SCHEDULE 13

Regulation 15(1) and (2)

Enforcement

Enforcement in relation to relevant products

- 1. In relation to relevant products—
 - (a) it shall be the duty of the Department 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) to an "enforcing authority" shall be construed as a reference to the Department;
 - (b) Articles 21 to 33(1), 35, 36, 38 and 39 of the 1978 Order 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 Articles 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) in Article 22, paragraph (3) were omitted;
 - (iv) in Article 25, paragraphs (3), (4) and (5) were omitted;
 - (v) in Article 31—
 - (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) for paragraph (4) there were substituted the following paragraph:—
 - "(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 level 5 on the standard scale; or
 - (b) on conviction on indictment—
 - (i) in the case of an offence under paragraph (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

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⁽¹⁾ Article 24(1) and (2) was amended, and Article 24(3) substituted, by Article 28 of, and paragraph 3 of Schedule 2 to, the Consumer Protection (Northern Ireland) Order 1987 S.I. 1987/2049 (N.I. 20). Article 26(4) was repealed by Article 35 of, and Schedule 4 to, the Industrial Training (Northern Ireland) Order 1984 S.I. 1984/1159 (N.I. 9). 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, S.I. 1987/2049 (N.I. 20). Article 29(2) to (4) was repealed by Article 10(1)(c) of the Statistics of Trade and Employment (Northern Ireland) Order 1988 S.I. 1988/595 (N.I. 3). Article 31(1)(j) was amended by Article 10(1)(c) of S.I. 1988/595 (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. 1986/1883 (N.I. 15); Article 31(1A) and (2A) was respectively inserted by Article 6(3) and (4) of the Offshore, and Pipelines, Safety (Northern Ireland) Order 1992 S.I. 1992/1728 (N.I. 17); Article 31(4) was amended by Article 3(5)(d) and (6) was repealed by Article 6(6) of S.I. 1992/1728 (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 Articles 31 and 32 which are not relevant to these Regulations.

- (ff) 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
- (c) Articles 34(1) and (2) shall apply in relation to offences under Article 31 as applied to these Regulations by sub-paragraph (b).

Forfeiture

- 2.—(1) The Department 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 an application for the forfeiture of the relevant products has not been made under sub-paragraph (a), 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 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 Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981(2) (statement of case)).
- (6) Subject to sub-paragraph (7), 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—
 - (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.

Duty of Department to inform Secretary of State of action taken

4. The Department 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 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 1978 Order.

Interpretation

6. In this Schedule—

"the 1978 Order" means the Health and Safety at Work (Northern Ireland) Order 1978(3); 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.