

SCHEDULE 15

ENFORCEMENT

Forfeiture of relevant products for private use or consumption: Scotland

5.—(1) In Scotland a sheriff may make an order for forfeiture of any relevant product for private use or consumption in relation to which there has been a contravention of any provision of regulation 8, 9, 10 or 11(1) or (2)—

- (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995⁽¹⁾; or
- (b) where a person is convicted of any offence in respect of any such contravention, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under sub-paragraph (1)(a) above shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the relevant product to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the relevant product should not be forfeited.

(3) Service under sub-paragraph (2) above shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.

(4) Any person upon whom a notice is served under sub-paragraph (2) above and any other person claiming to be the owner of, or otherwise to have an interest in, the relevant product to which an application under this paragraph relates shall be entitled to appear at the hearing of the application to show cause why the relevant product as the case may be should not be forfeited.

(5) The sheriff shall not make an order following an application under sub-paragraph (1)(a) above—

- (a) if any person on which notice is served under sub-paragraph (2) above does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under sub-paragraph (2) above has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The sheriff shall make an order under this paragraph only if he is satisfied that there has been a contravention in relation to the relevant product of regulation 8, 9, 10 or 11(1) or (2).

(7) For the avoidance of doubt it is declared that the sheriff may infer for the purposes of this paragraph that there has been a contravention in relation to any relevant product of regulation 8, 9, 10 or 11(1) or (2) if he is satisfied that that regulation has been contravened in relation to a relevant product which is representative of that relevant product (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(8) Where an order for the forfeiture of any relevant product is made following an application by the procurator-fiscal under sub-paragraph (1)(a) above, any person who appeared, or was entitled to appear, to show cause why it should not be forfeited may, within twenty-one days of the making of the order, appeal to the High Court by Bill of Suspension on the ground of an alleged miscarriage of justice; and section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under this sub-paragraph as it applies to a stated case under Part X of that Act.

(9) An order following an application under sub-paragraph (1)(a) above shall not take effect—

- (a) until the end of the period of twenty-one days beginning with the day after the day on which the order is made; or

(1) 1995 c. 46.

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- (b) if an appeal is made under sub-paragraph (8) above within that period, until the appeal is determined or abandoned.
- (10) An order under sub-paragraph (1)(b) shall not take effect—
 - (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995; or
 - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (11) Subject to sub-paragraph (12) below, relevant products forfeited under this paragraph shall be destroyed in accordance with such directions as the sheriff may give.
- (12) If he thinks fit, the sheriff may direct the relevant product to be released to such person as he may specify, on condition that that person does not supply it to any person otherwise than—
 - (a) to a person who carries on a business of buying relevant products of the same description as the first-mentioned relevant product and repairing or reconditioning it; or
 - (b) as scrap (that is to say, for the value of materials included in the relevant product rather than for the value of the relevant product itself).