britain to enforce these Regulations within its area in relation to machinery or partly completed machinery which is not for use at work.

3. It shall be the duty of the Office of Rail Regulation to make adequate arrangements for the enforcement of these Regulations in Great Britain where the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 make it the enforcing authority, within the meaning of section 18(7) of the 1974 Act, in relation to machinery or partly completed machinery for use in the operation of a railway, tramway or any other system of guided transport, as defined in those Regulations.

4. It shall be the duty of the Health and Safety Executive for Northern Ireland to make adequate arrangements for the enforcement of these Regulations in Northern Ireland in relation to machinery and partly completed machinery for use at work.

5. It shall be the duty of every district council in Northern Ireland to enforce these Regulations within its area in relation to machinery or partly completed machinery which is not for use at work.

6. The Secretary of State may enforce these Regulations in relation to machinery or partly completed machinery which is not for use at work in cases where the Office of Rail Regulation is not the enforcement authority.

#### *Powers of the Health and Safety Executive and the Office of Rail Regulation as enforcement authorities*

7. In relation to the enforcement of these Regulations by the Health and Safety Executive or the Office of Rail Regulation—

- (a) sections 19 to 28(1), 33 to 35(2), 38, 39, 41 and 42 of the 1974 Act shall apply as provided in paragraph 8; and

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(1) Sections 18, 27, 28 and 34(1) were amended by [S.I. 2008/960](#). Section 20(7) was amended by the Civil Partnership Act 2004 ([c.33](#)), section 261(1) and Schedule 27, paragraph 49. Sections 22 and 28(1)(a) were amended, and sections 25A and 27A were inserted, by section 36 of, and Schedule 3 to, the 1987 Act. Section 23(4) was amended by the Fire and Rescue Services Act 2004 ([c.21](#)), Schedule 1, paragraph 44 and by [S.I. 2005/1541](#), [S.I. 2006/475](#), and (in relation to Scotland) [S.S.I. 2005/383](#). Section 24 was amended by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 ([c.8](#)). Section 27 was amended by the Employment Act 1989 ([c.38](#)), Schedule 6, paragraph 10 and Schedule 7, Part I. Section 27A was amended by the Commissioners for Revenue and Customs Act 2005 ([c.11](#)), Schedule 4, paragraph 18. Section 28(1)(a) was amended by section 105(2) of the Railways and Transport Safety Act 2003 ([c.20](#)). Subsections (3), (4) and (5) of section 28 were amended by the Environment Act 1995 ([c.25](#)), Schedule 22, paragraph 30(6); subsection (3)(c) was also amended by the Water Act 1989 ([c.15](#)), Schedule 25, paragraph 46, and (in relation to Scotland) by the Local Government etc. (Scotland) Act 1994 ([c.39](#)), Schedule 13, paragraph 93 and [S.I. 2004/1822](#). Section 28(3)(f) was inserted by [S.I. 2004/3363](#). Section 28(5) was amended by the Water Act 1989, Schedule 25, paragraph 46, [S.I. 2004/1822](#) and [S.I. 2004/3363](#). Section 28(6) was amended by the Local Government Act 1985 ([c.51](#)), Schedule 14, paragraph 52, by the Education Reform Act 1988 ([c.40](#)), Schedule 13, Part I, by the Greater London Authority Act 1999 ([c.29](#)), Schedule 29, Part I, paragraph 23, and by the Local Government and Public Involvement in Health Act 2007 ([c.28](#)), Schedule 13, Part 2, paragraph 32. Section 28(9) was inserted by the Employment Protection Act 1975 ([c.71](#)), Schedule 15, paragraph 9. Section 28(9A) was inserted by [S.I. 2004/3363](#). Section 28(10) was inserted by the Norfolk and Suffolk Broads Act 1988 ([c.4](#)), Schedule 6, paragraph 13, and substituted by the Environment Act 1995, Schedule 10, paragraph 12. Section 33(2) was amended by section 31 of, and Schedule 6 to, the Criminal Law Act 1977 ([c.45](#)) and sections 37 and 46 of the Criminal Justice Act 1982 ([c.48](#)).

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- (b) sections 36(1) and (2) and 37 of the 1974 Act shall apply in relation to offences under section 33 as applied in relation to these Regulations and modified by paragraph 8.

8. For the purposes of the enforcement of these Regulations by the Health and Safety Executive or the Office of Rail Regulation, and in respect of any related proceedings for contravention of these Regulations, the provisions specified in paragraph 7 shall apply as if—

- (a) references to relevant statutory provisions were references to those provisions as modified by this paragraph and to these Regulations;
- (b) references to articles, substances, articles and substances, or plant, were references to machinery or partly completed machinery, or a machine or partly completed machine, as the context may require;
- (c) references to an “enforcing authority” were references to the Health and Safety Executive or the Office of Rail Regulation, as appropriate;
- (d) references to the field of responsibility of an enforcing authority, however expressed, were omitted;
- (e) in section 20, subsection (3) were omitted;
- (f) section 22, as well as permitting an inspector to serve a prohibition notice in the circumstances specified in section 22(2), permitted an inspector to serve a prohibition notice in any case where—
  - (i) a responsible person has failed to comply with the requirements of these Regulations in relation to CE marking; and
  - (ii) the responsible person—
    - (aa) has been served with a notice under regulation 21(3), or an improvement notice under section 21, in respect of that failure; and
    - (bb) has continued to fail to comply with those requirements after the period for remedying the contravention specified in the improvement notice;
- (g) in section 23, subsections (3), (4) and (6) were omitted;
- (h) in section 33—
  - (i) in subsection (1) the whole of paragraphs (a) to (d) were omitted;
  - (ii) subsection (1A) were omitted;
  - (iii) in subsection (2), the reference to paragraph (d) of subsection (1) were omitted;
  - (iv) subsection (2A) were omitted;
  - (v) for subsection (3) there were substituted the following—
    - “(3) A person guilty of an offence under any paragraph of subsection (1) not mentioned in subsection (2), or of an offence under subsection (1)(e) not falling within subsection (2), shall be liable—
    - (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
    - (b) on conviction on indictment—

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(2) Section 33 was amended by the Employment Protection Act 1975, Schedule 15, paragraph 11 and Schedule 18, by section 32(2) of the Magistrates’ Courts Act 1980 (c.43), by the Forgery and Counterfeiting Act 1981 (c.45), Schedule, Part I, by section 36 of, and Schedule 3 to, the 1987 Act, and by section 4 of the Offshore Safety Act 1992 (c.15). In section 34, subsection (5) was amended by section 461(1) of, and Schedule 9, paragraph 51 to, the Criminal Procedure (Scotland) Act 1975 (c.21); and subsection (6) was inserted, in relation to Scotland, by the Gas Act 1986 (c.44), Schedule 7, paragraph 18.

- (i) in the case of an offence under subsection (1)(g) or of an offence under subsection (1)(j), to imprisonment for a term not exceeding two years, or a fine, or both; or
- (ii) in all other cases, to a fine.”; and
- (vi) subsection (4) were omitted;
- (i) in section 34—
  - (i) paragraphs (a) and (b) of subsection (1) were omitted; and
  - (ii) in subsection (3) for “six months” there were substituted “twelve months”; and
- (j) in section 42, subsections (4) and (5) were omitted.

*Powers of the Health and Safety Executive for Northern Ireland as an enforcement authority*

**9.** In relation to the enforcement of these Regulations by the Health and Safety Executive for Northern Ireland—

- (a) Articles 21 to 33(3), 35, 36, 38 and 39 of the 1978 Order shall apply as provided in paragraph 10; and
- (b) Articles 34(1) and (2) and 34A(4) of the 1978 Order shall apply in relation to offences under Article 31 as applied in relation to these Regulations and modified by paragraph 10.

**10.** For the purposes of the enforcement of these Regulations by the Health and Safety Executive for Northern Ireland, and in respect of any related proceedings for contravention of these Regulations, the provisions specified in paragraph 9 shall apply as if—

- (a) references to relevant statutory provisions were references to those provisions as modified by this paragraph and to these Regulations;
- (b) references to articles, substances, articles and substances, or plant, were references to machinery or partly completed machinery, or a machine or partly completed machine, as the context may require;
- (c) references to an “enforcing authority” or to its field of responsibility (however expressed) or to “the Department concerned” were to the Health and Safety Executive for Northern Ireland;
- (d) in Article 22, paragraph (3) were omitted;
- (e) Article 24, as well as permitting an inspector to serve a prohibition notice in the circumstances specified in Article 24(2), permitted an inspector to serve a prohibition notice in any case where—
  - (i) a responsible person has failed to comply with the requirements of these Regulations in relation to CE marking; and

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(3) All these provisions were modified by [S.R. \(NI\) 2000/87](#), [S.R. \(NI\) 2000/120](#) and section 1 of the [Railway Safety Act \(Northern Ireland\) 2002 \(c.8 \(N.I.\)\)](#). Article 22(7) was amended by the [Civil Partnerships Act 2004 \(c.33\)](#). Article 26(4) was repealed by Article 35 of, and Schedule 4 to, the [Industrial Training \(Northern Ireland\) Order 1984 \(S.I. 1984/1159 \(N.I. 9\)\)](#). Articles 27A and 29A were inserted, and Articles 30(1)(a) and 31(1)(h) amended, by Article 28 of, and Schedule 2 to, the [Consumer Protection \(Northern Ireland\) Order 1987 \(S.I. 1987/2049 \(N.I. 20\)\)](#). Article 29(1) was amended, and Article 31(3) was repealed, by the [Health and Safety at Work \(Amendment\) \(Northern Ireland\) Order 1998 \(S.I. 1998/2795 \(N.I. 18\)\)](#), Schedule 1, paragraphs 14 and 15 respectively. Articles 29(2) to (4) were repealed, and Article 31(1)(j) was amended, by Article 10(1)(c) of the [Statistics of Trade and Employment \(Northern Ireland\) Order 1988 \(S.I. 1988/595 \(N.I. 3\)\)](#). Article 29A was amended by the [Commissioners for Revenue and Customs Act 2005 \(c.11\)](#), Schedule 4, paragraph 19. Article 31(1)(m) was amended by Article 13(3) of, and Schedule 5 to, the [Criminal Justice \(Northern Ireland\) Order 1986 \(S.I. 1986/1883 \(N.I. 15\)\)](#). Article 31(5)(d) and (6) was repealed by Article 6(6) of the [Offshore, and Pipelines, Safety \(Northern Ireland\) Order 1992 \(S.I. 1992/1728 \(N.I. 17\)\)](#). Article 31(7) was repealed by Part III of the Schedule to the [Forgery and Counterfeiting Act 1981 \(c.45\)](#). There are other amendments to these provisions which are not relevant to these Regulations.

(4) Article 34A was inserted by the [Health and Safety at Work \(Amendment\) \(Northern Ireland\) Order 1998 \(S.I. 1998/2795 \(N.I. 18\)\)](#), Schedule 1, paragraph 16.

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- (ii) the responsible person—
  - (aa) has been served with a notice under regulation 21(3), or an improvement notice under Article 23, in respect of that failure; and
  - (bb) has continued to fail to comply with those requirements after the period for remedying the contravention specified in the improvement notice;
- (f) in Article 25, paragraphs (3), (4) and (5) were omitted;
- (g) in Article 31—
  - (i) in paragraph (1), the whole of sub-paragraphs (a) to (d) were omitted;
  - (ii) paragraph (1A) were omitted;
  - (iii) in paragraph (2), the reference to sub-paragraph (d) of paragraph (1) were omitted;
  - (iv) paragraph (2A) were omitted;
  - (v) for paragraph (4) there were substituted the following—
    - “(4) A person guilty of an offence under any sub-paragraph of paragraph (1) not mentioned in paragraph (2) or of an offence under paragraph (1)(e) not falling within paragraph (2) shall be liable—
    - (a) on summary conviction, to a fine not exceeding £2000; or
    - (b) on conviction on indictment—
      - (i) in the case of an offence under paragraph (1)(g) or of an offence under paragraph (1)(j), to imprisonment for a term not exceeding two years, or a fine, or both; or
      - (ii) in all other cases, to a fine.”; and
  - (vi) paragraph (5) were omitted;
- (h) in Article 32—
  - (i) sub-paragraphs (a) and (b) were omitted from paragraph (1); and
  - (ii) in paragraph (3), for “six months” there were substituted “twelve months”; and
- (i) in Article 39, paragraphs (4) and (5) were omitted.

#### *Powers of other enforcement authorities*

**11.** In relation to the enforcement of these Regulations by local weights and measures authorities, Northern Ireland district councils or the Secretary of State—

- (a) sections 14, 15, 28 to 35, 37(5), 44 and 47(6) of the 1987 Act shall apply as provided in paragraph 12;
- (b) sections 39(7) and 40 shall apply in relation to offences under section 32 as applied in relation to these Regulations and modified by paragraph 12.

**12.** For the purposes of the enforcement of these Regulations by local weights and measures authorities, Northern Ireland district councils or the Secretary of State, and in respect of any related proceedings for contravention of these Regulations, the provisions specified in paragraph 11 shall apply as if—

- (a) references to safety provisions were references to these Regulations;

(5) Section 37 was amended by the Commissioners for Revenue and Customs Act 2005 (c.11), Schedule 4, paragraph 36.

(6) Section 47(2) was amended by the Civil Partnerships Act 2004 (c.33), Schedule 27, paragraph 126.

(7) Section 39(5) was amended by S.I. 2005/1803.

- (b) references to goods were references to machinery or partly completed machinery, or a machine or partly completed machine, as the context may require;
- (c) references to an “enforcement authority” were to the local weights and measures authority or Northern Ireland district council concerned, or to the Secretary of State, as appropriate;
- (d) in section 14, in subsection (6), for “six months” there were substituted “three months”;
- (e) in sections 28, 29, 30, 33, 34 and 35, the words “or of any provision made by or under Part III of this Act”, or “or any provision made by or under Part III of this Act”, on each occasion that they occur, were omitted;
- (f) in section 28, subsections (3), (4) and (5) were omitted;
- (g) in section 29, subsection (4) were omitted; and
- (h) in section 30, subsections (7) and (8) were omitted.

**13.** In relation to proceedings for an offence in relation to machinery or partly completed machinery which is not for use at work—

- (a) in Great Britain, section 34 of the 1974 Act shall apply as if—
  - (i) paragraphs (a) and (b) of subsection (1) were omitted;
  - (ii) references to an “enforcing authority” were references to local weights and measures authorities and the Secretary of State, and “responsible enforcing authority” were construed accordingly;
  - (iii) references to “relevant statutory provisions” were references to these Regulations; and
  - (iv) in subsection (3), for “six months” there were substituted “twelve months”; and
- (b) in Northern Ireland, Article 32 of the 1978 Order shall apply as if—
  - (i) sub-paragraphs (a) and (b) of paragraph (1) were omitted;
  - (ii) references to an “enforcing authority” were references to Northern Ireland district councils, and “responsible enforcing authority” were construed accordingly;
  - (iii) references to “relevant statutory provisions” were references to these Regulations; and
  - (iv) in paragraph (3), for “six months” there were substituted “twelve months”.

*Forfeiture: England and Wales and Northern Ireland*

**14.—(1)** An enforcement authority in England and Wales or Northern Ireland may apply under this paragraph for an order for the forfeiture of any machinery or partly completed machinery on the grounds that there has been a contravention of regulation 7 or 8 in relation to it.

(2) An application under this paragraph may be made to a magistrates’ court—

- (a) where proceedings have been brought in that court in respect of an offence in relation to some or all of the machinery or partly completed machinery under regulation 22;
- (b) where an application with respect to some or all of the machinery or partly completed machinery has been made to that court under section 15 or 33 of the 1987 Act as applied for the purposes of the enforcement of these Regulations by paragraph 11; and
- (c) by way of complaint, where no application for the forfeiture of the machinery or partly completed machinery has been made under sub-paragraph (a) or (b).

(3) On an application under this paragraph the court shall make an order for the forfeiture of the machinery or partly completed machinery only if satisfied that there has been a contravention of regulation 7 or 8 in relation to it.

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(4) A court may infer for the purposes of this paragraph that there has been a contravention of regulation 7 or 8 in relation to any machinery or partly completed machinery if satisfied that either of those regulations has been contravened in relation to a machine or partly completed machine which is representative of that machinery or partly completed machinery (whether by reason of its 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), where any machinery or partly completed machinery 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 machinery or partly completed machinery 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 machinery or partly completed machinery to any person otherwise than—
  - (i) to a person who carries on a business of buying machinery or partly completed machinery of the same description as that machinery or partly completed machinery and repairing or reconditioning it; or
  - (ii) as scrap (that is to say, for the value of materials included in the machinery or partly completed machinery rather than for the value of the machinery or partly completed machinery itself); and
- (b) complies with any order to pay costs or expenses (including any order under section 35 of the 1987 Act as applied for the purposes of the enforcement of these Regulations by paragraph 11) which has been made against that person in the proceedings for the order for forfeiture.

#### *Forfeiture: Scotland*

**15.—(1)** In Scotland a sheriff may make an order for forfeiture of any machinery or partly completed machinery in relation to which there has been a contravention of any provision of regulation 7 or 8—

- (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”); 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) shall serve on any person appearing to the procurator-fiscal to be the owner of, or otherwise to have an interest in, machinery or partly completed machinery to which the application relates a copy of the application, together with a notice giving that person the opportunity to appear at the hearing of the application to show cause why the machinery or partly completed machinery should not be forfeited.

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

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

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

- (a) if any person on whom notice is served under sub-paragraph (2) does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under sub-paragraph (2) 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 satisfied that there has been a contravention in relation to the machinery or partly completed machinery of regulation 7 or 8.

(7) The sheriff may infer for the purposes of this paragraph that there has been a contravention of regulation 7 or 8 in relation to any machinery or partly completed machinery if satisfied that either of those regulations has been contravened in relation to a machine or partly completed machine which is representative of that machinery or partly completed machinery (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 machinery or partly completed machinery is made following an application by the procurator-fiscal under sub-paragraph (1)(a), any person who appeared, or was entitled to appear, to show cause why it should not be forfeited may, within twenty-one 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 1995 Act shall apply to an appeal under this sub-paragraph as it applies to a stated case under Part 10 of that Act.

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

- (a) until the end of the period of twenty-one 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) 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 1995 Act; or
- (b) if an appeal is made within that period, until the appeal is determined or abandoned.

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

(12) The sheriff may direct the machinery or partly completed machinery to be released to such person as the sheriff 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 machinery or partly completed machinery of the same description as that machinery or partly completed machinery and repairing or reconditioning it; or
- (b) as scrap (that is to say, for the value of materials included in the machinery or partly completed machinery rather than for the value of the machinery or partly completed machinery itself).

**Status:** This is the original version (as it was originally made).

*Duty of enforcement authority to inform Secretary of State of action taken*

**16.** Any enforcement authority (other than the Secretary of State) which takes action (whether under these Regulations or otherwise) to prohibit or restrict the placing on the market or putting into service of any machinery or partly completed machinery which bears the CE marking must immediately inform the Secretary of State of the action taken, and the reasons for it, with a view to that information being passed by the Secretary of State to the Commission.

*Savings*

**17.—(1)** Nothing in these Regulations prevents an enforcement authority from taking any action (whether by way of investigation, prosecution or otherwise) which it is permitted to take in relation to machinery or partly completed machinery under or by virtue of the 1974 Act, the 1978 Order or the 1987 Act.

(2) To the extent that an enforcement authority takes action in relation to machinery or partly completed machinery under or by virtue of the 1974 Act, the 1978 Order or the 1987 Act, and not under these Regulations, any modification made to those Acts by these Regulations shall be disregarded.

**18.** Nothing in these Regulations shall authorise an enforcement authority to bring proceedings in Scotland for an offence.