

SCHEDULES

SCHEDULE 5

Section 77

INVESTIGATORY POWERS ETC.

PART 1

BASIC CONCEPTS

Overview

- 1 (1) This Schedule confers investigatory powers on enforcers and specifies the purposes for which and the circumstances in which those powers may be exercised.
- (2) Part 1 of this Schedule contains interpretation provisions; in particular paragraphs 2 to 6 explain what is meant by an “enforcer”.
- (3) Part 2 of this Schedule explains what is meant by “the enforcer’s legislation”.
- (4) Part 3 of this Schedule contains powers in relation to the production of information; paragraph 13 sets out which enforcers may exercise those powers, and the purposes for which they may do so.
- (5) Part 4 of this Schedule contains further powers; paragraphs 19 and 20 set out which enforcers may exercise those powers, and the purposes for which they may do so.
- (6) Part 5 of this Schedule contains provisions that are supplementary to the powers in Parts 3 and 4 of this Schedule.
- (7) Part 6 of this Schedule makes provision about the exercise of functions by certain enforcers outside their area or district and the bringing of proceedings in relation to conduct outside an enforcer’s area or district.

Enforcers

- 2 (1) In this Schedule “enforcer” means—
 - (a) a domestic enforcer,
 - (b) an EU enforcer,
 - (c) a public designated enforcer, or
 - (d) an unfair contract terms enforcer.
- (2) But in Part 4 and paragraphs 38 and 41 of this Schedule “enforcer” means—
 - (a) a domestic enforcer, or
 - (b) an EU enforcer.
- (3) In paragraphs 13, 19 and 20 of this Schedule, a reference to an enforcer exercising a power includes a reference to an officer of the enforcer exercising that power.

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Domestic enforcers

- 3 (1) In this Schedule “domestic enforcer” means—
- (a) the Competition and Markets Authority,
 - (b) a local weights and measures authority in Great Britain,
 - (c) a district council in England,
 - (d) the Department of Enterprise, Trade and Investment in Northern Ireland,
 - (e) a district council in Northern Ireland,
 - (f) the Secretary of State,
 - (g) the Gas and Electricity Markets Authority,
 - (h) the British Hallmarking Council,
 - (i) an assay office within the meaning of the Hallmarking Act 1973, or
 - (j) any other person to whom the duty in subsection (1) of section 27 of the Consumer Protection Act 1987 (duty to enforce safety provisions) applies by virtue of regulations under subsection (2) of that section.
- (2) But the Gas and Electricity Markets Authority is not a domestic enforcer for the purposes of Part 4 of this Schedule.
- (3) The reference to the Department of Enterprise, Trade and Investment in Northern Ireland includes a person with whom the Department has made arrangements, under paragraph 3(1) of Schedule 15 to the Lifts Regulations 1997 ([SI 1997/831](#)) for enforcement of those regulations.

EU enforcers

- 4 In this Schedule “EU enforcer” means—
- (a) the Competition and Markets Authority,
 - (b) a local weights and measures authority in Great Britain,
 - (c) the Department of Enterprise, Trade and Investment in Northern Ireland,
 - (d) the Financial Conduct Authority,
 - (e) the Civil Aviation Authority,
 - (f) the Secretary of State,
 - (g) the Department of Health, Social Services and Public Safety in Northern Ireland,
 - (h) the Office of Communications,
 - (i) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services), or
 - (j) the Information Commissioner.

Public designated enforcers

- 5 In this Schedule “public designated enforcer” means a person or body which—
- (a) is designated by order under subsection (2) of section 213 of the Enterprise Act 2002, and
 - (b) has been designated by virtue of subsection (3) of that section (which provides that the Secretary of State may designate a public body only if satisfied that it is independent).

Unfair contract terms enforcer

- 6 In this Schedule “unfair contract terms enforcer” means a person or body which—
- (a) is for the time being listed in paragraph 8(1) of Schedule 3 (persons or bodies that may enforce provisions about unfair contract terms), and
 - (b) is a public authority within the meaning of section 6 of the Human Rights Act 1998.

Officers

- 7 (1) In this Schedule “officer”, in relation to an enforcer, means—
- (a) an inspector appointed by the enforcer to exercise powers under this Schedule, or authorised to do so,
 - (b) an officer of the enforcer appointed by the enforcer to exercise powers under this Schedule, or authorised to do so,
 - (c) an employee of the enforcer (other than an inspector or officer) appointed by the enforcer to exercise powers under this Schedule, or authorised to do so, or
 - (d) a person (other than an inspector, officer or employee of the enforcer) authorised by the enforcer to exercise powers under this Schedule.
- (2) But references in this Schedule to an officer in relation to a particular power only cover a person within sub-paragraph (1) if and to the extent that the person has been appointed or authorised to exercise that power.
- (3) A person who, immediately before the coming into force of this Schedule, was appointed or authorised to exercise a power replaced by a power in this Schedule is to be treated as having been appointed or authorised to exercise the new power.
- (4) In this paragraph “employee”, in relation to the Secretary of State, means a person employed in the civil service of the State.

Interpretation of other terms

- 8 In this Schedule—
- “Community infringement” has the same meaning as in section 212 of the Enterprise Act 2002;
 - “document” includes information recorded in any form;
 - “enforcement order” means an order under section 217 of the Enterprise Act 2002;
 - “interim enforcement order” means an order under section 218 of that Act;
 - “the Regulation on Accreditation and Market Surveillance” means Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93.

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PART 2

THE ENFORCER’S LEGISLATION

Enforcer’s legislation

- 9 (1) In this Schedule “the enforcer’s legislation”, in relation to a domestic enforcer, means—
- (a) legislation or notices which, by virtue of a provision listed in paragraph 10, the domestic enforcer has a duty or power to enforce, and
 - (b) where the domestic enforcer is listed in an entry in the first column of the table in paragraph 11, the legislation listed in the corresponding entry in the second column of that table.
- (2) References in this Schedule to a breach of or compliance with the enforcer’s legislation include a breach of or compliance with a notice issued under—
- (a) the enforcer’s legislation, or
 - (b) legislation under which the enforcer’s legislation is made.
- (3) References in this Schedule to a breach of or compliance with the enforcer’s legislation are to be read, in relation to the Lifts Regulations 1997 (SI 1997/831), as references to a breach of or compliance with the Regulations as they apply to relevant products (within the meaning of Schedule 15 to the Regulations) for private use or consumption.

Enforcer’s legislation: duties and powers mentioned in paragraph 9(1)(a)

- 10 The duties and powers mentioned in paragraph 9(1)(a) are those arising under any of the following provisions—
- “section 26(1) or 40(1)(b) of the Trade Descriptions Act 1968 (including as applied by regulation 8(3) of the Crystal Glass (Descriptions) Regulations 1973 (SI 1973/1952) and regulation 10(2) of the Footwear (Indication of Composition) Labelling Regulations 1995 (SI 1995/2489));
- section 9(1) or (6) of the Hallmarking Act 1973;
- paragraph 6 of the Schedule to the Prices Act 1974 (including as read with paragraph 14(1) of that Schedule);
- section 161(1) of the Consumer Credit Act 1974;
- section 26(1) of the Estate Agents Act 1979;
- Article 39 of the Weights and Measures (Northern Ireland) Order 1981 (SI 1981/231 (NI 10));
- section 16A(1) or (4) of the Video Recordings Act 1984;
- section 27(1) of the Consumer Protection Act 1987 (including as applied by section 12(1) of the Fireworks Act 2003 to fireworks regulations under that Act);
- section 215(1) of the Education Reform Act 1988;
- section 107A(1) or (3) or 198A(1) or (3) of the Copyright, Designs and Patents Act 1988;
- paragraph 3(a) of Schedule 5 to the Simple Pressure Vessels (Safety) Regulations 1991 (SI 1991/2749);
- paragraph 1 of Schedule 3 to the Package Travel, Package Holidays and Package Tours Regulations 1992 (SI 1992/3288);

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section 30(4) or (7) or 31(4)(a) of the Clean Air Act 1993;
paragraph 1 of Schedule 2 to the Sunday Trading Act 1994;
section 93(1) or (3) of the Trade Marks Act 1994;
section 8A(1) or (3) of the Olympic Symbol etc (Protection) Act 1995;
paragraph 2(a) or 3(1) of Schedule 15 to the Lifts Regulations 1997 ([SI 1997/831](#));
paragraph 2(a) or 3(3)(a) of Schedule 8 to the Pressure Equipment Regulations 1999 ([SI 1999/2001](#));
regulation 5C(5) of the Motor Fuel (Composition and Content) Regulations 1999 ([SI 1999/3107](#));
paragraph 1(1)(b) or (2)(b) or 2 of Schedule 9 to the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 ([SI 2000/730](#));
paragraph 1(a) of Schedule 10 to the Personal Protective Equipment Regulations 2002 ([SI 2002/1144](#));
paragraph 1 of Schedule 4 to the Packaging (Essential Requirements) Regulations 2003 ([SI 2003/1941](#));
section 3(1) of the Christmas Day Trading Act 2004;
regulation 10(1) of the General Product Safety Regulations 2005 ([SI 2005/1803](#));
regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations 2006 ([SI 2006/659](#));
regulation 17 of the Measuring Instruments (Automatic Discontinuous Totalisers) Regulations 2006 ([SI 2006/1255](#));
regulation 18 of the Measuring Instruments (Automatic Rail-weighbridges) Regulations 2006 ([SI 2006/1256](#));
regulation 20 of the Measuring Instruments (Automatic Catchweighers) Regulations 2006 ([SI 2006/1257](#));
regulation 18 of the Measuring Instruments (Automatic Gravimetric Filling Instruments) Regulations 2006 ([SI 2006/1258](#));
regulation 18 of the Measuring Instruments (Beltweighers) Regulations 2006 ([SI 2006/1259](#));
regulation 16 of the Measuring Instruments (Capacity Serving Measures) Regulations 2006 ([SI 2006/1264](#));
regulation 17 of the Measuring Instruments (Liquid Fuel and Lubricants) Regulations 2006 ([SI 2006/1266](#));
regulation 16 of the Measuring Instruments (Material Measures of Length) Regulations 2006 ([SI 2006/1267](#));
regulation 17 of the Measuring Instruments (Cold-water Meters) Regulations 2006 ([SI 2006/1268](#));
regulation 18 of the Measuring Instruments (Liquid Fuel delivered from Road Tankers) Regulations 2006 ([SI 2006/1269](#));
regulation 37(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations 2006 ([SI 2006/3418](#));
regulation 13(1) or (1A) of the Business Protection from Misleading Marketing Regulations 2008 ([SI 2008/1276](#));
regulation 19(1) or (1A) of the Consumer Protection from Unfair Trading Regulations 2008 ([SI 2008/1277](#));

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paragraph 2 or 5 of Schedule 5 to the Supply of Machinery (Safety) Regulations 2008 ([SI 2008/1597](#));
 regulation 32(2) or (3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ([SI 2010/2960](#));
 regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 ([SR 2011/331](#));
 regulation 11 of the Textile Products (Labelling and Fibre Composition) Regulations 2012 ([SI 2012/1102](#));
 regulation 6(1) of the Cosmetic Products Enforcement Regulations 2013 ([SI 2013/1478](#));
 section 87(1) of this Act;
 section 93(1) or (2) of this Act.”

Enforcer’s legislation: legislation mentioned in paragraph 9(1)(b)

11 Here is the table mentioned in paragraph 9(1)(b)—

<i>Enforcer</i>	<i>Legislation</i>
A local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland	Section 35ZA of the Registered Designs Act 1949
A local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland	The Measuring Container Bottles (EEC Requirements) Regulations 1977 (SI 1977/932)
The Secretary of State	The Alcoholometers and Alcohol Hydrometers (EEC Requirements) Regulations 1977 (SI 1977/1753)
A local weights and measures authority in Great Britain	The Weights and Measures Act 1985 and regulations and orders made under that Act
A local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland	The Measuring Instruments (EEC Requirements) Regulations 1988 (SI 1988/186)
A local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland	The Financial Services and Markets Act 2000 so far as it relates to a relevant regulated activity within the meaning of section 107(4)(a) of the Financial Services Act 2012
A local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland	The Non-Automatic Weighing Instruments Regulations 2000 (SI 2000/3236)

Powers to amend paragraph 10 or 11

- 12 (1) The Secretary of State may by order made by statutory instrument—
- (a) amend paragraph 10 or the table in paragraph 11 by adding, modifying or removing any entry in it;
 - (b) in consequence of provision made under paragraph (a), amend, repeal or revoke any other legislation (including this Act) whenever passed or made.
- (2) The Secretary of State may not make an order under this paragraph that has the effect that a power of entry, or an associated power, contained in legislation other than this Act is replaced by a power of entry, or an associated power, contained in this Schedule unless the Secretary of State thinks that the condition in sub-paragraph (3) is met.
- (3) That condition is that, on and after the changes made by the order, the safeguards applicable to the new power, taken together, provide a greater level of protection than any safeguards applicable to the old power.
- (4) In sub-paragraph (2) “power of entry” and “associated power” have the meanings given by section 46 of the Protection of Freedoms Act 2012.
- (5) An order under this paragraph may contain transitional or transitory provision or savings.
- (6) A statutory instrument containing an order under this paragraph that amends or repeals primary legislation may not be made unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (7) Any other statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this paragraph “primary legislation” means—
- (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of the National Assembly for Wales, or
 - (d) Northern Ireland legislation.

PART 3

POWERS IN RELATION TO THE PRODUCTION OF INFORMATION

Exercise of powers in this Part

- 13 (1) An enforcer of a kind mentioned in this paragraph may exercise a power in this Part of this Schedule only for the purposes and in the circumstances mentioned in this paragraph in relation to that kind of enforcer.
- (2) The Competition and Markets Authority may exercise the powers in this Part of this Schedule for any of the following purposes—
- (a) to enable the Authority to exercise or to consider whether to exercise any function it has under Part 8 of the Enterprise Act 2002;
 - (b) to enable a private designated enforcer to consider whether to exercise any function it has under that Part;

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- (c) to enable a Community enforcer to consider whether to exercise any function it has under that Part;
 - (d) to ascertain whether a person has complied with or is complying with an enforcement order or an interim enforcement order;
 - (e) to ascertain whether a person has complied with or is complying with an undertaking given under section 217(9), 218(10) or 219 of the Enterprise Act 2002.
- (3) A public designated enforcer, a local weights and measures authority in Great Britain, the Department of Enterprise, Trade and Investment in Northern Ireland or an EU enforcer other than the Competition and Markets Authority may exercise the powers in this Part of this Schedule for any of the following purposes—
- (a) to enable that enforcer to exercise or to consider whether to exercise any function it has under Part 8 of the Enterprise Act 2002;
 - (b) to ascertain whether a person has complied with or is complying with an enforcement order or an interim enforcement order made on the application of that enforcer;
 - (c) to ascertain whether a person has complied with or is complying with an undertaking given under section 217(9) or 218(10) of the Enterprise Act 2002 following such an application;
 - (d) to ascertain whether a person has complied with or is complying with an undertaking given to that enforcer under section 219 of that Act.
- (4) A domestic enforcer may exercise the powers in this Part of this Schedule for the purpose of ascertaining whether there has been a breach of the enforcer’s legislation.
- (5) But a domestic enforcer may not exercise the power in paragraph 14 (power to require the production of information) for the purpose in sub-paragraph (4) unless an officer of the enforcer reasonably suspects a breach of the enforcer’s legislation.
- (6) Sub-paragraph (5) does not apply if the enforcer is a market surveillance authority within the meaning of Article 2(18) of the Regulation on Accreditation and Market Surveillance and the power is exercised for the purpose of market surveillance within the meaning of Article 2(17) of that Regulation.
- (7) An unfair contract terms enforcer may exercise the powers in this Part of this Schedule for either of the following purposes—
- (a) to enable the enforcer to exercise or to consider whether to exercise any function it has under Schedule 3 (enforcement of the law on unfair contract terms and notices);
 - (b) to ascertain whether a person has complied with or is complying with an injunction or interdict (within the meaning of that Schedule) granted under paragraph 5 of that Schedule or an undertaking given under paragraph 6 of that Schedule.
- (8) But an unfair contract terms enforcer may not exercise the power in paragraph 14 for a purpose mentioned in sub-paragraph (7)(a) unless an officer of the enforcer reasonably suspects that a person is using, or proposing or recommending the use of, a contractual term or notice within paragraph 3 of Schedule 3.
- (9) A local weights and measures authority in Great Britain may exercise the powers in this Part of this Schedule for either of the following purposes—

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- (a) to enable it to determine whether to make an order under section 3 or 4 of the Estate Agents Act 1979;
 - (b) to enable it to exercise any of its functions under section 5, 6, 8, 13 or 17 of that Act.
- (10) In this paragraph—
- “Community enforcer” has the same meaning as in the Enterprise Act 2002 (see section 213(5) of that Act);
 - “private designated enforcer” means a person or body which—
 - (a) is designated by order under subsection (2) of section 213 of that Act, and
 - (b) has been designated by virtue of subsection (4) of that section (which provides that the Secretary of State may designate a person or body which is not a public body only if it satisfies criteria specified by order).

Power to require the production of information

- 14 An enforcer or an officer of an enforcer may give notice to a person requiring the person to provide the enforcer with the information specified in the notice.

Procedure for notice under paragraph 14

- 15 (1) A notice under paragraph 14 must be in writing and specify the purpose for which the information is required.
- (2) If the purpose is to enable a person to exercise or to consider whether to exercise a function, the notice must specify the function concerned.
- (3) The notice may specify—
- (a) the time within which and the manner in which the person to whom it is given must comply with it;
 - (b) the form in which information must be provided.
- (4) The notice may require—
- (a) the creation of documents, or documents of a description, specified in the notice, and
 - (b) the provision of those documents to the enforcer or an officer of the enforcer.
- (5) A requirement to provide information or create a document is a requirement to do so in a legible form.
- (6) A notice under paragraph 14 does not require a person to provide any information or create any documents which the person would be entitled to refuse to provide or produce—
- (a) in proceedings in the High Court on the grounds of legal professional privilege, or
 - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.
- (7) In sub-paragraph (6) “communications” means—
- (a) communications between a professional legal adviser and the adviser’s client, or

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- (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.

Enforcement of notice under paragraph 14

- 16 (1) If a person fails to comply with a notice under paragraph 14, the enforcer or an officer of the enforcer may make an application under this paragraph to the court.
- (2) If it appears to the court that the person has failed to comply with the notice, it may make an order under this paragraph.
- (3) An order under this paragraph is an order requiring the person to do anything that the court thinks it is reasonable for the person to do, for any of the purposes for which the notice was given, to ensure that the notice is complied with.
- (4) An order under this paragraph may require the person to meet the costs or expenses of the application.
- (5) If the person is a company, partnership or unincorporated association, the court in acting under sub-paragraph (4) may require an official who is responsible for the failure to meet the costs or expenses.
- (6) In this paragraph—
- “the court” means—
- (a) the High Court,
- (b) in relation to England and Wales, the county court,
- (c) in relation to Northern Ireland, a county court,
- (d) the Court of Session, or
- (e) the sheriff;
- “official” means—
- (a) in the case of a company, a director, manager, secretary or other similar officer,
- (b) in the case of a limited liability partnership, a member,
- (c) in the case of a partnership other than a limited liability partnership, a partner, and
- (d) in the case of an unincorporated association, a person who is concerned in the management or control of its affairs.

Limitations on use of information provided in response to a notice under paragraph 14

- 17 (1) This paragraph applies if a person provides information in response to a notice under paragraph 14.
- (2) This includes information contained in a document created by a person in response to such a notice.
- (3) In any criminal proceedings against the person—
- (a) no evidence relating to the information may be adduced by or on behalf of the prosecution, and
- (b) no question relating to the information may be asked by or on behalf of the prosecution.
- (4) Sub-paragraph (3) does not apply if, in the proceedings—

- (a) evidence relating to the information is adduced by or on behalf of the person providing it, or
 - (b) a question relating to the information is asked by or on behalf of that person.
- (5) Sub-paragraph (3) does not apply if the proceedings are for—
- (a) an offence under paragraph 36 (obstruction),
 - (b) an offence under section 5 of the Perjury Act 1911 (false statutory declarations and other false statements without oath),
 - (c) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations), or
 - (d) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (SI 1979/1714 (NI 19)) (false statutory declarations and other false unsworn statements).

Application to Crown

- 18 In its application in relation to—
- (a) an enforcer acting for a purpose within paragraph 13(2) or (3), or
 - (b) an enforcer acting for the purpose of ascertaining whether there has been a breach of the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277),
- this Part binds the Crown.

PART 4

FURTHER POWERS EXERCISABLE BY DOMESTIC ENFORCERS AND EU ENFORCERS

Exercise of powers in this Part: domestic enforcers

- 19 (1) A domestic enforcer may exercise a power in this Part of this Schedule only for the purposes and in the circumstances mentioned in this paragraph in relation to that power.
- (2) A domestic enforcer may exercise any power in paragraphs 21 to 26 and 31 to 34 for the purpose of ascertaining compliance with the enforcer's legislation.
- (3) A domestic enforcer may exercise the power in paragraph 27 (power to require the production of documents) for either of the following purposes—
- (a) subject to sub-paragraph (4), to ascertain compliance with the enforcer's legislation;
 - (b) to ascertain whether the documents may be required as evidence in proceedings for a breach of, or under, the enforcer's legislation.
- (4) A domestic enforcer may exercise the power in paragraph 27 for the purpose mentioned in sub-paragraph (3)(a) only if an officer of the enforcer reasonably suspects a breach of the enforcer's legislation, unless—
- (a) the power is being exercised in relation to a document that the trader is required to keep by virtue of a provision of the enforcer's legislation, or
 - (b) the enforcer is a market surveillance authority within the meaning of Article 2(18) of the Regulation on Accreditation and Market Surveillance and the

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power is exercised for the purpose of market surveillance within the meaning of Article 2(17) of that Regulation.

- (5) A domestic enforcer may exercise the power in paragraph 28 (power to seize and detain goods) in relation to—
- (a) goods which an officer of the enforcer reasonably suspects may disclose (by means of testing or otherwise) a breach of the enforcer’s legislation,
 - (b) goods which an officer of the enforcer reasonably suspects are liable to forfeiture under that legislation, and
 - (c) goods which an officer of the enforcer reasonably suspects may be required as evidence in proceedings for a breach of, or under, that legislation.
- (6) A domestic enforcer may exercise the power in paragraph 29 (power to seize documents required as evidence) in relation to documents which an officer of the enforcer reasonably suspects may be required as evidence—
- (a) in proceedings for a breach of the enforcer’s legislation, or
 - (b) in proceedings under the enforcer’s legislation.
- (7) A domestic enforcer may exercise the power in paragraph 30 (power to decommission or switch off fixed installations)—
- (a) if an officer of the enforcer reasonably suspects a breach of the Electromagnetic Compatibility Regulations 2006 (SI 2006/3418), and
 - (b) for the purpose of ascertaining (by means of testing or otherwise) whether there has been such a breach.
- (8) For the purposes of the enforcement of the Estate Agents Act 1979—
- (a) the references in sub-paragraphs (2) and (3)(a) to ascertaining compliance with the enforcer’s legislation include ascertaining whether a person has engaged in a practice mentioned in section 3(1)(d) of that Act (practice in relation to estate agency work declared undesirable by the Secretary of State), and
 - (b) the references in sub-paragraph (4) and paragraphs 23(6)(a) and 32(3)(a) to a breach of the enforcer’s legislation include references to a person’s engaging in such a practice.

Exercise of powers in this Part: EU enforcers

- 20 (1) Any power in this Part of this Schedule which is conferred on an EU enforcer may be exercised by such an enforcer only for the purposes and in the circumstances mentioned in this paragraph in relation to that power.
- (2) If the condition in sub-paragraph (3) is met, an EU enforcer may exercise any power conferred on it by paragraphs 21 to 25 and 31 to 34 for any purpose relating to the functions that the enforcer has under Part 8 of the Enterprise Act 2002 in its capacity as a CPC enforcer under that Part.
- (3) The condition is that an officer of the EU enforcer reasonably suspects—
- (a) that there has been, or is likely to be, a Community infringement,
 - (b) a failure to comply with an enforcement order or an interim enforcement order made on the application of that enforcer,
 - (c) a failure to comply with an undertaking given under section 217(9) or 218(10) of the Enterprise Act 2002 following such an application, or

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- (d) a failure to comply with an undertaking given to that enforcer under section 219 of that Act.
- (4) An EU enforcer may exercise the power in paragraph 27 (power to require the production of documents) for either of the following purposes—
 - (a) the purpose mentioned in sub-paragraph (2), if the condition in sub-paragraph (3) is met;
 - (b) to ascertain whether the documents may be required as evidence in proceedings under Part 8 of the Enterprise Act 2002.
- (5) An EU enforcer may exercise the power in paragraph 28 (power to seize and detain goods) in relation to goods which an officer of the enforcer reasonably suspects—
 - (a) may disclose (by means of testing or otherwise) a Community infringement or a failure to comply with a measure specified in sub-paragraph (3)(b), (c) or (d), or
 - (b) may be required as evidence in proceedings under Part 8 of the Enterprise Act 2002.
- (6) An EU enforcer may exercise the power in paragraph 29 (power to seize documents required as evidence) in relation to documents which an officer of the enforcer reasonably suspects may be required as evidence in proceedings under Part 8 of the Enterprise Act 2002.

Power to purchase products

- 21
- (1) An officer of an enforcer may—
 - (a) make a purchase of a product, or
 - (b) enter into an agreement to secure the provision of a product.
 - (2) For the purposes of exercising the power in sub-paragraph (1), an officer may—
 - (a) at any reasonable time, enter premises to which the public has access (whether or not the public has access at that time), and
 - (b) inspect any product on the premises which the public may inspect.
 - (3) The power of entry in sub-paragraph (2) may be exercised without first giving notice or obtaining a warrant.

Power to observe carrying on of business etc

- 22
- (1) An officer of an enforcer may enter premises to which the public has access in order to observe the carrying on of a business on those premises.
 - (2) The power in sub-paragraph (1) may be exercised at any reasonable time (whether or not the public has access at that time).
 - (3) The power of entry in sub-paragraph (1) may be exercised without first giving notice or obtaining a warrant.

Power to enter premises without warrant

- 23
- (1) An officer of an enforcer may enter premises at any reasonable time.
 - (2) Sub-paragraph (1) does not authorise the entry into premises used wholly or mainly as a dwelling.

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- (3) In the case of a routine inspection, the power of entry in sub-paragraph (1) may only be exercised if a notice has been given to the occupier of the premises in accordance with the requirements in sub-paragraph (4), unless sub-paragraph (5) applies.
- (4) Those requirements are that—
 - (a) the notice is in writing and is given by an officer of the enforcer,
 - (b) the notice sets out why the entry is necessary and indicates the nature of the offence under paragraph 36 (obstruction), and
 - (c) there are at least two working days between the date of receipt of the notice and the date of entry.
- (5) A notice need not be given if the occupier has waived the requirement to give notice.
- (6) In this paragraph “routine inspection” means an exercise of the power in sub-paragraph (1) other than where—
 - (a) the power is exercised by an officer of a domestic enforcer who reasonably suspects a breach of the enforcer’s legislation,
 - (b) the officer reasonably considers that to give notice in accordance with sub-paragraph (3) would defeat the purpose of the entry,
 - (c) it is not reasonably practicable in all the circumstances to give notice in accordance with that sub-paragraph, in particular because the officer reasonably suspects that there is an imminent risk to public health or safety, or
 - (d) the enforcer is a market surveillance authority within the meaning of Article 2(18) of the Regulation on Accreditation and Market Surveillance and the entry is for the purpose of market surveillance within the meaning of Article 2(17) of that Regulation.
- (7) If an officer of an enforcer enters premises under sub-paragraph (1) otherwise than in the course of a routine inspection, and finds one or more occupiers on the premises, the officer must provide to that occupier or (if there is more than one) to at least one of them a document that—
 - (a) sets out why the entry is necessary, and
 - (b) indicates the nature of the offence under paragraph 36 (obstruction).
- (8) If an officer of an enforcer enters premises under sub-paragraph (1) and finds one or more occupiers on the premises, the officer must produce evidence of the officer’s identity and authority to that occupier or (if there is more than one) to at least one of them.
- (9) An officer need not comply with sub-paragraph (7) or (8) if it is not reasonably practicable to do so.
- (10) Proceedings resulting from the exercise of the power under sub-paragraph (1) are not invalid merely because of a failure to comply with sub-paragraph (7) or (8).
- (11) An officer entering premises under sub-paragraph (1) may be accompanied by such persons, and may take onto the premises such equipment, as the officer thinks necessary.
- (12) In this paragraph—

“give”, in relation to the giving of a notice to the occupier of premises, includes delivering or leaving it at the premises or sending it there by post;

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- “working day” means a day other than—
- (a) Saturday or Sunday,
 - (b) Christmas Day or Good Friday, or
 - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the premises are situated.

Application of paragraphs 25 to 31

- 24 Paragraphs 25 to 31 apply if an officer of an enforcer has entered any premises under the power in paragraph 23(1) or under a warrant under paragraph 32.

Power to inspect products etc

- 25 (1) The officer may inspect any product on the premises.
- (2) The power in sub-paragraph (3) is also available to an officer of a domestic enforcer acting pursuant to the duty in section 27(1) of the Consumer Protection Act 1987 or regulation 10(1) of the General Product Safety Regulations 2005 (SI 2005/1803).
- (3) The officer may examine any procedure (including any arrangements for carrying out a test) connected with the production of a product.
- (4) The powers in sub-paragraph (5) are also available to an officer of a domestic enforcer acting pursuant to—
- (a) the duty in regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659) (“the “2006 Regulations”), or
 - (b) the duty in regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (SR 2011/331) (“the 2011 Regulations”).
- (5) The officer may inspect and take copies of, or of anything purporting to be—
- (a) a record of a kind mentioned in regulation 5(2) or 9(1), or
 - (b) evidence of a kind mentioned in regulation 9(3).
- (6) The references in sub-paragraph (5) to regulations are to regulations in the 2006 Regulations in the case of a domestic enforcer in Great Britain or the 2011 Regulations in the case of a domestic enforcer in Northern Ireland.
- (7) The powers in sub-paragraph (8) are also available to an officer of a domestic enforcer acting pursuant to the duty in regulation 37(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations 2006 (SI 2006/3418).
- (8) The officer may—
- (a) inspect any apparatus or fixed installation (as defined in those Regulations), or
 - (b) examine any procedure (including any arrangements for carrying out a test) connected with the production of apparatus.

Power to test equipment

- 26 (1) An officer of a domestic enforcer may test any weighing or measuring equipment—

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- (a) which is, or which the officer has reasonable cause to believe may be, used for trade or in the possession of any person or on any premises for such use, or
 - (b) which has been, or which the officer has reasonable cause to believe to have been, passed by an approved verifier, or by a person purporting to act as such a verifier, as fit for such use.
- (2) Expressions used in sub-paragraph (1) have the same meaning—
- (a) as in the Weights and Measures Act 1985, in the case of a domestic enforcer in Great Britain;
 - (b) as in the Weights and Measures (Northern Ireland) Order 1981 (SI 1981/231 (NI 10)), in the case of a domestic enforcer in Northern Ireland.
- (3) The powers in sub-paragraph (4) are available to an officer of a domestic enforcer acting pursuant to—
- (a) the duty in regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659) (“the 2006 Regulations”), or
 - (b) the duty in regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (SR 2011/331) (“the 2011 Regulations”).
- (4) The officer may test any equipment which the officer has reasonable cause to believe is used in—
- (a) making up packages (as defined in regulation 2) in the United Kingdom, or
 - (b) carrying out a check mentioned in paragraphs (1) and (3) of regulation 9.
- (5) The references in sub-paragraph (4) to regulations are to regulations in the 2006 Regulations in the case of a domestic enforcer in Great Britain or the 2011 Regulations in the case of a domestic enforcer in Northern Ireland.

Power to require the production of documents

- 27 (1) The officer may, at any reasonable time—
- (a) require a trader occupying the premises, or a person on the premises acting on behalf of such a trader, to produce any documents relating to the trader’s business to which the trader has access, and
 - (b) take copies of, or of any entry in, any such document.
- (2) The power in sub-paragraph (1) is available regardless of whether—
- (a) the purpose for which the documents are required relates to the trader or some other person, or
 - (b) the proceedings referred to in paragraph 19(3)(b) or 20(4)(b) could be taken against the trader or some other person.
- (3) That power includes power to require the person to give an explanation of the documents.
- (4) Where a document required to be produced under sub-paragraph (1) contains information recorded electronically, the power in that sub-paragraph includes power to require the production of a copy of the document in a form in which it can easily be taken away and in which it is visible and legible.

- (5) This paragraph does not permit an officer to require a person to create a document other than as described in sub-paragraph (4).
- (6) This paragraph does not permit an officer to require a person to produce any document which the person would be entitled to refuse to produce—
 - (a) in proceedings in the High Court on the grounds of legal professional privilege, or
 - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.
- (7) In sub-paragraph (6) “communications” means—
 - (a) communications between a professional legal adviser and the adviser’s client, or
 - (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.
- (8) In this paragraph “trader” has the same meaning as in Part 1 of this Act.

Power to seize and detain goods

- 28
- (1) The officer may seize and detain goods other than documents (for which see paragraph 29).
 - (2) An officer seizing goods under this paragraph from premises which are occupied must produce evidence of the officer’s identity and authority to an occupier of the premises before seizing them.
 - (3) The officer need not comply with sub-paragraph (2) if it is not reasonably practicable to do so.
 - (4) An officer seizing goods under this paragraph must take reasonable steps to—
 - (a) inform the person from whom they are seized that they have been seized, and
 - (b) provide that person with a written record of what has been seized.
 - (5) If, under this paragraph, an officer seizes any goods from a vending machine, the duty in sub-paragraph (4) also applies in relation to—
 - (a) the person whose name and address are on the vending machine as the owner of the machine, or
 - (b) if there is no such name and address on the machine, the occupier of the premises on which the machine stands or to which it is fixed.
 - (6) In determining the steps to be taken under sub-paragraph (4), an officer exercising a power under this paragraph in England and Wales or Northern Ireland must have regard to any relevant provision about the seizure of property made by—
 - (a) a code of practice under section 66 of the Police and Criminal Evidence Act 1984, or
 - (b) a code of practice under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341 (NI 12)),(as the case may be).
 - (7) Goods seized under this paragraph (except goods seized for a purpose mentioned in paragraph 19(5)(b)) may not be detained—

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- (a) for a period of more than 3 months beginning with the day on which they were seized, or
- (b) where the goods are reasonably required to be detained for a longer period by the enforcer for a purpose for which they were seized, for longer than they are required for that purpose.

Power to seize documents required as evidence

- 29 (1) The officer may seize and detain documents.
- (2) An officer seizing documents under this paragraph from premises which are occupied must produce evidence of the officer’s identity and authority to an occupier of the premises before seizing them.
- (3) The officer need not comply with sub-paragraph (2) if it is not reasonably practicable to do so.
- (4) An officer seizing documents under this paragraph must take reasonable steps to—
- (a) inform the person from whom they are seized that they have been seized, and
 - (b) provide that person with a written record of what has been seized.
- (5) In determining the steps to be taken under sub-paragraph (4), an officer exercising a power under this paragraph in England and Wales or Northern Ireland must have regard to any relevant provision about the seizure of property made by—
- (a) a code of practice under section 66 of the Police and Criminal Evidence Act 1984, or
 - (b) a code of practice under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341 (NI 12)),
- (as the case may be).
- (6) This paragraph does not confer any power on an officer to seize from a person any document which the person would be entitled to refuse to produce—
- (a) in proceedings in the High Court on the grounds of legal professional privilege, or
 - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.
- (7) In sub-paragraph (6) “communications” means—
- (a) communications between a professional legal adviser and the adviser’s client, or
 - (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.
- (8) Documents seized under this paragraph may not be detained—
- (a) for a period of more than 3 months beginning with the day on which they were seized, or
 - (b) where the documents are reasonably required to be detained for a longer period by the enforcer for the purposes of the proceedings for which they were seized, for longer than they are required for those purposes.

Power to decommission or switch off fixed installations

- 30 (1) The power in sub-paragraph (2) is available to an officer of a domestic enforcer acting pursuant to the duty in regulation 37(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations 2006 (SI 2006/3418).
- (2) The officer may decommission or switch off any fixed installation (as defined in those Regulations) or part of such an installation.

Power to break open container etc

- 31 (1) The officer may, for the purpose of exercising any of the powers in paragraphs 28 to 30, require a person with authority to do so—
- (a) break open any container,
 - (b) open any vending machine, or
 - (c) access any electronic device in which information may be stored or from which it may be accessed.
- (2) Where a requirement under sub-paragraph (1) has not been complied with, the officer may, for the purpose of exercising any of the powers in paragraphs 28 to 30—
- (a) break open the container,
 - (b) open the vending machine, or
 - (c) access the electronic device.
- (3) Sub-paragraph (1) or (2) applies if and to the extent that the exercise of the power in that sub-paragraph is reasonably necessary for the purposes for which that power may be exercised.
- (4) In this paragraph “container” means anything in which goods may be stored.

Power to enter premises with warrant

- 32 (1) A justice of the peace may issue a warrant authorising an officer of an enforcer to enter premises if satisfied, on written information on oath given by such an officer, that there are reasonable grounds for believing that—
- (a) condition A or B is met, and
 - (b) condition C, D or E is met.
- (2) Condition A is that on the premises there are—
- (a) products which an officer of the enforcer has power to inspect under paragraph 25, or
 - (b) documents which an officer of the enforcer could require a person to produce under paragraph 27.
- (3) Condition B is that, on the premises—
- (a) in the case of a domestic enforcer, there has been or is about to be a breach of the enforcer’s legislation,
 - (b) in the case of an EU enforcer, there has been or is about to be a Community infringement as defined in section 212 of the Enterprise Act 2002, or
 - (c) in the case of an EU enforcer, there has been a failure to comply with a measure specified in paragraph 20(3)(b), (c) or (d).
- (4) Condition C is that—

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- (a) access to the premises has been or is likely to be refused, and
 - (b) notice of the enforcer’s intention to apply for a warrant under this paragraph has been given to the occupier of the premises.
- (5) Condition D is that it is likely that products or documents on the premises would be concealed or interfered with if notice of entry on the premises were given to the occupier of the premises.
- (6) Condition E is that—
- (a) the premises are unoccupied, or
 - (b) the occupier of the premises is absent, and it might defeat the purpose of the entry to wait for the occupier’s return.
- (7) In the application of this paragraph to Scotland—
- (a) the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to a sheriff, and
 - (b) the reference in that sub-paragraph to information on oath is to be read as a reference to evidence on oath.
- (8) In the application of this paragraph to Northern Ireland—
- (a) the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to a lay magistrate, and
 - (b) the reference in that sub-paragraph to written information is to be read as a reference to a written complaint.

Entry to premises under warrant

- 33 (1) A warrant under paragraph 32 authorises an officer of the enforcer to enter the premises at any reasonable time, using reasonable force if necessary.
- (2) A warrant under that paragraph ceases to have effect at the end of the period of one month beginning with the day it is issued.
- (3) An officer entering premises under a warrant under paragraph 32 may be accompanied by such persons, and may take onto the premises such equipment, as the officer thinks necessary.
- (4) If the premises are occupied when the officer enters them, the officer must produce the warrant for inspection to an occupier of the premises.
- (5) Sub-paragraph (6) applies if the premises are unoccupied or the occupier is temporarily absent.
- (6) On leaving the premises the officer must—
- (a) leave a notice on the premises stating that the premises have been entered under a warrant under paragraph 32, and
 - (b) leave the premises as effectively secured against trespassers as the officer found them.

Power to require assistance from person on premises

- 34 (1) If an officer of an enforcer has entered premises under the power in paragraph 23(1) or under a warrant under paragraph 32, the officer may require any person on the

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premises to provide such assistance or information as the officer reasonably considers necessary.

- (2) Sub-paragraph (3) applies if an officer of a domestic enforcer has entered premises under the power in paragraph 23(1) or under a warrant under paragraph 32 for the purposes of the enforcement of—
- (a) the Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659), or
 - (b) the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (SR 2011/331).
- (3) The officer may, in particular, require any person on the premises to provide such information as the person possesses about the name and address of the packer and of any importer of a package which the officer finds on the premises.
- (4) In sub-paragraph (3) “importer”, “package” and “packer” have the same meaning as in—
- (a) the Weights and Measures (Packaged Goods) Regulations 2006 (see regulation 2), in the case of a domestic enforcer in Great Britain, or
 - (b) the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (see regulation 2), in the case of a domestic enforcer in Northern Ireland.

Definitions for purposes of this Part

35 In this Part of this Schedule—

- “goods” has the meaning given by section 2(8);
- “occupier”, in relation to premises, means any person an officer of an enforcer reasonably suspects to be the occupier of the premises;
- “premises” includes any stall, vehicle, vessel or aircraft;
- “product” means—
 - (a) goods,
 - (b) a service,
 - (c) digital content, as defined in section 2(9),
 - (d) immovable property, or
 - (e) rights or obligations.

PART 5

PROVISIONS SUPPLEMENTARY TO PARTS 3 AND 4

Offence of obstruction

- 36 (1) A person commits an offence if the person—
- (a) intentionally obstructs an enforcer or an officer of an enforcer who is exercising or seeking to exercise a power under Part 4 of this Schedule in accordance with that Part,
 - (b) intentionally fails to comply with a requirement properly imposed by an enforcer or an officer of an enforcer under Part 4 of this Schedule, or

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- (c) without reasonable cause fails to give an enforcer or an officer of an enforcer any other assistance or information which the enforcer or officer reasonably requires of the person for a purpose for which the enforcer or officer may exercise a power under Part 4 of this Schedule.
- (2) A person commits an offence if, in giving information of a kind referred to in sub-paragraph (1)(c), the person—
- (a) makes a statement which the person knows is false or misleading in a material respect, or
 - (b) recklessly makes a statement which is false or misleading in a material respect.
- (3) A person who is guilty of an offence under sub-paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) Nothing in this paragraph requires a person to answer any question or give any information if to do so might incriminate that person.

Offence of purporting to act as officer

- 37 (1) A person who is not an officer of an enforcer commits an offence if the person purports to act as such under Part 3 or 4 of this Schedule.
- (2) A person who is guilty of an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) If section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force on or before the day on which this Act is passed—
- (a) section 85 of that Act (removal of limit on certain fines on conviction by magistrates' court) applies in relation to the offence in this paragraph as if it were a relevant offence (as defined in section 85(3) of that Act), and
 - (b) regulations described in section 85(11) of that Act may amend or otherwise modify sub-paragraph (2).

Access to seized goods and documents

- 38 (1) This paragraph applies where anything seized by an officer of an enforcer under Part 4 of this Schedule is detained by the enforcer.
- (2) If a request for permission to be granted access to that thing is made to the enforcer by a person who had custody or control of it immediately before it was seized, the enforcer must allow that person access to it under the supervision of an officer of the enforcer.
- (3) If a request for a photograph or copy of that thing is made to the enforcer by a person who had custody or control of it immediately before it was seized, the enforcer must—
- (a) allow that person access to it under the supervision of an officer of the enforcer for the purpose of photographing or copying it, or
 - (b) photograph or copy it, or cause it to be photographed or copied.
- (4) Where anything is photographed or copied under sub-paragraph (3), the photograph or copy must be supplied to the person who made the request within a reasonable time from the making of the request.

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- (5) This paragraph does not require access to be granted to, or a photograph or copy to be supplied of, anything if the enforcer has reasonable grounds for believing that to do so would prejudice the investigation for the purposes of which it was seized.
- (6) An enforcer may recover the reasonable costs of complying with a request under this paragraph from the person by whom or on whose behalf it was made.
- (7) References in this paragraph to a person who had custody or control of a thing immediately before it was seized include a representative of such a person.

Notice of testing of goods

- 39
- (1) Sub-paragraphs (3) and (4) apply where goods purchased by an officer of a domestic enforcer under paragraph 21 are submitted to a test and as a result—
 - (a) proceedings are brought for a breach of, or under, the enforcer’s legislation or for the forfeiture of the goods by the enforcer, or
 - (b) a notice is served by the enforcer preventing a person from doing any thing.
 - (2) Sub-paragraphs (3) and (4) also apply where goods seized by an officer of a domestic enforcer under paragraph 28 are submitted to a test.
 - (3) The enforcer must inform the relevant person of the results of the test.
 - (4) The enforcer must allow a relevant person to have the goods tested if it is reasonably practicable to do so.
 - (5) In sub-paragraph (3) “relevant person” means the person from whom the goods were purchased or seized or, where the goods were purchased or seized from a vending machine—
 - (a) the person whose name and address are on the vending machine as the owner of the machine, or
 - (b) if there is no such name and address on the machine, the occupier of the premises on which the machine stands or to which it is fixed.
 - (6) In sub-paragraph (4) “relevant person” means—
 - (a) a person within sub-paragraph (5),
 - (b) in a case within sub-paragraph (1)(a), a person who is a party to the proceedings, and
 - (c) in a case within sub-paragraph (1)(b), a person with an interest in the goods.

Appeals against detention of goods and documents

- 40
- (1) This paragraph applies where goods or documents are being detained as the result of the exercise of a power in Part 4 of this Schedule.
 - (2) A person with an interest in the goods or documents may apply for an order requiring them to be released to that or another person.
 - (3) An application under this paragraph may be made in England and Wales or Northern Ireland—
 - (a) to any magistrates’ court in which proceedings have been brought for an offence as the result of the investigation in the course of which the goods or documents were seized,

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- (b) to any magistrates' court in which proceedings have been brought for the forfeiture of the goods or documents or (in the case of seized documents) any goods to which the documents relate, or
 - (c) if no proceedings within paragraph (a) or (b) have been brought, by way of complaint to a magistrates' court.
- (4) An application under this paragraph may be made in Scotland by summary application to the sheriff.
- (5) On an application under this paragraph, the court or sheriff may make an order requiring goods to be released only if satisfied that condition A or B is met.
- (6) Condition A is that—
- (a) no proceedings have been brought—
 - (i) for an offence as the result of the investigation in the course of which the goods or documents were seized, or
 - (ii) for the forfeiture of the goods or documents or (in the case of seized documents) any goods to which the documents relate, and
 - (b) the period of 6 months beginning with the date the goods or documents were seized has expired.
- (7) Condition B is that—
- (a) proceedings of a kind mentioned in sub-paragraph (6)(a) have been brought, and
 - (b) those proceedings have been concluded without the goods or documents being forfeited.
- (8) A person aggrieved by an order made under this paragraph by a magistrates' court, or by the decision of a magistrates' court not to make such an order, may appeal against the order or decision—
- (a) in England and Wales, to the Crown Court;
 - (b) in Northern Ireland, to a county court.
- (9) An order made under this paragraph by a magistrates' court may contain such provision as the court thinks appropriate for delaying its coming into force pending the making and determination of any appeal.
- (10) In sub-paragraph (9) “appeal” includes an application under section 111 of the Magistrates' Courts Act 1980 or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (SI 1981/1675 (NI 26)) (statements of case).

Compensation

- 41 (1) This paragraph applies where an officer of an enforcer has seized and detained goods under Part 4 of this Schedule for a purpose within paragraph 19(5)(a) or 20(5)(a).
- (2) The enforcer must pay compensation to any person with an interest in the goods in respect of any loss or damage caused by the seizure and detention, if the condition in sub-paragraph (3) or (4) that is relevant to the enforcer is met.
- (3) The condition that is relevant to a domestic enforcer is that—
- (a) the goods have not disclosed a breach of the enforcer's legislation, and
 - (b) the power to seize and detain the goods was not exercised as a result of any neglect or default of the person seeking the compensation.

- (4) The condition that is relevant to an EU enforcer is that—
- (a) the goods have not disclosed a Community infringement or a failure to comply with a measure specified in paragraph 20(3)(b), (c) or (d), and
 - (b) the power to seize and detain the goods was not exercised as a result of any neglect or default of the person seeking the compensation.
- (5) Any dispute about the right to or amount of any compensation payable under this paragraph is to be determined—
- (a) in England and Wales or Northern Ireland, by arbitration, or
 - (b) in Scotland, by a single arbitrator appointed by the parties or, if there is no agreement between the parties as to that appointment, by the sheriff.

Meaning of “goods” in this Part

- 42 In this Part of this Schedule “goods” does not include a document.

PART 6

EXERCISE OF ENFORCEMENT FUNCTIONS BY AREA ENFORCERS

Interpretation of this Part

- 43 In this Part, “area enforcer” means—
- (a) a local weights and measures authority in Great Britain,
 - (b) a district council in England, or
 - (c) a district council in Northern Ireland.

Investigatory powers

- 44 (1) Sub-paragraphs (3) to (6) apply in relation to an area enforcer’s exercise, in accordance with this Schedule, of a power in Part 3 or 4 of this Schedule.
- (2) Sub-paragraphs (3) to (6) also apply in relation to an area enforcer’s exercise of an investigatory power—
- (a) conferred by legislation which, by virtue of a provision listed in paragraph 10 of this Schedule, the area enforcer has a duty or power to enforce, or conferred by legislation under which such legislation is made, or
 - (b) conferred by legislation listed in the second column of the table in paragraph 11 of this Schedule,
- for the purpose of ascertaining whether there has been a breach of that legislation or of any notice issued by the area enforcer under that legislation.
- (3) A local weights and measures authority in England or Wales may exercise the power in a part of England or Wales which is outside that authority’s area.
- (4) A local weights and measures authority in Scotland may exercise the power in a part of Scotland which is outside that authority’s area.
- (5) A district council in England may exercise the power in a part of England which is outside that council’s district.

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- (6) A district council in Northern Ireland may exercise the power in a part of Northern Ireland which is outside that council's district.

Civil proceedings

- 45 (1) Sub-paragraphs (4) to (7) apply in relation to civil proceedings which may be brought by an area enforcer under—
- (a) Part 8 of the Enterprise Act 2002,
 - (b) Schedule 3 to this Act,
 - (c) legislation which, by virtue of a provision listed in paragraph 10 of this Schedule, the area enforcer has a duty or power to enforce,
 - (d) legislation under which legislation mentioned in paragraph (c) is made, or
 - (e) legislation listed in the second column of the table in paragraph 11 of this Schedule.
- (2) Sub-paragraphs (4) to (7) also apply in relation to an application for forfeiture which may be made by an area enforcer, in circumstances where there are no related criminal proceedings,—
- (a) under section 35ZC of the Registered Designs Act 1949,
 - (b) under section 16 of the Consumer Protection Act 1987,
 - (c) under section 97 of the Trade Marks Act 1994 (including as applied by section 11 of the Olympic Symbol etc (Protection) Act 1995), or
 - (d) under legislation which, by virtue of a provision listed in paragraph 10 of this Schedule, the area enforcer has a duty or power to enforce.
- (3) In sub-paragraphs (4), (5), (6) and (7), the reference to civil proceedings includes a reference to an application mentioned in sub-paragraph (2).
- (4) A local weights and measures authority in England or Wales may bring civil proceedings in respect of conduct in a part of England or Wales which is outside that authority's area.
- (5) A local weights and measures authority in Scotland may bring civil proceedings in respect of conduct in a part of Scotland which is outside that authority's area.
- (6) A district council in England may bring civil proceedings in respect of conduct in a part of England which is outside that council's district.
- (7) A district council in Northern Ireland may bring civil proceedings in respect of conduct in a part of Northern Ireland which is outside that council's district.

Criminal proceedings

- 46 (1) A local weights and measures authority in England or Wales may bring proceedings for a consumer offence allegedly committed in a part of England or Wales which is outside that authority's area.
- (2) In sub-paragraph (1) "a consumer offence" means—
- (a) an offence under legislation which, by virtue of a provision listed in paragraph 10 of this Schedule, a local weights and measures authority in England or Wales has a duty or power to enforce,
 - (b) an offence under legislation under which legislation within paragraph (a) is made,

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

- (c) an offence under legislation listed in the second column of the table in paragraph 11 of this Schedule in relation to which a local weights and measures authority is listed in the corresponding entry in the first column of the table as an enforcer,
 - (d) an offence originating from an investigation into a breach of legislation mentioned in paragraph (a), (b) or (c), or
 - (e) an offence described in paragraph 36 or 37 of this Schedule.
- (3) A district council in England may bring proceedings for a consumer offence allegedly committed in a part of England which is outside that council’s district.
- (4) In sub-paragraph (3) “a consumer offence” means—
- (a) an offence under legislation which, by virtue of a provision listed in paragraph 10 of this Schedule, a district council in England has a duty or power to enforce,
 - (b) an offence under legislation under which legislation within paragraph (a) is made,
 - (c) an offence originating from an investigation into a breach of legislation mentioned in paragraph (a) or (b), or
 - (d) an offence described in paragraph 36 or 37 of this Schedule.
- (5) A district council in Northern Ireland may bring proceedings for a consumer offence allegedly committed in a part of Northern Ireland which is outside that council’s district.
- (6) In sub-paragraph (5) “a consumer offence” means—
- (a) an offence under legislation which, by virtue of a provision listed in paragraph 10 of this Schedule, a district council in Northern Ireland has a duty or power to enforce,
 - (b) an offence under legislation under which legislation within paragraph (a) is made,
 - (c) an offence originating from an investigation into a breach of legislation mentioned in paragraph (a) or (b), or
 - (d) an offence described in paragraph 36 or 37 of this Schedule.