

SCHEDULE 14

Regulation 15

ENFORCEMENT

Enforcement in relation to relevant products

1. In relation to relevant products—

- (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 for the purposes of such enforcement 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 products;
 - (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, the Consumer Protection Act 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. 38), 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. 38; 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.

Status: This is the original version (as it was originally made).

- (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), (j) or (o), 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 by sub-paragraph (b) above.

Forfeiture: England and Wales

2.—(1) An enforcement authority in England and Wales may apply under this paragraph for an order for the forfeiture of any relevant product on the grounds that there has been a contravention in relation thereto of regulation 6, 7 or 8.

(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 products under regulation 16 to that court; and
- (b) where no application for the forfeiture of the relevant product has been made under sub-paragraph (a) 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 products only if it is satisfied that there has been a contravention in relation thereto of regulation 6, 7 or 8.

(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 products of regulation 6, 7 or 8 if it is satisfied that that regulation has been contravened in relation to a relevant product which is representative of that relevant product (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 to the Crown 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(3)).

(6) Subject to sub-paragraph (7) below, where any relevant product 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 product 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 product to any person otherwise than—

(3) 1980 c. 43.

- (i) to a person who carries on a business of buying relevant products of the same description as the first mentioned product and repairing or reconditioning it; or
 - (ii) as scrap (that is to say, for the value of materials included in the relevant product rather than for the value of the relevant product itself); and
- (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.

Forfeiture: Scotland

3.—(1) In Scotland a sheriff may make an order for forfeiture of any relevant product in relation to which there has been a contravention of any provision of regulation 6, 7 or 8—

- (a) on an application by the procurator-fiscal made in the manner specified in section 310 of the Criminal Procedure (Scotland) Act 1975⁽⁴⁾; 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, the relevant product 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 product 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.

(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 product 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 product 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 product of regulation 6, 7 or 8.

(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 product of regulation 6, 7 or 8 if he is satisfied that that regulation has been contravened in relation to a relevant product which is representative of that relevant product (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 product 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

(4) 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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justice; and section 452(4)(a) to (e) of the Criminal Procedure (Scotland) Act 1975⁽⁵⁾ 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 products 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 product 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 products of the same description as the first-mentioned relevant product and repairing or reconditioning it; or
 - (b) as scrap (that is to say, for the value of materials included in the relevant product rather than for the value of the relevant product itself).

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

4. The enforcement authority shall, where action has been taken by it to prohibit or restrict the placing on the market, the supply or putting into service (whether under these Regulations or otherwise) of any relevant product which bears the CE marking 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

5. Nothing in these Regulations shall be construed as preventing the taking of any action in respect of any relevant product under the provisions of the 1974 Act.

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

Interpretation

7. In this Schedule—
- “the 1974 Act” means the Health and Safety at Work etc. Act 1974⁽⁶⁾;
 - “the Executive” means the Health and Safety Executive established under section 10 of the 1974 Act; and
 - “relevant product” means an item of equipment, a protective system, a device or component, as the case may be, to which these Regulations apply.

⁽⁵⁾ A new section 452 was substituted by paragraph 11 of Schedule 3 to 1980 c. 62.

⁽⁶⁾ 1974 c. 37.