

SCHEDULE 4

Regulation 18 and 37

Enforcement powers under Part 3

Powers of Health and Safety Executive

1.—(1) In relation to the enforcement of regulation 4(3) and of Part 3 by the Health and Safety Executive—

- (a) sections 19 to 28, 33 to 35, 38, 39, 41 and 42 of the 1974 Act shall apply as modified by paragraph 2; and
- (b) sections 36(1) and (2) and 37 of that Act shall apply in relation to offences under section 33 as modified by paragraph 2.

(2) The application of section 33 (and Schedule 3A) by paragraph (1) is subject to a penalty on summary conviction being no more than 3 months' imprisonment or a fine of level 5 on the standard scale.

2. For the purposes of the enforcement of these Regulations by the Health and Safety Executive the provisions specified in paragraph 1 shall apply as if—

- (a) references to “relevant statutory provisions” were references to those provisions as modified by this paragraph and to these Regulations;
- (b) references to an “enforcing authority” were references to the Health and Safety Executive;
- (c) reference to the “field of responsibility” of an enforcing authority, however expressed, were omitted;
- (d) in section 20, subsection (3) were omitted;
- (e) section 22, as well as permitting an inspector to serve a prohibition notice in the circumstances specified in section 22(2), permitted an inspector to serve a prohibition notice in any case where—
 - (i) a manufacturer, or where regulation 24(1)(b) applies, an importer, has failed to comply with the requirements of these Regulations in relation to the CE marking; and
 - (ii) the manufacturer or importer, as the case may be, has been served with an improvement notice under section 21 in respect of that failure and has continued to fail to comply after the period for remedying the contravention specified in the improvement notice;
- (f) in section 23, subsections (3), (4) and (6) were omitted;
- (g) in section 33, in subsection (1), the whole of paragraphs (a) to (d) were omitted;
- (h) in section 34—
 - (i) paragraphs (a) and (b) of subsection (1) were omitted; and
 - (ii) in subsection (3) for “six months” there were substituted “twelve months”; and
- (i) in section 42, subsections (3A), (4) and (5) were omitted.

Withdrawal notices

3.—(1) Subject to regulation 36(6) (presumption of conformity for CE marked articles) and 38 (requirements regarding prohibitions, restrictions and withdrawals), where the Health and Safety Executive or the Secretary of State, as the case may be, believes a pyrotechnic article—

- (a) in relation to which a manufacturer or, where regulation 24(1)(b) applies, an importer contravenes regulation 4(3) (categorisation) or in relation to which regulation 4(4) is contravened, or

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(b) falling within Part 3 of the regulations,

is liable to endanger the health and safety of persons the Health and Safety Executive or the Secretary of State may serve a notice (“a withdrawal notice”) requiring the person on whom it is served to take measures aimed at preventing a pyrotechnic article in the supply chain from being supplied, without its consent.

(2) A withdrawal notice may require the person on whom it is served to take action to alert consumers to the risks that the pyrotechnic article presents.

(3) A withdrawal notice may require the person on whom it is served to keep the Health and Safety Executive or the Secretary of State informed of the whereabouts of any pyrotechnic article referred to in the notice in which the person on whom it is served has an interest.

(4) A consent given by the Health and Safety Executive or the Secretary of State for the purposes of paragraph (1) may impose such conditions on the supply of a pyrotechnic article for which the consent is required as the Health and Safety Executive or the Secretary of State considers appropriate.

Supplementary provisions relating to withdrawal notices

4.—(1) A withdrawal notice shall have effect throughout the United Kingdom.

(2) Where the Health and Safety Executive or the Secretary of State serves a withdrawal notice in respect of a pyrotechnic article, the Health and Safety Executive or the Secretary of State shall be liable to pay compensation to a person having an interest in the article in respect of any loss or damage suffered by reason of the notice if—

- (a) the pyrotechnic article was not an article which contravened regulation 4(3), (4) or a provision in Part 3 of these Regulations nor an article which was liable to endanger the health and safety of persons; and
- (b) the exercise by the Health and Safety Executive or the Secretary of State of the power to serve the withdrawal notice was not attributable to any neglect or default by that person.

(3) Subject to regulation 36(6) (presumption of conformity for CE marked articles) and 38 (requirements regarding prohibitions, restrictions and withdrawals), the Health and Safety Executive or the Secretary of State may revoke a withdrawal notice which that person has served.

(4) Subject to regulation 36(6) (presumption of conformity for CE marked articles) and 38 (requirements regarding prohibitions, restrictions and withdrawals), the Health and Safety Executive or the Secretary of State may vary a withdrawal notice which that person has served, provided it is not made more restrictive for the person on whom it is served or more onerous for that person to comply with.

(5) Where the conditions for serving a withdrawal notice are satisfied and either—

- (a) the Health and Safety Executive or the Secretary of State, as the case may be, has been unable to identify any person on whom to serve such a notice; or
- (b) the person on whom such a notice has been served has failed to comply with it,
- (c) then the Health and Safety Executive or the Secretary of State may instead take such action as could have been required by a withdrawal notice.

(6) Where the Health and Safety Executive or the Secretary of State has exercised powers under paragraph (5) to take action following the failure of the person on whom the withdrawal notice has been served to comply with that notice, the Health and Safety Executive or the Secretary of State may if considered appropriate recover from that person summarily as a civil debt, any costs or expenses reasonably incurred by the Health and Safety Executive or the Secretary of State in undertaking the action under paragraph (5).

(7) A civil debt recoverable under the preceding paragraph may be recovered—

- (i) in England and Wales by way of complaint (pursuant to section 58 of the Magistrates' Courts Act 1980⁽¹⁾),
- (ii) in Northern Ireland in proceedings under Article 62 of the Magistrate's Court (Northern Ireland) Order 1981⁽²⁾.

Appeals against withdrawal notices

5.—(1) A person on whom a withdrawal notice has been served and a person having an interest in a pyrotechnic article in respect of which a withdrawal notice has been served may, before the end of the period of 21 days beginning with the day on which the notice was served, apply for an order to vary or set aside the terms of the notice.

(2) On an application under paragraph (1) the appropriate court shall make an order setting aside the notice only if satisfied that—

- (a) the pyrotechnic article was not an article liable to endanger the health and safety of persons, or
- (b) where applicable, regulation 38⁽¹⁾ (requirements regarding prohibitions etc) has not been complied with by, as the case may be, the Health and Safety Executive or the Secretary of State.

(3) On an application to vary the terms of a notice the appropriate court may vary the requirements specified in the notice as it considers appropriate.

(4) The appropriate court for the purposes of this paragraph is—

- (a) the court in England and Wales or Northern Ireland in which proceedings have been brought in relation to the pyrotechnic article for—
 - (i) contravention of a provision of these Regulations;
 - (ii) an offence imposed by these Regulations;
- (b) the employment tribunal seized of appeal proceedings against a notice which relates to the pyrotechnic article and which has been served under or by virtue of paragraph 1 of Schedule 4; or
- (c) in any other case, a magistrates' court in England and Wales or Northern Ireland, or in Scotland a sheriff for any sheriff court district in which a withdrawal notice has been served on a person.

(5) A person aggrieved by an order made pursuant to an application under paragraph (1) by a magistrates' court in England, 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.

(6) A person aggrieved by an order made by an employment tribunal pursuant to an application under paragraph (1) or by a decision of an employment tribunal not to make such an order, may—

- (a) appeal against that order or decision in England and Wales to the High Court on a point of law in accordance with section 11(1) of the Tribunals and Inquiries Act 1992⁽³⁾;
- (b) seek review of the order or decision by the employment tribunal in accordance with Rules 34 to 36 of the Employment Tribunal Rules.

(1) 1980 c.43.

(2) SI 1675/1981 (N.I. 26).

(3) 1992 c.53. There are amendments to this section which are not relevant.

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(7) For the purposes of this paragraph, “Employment Tribunal Rules” means the rules set out in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004⁽⁴⁾, as modified by the provisions of Schedule 4 to those Regulations.

Offence of contravening a withdrawal notice

6.—(1) A person who contravenes a withdrawal notice is guilty of an offence and liable on summary conviction to—

- (a) imprisonment for a term not exceeding three months; or
- (b) a fine not exceeding level 5 on the standard scale.

(4) S.I. 2004/1861, as amended by the Constitutional Reform Act (c.4) and by the following S.I.s: 2004/2351, 2005/435, 2005/1865, 2007/2142, 2007/2602, 2008/2683, 2008/3240 and 2010/131.