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STATUTORY INSTRUMENTS

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**2005 No. 1803**

**The General Product Safety Regulations 2005**

**PART 3**

**ENFORCEMENT**

**Appeals against safety notices**

**17.**—(1) A person on whom a safety notice has been served and a person having an interest in a product in respect of which a safety notice (other than a recall notice) has been served may, before the end of the period of 21 days beginning with the day on which the notice was served, apply for an order to vary or set aside the terms of the notice.

(2) On an application under paragraph (1) the court or the sheriff, as the case may be, shall make an order setting aside the notice only if satisfied that—

- (a) in the case of a suspension notice, there has been no contravention in relation to the product of any requirement of these Regulations,
- (b) in the case of a requirement to mark or a requirement to warn, the product is not a dangerous product,
- (c) in the case of a withdrawal notice—
  - (i) the product is not a dangerous product, or
  - (ii) where applicable, regulation 14(3) has not been complied with by the enforcement authority concerned,
- (d) in the case of a recall notice—
  - (i) the product is not a dangerous product, or
  - (ii) regulation 15(4) has not been complied with,
- (e) in any case, the serving of the safety notice concerned was not proportionate to the seriousness of the risk.

(3) On an application concerning the period of time specified in a suspension notice as the period for which it applies, the court or the sheriff, as the case may be, may reduce the period to such period as it considers sufficient for organising appropriate safety evaluations, checks and controls.

(4) On an application to vary the terms of a notice, the court or the sheriff, as the case may be, may vary the requirements specified in the notice as it considers appropriate.

(5) A person on whom a recall notice has been served and who proposes to make an application under paragraph (1) in relation to the notice may, before the end of the period of seven days beginning with the day on which the notice was served, apply to the court or the sheriff for an order suspending the effect of the notice and the court or the sheriff may, in any case where it considers it appropriate to do so, make an order suspending the effect of the notice.

(6) If the court or the sheriff makes an order suspending the effect of a recall notice under paragraph (5) in the absence of the enforcement authority, the enforcement authority may apply for the revocation of such order.

- (7) An order under paragraph (5) shall take effect from the time it is made until—
- (a) it is revoked under paragraph (6),
  - (b) where no application is made under paragraph (1) in respect of the recall notice within the time specified in that paragraph, the expiration of that time,
  - (c) where such an application is made but is withdrawn or dismissed for want of prosecution, the date of dismissal or withdrawal of the application, or
  - (d) where such an application is made and is not withdrawn or dismissed for want of prosecution, the determination of the application.
- (8) Subject to paragraph (6), in Scotland the sheriff's decision under paragraph (5) shall be final.
- (9) An application under this regulation may be made—
- (a) by way of complaint to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland—
    - (i) in respect of a contravention in relation to the product of a requirement imposed by or under these Regulations; or
    - (ii) for the forfeiture of the product under regulation 18;
  - (b) where no such proceedings have been brought, by way of complaint to any magistrates' court; or
  - (c) in Scotland, by summary application to the sheriff.
- (10) A person aggrieved by an order made pursuant to an application under paragraph (1) by a magistrates' court in England, Wales or Northern Ireland, or by a decision of such a 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.