

## SCHEDULES

### SCHEDULE 5

Section 24(5).

#### SAMPLING

- 1 The person taking a sample—
  - (a) if he takes it from a motor vehicle, shall if practicable do so in the presence of a person appearing to him to be the owner or person for the time being in charge of the vehicle ;
  - (b) if he takes the sample on any premises but not from a motor vehicle, shall if practicable take it in the presence of a person appearing to him to be the occupier of the premises or for the time being in charge of the part of the premises from which it is taken.
- 2 (1) The result of an analysis of a sample shall not be admissible—
  - (a) in criminal proceedings under the Customs and Excise Acts 1979 ; or
  - (b) on behalf of the Commissioners in any civil proceedings under those Acts, unless the analysis was made by an authorised analyst and the requirements of paragraph 1 above (where applicable) and of the following provisions of this paragraph have been complied with.(2) The person taking a sample must at the time have divided it into three parts (including the part to be analysed), marked and sealed or fastened up each part, and—
  - (a) delivered one part to the person in whose presence the sample was taken in accordance with paragraph 1 above, if he requires it; and
  - (b) retained one part for future comparison.(3) Where it was not practicable to comply with the relevant requirements of paragraph 1 above, the person taking the sample must have served notice on the owner or person in charge of the vehicle or, as the case may be, the occupier of the premises informing him that the sample has been taken and that one part of it is available for delivery to him, if he requires it, at such time and place as may be specified in the notice.
- 3 (1) Subject to sub-paragraph (2) below, in any such proceedings as are mentioned in paragraph 2(1) above a certificate purporting to be signed by an authorised analyst and certifying the presence of any substance in any such sample of oil as may be specified in the certificate shall be evidence, and in Scotland sufficient evidence, of the facts stated in it.
  - (2) Without prejudice to the admissibility of the evidence of the analyst (which shall be sufficient in Scotland as well as in England), such a certificate shall not be admissible as evidence—
    - (a) unless a copy of it has, not less than 7 days before the hearing, been served by the prosecutor or, in the case of civil proceedings, the Commissioners on all other parties to the proceedings ; or
    - (b) if any of those other parties, not less than 3 days before the hearing or within such further time as the court may in special circumstances allow, serves

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

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notice on the prosecutor or, as the case may be, the Commissioners requiring the attendance at the hearing of the person by whom the analysis was made.

- 4 (1) Any notice required or authorised to be given under this Schedule shall be in writing.
- (2) Any such notice shall be deemed, unless the contrary is shown, to have been received by a person if it is shown to have been left for him at his last-known residence or place of business in the United Kingdom.
- (3) Any such notice may be given by post, and the letter containing the notice may be sent to the last-known residence or place of business in the United Kingdom of the person to whom it is directed.
- (4) Any such notice given to the secretary or clerk of a company or body of persons (incorporated or unincorporated) on behalf of the company or body shall be deemed to have been given to the company or body ; and for the purpose of the foregoing provisions of this paragraph any such company or body of persons having an office in the United Kingdom shall be treated as resident at that office or, if it has more than one, at the registered or principal office.
- (5) Where any such notice is to be given to any person as the occupier of any land, and it is not practicable after reasonable inquiry to ascertain—
- (a) what is the name of any person being the occupier of the land; or
  - (b) whether or not there is a person being the occupier of the land,
- the notice may be addressed to the person concerned by any sufficient description of the capacity in which it is given to him.
- (6) In any case to which sub-paragraph (5) above applies, and in any other case where it is not practicable after reasonable inquiry to ascertain an address in the United Kingdom for the service of a notice to be given to a person as being the occupier of any land, the notice shall be deemed to have been received by the person concerned on being left for him on the land, either in the hands of a responsible person or conspicuously affixed to some building or object on the land.
- (7) Sub-paragraphs (2) to (6) above shall not affect the validity of any notice duly given otherwise than in accordance with those sub-paragraphs.
- 5 In this Schedule " authorised analyst" means—
- (a) the Government Chemist or a person acting under his direction;
  - (b) the Government Chemist for Northern Ireland or a person acting under his direction ;
  - (c) any chemist authorised by the Treasury to make analyses for the purposes of this Schedule ; or
  - (d) any other person appointed as a public analyst or deputy public analyst under—
    - section 89 of the Food and Drugs Act 1955,
    - section 27 of the Food and Drugs (Scotland) Act 1956,
    - or section 31 of the Food and Drugs Act (Northern Ireland) 1958.
- 6 References in this Schedule to the taking of a sample or to a sample shall be construed respectively as references to the taking of a sample in pursuance of regulations under section 24 of this Act and to a sample so taken.

- 7 This Schedule shall have effect in its application to a vehicle of which a person other than the owner is, or is for the time being, entitled to possession as if for references to the owner there were substituted references to the person entitled to possession.