

SCHEDULE 3

Regulation 5(2)(c)

Powers under the Health and Safety at Work (Northern Ireland) Order 1978

HSAW enforcer

1. In this Schedule, a “HSAW enforcer” means—
 - (a) the Health and Safety Executive for Northern Ireland;
 - (b) the Department for the Economy in Northern Ireland;
 - (c) the Department of Justice in Northern Ireland; or
 - (d) the Secretary of State.

Enforcement powers under the 1978 Order

2.—(1) An Article of the 1978 Order listed in sub-paragraph (2) applies, as modified by paragraph 3, for the purposes of the enforcement of the MSC Regulation in relation to a product to which these Regulations apply if, and to the extent that, the Article applies for the purposes of the HSAW enforcer in relation to a relevant product.

- (2) Those Articles are—
 - (a) Article 21 (appointment of inspectors);
 - (b) Article 22 (powers of inspectors);
 - (c) Article 23 (improvement notices);
 - (d) Article 24 (prohibition notices);
 - (e) Article 25 (provisions supplementary to Articles 23 and 24);
 - (f) Article 26 (appeal against improvement or prohibition notice);
 - (g) Article 27 (power to deal with cause of imminent danger);
 - (h) Article 27A (power of customs officer to detain articles and substances);
 - (i) Article 28 (power of enforcing authorities to indemnify inspectors);
 - (j) Article 29 (obtaining of information by the Executive, enforcing authorities etc);
 - (k) Article 29A (information communicated by Commissioners for Revenue and Customs);
 - (l) Article 30 (restrictions on disclosure of information);
 - (m) Article 31 (offences);
 - (n) Article 32 (extension of time for bringing summary proceedings);
 - (o) Article 33 (venue);
 - (p) Article 36 (prosecution by inspectors);
 - (q) Article 38 (evidence);
 - (r) Article 39 (power of court to order cause of offence to be remedied and, in certain cases, forfeiture).

Modifications to the 1978 Order

3. Those Articles of the 1978 Order apply as if—
 - (a) references in those Articles to “relevant statutory provisions” were references to—
 - (i) the provisions of the 1978 Order set out in paragraph 2, as modified by this paragraph;

Status: This is the original version (as it was originally made).

- (ii) the provisions of the enforcer’s legislation which the HSAW enforcer has a duty or power to enforce under the 1978 Order;
 - (iii) the MSC Regulation; and
 - (iv) these Regulations;
- (b) references in those Articles to “enforcing authority” were references to a HSAW enforcer;
- (c) references in those Articles to “risk”, in relation to a product, were references to the potential to affect adversely—
- (i) health and safety of persons in general;
 - (ii) health and safety in the workplace;
 - (iii) protection of consumers;
 - (iv) the environment;
 - (v) public security; and
 - (vi) other public interests,
- to a degree which goes beyond that considered reasonable and acceptable in relation to the product’s intended purpose or under the normal or reasonably foreseeable conditions of use of the product, including the duration of use and, where applicable, any putting into service, installation and maintenance requirements;
- (d) in Article 22—
- (i) in paragraph (2)(h), for “him to have caused or to be likely to cause danger to health or safety”, there were substituted “contravene any of the relevant statutory provisions or present a risk”; and
 - (ii) paragraph (3) were omitted;
- (e) in Article 24—
- (i) for paragraph (2) there were substituted—
 - “(2) An inspector may serve a notice (in this Part referred to as a “prohibition notice”) on a person if, as regards any activities to which this paragraph applies, the inspector is of the opinion that, as carried on or likely to be carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve—
 - (a) a risk; or
 - (b) the contravention of any of the relevant statutory provisions.
 - (2A) A prohibition notice must—
 - (a) state the inspector’s opinion;
 - (b) specify the matters which in the inspector’s opinion give, or as the case may be, will give rise to the risk or contravention;
 - (c) where in the inspector’s opinion any of those matters involves or, as the case may be, will involve a contravention of any of the relevant statutory provisions, specify the provision or provisions concerned and give particulars of the reasons why the inspector is of that opinion; and
 - (d) direct that the activities to which the notice relates must not be carried on by or under the control of the person on whom the notice is served unless the matters specified in pursuance of sub-paragraph (b) and any contraventions of provisions specified in pursuance of sub-paragraph (c) have been remedied.”;

- (ii) in paragraph (3), for “(2)(d)” there were substituted “(2A)(d)”;
- (f) in Article 25, paragraphs (3), (4) and (5) were omitted;
- (g) in Article 30—
 - (i) in paragraph (6), “16(4)(a) or” were omitted;
 - (ii) for paragraph (6)(b), there were substituted—
 - “(b) for the purposes of any legal proceedings or for the purposes of a report of any such proceedings;”;
- (h) in Article 31—
 - (i) in paragraph (1), sub-paragraphs (a) to (i) and (k) to (m) were omitted;
 - (ii) for paragraphs (2) and (3), there were substituted—
 - “(2) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”;
- (i) in Article 32—
 - (i) in paragraph (1), sub-paragraphs (a) and (b) were omitted;
 - (ii) in paragraph (1), for the words from “and it appears” to the end, there were substituted “and it appears from the proceedings at the inquest that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject-matter of the inquest, summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within three months of the conclusion of the inquest.”; and
 - (iii) paragraphs (3) and (4) were omitted;
- (j) in Article 39, paragraphs (3A), (4) and (5) were omitted.