

SCHEDULES

SCHEDULE 1

Regulation 15

Offences, penalties, enforcement and other matters

PART 1

Offences

Offences and penalties

1. A person who is an economic operator is guilty of an offence if that person—
 - (a) contravenes any prohibition in these Regulations or the AFV Regulation; or
 - (b) fails to comply with any requirement or obligation in these Regulations or the AFV Regulation.

Offences by bodies corporate and partnerships

2.—(1) If an offence under these Regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, an officer of the body corporate, or a person purporting to act as an officer of the body corporate, that officer or person (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, sub-paragraph (1) applies in relation to the acts and omissions of a member in connection with the member's functions of management as it applies to an officer of the body corporate.

- (3) If an offence under these Regulations is—
 - (a) committed by a Scottish partnership; and
 - (b) proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner of the partnership,

the partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) In this paragraph “officer” in relation to a body corporate means a director, secretary or other similar officer of the body corporate.

PART 2

Penalties

Criminal penalties

3.—(1) A person guilty of an offence under these Regulations is punishable on summary conviction—

- (a) in England and Wales by a fine or (in the case of an individual) by imprisonment for a term not exceeding six months, or to both; or
 - (b) in Scotland or Northern Ireland by a fine not exceeding level 5 on the standard scale or (in the case of an individual) by imprisonment for a term not exceeding six months, or to both.
- (2) But an offence is not punishable under this paragraph if—
- (a) the enforcement authority has required a person to pay a penalty in respect of that offence under paragraph 4; and
 - (b) that penalty has been paid to the enforcement authority.

Civil penalties

4.—(1) The enforcement authority may require a person who is an economic operator to pay a penalty if the enforcement authority is satisfied, on a balance of probabilities, that the person has committed an offence mentioned in paragraph 1.

- (2) But the enforcement authority may not require a person to pay a penalty if—
 - (a) the person shows that there was a reasonable excuse for committing the offence; or
 - (b) criminal proceedings have been instituted against the person in respect of the same offence.
- (3) A penalty imposed under this paragraph may not exceed £50,000 per offence.
- (4) The penalty is payable to the enforcement authority on demand.

Notification of penalty decision

5.—(1) If the enforcement authority decides to require a person to pay a penalty under these Regulations, the enforcement authority must give the person a penalty notice.

- (2) A penalty notice must—
 - (a) be in writing;
 - (b) state the enforcement authority's reasons for deciding to require the person to pay a penalty;
 - (c) state the amount of the penalty;
 - (d) specify the date on which it is given;
 - (e) specify the date, at least 28 days after the date specified in the notice as the date on which it is given, before which the penalty must be paid;
 - (f) specify how a penalty must be paid;
 - (g) include an explanation of the steps that the person may take if the person objects to the penalty (including specifying the manner and form in which any notice of objection must be given to the enforcement authority); and
 - (h) include an explanation of the steps the enforcement authority may take to recover any unpaid penalty.

Objection to penalty decision

6.—(1) The recipient of a penalty notice (the “recipient”) may object to the penalty notice by giving a notice of objection to the enforcement authority.

(2) A notice of objection must—

- (a) give the reasons for the objection;
- (b) be given to the enforcement authority in the manner and form specified in the penalty notice; and
- (c) be given before the end of the period of 28 days beginning with the date specified in the penalty notice as the date on which it is given.

(3) Where the enforcement authority receives a notice of objection, the enforcement authority must consider it and—

- (a) cancel the penalty;
- (b) reduce the penalty;
- (c) increase the penalty; or
- (d) determine not to alter the penalty.

(4) After reaching a decision as to how to proceed under sub-paragraph (3), the enforcement authority must notify the recipient of the decision in writing.

(5) A notification under sub-paragraph (4) must be given before the end of the period of 70 days beginning with the date specified in the penalty notice as the date on which it is given, or such longer period as the enforcement authority may agree with the recipient.

(6) A notification under sub-paragraph (4), other than one notifying the recipient that the enforcement authority has decided to cancel the penalty, must—

- (a) state the amount of the penalty following the enforcement authority’s consideration of the notice of objection;
- (b) state the enforcement authority’s reasons for the decision under sub-paragraph (3);
- (c) specify the date, at least 28 days after the date on which the notification is given, before which the penalty must be paid;
- (d) specify how the penalty must be paid;
- (e) include an explanation of the recipient’s rights of appeal; and
- (f) include an explanation of the steps the enforcement authority may take to recover any unpaid penalty.

Civil penalties: appeals

7.—(1) A person (the “appellant”) may appeal to the court against a decision to require the person to pay a penalty under these Regulations.

(2) An appeal may be brought only if the appellant has given a notice of objection and the enforcement authority has—

- (a) reduced the penalty under paragraph 6(3)(b);
- (b) increased the penalty under paragraph 6(3)(c); or
- (c) determined not to alter the penalty under paragraph 6(3)(d).

(3) An appeal must be brought within the period of 28 days beginning with the date on which the person is notified of the enforcement authority’s decision on the notice of objection under paragraph 7(2).

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

- (4) On appeal, the court may—
 - (a) allow the appeal and cancel the penalty;
 - (b) allow the appeal and reduce the penalty; or
 - (c) dismiss the appeal.
- (5) An appeal—
 - (a) is to be a re-hearing of the enforcement authority’s decision to impose a penalty; and
 - (b) may be determined having regard to matters of which the enforcement authority was unaware.
- (6) Sub-paragraph (5)(a) has effect despite any provision of rules of court.
- (7) In this paragraph, a reference to “the court” is a reference—
 - (a) in England and Wales, to the county court;
 - (b) in Scotland, to the sheriff; and
 - (c) in Northern Ireland, to a county court.
- (8) But—
 - (a) the county court in England and Wales, or a county court in Northern Ireland, may transfer proceedings under this regulation to the High Court; and
 - (b) the sheriff may transfer proceedings under this regulation to the Court of Session.

PART 3

Enforcement and other matters

Enforcement of penalty decision

8.—(1) This paragraph applies where a sum is payable to the enforcement authority as a penalty under these Regulations.

(2) In England and Wales the penalty is recoverable as if it were payable under an order of the county court in England and Wales.

(3) In Scotland the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(4) In Northern Ireland the penalty is recoverable as if it were payable under an order of a county court in Northern Ireland.

(5) Where action is taken under this paragraph for the recovery of a sum payable as a penalty under these Regulations, the penalty is—

- (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc.)(1) as if it were a judgment entered in the county court;
- (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (register of judgments)(2) as if it

(1) 2003 c.39; section 98 has been amended by sections 48(1) and 106(2) of, and paragraph 55(1), (2), (3)(a) and (b) of Schedule 8 and paragraph 15 of Schedule 16 to, the Tribunals, Courts and Enforcement Act 2007 (c.15) and section 17(5) of, and paragraph 40(a) and (c) of Part 2 of Schedule 9 to, the Crime and Courts Act 2013 (c.22). Further amendments made by the Tribunals, Courts and Enforcement Act 2007 have yet to be brought into force.

(2) S.I. 1981/226 (N.I. 6).

were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.

Obstruction of officers and false statements

9.—(1) A person must not—

- (a) intentionally obstruct an officer when acting in pursuance of any provision of these Regulations;
- (b) intentionally fail to comply with any requirement properly made by an officer under any provision of these Regulations; or
- (c) without reasonable cause, fail to give an officer any other assistance or information which the officer may reasonably require of that person for the purposes of the exercise of the officer's functions under any provision of these Regulations.

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

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

Powers of search, etc.

10.—(1) Officers may exercise any of the powers set out in sub-paragraph (2) at all reasonable hours provided—

- (a) the officers identify themselves and produce authority in writing from the enforcement authority for the exercise by the officers of powers conferred on the authority by these Regulations; and
- (b) state the purpose of the officers' actions and the grounds for undertaking them.

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

- (a) an officer may for the purpose of ascertaining whether an offence under these Regulations has been committed—
 - (i) inspect any relevant products; and
 - (ii) enter any premises other than premises used wholly or mainly as a dwelling;
- (b) if an officer has reasonable cause to suspect that an offence under these Regulations has been committed, the officer 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 relevant products and the officer may take copies of those records or any part of them;
- (c) if an officer has reasonable cause to suspect that an offence under these Regulations has been committed, the officer may seize and detain any relevant products for the purpose of ascertaining whether the offence has been committed;
- (d) an officer may seize and detain any relevant products or records which the officer has reason to believe may be required as evidence in proceedings for an offence under these Regulations;
- (e) an officer may, for the purpose of exercising the officer's 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 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, the officer may break open the container.

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

(3) For the purposes of sub-paragraph (2), the officer may require information stored electronically to be made available in printed form.

(4) An officer may, for the purpose of ascertaining whether an offence has been committed under these Regulations, make a purchase of relevant products.

(5) If a justice is satisfied by any written information on oath—

(a) that there are reasonable grounds for believing either—

(i) that any relevant products or records, which an officer has power under this paragraph to inspect, copy, seize or require to be produced, is or are on any premises and that the inspection, copying, seizure or production of that item 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 the occupier's return,

the justice may by warrant under the justice's hand, which continues in force for a period of one month, authorise an officer to enter the premises, if need be by force.

(6) On entering any premises by authority of a warrant granted under sub-paragraph (5), an officer must, 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 an appropriate part of the premises, a notice in writing—

(a) summarising an officer's powers of seizure and detention of any relevant products or records under this paragraph;

(b) explaining that compensation may be payable for damage caused in entering premises and seizing and removing any relevant products or records 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.

(7) An officer, when entering any premises by virtue of this paragraph, may be accompanied by such persons and take such equipment as appear to the officer to be necessary.

(8) An officer, when leaving any premises which the officer entered by virtue of a warrant, must, if the premises are unoccupied or the occupier is temporarily absent, leave them in as secure a state as that in which they were found.

(9) When exercising any power of seizure and detention under this paragraph, an officer must, as soon as practicable, give to the person against whom the power has been exercised, a written notice stating—

(a) precisely what has been so seized and detained;

(b) that an application for the release of a detained item may be made in accordance with paragraph 12 of this Schedule; and

(c) the procedure for making such an application.

(10) A person who is not an officer of the enforcement authority must not purport to act as such under this paragraph.

(11) In sub-paragraph (5), the reference to “any written information on oath” is to be construed, in the application of this paragraph to—

- (a) Scotland, as a reference to any evidence on oath;
- (b) Northern Ireland, as a reference to any complaint on oath.

(12) In this paragraph, “justice” means—

- (a) in England and Wales, a justice of the peace;
- (b) in Scotland, a sheriff or summary sheriff; and
- (c) in Northern Ireland, a lay magistrate.

Powers of customs officers to detain goods

11.—(1) An Officer of Revenue and Customs may, for the purpose of facilitating the exercise by the enforcement authority, or duly authorised officer of the authority, of any powers conferred on the authority or officer by these Regulations seize any imported relevant products or any records, and detain them for not more than two working days.

(2) Anything seized and detained under this paragraph must be dealt with during the period of its detention in such manner as the Commissioners for Her Majesty’s Revenue and Customs may direct.

(3) An Officer of Revenue and Customs seizing any relevant products or records under this paragraph must inform the person from whom they are seized that such relevant products or records have been seized.

(4) In sub-paragraph (1) the reference to two working days is a reference to a period of forty-eight hours calculated from the time when the goods in question are seized, but disregarding so much of any period as falls on a Saturday or Sunday or on Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽³⁾ in the part of the United Kingdom where the goods are seized.

Applications for the release of detained items

12.—(1) Any person having an interest in any relevant products or records detained for the time being under paragraph 10 may apply for an order requiring any item so detained to be released to the applicant or 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 connection with the detained item;
- (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 must not make an order under sub-paragraph (1) unless the court or sheriff is satisfied that—

- (a) proceedings have not been brought for an offence in respect of a contravention of any provision of these Regulations in connection with the detained item or, having been brought, have been concluded; and
- (b) where no such proceedings have been brought, more than six months have elapsed since the seizure was carried out.

(3) 1971 c.80.

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

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

- (a) in England and Wales, to the Crown Court;
- (b) in Scotland, to the Sheriff Appeal Court as though it were an appeal under section 110(1) of the Courts Reform (Scotland) Act 2014(4); or
- (c) in Northern Ireland, to a county court.

(5) In England and Wales or in Northern Ireland, 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(5) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981(6) (statement of case)).

Compensation for seizure and detention

13.—(1) Where an officer exercises any power under paragraph 10 to seize and detain any relevant products or records, the enforcement authority is liable to pay compensation to any person having an interest in the item seized and detained 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; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(2) Any disputed question as to the right to, or the amount of, any compensation payable under this paragraph must be determined by arbitration—

- (a) in England and Wales or Northern Ireland, in accordance with the Arbitration Act 1996(7); or
- (b) in Scotland, in accordance with the Arbitration (Scotland) Act 2010(8).

Recovery of the expenses of enforcement

14.—(1) This paragraph applies where a court convicts a person of an offence in respect of a contravention of any provision of these Regulations in relation to any relevant products 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 the 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 relevant products or records.

Power of the Commissioners for Her Majesty's Revenue and Customs to disclose information

15.—(1) If they think it appropriate to do so for the purpose of facilitating the exercise by any person to whom sub-paragraph (2) applies of any functions conferred on that person by any provisions of these Regulations, the Commissioners for Her Majesty's Revenue and Customs may authorise the disclosure to that person of any information obtained for the purposes of the exercise by the Commissioners of their functions in relation to imported goods.

(4) 2014 asp 18.

(5) 1980 c.43.

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

(7) 1996 c.23.

(8) 2010 asp 1.

(2) This sub-paragraph applies to the enforcement authority and to any officer authorised by the enforcement authority.

(3) A disclosure of information made to any person under sub-paragraph (1) must be made in such manner as may be directed by the Commissioners for Her Majesty's Revenue and Customs and may be made through such persons acting on behalf of that person as may be so directed.

(4) Information may be disclosed to a person under sub-paragraph (1) whether or not the disclosure of the information has been requested by or on behalf of that person.

Savings for certain privileges

16. Nothing in these Regulations is to be taken as requiring any person—

- (a) to produce any records if that person 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, a claim of confidential communications, 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 or civil partner.

Savings for civil rights

17. A contract for the supply of relevant products is not void or unenforceable by reason only of a contravention of any provision of these Regulations.