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SCHEDULES

SCHEDULE 1

Section 33.

SUPPLEMENTARY PROVISIONS IN CONNECTION WITH PROCEEDINGS FOR OFFENCES UNDER SECTION 33

- 1 (1) A person against whom proceedings are brought in England or Wales for an offence under section 33 of this Act (hereinafter referred to as "the principal section") shall, upon information duly laid by him and on giving to the prosecution not less than three clear days' notice of his intention, be entitled to have any person to whose act or default he alleges that the contravention of that section was due brought before the court in the proceedings; and if, after the contravention has been proved, the original accused proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original accused further proves that he has used all due diligence to secure that that section was complied with, he shall be acquitted of the offence.
- (2) Where an accused seeks to avail himself of the provisions of sub-paragraph (1) above—
- (a) the prosecution, as well as the person whom the accused charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence;
 - (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party thereto.
- (3) Where it appears that an offence under the principal section has been committed in respect of which proceedings might be taken in England or Wales against some person (hereinafter referred to as "the original offender"), and a person proposing to take proceedings in respect of the offence is reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person, being an act or default which took place in England or Wales, and that the original offender could establish a defence under sub-paragraph (1) above, the proceedings may be taken against that other person without proceedings' first being taken against the original offender.

In any such proceedings the accused may be charged with, and on proof that the contravention was due to his act or default be convicted of, the offence with which the original offender might have been charged.

- 2 (1) Where proceedings are brought in England or Wales against a person (hereafter in this paragraph referred to as "the accused") in respect of a contravention of the principal section, and it is proved—
- (a) that the contravention was due to the act or default of some other person, being an act or default which took place in Scotland, and
 - (b) that the accused used all due diligence to secure compliance with that section,
- the accused shall, subject to the provisions of this paragraph, be acquitted of the offence.

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- (2) The accused shall not be entitled to be acquitted under this paragraph unless within seven days from the date of the service of the summons on him he has given notice in writing to the prosecution of his intention to rely upon the provisions of this paragraph, specifying the name and address of the person to whose act or default he alleges that the contravention was due, and has sent a like notice to that person.
- (3) The person specified in a notice served under this paragraph shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.
- (4) Where it is proved that the contravention of the principal section was due to the act or default of some person other than the accused, being an act or default which took place in Scotland, the court shall (whether or not the accused is acquitted) cause notice of the proceedings to be sent to the Secretary of State.
- 3 (1) Where a contravention of the principal section committed by a person in Scotland was due to an act or default of any other person, being an act or default which took place in Scotland, then, whether proceedings are or are not taken against the first-mentioned person, that other person may be charged with and convicted of the contravention and shall be liable on conviction to the same punishment as might have been inflicted on the first-mentioned person if he had been convicted of the contravention.
- (2) Where a person who is charged in Scotland with a contravention of the principal section proves to the satisfaction of the court that he has used all due diligence to secure that the provision in question was complied with and that the contravention was due to the act or default of some other person, the first-mentioned person shall be acquitted of the contravention.
- 4 (1) Subject to the provisions of this paragraph, in any proceedings (whether in England or Wales or Scotland) for an offence under the principal section it shall be a defence for the accused to prove—
- (a) that he purchased the helmet in question as being of a type which under the principal section could be lawfully sold or offered for sale, and with a written warranty to that effect, and
 - (b) that he had no reason to believe at the time of the commission of the alleged offence that it was not of such a type, and
 - (c) that it was then in the same state as when he purchased it.
- (2) A warranty shall only be a defence in any such proceedings if—
- (a) the accused—
 - (i) has, not later than three clear days before the date of the hearing, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and
 - (ii) has also sent a like notice of his intention to that person, and
 - (b) in the case of a warranty given by a person resident outside the United Kingdom, the accused proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained therein.
- (3) Where the accused is a servant of the person who purchased the helmet in question under a warranty, he shall be entitled to rely on the provisions of this paragraph in the same way as his employer would have been entitled to do if he had been the accused.

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- (4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.
- 5 (1) An accused who in any proceedings for an offence under the principal section wilfully applies to a helmet a warranty not given in relation to that helmet shall be guilty of an offence.
- (2) A person who, in respect of a helmet sold by him, being a helmet in respect of which a warranty might be pleaded under paragraph 4 above, gives to the purchaser a false warranty in writing, shall be guilty of an offence, unless he proves that when he gave the warranty he had reason to believe that the statements or description contained therein were accurate.
- (3) Where the accused in a prosecution for an offence under the principal section relies successfully on a warranty given to him or to his employer, any proceedings under sub-paragraph (2) above in respect of the warranty may, at the option of the prosecutor, be taken either before a court having jurisdiction in the place where the helmet, or any of the helmets, to which the warranty relates was procured, or before a court having jurisdiction in the place where the warranty was given.