

## SCHEDULE 2

Regulation 16

### ENFORCEMENT OF REGULATIONS 6, 9 AND 14

#### **Enforcement of the relevant provisions**

1.—(1) This Schedule shall have effect for the purposes of providing for the enforcement of regulations 6(1), 9(1) and 14(1), and in this Schedule, each such provision is hereinafter referred to as a “relevant provision”.

(2) Nothing in paragraphs 4 or 5 below shall be taken to authorise the taking of any action in relation to any equipment which has been sold or rented out or otherwise made available as the case may be to a viewer, where the viewer has physically taken delivery of the equipment, provided that—

- (a) nothing in this paragraph shall prevent an enforcement authority or an officer of such authority from taking any other action authorised by this Schedule in relation to such equipment; or
- (b) nothing in this Schedule shall prevent the viewer from taking any action or bringing any proceedings which he might otherwise take or bring in respect of such equipment.

#### **Enforcement authorities**

2.—(1) It shall be the duty of the following authorities to enforce the relevant provisions—

- (a) in England and Wales, weights and measures authorities; and
- (b) in Northern Ireland, the Department of Economic Development.

(2) The Secretary of State may enforce the relevant provisions.

(3) In this Schedule, “enforcement authority” means any person who is, pursuant to the provisions of this paragraph, authorised to enforce the relevant provisions.

#### **Test purchases**

3.—(1) An enforcement authority shall have the power, for the purposes of ascertaining whether any equipment which is required to comply with a relevant provision does in fact so comply, to make, or authorise an officer of the authority to make, any purchase of equipment.

(2) Where—

- (a) any equipment purchased pursuant to this paragraph by or on behalf of an enforcement authority is submitted to a test;
- (b) the test leads to the bringing of forfeiture proceedings in respect of that equipment or equipment of the same description pursuant to paragraph 7 or 8 below; and
- (c) the authority is requested to do so and it is practicable for the authority to comply with the request,

the authority shall allow the person from whom the equipment was purchased or any person who is a party to the proceedings or has an interest in any equipment to which the notice relates to have the apparatus tested.

(3) In this paragraph, “purchase” includes, where equipment is only available to rent, renting, and where consumer equipment capable of descrambling digital television signals is only made available by a method otherwise than by way of sale or rent, obtaining such equipment by that method, and cognate expressions shall be construed accordingly.

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### **Powers of search etc.**

4.—(1) Subject to paragraph 5 below, a duly authorised officer of an enforcement authority may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by the following provisions of this paragraph.

(2) The officer may, for the purposes of ascertaining whether there has been a contravention of a relevant provision—

- (a) inspect any equipment and enter any premises other than premises occupied only as a person's residence; or
- (b) examine any procedure connected with the production of any equipment.

(3) If the officer has reasonable grounds for suspecting that there has been a contravention of a relevant provision, he may for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain any equipment.

(4) The officer may seize and detain—

- (a) any document, record or information or any other thing which he has reasonable grounds for believing may be required—
  - (i) as evidence in proceedings for forfeiture under paragraph 7 or 8 below; or
  - (ii) by the authorities of a member State other than the United Kingdom for the purposes of the exercise of its functions with regard to the Directive;
- (b) any equipment which he has reasonable grounds for suspecting may be liable to be forfeited.

(5) The officer may, for the purposes of the exercise of his powers under sub-paragraphs (3) or (4) above to seize any equipment, any document, record or information or any other thing—

- (a) require any person having authority to do so to open any container; and
- (b) himself open or break open any such container where a requirement made under sub-paragraph (a) above in relation to the container has not been complied with.

### **Provisions supplemental to paragraph 4**

5.—(1) An officer seizing any equipment, documents, records or information or any other thing under paragraph 4 above shall inform the person from whom they are seized that such equipment, document, record or information or other thing have been so seized.

(2) If a justice of the peace—

- (a) is satisfied by any written information on oath that there are reasonable grounds for believing either—
  - (i) that any equipment, documents, records or information or any other thing which any officer has power to inspect under paragraph 4 above are on any premises (which may be premises occupied only as a person's residence) and that such inspection is likely to disclose evidence that there has been a contravention of a relevant provision; or
  - (ii) that such a contravention has taken place, is taking place or is about to take place on any premises; and
- (b) is also satisfied by any such information either—
  - (i) that admission to the premises has been or is likely to be refused and that notice of an intention to apply for a warrant under this sub-paragraph has been given to the occupier; or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the justice may by warrant under his hand, which shall continue in force for one month, authorise any officer of an enforcement authority to enter the premises, if need be by force.

(3) An officer entering any premises by virtue of paragraph 4 above or a warrant under sub-paragraph (2) of this paragraph may take with him such other persons and such equipment as may appear to him to be necessary.

(4) On leaving any premises which a person is authorised to enter by a warrant under sub-paragraph (2) of this paragraph, that person shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(5) Where any equipment seized by an officer under paragraph 4 above is submitted to a test, the officer shall inform the person mentioned in sub-paragraph (1) of this paragraph of the result of the test and, if—

(a) proceedings are brought in respect of a contravention of a relevant provision for the forfeiture of the equipment concerned; and

(b) the officer is requested to do so and it is practicable to comply with the request,

the officer shall allow any person who is a party to the proceedings or has an interest in the equipment to have the equipment tested.

(6) In the application of this paragraph to Northern Ireland, the references in sub-paragraph (2) above to any information on oath shall be construed as references to any complaint on oath.

### **Appeals against detention of equipment**

6.—(1) Any person having an interest in any equipment, document, record, information or other thing which is for the time being detained under any provision of this Schedule by an enforcement authority or by an officer if such an authority may apply for an order requiring such item to be released to him or to another person.

(2) An application under this paragraph may be made—

(a) to any magistrates' court in which proceedings for forfeiture have been brought in England and Wales and Northern Ireland; or

(b) where no such proceedings have been brought, by way of complaint to a magistrates' court.

(3) On an application under this paragraph to a magistrates' court, an order requiring equipment to be released shall be made only if the court is satisfied—

(a) that proceedings for the forfeiture of the equipment under paragraph 7 below have not been brought, or, having been brought, have been concluded without the equipment being forfeited; and

(b) where no such proceedings have been brought, that more than six months have elapsed since the equipment was seized.

(4) Any person aggrieved by an order made under this paragraph by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—

(a) in England and Wales, to the Crown Court;

(b) in Northern Ireland, to the county court;

and an order so made may contain such provision as appears to the court appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any

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application under section 111 of the Magistrates' Courts Act 1980(1) or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981(2).

### **Proceedings in England and Wales or Northern Ireland for forfeiture**

7.—(1) Where in England and Wales or Northern Ireland any equipment has been seized and detained by an officer of an enforcement authority pursuant to paragraph 4 above, an officer of that authority may apply to a justice of the peace acting for the petty sessions area in which the equipment was seized (referred to below in this paragraph as the relevant petty sessions area) to initiate proceedings for forfeiture of the equipment under this paragraph.

(2) An application under this paragraph must be made within the period of six months beginning with the date on which the equipment to which it relates was seized.

(3) A justice of the peace to whom an application under this paragraph is made may issue a summons to any person appearing to him to be the owner of or otherwise interested in any equipment to which the application relates requiring him to appear on a day specified in the summons before a magistrates' court acting for the relevant petty sessions area to show cause why the equipment should not be forfeited.

(4) In addition to the person summoned, any other person claiming to be the owner of or otherwise interested in any equipment to which an application under this paragraph relates shall be entitled to appear before the court on the day specified in the summons to show cause why it should not be forfeited.

(5) Subject to the following provisions of this paragraph, where any equipment is brought before a magistrates' court in proceedings under this paragraph and the court is satisfied that the equipment contravenes the relevant provision, the court shall order the equipment to be forfeited to the enforcement authority concerned, unless the person summoned or any other person entitled to appear before the court for that purpose shows cause why the equipment should not be forfeited.

(6) If the person summoned does not appear, the court shall not make an order under this paragraph unless service of the summons is proved.

(7) Where in any proceedings under this paragraph an order is made for the forfeiture of any equipment, any person who appeared, or who was entitled to appear, to show cause against the making of the order may appeal to the Crown Court.

(8) No order for the forfeiture of any equipment made under this paragraph shall take effect—

- (a) until the end of the period of twenty-one days after the day on which the order is made; or
- (b) if appeal proceedings are brought in respect of the order within that period (whether by way of appeal to the Crown Court or by way of case stated for the opinion of the High Court), until the conclusion of those proceedings.

(9) If a magistrates' court does not order forfeiture of any equipment brought before it in proceedings under this paragraph the court may if it thinks fit order the person on whose application the proceedings were initiated to pay such costs as the court thinks reasonable to any person who has appeared before the court to show cause why the equipment should not be forfeited; and costs ordered to be paid under this sub-paragraph shall be enforceable as a civil debt.

(10) Any equipment ordered to be forfeited under this paragraph may be disposed of by the enforcement authority concerned in such manner as it thinks fit.

(11) This paragraph has effect notwithstanding anything in section 140 of the Magistrates' Courts Act 1980 or article 58 of the Magistrates' Courts (Northern Ireland) Order 1981 (disposal of non-pecuniary forfeitures).

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(1) 1980 c. 43.

(2) S.I.1981/1675 (N.I. 26) (statement of case).

(12) In the application of this paragraph to Northern Ireland references to a petty sessions area shall be read as references to a petty sessions district.

### **Power of the court to require matter to be remedied**

8.—(1) Where an application is made for the forfeiture of any equipment in respect of any matters which it appears to the court to be matters which it is in the power of any person who appears or who is entitled to appear to show cause why such equipment should not be forfeited to remedy, the court may, instead of ordering the equipment to be forfeited, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.

(2) The time fixed by an order under sub-paragraph (1) above may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this sub-paragraph, as the case may be.

### **Recovery of expenses of enforcement**

9.—(1) This paragraph applies where a court makes an order under paragraph 7 or 8 above.

(2) The court may (in addition to any other order it may make as to costs) order the person appearing to be the owner of or otherwise interested in the equipment or from whom the equipment was seized, to reimburse the enforcement authority for any expenditure which has been or may be incurred by that authority—

- (a) in investigating the contravention, and, without prejudice to the generality of the foregoing, in having the equipment tested; or
- (b) in connection with any seizure or detention of the equipment by or on behalf of the authority.

### **Application in England and Wales of certain provisions of the Police and Criminal Evidence Act 1984**

10.—(1) Whilst nothing in these Regulations shall be taken as providing that a contravention of a relevant provision constitutes a criminal offence, sections 15, 16, 20 and 21 of the Police and Criminal Evidence Act 1984<sup>(3)</sup> shall apply to the exercise by an officer of an enforcement authority of the powers conferred by this Schedule as they apply to a constable.

(2) This paragraph applies to England and Wales only.

### **Application in Northern Ireland of certain provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989**

11.—(1) Whilst nothing in these Regulations shall be taken as providing that a contravention of a relevant provision constitutes a criminal offence, articles 17, 18, 22 and 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989<sup>(4)</sup> shall apply to the exercise by an officer of an enforcement authority of the powers conferred by this Schedule as they apply to a constable.

(2) This paragraph applies to Northern Ireland only.

### **Interpretation**

12.—(1) In this Schedule—  
“equipment” means—

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<sup>(3)</sup> 1984 c. 60.

<sup>(4)</sup> S.I. 1989/1341 (N.I. 12).

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- (a) a relation to regulation 6, a television set;
  - (b) in relation to regulation 9, consumer equipment capable of descrambling digital television signals; and
  - (c) in relation to regulation 14, a television set containing an integrated digital decoders;
- “forfeiture” means forfeiture under paragraph 7 above, and “forfeited” shall be construed accordingly; and

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or movable structure,

and in this definition, “offshore installation” has the meaning given to it by section 1 of the Mineral Workings (Offshore Installations) Act 1971(5).

(2) In this Schedule, “document, record or information” includes any computer disk or other electronic, magnetic or electromagnetic means upon which the document, record or information is or is reasonably believed to be stored.

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(5) 1971 c. 61.