

SCHEDULE 11

Regulation 38

ENFORCEMENT, OFFENCES AND CIVIL LIABILITY

Interpretation

1. In this Schedule—

- (a) “the 1998 Regulations” means the Health and Safety (Enforcing Authority) Regulations 1998⁽¹⁾;
- “domestic premises” means premises occupied as a private dwelling (including any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling);
- “inspector” means an inspector appointed under section 19 of the 1974 Act;
- “justice” means—
- (i) in relation to England and Wales, a justice of the peace;
- (ii) in relation to Scotland, a sheriff, stipendiary magistrate or justice of the peace;
- “local authority” means—
- (i) in relation to England, a county council so far as they are the council for an area for which there are no district councils, a district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under-Treasurer of the Middle Temple or the Council of the Isles of Scilly;
- (ii) in relation to Scotland, the council for a local government area; and
- (iii) in relation to Wales, a county council or a county borough council;
- “work” shall be construed in accordance with section 52 of the 1974 Act; and
- (b) a reference to a numbered sub-paragraph is a reference to the sub-paragraph so numbered in the paragraph in which that reference occurs.

Application of the 1974 Act

2.—(1) Sections—

- (a) 16 to 26 (approval of codes of practice and enforcement);
- (b) 33 to 42 (provisions as to offences); and
- (c) 47(2) (civil liability),

of the 1974 Act shall, subject to the following provisions of this Schedule, and to the extent that they would not otherwise do so, apply to these Regulations as if they were health and safety regulations for the purposes of that Act.

(2) Any function of the Health and Safety Commission under any other provision of the 1974 Act which is exercisable in relation to any function of the Health and Safety Executive under or in respect of health and safety regulations (including their enforcement) shall be exercisable as if these Regulations were, to the extent they would not otherwise be so, health and safety regulations for the purposes of that Act.

(3) The sections of the 1974 Act which are applied to these Regulations by sub-paragraph (1) shall so apply as if any reference to—

⁽¹⁾ S.I.1998/494, amended by S.I. 1999/2024, 1999/3232.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) danger, or danger to health and safety, were a reference to danger to the health or safety of humans or animals or to danger to the environment; and
 - (b) harm were a reference to harm to humans, animals or the environment.
- (4) Sections 22 and 25 of the 1974 Act, as applied to these Regulations by sub-paragraph (1), shall apply as if the reference in those sections to serious personal injury were a reference to—
- (a) serious personal injury to humans;
 - (b) a breach of the Regulations and serious injury to animals; or
 - (c) a breach of the Regulations and serious harm to the environment.

Offences

3. A failure to discharge a duty—

- (a) placed on the Ministers by these Regulations; or
- (b) placed on any person by regulation 5, 7(3), 9(4) to (6), 9(8), 10(4) to (6), 10(9), 11(5), 12(5), 17(4), 26(2), 34(1) to (4) and 37,

shall not be an offence under section 33(1)(c) of the 1974 Act.

Limitation on entry to domestic premises in certain circumstances

4.—(1) An inspector may not enter domestic premises in the exercise of his powers under the 1974 Act, as applied to these Regulations by virtue of paragraph 2, in respect of an activity which is not, or is not related to, an activity involving work, unless a justice has issued a warrant authorising him to enter and exercise his powers in those domestic premises.

(2) A justice may not issue such a warrant, unless on an application made by the inspector, he is satisfied—

- (a) that the inspector has reasonable grounds for believing that there is present in the domestic premises anything to which those powers relate; and
- (b) that—
 - (i) it is not practicable to communicate with any person entitled to grant entry to the domestic premises,
 - (ii) a person entitled to grant entry to the domestic premises has unreasonably refused an inspector entry,
 - (iii) entry to the domestic premises is unlikely to be granted unless a warrant is produced, or
 - (iv) the purpose of entry may be frustrated or seriously prejudiced unless an inspector arriving at the domestic premises can secure immediate entry to them.

Allocation of enforcement responsibility

5.—(1) Notwithstanding the 1998 Regulations, and subject to sub-paragraphs (2) to (7), the enforcing authority for these Regulations shall be the Health and Safety Executive.

(2) Where an active substance is placed on the market—

- (a) in or from any shop, mobile vehicle, market stall or other retail outlet; or
- (b) otherwise to members of the public, including by way of free sample, prize or mail order,

the enforcing authority for regulation 4 shall be the local weights and measures authority.

(3) Where a biocidal product is placed on the market—

- (a) in or from any shop, mobile vehicle, market stall or other retail outlet; or
 - (b) otherwise to members of the public, including by way of free sample, prize or mail order,
- the enforcing authority for regulations 8(1), 30 and 31 shall be the local weights and measures authority.
- (4) Where a biocidal product is sold—
 - (a) in or from any shop, mobile vehicle, market stall or other retail outlet; or
 - (b) otherwise to members of the public, including by way of free sample, prize or mail order,
- the enforcing authority for regulation 22(3) shall be the local weights and measures authority.
- (5) The enforcing authority for regulation 33 shall be the local weights and measures authority.
 - (6) The 1998 Regulations shall apply to the enforcement of regulations 8(2), 8(5) and 22(4).
 - (7) The enforcing authority for regulations 8(2), 8(5) and 22(4)—
 - (a) in respect of any use not related to an activity involving work; or
 - (b) in respect of any use by a domestic servant in a private household,
- shall be the local authority for the area in which the use occurs.