

SCHEDULE 5

OFFENCES, ENFORCEMENT AND OTHER MATTERS

PART I

PROVISIONS AS TO OFFENCES

Offences and penalties

- 1.—(1) It shall be an offence to contravene—
regulation 4 (suppliers' duties in respect of labels);
regulation 5 (suppliers' duties in respect of information notices);
regulation 8 (suppliers' duties in respect of technical documentation);
regulation 9 (dealers' duty in respect of displayed appliances);
regulation 10 (dealers' duty in respect of information notices);
regulation 12 (printed communications);
regulation 13 (misleading information);
paragraph 5 of this Schedule (obstruction of authorised officers);
paragraph 11(8) of this Schedule (prohibition of purported search and seizure by unauthorised person); or
paragraph 15(1) of this Schedule (restrictions on disclosure of information).
- (2) A person guilty of the offence of contravening paragraph 15(1) shall be liable on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine.
- (3) A person guilty of any offence specified in sub-paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Prosecution of offences

- 2.—(1) Proceedings for an offence under these Regulations shall not be instituted—
(a) in England and Wales, except by an enforcement authority; and
(b) in Northern Ireland, except by or on behalf of the enforcement authority or the Director of Public Prosecutions for Northern Ireland.
- (2) Proceedings for an offence under these Regulations, other than proceedings for an offence under paragraph 15(1), shall not be instituted—
(a) unless there has been served on the person charged a notice in writing of the date and nature of the offence alleged and, where the proceedings are in respect of one or more appliances of the same model tested on the same occasion under paragraph 10(3) (testing of purchased or seized appliances), of the results of the tests of all those appliances; or
(b) unless the said notice was served before the expiration of the period of thirty days beginning with the date when evidence which the person proposing to institute the proceedings considers is sufficient to justify a prosecution for the offence came to his knowledge; or
(c) after the expiration of the period—
(i) of twelve months beginning with the date mentioned in paragraph (a) above, or

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- (ii) of three months beginning with the date mentioned in paragraph (b) above, whichever first occurs.
- (3) For the purposes of sub-paragraph (2)—
 - (a) a certificate of a person who institutes proceedings for an offence mentioned in that sub-paragraph which states that evidence came to his knowledge on a particular date shall be conclusive of that fact;
 - (b) a document purporting to be a certificate of such a person and to be signed by him or on his behalf shall be presumed to be such a certificate unless the contrary is proved; and
 - (c) such a certificate shall not be received in evidence—
 - (i) unless the party against whom it is to be given in evidence has been served with a copy thereof not less than seven clear days before the hearing; or
 - (ii) if that party has, not less than three clear days before the hearing, served on the other party a notice requiring the attendance of the person issuing the certificate.
- (4) For the purposes of any proceedings for an offence in Scotland—
 - (a) sub-paragraph (2) shall apply as if the word “instituted” read “brought”;
 - (b) sub-paragraph (2)(b) shall apply as if the words “which the person proposing to institute the proceedings considers is sufficient to justify a prosecution for the offence came to his knowledge” read “sufficient in the opinion of the procurator fiscal to justify proceedings came to his knowledge”;
 - (c) sub-paragraph (3)(a) shall apply as if the words “a person who institutes” read “the procurator fiscal who brings”; and
 - (d) sub-paragraph (3)(b) shall apply as if the words “such a person” read “the procurator fiscal”;
 - (e) sub-paragraph (3)(c) shall apply as if the word “hearing” read “trial diet”.

Defences

3.—(1) In proceedings against a person for an offence under these Regulations, it shall be a defence for that person to show that he believed that these Regulations did not apply and he had no reasonable grounds for believing that these Regulations might apply.

(2) Subject to sub-paragraphs (3) to (5), in proceedings against a person for an offence under these Regulations it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(3) Where in any proceedings (which in Scotland include the trial diet) against any person for such an offence the defence provided for by sub-paragraph (2) involves an allegation that the commission of the offence was due—

- (a) to the act or default of another, or
- (b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings (or, in Scotland, the trial diet), he has served a notice under sub-paragraph (4) on the person bringing the proceedings.

(4) A notice under this sub-paragraph shall give such information identifying or assisting in the identification of the person who is alleged to have committed the act or default or to have given the information as is in the possession of the person serving the notice at the time he serves it.

(5) A person shall not be entitled to rely on the defence provided by sub-paragraph (2) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to whether he had any reason to disbelieve the information, and
- (b) in the case of a supplier, to the steps which he took and those which might reasonably have been taken, for the purpose of verifying the information.

Liability of a person other than the principal offender

4.—(1) Where the commission by any person of an offence under these Regulations is due to an act or default committed by some other person in the course of any business of his, that other person shall be guilty of the offence and may be proceeded against and punished by virtue of this sub-paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of sub-paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, sub-paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) Where a Scottish partnership is guilty of an offence under these Regulations (including where it is so guilty by virtue of sub-paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner in the partnership, he, as well as the partnership, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.