
STATUTORY INSTRUMENTS

1998 No. 1165

The Packaging (Essential Requirements) Regulations 1998

**PART IV
ENFORCEMENT**

Enforcement Authorities

13.—(1) It shall be the duty of the following authorities to enforce these Regulations within their area—

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

(2) For the purposes of providing for the enforcement of these Regulations—

- (a) sections 14, 15, 28 to 35, 37, 38, 44 and 47 of the 1987 Act shall apply and in respect of proceedings for contravention thereof as if—
 - (i) references to safety provisions were references to these Regulations;
 - (ii) references to goods were references to packaging as the context may require;
 - (iii) in section 14, in sub-section (6), for “six months” there were substituted “three months”;
 - (iv) in sections 28, 29, 30, 33, 34 and 35, the words “or any provision made by or under Part III of this Act” on each occasion that they occur were omitted;
 - (v) in section 28, sub-sections (3), (4) and (5) were omitted;
 - (vi) in section 29, sub-section (4) was omitted;
 - (vii) in section 30, sub-sections (7) and (8) were omitted; and
 - (viii) in section 38(1), paragraphs (a) and (b) were omitted;
- (b) sections 39 and 40 of the 1987 Act shall apply to offences under section 32 of that Act as it is applied to these Regulations by sub-paragraph (a) above; and
- (c) in England and Wales, a magistrates' court may try an information in respect of an offence committed under these Regulations if the information is laid within twelve months from the time when the offence is committed, and in Scotland summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.

(3) Nothing in this regulation shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

(4) No action shall be taken by virtue of paragraphs (1) and (2) above before 1 January 1999 unless it could have been taken otherwise than by virtue of these Regulations.

(5) An enforcement authority shall, whenever the Secretary of State so directs, make a report to the Secretary of State on the exercise of the functions exercisable by that authority under these Regulations.

Offences

14. Any person who—

- (a) contravenes or fails to comply with regulation 6, 7, 8 or 9; or
- (b) fails to supply or retain technical documentation or other information as required by regulations 11 and 12;

shall be guilty of an offence.

Penalties

15.—(1) A person guilty of an offence under regulation 14(a) shall be liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
- (b) on conviction on indictment, to a fine.

(2) A person guilty of an offence under regulation 14(b) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

16.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulations 6, 7, 8 and 9, 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.

(2) Where in any proceedings against a person for such an offence the defence provided by paragraph (1) 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 later than 7 clear days before the hearing of the proceedings (or, in Scotland, the trial diet), he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) 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 the steps which he took and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

Liability of persons other than the principal offender

17.—(1) Where the commission by any person of an offence under regulations 6, 7, 8 and 9 is due to an act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this 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 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 other 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 any body corporate are managed by its members, 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) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.