

## SCHEDULE 9

Regulation 18

### ENFORCEMENT

#### **Enforcement in Great Britain**

1.—(1) In Great Britain, it shall be the duty of the Secretary of State, and of every weights and measures authority within their area, to enforce these Regulations; and a reference in the provisions applied to these Regulations by sub-paragraph (2) to an “enforcement authority” shall be construed accordingly.

(2) Sections 14, 15, 28 to 35, 37, 38, 44 and 47 of the Consumer Protection Act 1987, shall apply for the purposes of providing for the enforcement of these Regulations and in respect of proceedings for contravention thereof as if—

- (a) references to safety provisions were references to these Regulations;
- (b) references to goods were references to apparatus as the context may require;
- (c) in section 14, in sub-section (6), for “six months” there was substituted “three months”;
- (d) references to proceedings for the forfeiture of goods under section 16 or 17 were references to the forfeiture of apparatus under paragraph 3 or 4.
- (e) in sections 28, 29, 30, 33, 34 and 35, the words “or any provision made by or under Part III of this Act” on each occasion that they occur, were omitted;
- (f) in section 28, sub-sections (3), (4), and (5) were omitted;
- (g) in section 29, sub-section (4) was omitted;
- (h) in section 30, sub-sections (7) and (8) were omitted; and
- (i) in section 38(1), paragraphs (a) and (b) were omitted.

(3) Sections 39 and 40 of the 1987 Act shall apply to offences under section 32 of that Act as it is applied to these Regulations by sub-paragraph(2).

(4) In England and Wales, a magistrates' court may try an information in respect of an offence committed under these Regulations if the information is laid within twelve months from the time when the offence is committed, and in Scotland summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.

#### **Enforcement in Northern Ireland**

2.—(1) In Northern Ireland, it shall be the duty of the Secretary of State, and of every district council within their area, to enforce these Regulations; and a reference in the provisions applied to these Regulations by sub-paragraph (2) and paragraph 1(2) to an “enforcement authority” shall be construed accordingly.

(2) The provisions of paragraph 1(2) and (3) shall have effect.

(3) A magistrates' court may try a complaint in respect of an offence committed under these Regulations if the complaint is made within twelve months from the time when the offence is committed.

#### **Forfeiture of apparatus: England and Wales and Northern Ireland**

3.—(1) An enforcement authority in England and Wales or Northern Ireland may apply under this paragraph for an order for the forfeiture of any apparatus on the grounds that there has been a contravention in relation thereto of regulation 5.

(2) An application under this paragraph may be made—

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- (a) where proceedings have been brought in a magistrates' court in respect of an offence in relation to some or all of the apparatus under regulation 19 to that court; and
  - (b) where no application for the forfeiture of the apparatus has been made under sub-paragraph (a), by way of complaint to a magistrates' court.
- (3) On an application under this paragraph the court shall make an order for the forfeiture of the apparatus if it is satisfied that there has been a contravention in relation thereto of regulation 5.
- (4) For the avoidance of doubt it is hereby declared that a court may infer for the purposes of this paragraph that there has been a contravention in relation to any apparatus of regulation 5 if it is satisfied that regulation has been contravened in relation to any apparatus (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (5) Any person aggrieved by an order made under this paragraph by a magistrates' court, or by a decision of such court not to make such an order, may appeal against that order or decision—
- (a) in England and Wales, to the Crown Court
  - (b) in Northern Ireland, to the county court,
- and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of an order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Court Act 1980<sup>(1)</sup>, or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(2)</sup> (statement of case)).
- (6) Subject to sub-paragraph (7), where any apparatus is forfeited under this paragraph it shall be destroyed in accordance with such directions as the court may give.
- (7) On making an order under this paragraph a magistrates' court may, if it considers it appropriate to do so, direct that the apparatus to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person—
- (a) does not supply the apparatus to any person otherwise than—
    - (i) to a person who carries on a business of buying of the same description as the first mentioned product and repairing or reconditioning it; or
    - (ii) as scrap (that is to say, for the value of materials included in the apparatus rather than for the value of the apparatus itself); and
  - (b) complies with any order to pay costs or expenses which has been made against that person in the proceedings for the order for forfeiture.

#### **Forfeiture of apparatus: Scotland**

- 4.—(1) In Scotland a sheriff may make an order for forfeiture of any apparatus for private use or consumption in relation to which there has been a contravention of any provision of regulation 5—
- (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995<sup>(3)</sup>; 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) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the apparatus 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 apparatus should not be forfeited.

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(1) 1980 c. 43.

(2) S.I.1981/1675 (N.I.26).

(3) 1995 c. 46.

(3) Service under sub-paragraph (2) 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) and any other person claiming to be the owner of, or otherwise to have an interest in, the apparatus to which an application under this paragraph relates shall be entitled to appear at the hearing of the application to show cause why the apparatus 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)—

- (a) if any person on which notice is served under sub-paragraph (2) does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under sub-paragraph (2) 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 apparatus of regulation 5.

(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 apparatus of regulation 5 if he is satisfied that that regulation has been contravened in relation to an item of apparatus which is representative of that apparatus (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 apparatus is made following an application by the procurator-fiscal under sub-paragraph (1)(a), 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) 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
- (b) if an appeal is made under sub-paragraph (8) 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), apparatus 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 apparatus 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 apparatus of the same description as the first-mentioned and repairing or reconditioning it; or
- (b) as scrap (that is to say, for the value of materials included in the apparatus rather for the value of the apparatus).