

## SCHEDULES

### SCHEDULE 7

Regulation 53

Enforcement and investigatory powers conferred on the enforcing authority and the market surveillance authority

### PART 1

### ENFORCEMENT AND INVESTIGATORY POWERS

#### **Enforcement powers under the 1987 Act**

1. For the purposes of enforcing these Regulations, the following sections of the 1987 Act apply subject to the modifications in paragraph 2—

- (a) section 13 (prohibition notices and notices to warn);
- (b) section 14 (suspension notices);
- (c) section 16 (forfeiture: England and Wales and Northern Ireland);
- (d) section 17 (forfeiture: Scotland);
- (e) section 18 (power to obtain information);
- (f) section 19 (interpretation of Part II);
- (g) section 29 (powers of search etc);
- (h) section 30 (provisions supplemental to s 29);
- (i) section 31 (powers of customs officer to detain goods);
- (j) section 33 (appeals against detention of goods);
- (k) section 34 (compensation for seizure and detention);
- (l) section 35 (recovery of expenses of enforcement);
- (m) section 37 (power of Commissioners for Revenue and Customs);
- (n) section 45 (interpretation);
- (o) section 46(1) (meaning of “supply”);
- (p) Schedule 2 (prohibition notices and notices to warn).

#### **Modifications to the 1987 Act**

2. The sections of the 1987 Act referred to in paragraph 1 are to apply as if—

- (a) in section 13—
  - (i) in subsection (1), for “unsafe” on each occasion that it appears, there were substituted “non-compliant”;
  - (ii) in subsection (1), “relevant” were omitted on each occasion that it appears;

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- (iii) in subsection (2), the words from “; and the Secretary of State may” to the end were omitted;
- (iv) subsections (4) to (7) were omitted;
- (b) in section 14—
  - (i) in subsection (1), after “any safety provision has been contravened in relation to any goods”, there were inserted “or that any goods present a risk”;
  - (ii) in subsection (2)(b), after “a safety provision has been contravened in relation to the goods”, there were inserted “or that the goods present a risk”;
  - (iii) in subsection (2)(c), “under section 15 below” were omitted; and
  - (iv) subsections (6) to (8) were omitted;
- (c) in section 16—
  - (i) in subsection (1), after “a contravention in relation to the goods of a safety provision” there were inserted “or that the goods present a risk”;
  - (ii) for subsection 2(b) there were substituted—
    - “(b) where an application with respect to some or all of the goods has been made to a magistrates’ court under regulation 68 (appeals against notices) of the Electromagnetic Compatibility Regulations 2016 or section 33, to that court; and”;
  - (iii) in subsection (3), after “a contravention in relation to the goods of a safety provision” there were inserted “or that the goods present a risk”;
  - (iv) after subsection (4), there were inserted—
    - “(4A) A court may infer for the purposes of this section that any goods present a risk if it is satisfied that such a risk is presented by goods which are representative of those goods (whether by reason of being of the same design or part of the same consignment or batch or otherwise).”;
  - (v) in subsection (6), for “Subject to subsection (7) below,” there were substituted “Where”; and
  - (vi) subsection (7) were omitted;
- (d) in section 17—
  - (i) in subsection (1), after “a contravention of a safety provision”, there were inserted “or where the goods present a risk”;
  - (ii) in subsection (6), after “a contravention in relation to those goods of a safety provision” there were inserted “or that those goods present a risk”; and
  - (iii) after subsection (7), there were inserted—
    - “(7A) The sheriff may infer for the purposes of this section that any goods present a risk if satisfied that such a risk is presented by goods which are representative of those goods (whether by reason of being of the same design or part of the same consignment or batch or otherwise).”;
- (e) in section 18, subsections (3) and (4) were omitted;
- (f) in section 29—
  - (i) in subsection (4)(a), after “any contravention of any safety provision in relation to the goods” there were inserted “or whether the goods present a risk”;
  - (ii) in subsection (4)(b), after “any such contravention” there were inserted “or whether the goods present a risk”;

- (iii) in subsection (7), after “a contravention of any safety provision”, there were inserted “or prevent goods from presenting a risk”;
- (g) in section 30—
  - (i) at the end of subsection (2)(a)(ii), for “and”, there were substituted “or”;
  - (ii) after subsection (2)(a)(ii), there were inserted—
    - “(iii) that any goods which any officer has power to inspect under section 29 are on any premises and their inspection is likely to demonstrate that they present a risk; and;” and
  - (iii) subsections (5), (7) and (8) were omitted;
- (h) in section 31(1), for “Part II of this Act”, there were substituted “the Electromagnetic Compatibility Regulations 2016”;
- (i) in section 34(1), after paragraph (a), there were inserted—
  - “(aa) the goods do not present a risk;”;
- (j) in section 37(1), for “Part II of this Act”, there were substituted “the Electromagnetic Compatibility Regulations 2016”;
- (k) in section 45(1)—
  - (i) the definitions of “conditional sale agreement”, “credit-sale agreement”, “gas”, “motor vehicle”, “personal injury”, “subordinate legislation” and “substance” were omitted;
  - (ii) for the definition of “enforcement authority” there were substituted—
    - ““enforcement authority” means an enforcing authority as defined in regulation 2(1) of the Electromagnetic Compatibility Regulations 2016;”;
  - (iii) for the definition of “goods” there were substituted—
    - ““goods” means apparatus within the scope of the Electromagnetic Compatibility Regulations 2016;”;
  - (iv) after the definition of “modifications” there were inserted—
    - ““non-compliant” in relation to any goods means that—
    - (a) a safety provision has been contravened in relation to the goods; or
    - (b) the goods present a risk;”;
  - (v) after the definition of “premises”, there were inserted—
    - ““present a risk” means present a risk within the meaning set out in regulation 2(3) of the Electromagnetic Compatibility Regulations 2016;”;
  - (vi) for the definition of “safety provision” there were substituted—
    - ““safety provision” means any provision of the Electromagnetic Compatibility Regulations 2016;”;
  - (vii) for the definition of “safety regulations” there were inserted—
    - ““safety regulations” means the Electromagnetic Compatibility Regulations 2016;”;
- (l) in section 46(1), omit “and, in relation to gas or water, those references shall be construed as including references to providing the service by which the gas or water is made available for use”; and
- (m) in Schedule 2—

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- (i) for “unsafe”, on each occasion that it appears, there were substituted “non-compliant”; and
- (ii) for “safe” , on each occasion that it appears, there were substituted “not non-compliant”.

### **Application of Schedule 5 to the Consumer Rights Act 2015**

3. Schedule 5 to the Consumer Rights Act 2015 (investigatory powers etc) applies to OFCOM as if—

- (a) OFCOM were a domestic enforcer within the meaning of that Schedule;
- (b) the enforcer’s legislation within the meaning of that Schedule, in relation to OFCOM, were the legislation and notices which, by virtue of regulation 52(1)(a)(i) or (b)(i), OFCOM has a duty or power to enforce; and
- (c) the references in paragraphs 25(7) and 30(1) of that Schedule to regulation 52(1)(a)(ii) or (b)(ii) were references to regulations 52(1)(a)(i) or (b)(i).

## **PART 2**

### **COMPLIANCE NOTICES, WITHDRAWAL NOTICES AND RECALL NOTICES**

#### **Compliance notice**

4. An enforcing authority may serve a compliance notice on a relevant economic operator in respect of apparatus if the authority has reasonable grounds for believing that there is non-compliance.

5. A compliance notice must—

- (a) require the relevant economic operator on which it is served to—
  - (i) end the non-compliance within such period as may be specified in the notice; or
  - (ii) provide evidence, within such period as may be specified in the notice, demonstrating to the satisfaction of the enforcing authority that the non-compliance has not in fact occurred; and
- (b) warn the economic operator that, if the non-compliance persists or if satisfactory evidence has not been produced under sub-paragraph (a) within the period specified in the notice, further action may be taken in respect of the apparatus or any apparatus of the same type made available on the market by that relevant economic operator.

6. A compliance notice may include directions as to the measures to be taken by the economic operator to secure compliance, including different ways of securing compliance.

7. Subject to paragraph 8, an enforcing authority may revoke or vary a compliance notice by serving a notification on the economic operator.

8. An enforcing authority may not vary a compliance notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

#### **Withdrawal notice**

9. An enforcing authority may serve a withdrawal notice on a relevant economic operator in respect of apparatus if the authority has reasonable grounds for believing that—

- (a) the apparatus has been made available on the market; and

(b) there is non-compliance.

**10.** A withdrawal notice must prohibit the relevant economic operator from making the apparatus available on the market without the consent of the enforcing authority.

**11.** A withdrawal notice may require the relevant economic operator to take action to alert end-users to any risk presented by the apparatus.

**12.** A withdrawal notice may require the relevant economic operator to keep the enforcing authority informed of the whereabouts of any apparatus referred to in the notice.

**13.** A consent given by the enforcing authority pursuant to a withdrawal notice, may impose such conditions on the making available on the market as the enforcing authority considers appropriate.

**14.** Subject to paragraph 15, an enforcing authority may revoke or vary a withdrawal notice by serving a notification on the economic operator.

**15.** An enforcing authority may not vary a withdrawal notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

**16.** A withdrawal notice has effect throughout the United Kingdom.

#### **Recall notice**

**17.** The enforcing authority may serve a recall notice on a relevant economic operator in respect of apparatus if the authority has reasonable grounds for believing that—

- (a) the apparatus has been made available to end-users; and
- (b) there is non-compliance.

**18.** A recall notice must require the relevant economic operator to use reasonable endeavours to organise the return of the apparatus from end-users to the relevant economic operator or another person specified in the notice.

**19.** A recall notice may—

- (a) require the recall to be effected in accordance with a code of practice;
- (b) require the relevant economic operator to—
  - (i) contact end-users in order to inform them of the recall, to the extent that it is practicable to do so;
  - (ii) publish a notice in such form and such manner as is likely to bring to the attention of end-users any risk the apparatus poses and the fact of the recall; or
  - (iii) make arrangements for the collection or return of the apparatus from end-users or its disposal; or
- (c) impose such additional requirements on the relevant economic operator as are reasonable and practicable with a view to achieving the return of the apparatus.

**20.** In determining what requirements to include in a recall notice, the enforcing authority must take into consideration the need to encourage distributors and end-users to contribute to its implementation.

**21.** A recall notice may only be issued by the enforcing authority where—

- (a) other action which it may require under these Regulations would not suffice to address the non-compliance;
- (b) the action being undertaken by the relevant economic operator is unsatisfactory or insufficient to address the non-compliance;

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- (c) the enforcing authority has given not less than 10 days' notice to the relevant economic operator of its intention to serve such a notice; and
- (d) the enforcing authority has taken account of any advice obtained under paragraph 22.

**22.** A relevant economic operator which has received notice from the enforcing authority of an intention to serve a recall notice may at any time prior to the service of the recall notice require the authority to seek the advice of such person as the Institute determines on the questions of—

- (a) whether there is non-compliance; and
- (b) whether the issue of a recall notice would be proportionate.

**23.** Paragraphs 21(b), (c) and (d) do not apply in the case of apparatus presenting a serious risk requiring, in the view of the enforcing authority, urgent action.

**24.** Where a relevant economic operator requires the enforcing authority to seek advice under paragraph 22, that relevant economic operator is to be responsible for the fees, costs and expenses of the Institute and of the person appointed by the Institute to advise the enforcing authority.

**25.** In this Schedule, “Institute” means the charitable organisation with registered number 803725 and known as the Chartered Institute of Arbitrators.

**26.** A recall notice served by the enforcing authority may require the relevant economic operator to keep the authority informed of the whereabouts of apparatus to which the recall notice relates, so far as the relevant economic operator is able to do so.

**27.** Subject to paragraph 28, an enforcing authority may revoke or vary a recall notice by serving a notification on the economic operator.

**28.** An enforcing authority may not vary a recall notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

**29.** A recall notice has effect throughout the United Kingdom.

### **Interpretation**

**30.** In this Schedule, “non-compliance” means that the apparatus—

- (a) presents a risk; or
- (b) is not in conformity with Part 2 or RAMS (in its application to apparatus).