

SCHEDULE 6

Powers of enforcement

PART 3

Local (consumer safety) authorities

SECTION 3

Forfeiture

22. An authorised person in England and Wales or Northern Ireland may apply under this section for an order for the forfeiture of any goods on the grounds that there has been a contravention in relation to the goods of a listed REACH provision.

23. An application under this section may be made—

- (a) where proceedings have been brought in a magistrates' court for an offence in respect of a contravention of a listed REACH provision in relation to some or all of the goods, to that court;
- (b) where no application for the forfeiture of the goods has been made under sub-paragraph (a) by way of complaint to a magistrates' court.

24. On an application under this section the court may make an order for the forfeiture of any goods only if it is satisfied that there has been a contravention of a listed REACH provision in relation to the goods.

25. A court may infer for the purposes of this section that there has been a contravention of a listed REACH provision in relation to any goods if it is satisfied that any such provision has been contravened in relation to goods which are representative of those goods (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

26. Any person aggrieved by an order made under this section by a magistrates' court, 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 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⁽²⁾)(statement of case).

27. Subject to paragraph 28, where any goods are forfeited under this section they must be destroyed in accordance with such directions as the court may give.

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

- (a) does not supply those goods to any person otherwise than as specified;
- (b) complies with any order to pay costs or expenses which has been made against that person in the proceedings for the order for forfeiture.

(1) 1980 c.43.

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

Status: This is the original version (as it was originally made).

29. In Scotland a sheriff may make an order for forfeiture of any goods in relation to which there has been a contravention of a listed REACH provision—

- (a) on an application by the procurator-fiscal; 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.

30. The procurator-fiscal making an application under paragraph 29 must serve on any person appearing to be the owner of, or otherwise to have an interest in, the goods to which the application relates a copy of the application, together with a notice giving the opportunity to appear at the hearing of the application to show cause why the goods should not be forfeited.

31. Service under paragraph 30 must be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings.

32. Any person upon whom notice is served under paragraph 30 and any other person claiming to be the owner of, or otherwise to have an interest in, goods to which an application under this section relates is entitled to appear at the hearing of the application to show cause why the goods should not be forfeited.

33. The sheriff must not make an order following an application under paragraph 29—

- (a) if any person on whom notice is served under paragraph 30 does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under paragraph 30 has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

34. An order under this section may be made only if the sheriff is satisfied that there has been a contravention in relation to those goods of a listed REACH provision.

35. The sheriff may infer for the purposes of this section that there has been a contravention of a listed REACH provision in relation to any goods if the sheriff is satisfied that any such provision has been contravened in relation to any goods which are representative of those goods (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

36. Where an order for the forfeiture of any goods is made following an application by the procurator-fiscal under paragraph 29, any person who appeared, or was entitled to appear, to show cause why goods 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 Criminal Procedure (Scotland) Act 1995(3) applies to an appeal under this section as it applies to a stated case under Part X of that Act.

37. An order following an application under paragraph 29 does 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 paragraph 36 within that period, until the appeal is determined or abandoned.

38. An order under paragraph 29 does 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.

39. Subject to paragraph 40, goods forfeited under this section must be destroyed in accordance with such directions as the sheriff may give.

(3) 1995 c.46.

40. The sheriff may direct that the goods be released, to such person as may be specified, on condition that that person does not supply those goods to any other person otherwise than as mentioned in section 46(7)(a) or (b) of the Consumer Protection Act 1987(4).

(4) 1987 c.43.