

SCHEDULES

SCHEDULE I

Articles 26, 28 and 29

Supplementary Provisions in connection with Proceedings for Offences under Articles 16, 28 and 29(4)

1.—(1) A person against whom proceedings are brought for an offence under Article 26, 28 or 29(4) shall, upon complaint on oath and in writing made to a justice of the peace for the county court division in which the proceedings are brought and on giving to the prosecution not less than 7 days' notice of his intention, be entitled to have any person to whose act or default in Northern Ireland he alleges that the contravention of that Article was due brought before the court in the proceedings.

(2) If, after the contravention has been proved, the original accused proves that the contravention was due to such act or default of that other person—

- (a) that other person may be convicted of the offence; and
 - (b) if the original accused further proves that he has used all due diligence to secure that Article 26, 28 or, as the case may be, 29(4) was complied with, he shall be acquitted of the offence.
- (3) Where an accused seeks to avail himself of the provisions of sub-paragraphs (1) and (2)—
- (a) the prosecution, as well as the person whom the accused charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence; and
 - (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party to the proceedings.

2.—(1) Where—

- (a) it appears that an offence under Article 26, 28 or 29(4) has been committed in respect of which proceedings might be taken against some person (in this Schedule referred to as "the original offender"); and
- (b) a person proposing to take proceedings in respect of the offence is reasonably satisfied—
 - (i) that the offence of which complaint is made was due to an act or default of some other person, being an act or default which took place in Northern Ireland; and
 - (ii) that the original offender could establish a defence under paragraph 1,the proceedings may be taken against that other person without proceedings first being taken against the original offender.

(2) In any such proceedings the accused may be charged with, and on proof that the contravention was due to his act or default be convicted of, the offence with which the original offender might have been charged.

3.—(1) Subject to the provisions of this paragraph, in any proceedings for an offence under Article 26, it shall be a defence for the accused to prove—

- (a) if the offence is under paragraph (3)(a) of that Article—
 - (i) that he purchased the equipment in question as being of a type which could be lawfully sold or offered or exposed for sale as conducive to the safety in the event

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- of accident of prescribed classes of children in prescribed classes of motor vehicles and with a written warranty to that effect;
- (ii) that he had no reason to believe at the time of the commission of the alleged offence that it was not of such a type; and
- (iii) That it was then in the same state as when he purchased it;
- (b) if the offence is under paragraph (3)(b) of that Article, he provided information in relation to the equipment and it is alleged that it did not include appropriate information or included or consisted of inappropriate information—
 - (i) that the information provided by him was information which had been provided to him with a written warranty to the effect that it was the information required to be provided by him under Article 26; and
 - (ii) that he had no reason to believe at the time of the commission of the alleged offence that the information provided by him was not the information required to be provided under that paragraph; or
- (c) if the offence is under paragraph (3)(b) of that Article, he provided information in relation to the equipment and it is alleged that it was not provided in the manner required under that Article—
 - (i) that the information provided by him had been provided to him either with a written warranty to the effect that it was provided to him in the manner in which it was required to be provided by him under that Article or with instructions as to the manner in which the information should be provided by him and with a written warranty to the effect that provision in that manner would comply with regulations under that Article;
 - (ii) that he had no reason to believe at the time of the commission of the alleged offence that he was not providing the information in the manner required under that Article; and
 - (iii) that the information was then in the same state as when it was provided to him or, as the case may be, that it was provided by him in accordance with the instructions given to him.
- (2) Subject to the provisions of this paragraph, in any proceedings for an offence under Article 28 or 29(4) it shall be a defence for the accused to prove—
 - (a) that he purchased the helmet or appliance in question as being of a type which—
 - (i) in the case of Article 28, could be lawfully sold or offered or exposed for sale under that Article; and
 - (ii) in the case of Article 29(4), could be lawfully sold or offered or exposed for sale under Article 29 as authorised for use in the manner in question, and with a written warranty to that effect; and
 - (b) that he had no reason to believe at the time of the commission of the alleged offence that it was not of such a type; and
 - (c) that it was then in the same state as when he purchased it.
- (3) A warranty shall only be a defence in any such proceedings if—
 - (a) the accused—
 - (i) has, not later than 7 days before the date of the hearing, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it; and
 - (ii) has also sent a like notice of his intention to that person; and

(b) in the case of a warranty given by a person resident outside Northern Ireland, the accused proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in the warranty.

(4) Where the accused is a servant of the person who purchased the equipment, helmet or appliance in question under a warranty, or to whom the information in question was provided under a warranty, he shall be entitled to rely on the provisions of this paragraph in the same way as his employer would have been entitled to do if he had been the accused.

(5) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

4.—(1) An accused who in any proceedings for an offence under Article 26, 28 or 29(4) wilfully applies to equipment, information, a helmet or, as the case may be, an appliance a warranty not given in relation to it is guilty of an offence.

(2) A person who, in respect of equipment, a helmet, or an appliance sold by him, or information provided by him, being equipment, a helmet an appliance or information in respect of which a warranty might be pleaded under paragraph 3, gives to the purchaser a false warranty in writing, is guilty of an offence, unless he proves that when he gave the warranty he had reason to believe that the statements or description contained in it were accurate.

(3) Where the accused in a prosecution for an offence under Article 26, 28 or 29(4) relies successfully on a warranty given to him or his employer, any proceedings under subparagraph (2) in respect of the warranty may, at the option of the prosecutor, be taken before a court having jurisdiction in the county court division—

- (a) in which the equipment, helmet or appliance, or any of the equipment, helmets or appliances, to which the warranty relates was procured;
- (b) in which the information, or any of it, to which the warranty relates was provided; or
- (c) in which the warranty was given.

5. In this Schedule, “equipment” means equipment to which Article 26 applies and “appliance” means an appliance to which Article 29 applies.