

## SCHEDULE 6

Regulation 28

### ENFORCEMENT

#### **Enforcement in Great Britain in relation to relevant machinery for use at work**

1. In Great Britain, in relation to relevant machinery for use at work—
  - (a) it shall be the duty of the Executive to make adequate arrangements for the enforcement of these Regulations, and accordingly a reference in the provisions applied to these Regulations by sub-paragraph (b) below to an “enforcing authority” shall be construed as a reference to the Executive;
  - (b) sections 19 to 28(1), 33 to 35(2), 38, 39, 41 and 42 of the 1974 Act shall apply for the purposes of providing for the enforcement of these Regulations and in respect of proceedings for contravention thereof as if—
    - (i) references to relevant statutory provisions were references to those sections as applied by this paragraph and to these Regulations;
    - (ii) references to articles, substances, articles and substances, or plant, were references to relevant machinery;
    - (iii) references to the field of responsibility of an enforcing authority, however expressed, were omitted;
    - (iv) in section 20, subsection (3) were omitted;
    - (v) in section 23, subsections (3), (4) and (6) were omitted;
    - (vi) in section 33—
      - (aa) in subsection (1) the whole of paragraphs (a) to (d) were omitted;
      - (bb) subsection (1A) were omitted;
      - (cc) in subsection (2), the reference to paragraph (d) of subsection (1) were omitted;
      - (dd) subsection (2A) were omitted;
      - (ee) for subsection (3) there were substituted the following:—

“(3) A person guilty of an offence under any paragraph of subsection (1) above not mentioned in subsection (2) above or of an offence under subsection (1)(e) above not falling within that subsection shall be liable—

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- (1) In section 22, subsections (1) and (2) were amended and subsection (4) was added by paragraph 2, of Schedule 3 to, and section 36 of, 1987 c. 43. There is a modification of the application of section 24 not relevant to these Regulations. Sections 25A and 27A were inserted by paragraphs 3 and 4 respectively, and section 28(1)(a) was amended by paragraph 5, of Schedule 3 to, and section 36 of, 1987 c. 43; section 27 was amended by the repeal of subsection (2)(b) and the word “or” immediately preceding it by section 29(3) and (4) of, and paragraph 10(1) and (2) of Schedule 6 and Schedule 7 to, the Employment Act 1989 (c. 37), and in subsection (3) by section 33(1) of, and paragraph 7(a) of Part II of Schedule 3 to, the Employment Act 1988 (c. 19) and section 29(3) of, and paragraph 10(3) of Schedule 6 to, 1989 c. 37; and in section 28, subsections (3)(c) and (5)(b) were amended by section 190 of, and paragraph 46 of Schedule 25 to, the Water Act 1989 (c. 15), a new subsection (6) was substituted by section 84 of, and paragraph 52 of Part II of Schedule 14 to, the Local Government Act 1985 (c. 51), and new subsections (9) and (10) were added by section 116 of, and paragraph 9 of Schedule 15 to, the Employment Protection Act 1975 (c. 71) and section 21 of, and paragraph 13 of Schedule 6 to, the Norfolk and Suffolk Broads Act 1988 (c. 4) respectively.
  - (2) Section 33 was amended in subsection (1) in paragraph (h) by section 36 of, and paragraph 6 of Schedule 3 to, 1987 c. 43, and in paragraph (m) by section 30 of, and Part I of the Schedule to, the Forgery and Counterfeiting Act 1981 (c. 45); in subsection (2) as it applies to England and Wales by section 46 of the Criminal Justice Act 1982 (c. 48); subsection (5) was repealed by section 4(5) of the Offshore Safety Act 1992 (c. 15); and subsection (6) was repealed by section 30 of, and Part I of the Schedule to, 1981 c. 45. There are other amendments to section 33, and there is an amendment to section 34, not relevant to these Regulations.

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- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
- (b) on conviction on indictment—
  - (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
- (ff) subsection (4) were omitted;
- (vii) in section 34—
  - (aa) paragraphs (a) and (b) were omitted from subsection (1); and
  - (bb) in subsection (3) for “six months” there were substituted “twelve months”; and
- (viii) in section 42, subsections (4) and (5) were omitted; and
- (c) sections 36(1) and (2) and 37 shall apply in relation to offences under section 33 as applied to these Regulations and as modified by sub-paragraph (b)(vi) above.

### **Enforcement in Northern Ireland in relation to relevant machinery for use at work**

#### **2.—(1) In Northern Ireland—**

- (a) subject to head (b) below, it shall be the duty of the Department of Economic Development to make adequate arrangements for the enforcement of these Regulations in relation to relevant machinery for use at work; and
- (b) it shall be the duty of the Department of Agriculture to make adequate arrangements for the enforcement of these Regulations in relation to relevant machinery for use at work which is wholly or mainly agricultural,

and a reference in the provisions applied to these Regulations by sub-paragraph (2) below to an “enforcing authority” or to its “field of responsibility” (however expressed) or to “the Department concerned” shall be construed accordingly.

- (a) (2) (a) For the purposes of providing for the enforcement of these Regulations and in respect of proceedings for contravention thereof, Articles 21 to 33(3), 35, 36, 38 and 39 of the Order shall apply as if—
  - (i) references to relevant statutory provisions were references to those Articles as applied by this paragraph and to these Regulations;
  - (ii) references to articles, substances, articles and substances, or plant, were references to relevant machinery;
  - (iii) in Article 22, paragraph (3) were omitted;
  - (iv) in Article 25, paragraphs (3), (4) and (5) were omitted;
  - (v) in Article 31—

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(3) Article 26(4) was repealed by Article 35 of, and Schedule 4 to, the [Industrial Training \(Northern Ireland\) Order 1984 S.I. No. 1159 \(N.I. 9\)](#). There is a modification of the application of Article 26 not relevant to these Regulations. Articles 27A and 29A were inserted, and Articles 30(1)(a) and 31(1)(h) amended, by Article 28 of, and paragraphs 4, 5, 6 and 7 respectively of Schedule 2 to, the [Consumer Protection \(Northern Ireland\) Order 1987 S.I. No. 2049 \(N.I. 20\)](#); Article 29(2) to (4) were repealed, and Article 31(1)(j) amended by Article 10(1)(c) of the [Statistics of Trade and Employment \(Northern Ireland\) Order 1988 S.I. No. 595 \(N.I. 3\)](#); Article 31(1)(m) was amended by Article 13(3) of, and Schedule 5 to, the [Criminal Justice \(Northern Ireland\) Order 1986 S.I. No. 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. 1728 \(N.I. 17\)](#); and Article 31(7) was repealed by section 30 of, and Part III of the Schedule to, the [Forgery and Counterfeiting Act 1981 \(c. 45\)](#). There are other amendments to Article 31 which are not relevant to these Regulations.

- (aa) in paragraph (1), the whole of sub-paragraphs (a) to (d) were omitted;
- (bb) paragraph (1A) were omitted;
- (cc) in paragraph (2), the reference to sub-paragraph (d) of paragraph (1) were omitted;
- (dd) paragraph (2A) were omitted;
- (ee) paragraph (3) were omitted;
- (ff) 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
  - (gg) paragraph (5) were omitted;
- (vi) in Article 32—
  - (aa) sub-paragraphs (a) and (b) were omitted from paragraph (1); and
  - (bb) in paragraph (3), for “six months” there were substituted “twelve months”; and
- (vii) in Article 39, paragraphs (4) and (5) were omitted; and
- (b) Articles 34(1) and (2) shall apply in relation to offences under Article 31 as applied to these Regulations and as modified by sub-paragraph (2)(a)(v) above.

### **Enforcement in relation to relevant machinery as goods for private use or consumption**

- 3.** In relation to relevant machinery as goods for private use or consumption—
- (a) it shall be the duty of—
    - (i) every weights and measures authority in Great Britain; and
    - (ii) every district council in Northern Ireland,to enforce these Regulations within their area;
  - (b) a reference in the provisions applied to these Regulations by sub-paragraph (c) below to an “enforcement authority” shall be construed as a reference to each of the following authorities—
    - (i) the bodies mentioned in sub-paragraph (a) above; and
    - (ii) the Secretary of State;
  - (c) sections 14, 15, 28 to 35, 37, 38, 44 and 47 of the 1987 Act shall apply for the purposes of providing for the enforcement of these Regulations and in respect of proceedings for contravention thereof as if—
    - (i) references to safety provisions were references to these Regulations;
    - (ii) references to goods were references to relevant machinery or items of relevant machinery as the context may require;

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- (iii) in section 14, in subsection (6), for “six months” there were substituted “three months”;
- (iv) in sections 28, 29, 30, 33, 34 and 35, the words “or any provision made by or under Part III of this Act”, on each occasion that they occur, were omitted;
- (v) in section 28, subsections (3), (4) and (5) were omitted;
- (vi) in section 29, subsection (4) were omitted;
- (vii) in section 30, subsections (7) and (8) were omitted; and
- (viii) in section 38(1), paragraphs (a) to (c) were omitted;
- (d) sections 39 and 40 shall apply to offences under section 32 as it is applied to these Regulations by sub-paragraph (c) above; and
- (e) in relation to proceedings for an offence under these Regulations—
  - (i) in Great Britain, section 34 of the 1974 Act shall apply as if—
    - (aa) paragraphs (a) and (b) of subsection (1) were omitted;
    - (bb) references to an “enforcing authority” were references to each of the authorities referred to in sub-paragraph (a)(i) and (b)(ii) of this paragraph, and “responsible enforcing authority” were construed accordingly;
    - (cc) references to “relevant statutory provisions” were references to these Regulations; and
    - (dd) in subsection (3), for “six months” there were substituted “twelve months”; and
  - (ii) in Northern Ireland, Article 32 of the Order shall apply as if—
    - (aa) sub-paragraphs (a) and (b) of paragraph (1) were omitted;
    - (bb) references to an “enforcing authority” were references to each of the authorities referred to in sub-paragraph (a)(ii) and (b)(ii) of this paragraph, and “responsible enforcing authority” were construed accordingly;
    - (cc) references to “relevant statutory provisions” were references to these Regulations; and
    - (dd) in paragraph (3), for “six months” there were substituted “twelve months”.

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

4.—(1) An enforcement authority in England and Wales or Northern Ireland may apply under this paragraph for an order for the forfeiture of any relevant machinery on the grounds that there has been a contravention in relation thereto of regulation 11.

(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 some or all of the relevant machinery under regulation 29(a) or (b) to that court;
- (b) where an application with respect to some or all of the relevant machinery has been made to a magistrates' court under section 15 or 33 of the 1987 Act as applied for the purposes of the enforcement of these Regulations by paragraph 3(c) above, to that court; and
- (c) where no application for the forfeiture of the relevant machinery has been made under sub-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 relevant machinery only if it is satisfied that there has been a contravention in relation thereto of regulation 11.

(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 relevant machinery of regulation 11 if it is satisfied that that regulation has been contravened in relation to an item of relevant machinery which is representative of that relevant machinery (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<sup>(4)</sup>, or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(5)</sup> (statement of case)).

(6) Subject to sub-paragraph (7) below, where any relevant 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 relevant 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 relevant machinery to any person otherwise than—
  - (i) to a person who carries on a business of buying relevant machinery of the same description as the first mentioned machinery and repairing or reconditioning it; or
  - (ii) as scrap (that is to say, for the value of materials included in the relevant machinery rather than for the value of the relevant 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 3(c) above) which has been made against that person in the proceedings for the order for forfeiture.

### **Forfeiture: Scotland**

5.—(1) In Scotland a sheriff may make an order for forfeiture of any relevant machinery in relation to which there has been a contravention of any provision of regulation 11—

- (a) on an application by the procurator-fiscal made in the manner specified in section 310 of the Criminal Procedure (Scotland) Act 1975<sup>(6)</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, relevant machinery 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 relevant machinery 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 1975.

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(4) 1980 c. 43.

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

(6) 1975 c. 21. Section 310 was amended by paragraph 53 of Schedule 7, and Schedule 8, to the Criminal Justice (Scotland) Act 1980 (c. 62); there are extensions of section 310 not relevant to these Regulations.

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(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 relevant 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 relevant machinery as the case may be should not be forfeited.

(5) The sheriff shall not make an order following an 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 relevant machinery of regulation 11.

(7) For the avoidance of doubt it is declared that the sheriff may infer for the purposes of this paragraph that there has been a contravention in relation to any relevant machinery of regulation 11 if he is satisfied that regulation 11 has been contravened in relation to an item of relevant machinery which is representative of that relevant 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 relevant machinery 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 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 452(4)(a) to (e) of the Criminal Procedure (Scotland) Act 1975(7) shall apply to an appeal under this sub-paragraph as it applies to a stated case under Part II 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 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) 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 1975; or
- (b) if an appeal is made within that period, until the appeal is determined or abandoned.

(11) Subject to sub-paragraph (12) below, relevant machinery 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 relevant machinery 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 relevant machinery of the same description as the first-mentioned relevant machinery and repairing or reconditioning it; or
- (b) as scrap (that is to say, for the value of materials included in the relevant machinery rather than for the value of the relevant machinery itself).

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

6. An enforcement authority shall, where action has been taken by it to prohibit or restrict the supply or putting into service (whether under these Regulations or otherwise) of any relevant

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(7) A new section 452 was substituted by paragraph 11 of Schedule 3 to 1980 c. 62.

machinery which bears the EC mark forthwith inform the Secretary of State of the action taken, and the reasons for it, with a view to this information being passed by him to the Commission.

### Savings

7. Nothing in these Regulations shall be construed as preventing the taking of any action in respect of any relevant machinery under the provisions of the 1974 Act, the Order or the 1987 Act.

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

### Interpretation

9. In this Schedule—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974<sup>(8)</sup>;

“the 1987 Act” means the Consumer Protection Act 1987<sup>(9)</sup>;

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping, forestry, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds and the preparation of land for agricultural use;

“the Executive” means the Health and Safety Executive established under section 10 of the 1974 Act;

“the Order” means the Health and Safety at Work (Northern Ireland) Order 1978<sup>(10)</sup>; and

“machinery for use at work” means machinery—

- (a) designed for use or operation, whether exclusively or not, by persons at work; or
- (b) designed for use or operation, otherwise than at work, in non-domestic premises made available to persons at a place where they may use the machinery provided for their use there, and a reference to relevant machinery for use at work shall be construed accordingly.

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<sup>(8)</sup> 1974 c. 37.

<sup>(9)</sup> 1987 c. 43.

<sup>(10)</sup> S.I. 1978/1039 (N.I. 9).