

SCHEDULE 2

Regulation 7(1)(a)

Testing, powers of entry etc and warrants

Testing of cosmetic products

1.—(1) — The enforcement authority may purchase a cosmetic product for the purpose of ascertaining whether the requirements of the EU Cosmetics Regulation or these Regulations have been complied with in respect of it.

(2) If—

(a) a cosmetic product which has been purchased under sub-paragraph (1) or seized under paragraph 4 is submitted to a test;

(b) the test leads to—

(i) the bringing of proceedings for an offence under regulation 12 or for the forfeiture of the product under regulations 20 or 21; or

(ii) the serving of a notice under regulation 8 requiring measures to be taken under Articles 25, 26 or 27 of the EU Cosmetics Regulation; and

(c) a person—

(i) from whom the cosmetic product was purchased or seized;

(ii) who is a party to the proceedings; or

(iii) who has an interest in the cosmetic product which is identified as an infringing cosmetic product in a notice under regulation 8 requiring measures to be taken under Articles 25, 26 or 27 of the EU Cosmetics Regulation,

requests the enforcement authority to allow that person to have the cosmetic product tested, the authority must, if it is practicable for such a test to be carried out, allow that person to have the cosmetic product tested.

2. Any test of goods purchased under paragraph 1(1) or seized under paragraph 4 by or on behalf of an enforcement authority for the purposes of ascertaining whether the provisions of these Regulations have been contravened must in all cases be carried out in accordance with the provisions of paragraphs 2 to 5 of Schedule 3 and any test for which a method is specified in paragraph 6 of Schedule 3 must be carried out in accordance with that method.

Power to enter premises

3.—(1) An officer of an enforcement authority may enter premises, except any premises used wholly or mainly as a private dwelling, at any reasonable hour, for the purpose of ascertaining whether there has been compliance with the provisions of the EU Cosmetics Regulation or these Regulations.

(2) Before entering the premises, an officer must give reasonable notice, unless giving such notice would reasonably be supposed to defeat the purpose of the entry.

(3) An officer must, if requested to do so, produce the officer's credentials.

(4) An officer may be accompanied by such other persons as the officer considers necessary

(5) An officer may bring on to the premises such equipment as the officer considers necessary.

Power to inspect, seize and detain cosmetic products etc

4.—(1) An officer of an enforcement authority may, in order to ascertain if any provision of the EU Cosmetics Regulations or these Regulations has not been complied with—

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

- (a) examine any procedure (including any arrangements for carrying out a test) connected with the production of a product;
 - (b) make such examination or investigation as is necessary on entering any premises under paragraph 3 or a warrant under paragraph 5;
 - (c) require any person carrying on or employed in connection with a business to produce any cosmetic products, products, goods, substances, records, documents or information and take copies of—
 - (i) any document or record; or
 - (ii) any entry in any document or record.
- (2) An officer who reasonably suspects non-compliance with any provision of the EU Cosmetics Regulation or these Regulations may seize and detain any cosmetic products, products, goods, substances, records, documents or information in order to ascertain, by testing or otherwise, such non-compliance.
- (3) An officer may—
- (a) seize and detain any cosmetic products, products, goods, substances, records, documents or information which may be required as evidence in any proceedings under these Regulations;
 - (b) seize and detain any cosmetic products which he has reasonable grounds for suspecting may be liable to be forfeited under regulations 20 or 21 above.
- (4) An officer may, for the purposes of exercising powers under sub-paragraphs (1), (2) or (3), or RAMS, but only to the extent reasonably necessary to prevent a contravention of the provisions of the EU Cosmetics Regulations or these Regulations—
- (a) require any person having authority to do so to break open any container or to open any vending machine; and
 - (b) break open the container or machine, using reasonable force, if that person does not comply or if there is no person present having authority to open it.
- (5) An officer may require information stored electronically to be made available in printed form.
- (6) An officer entering any premises which are unoccupied or any premises from which the occupier is temporarily absent must leave them as effectively secured against unauthorised entry as they were before entry.
- (7) An officer exercising any power of seizure and detention must—
- (a) give to the person against whom the power has been exercised a written notice stating what has been seized and detained;
 - (b) detain those things only for as long as is necessary for—
 - (i) the enforcement authority to ascertain whether any provision of the EU Cosmetics Regulations or these Regulations has not been complied with and if required to present the evidence at court; or
 - (ii) the forfeiture proceedings to be concluded, where the goods are detained under sub-paragraph (3)(b).
- (8) Nothing in this regulation compels the production by any person of a document which that person would be entitled to withhold production of in any proceedings in any court on the grounds that it is the subject of legal professional privilege or, in Scotland, that it contains a confidential communication made by or to an advocate or solicitor in that capacity.

Warrants

5.—(1) A justice of the peace may by signed warrant permit an officer or any other person to enter any premises in the exercise of the powers and duties under the EU Cosmetics Regulations, RAMS or these Regulations, if necessary by reasonable force, if the justice in England and Wales on sworn information in writing, in Northern Ireland on a complaint on oath, or in Scotland by evidence on oath is satisfied—

- (a) that there are reasonable grounds for believing either—
 - (i) entry to the premises in order to exercise powers under paragraph 4 is likely to disclose evidence that there has been a contravention of any requirement imposed by or under the EU Cosmetics Regulation or these Regulations; or
 - (ii) a contravention of the EU Cosmetics Regulation or these Regulations has taken place, is taking place or is about to take place on any premises; and
 - (b) that any of the conditions in sub-paragraph (3) are met.
- (2) Reference to a justice of the peace—
- (a) in Scotland includes a sheriff;
 - (b) in Northern Ireland is a reference to a lay magistrate.
- (3) The conditions are—
- (a) entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant has been given to the occupier;
 - (b) asking for admission to the premises, or giving such a notice, would defeat the object of the entry;
 - (c) the premises are unoccupied or the occupier is temporarily absent and it might defeat the object of the entry to await his return.
- (4) A warrant under sub-paragraph (1) is valid for one month.