

SCHEDULE 4

Regulation 11(2)(a)

MODIFICATIONS OF ENFORCEMENT PROVISIONS OF THE ACT

1. In section 107 (validity of decisions and proceedings relating thereto)—
 - (a) in subsection (1), for “Part II of this Act or of a Minister under section 75 of this Act, and the validity of any licence or certificate” substitute “the Herbal Regulations, and the validity of any registration”;
 - (b) in subsections (2)(a) and (3)(b), for “this Act” substitute “the Herbal Regulations”;
 - (c) in subsection (2)(b), for “this Act or of any regulations made under this Act” substitute “the Herbal Regulations”; and
 - (d) in subsection (4), for “licence or certificate”, in each place those words appear, substitute “registration”.
2. In section 108 (enforcement in England and Wales)—
 - (a) for subsection (1) substitute—

“(1) It shall be the duty of the Secretary of State to enforce in England, or to secure the enforcement in England of, the provisions of the Herbal Regulations.

(1A) It shall be the duty of the National Assembly of Wales to enforce in Wales, or to secure the enforcement in Wales of, the provisions of the Herbal Regulations.”; and
 - (b) in subsection (2)(c) after “this Act”, in the second place those words appear, insert “or the Herbal Regulations”.
3. In section 109 (enforcement in Scotland), for subsections (1) to (3), substitute—

“(1) It shall be the duty of the Scottish Ministers to enforce in Scotland, or to secure the enforcement in Scotland of, the provisions of the Herbal Regulations.”.
4. For section 110 (enforcement in Northern Ireland) substitute—

“It shall be the duty of the Department for Health, Social Services and Public Safety to enforce in Northern Ireland, or to secure the enforcement in Northern Ireland of, the provisions of the Herbal Regulations.”.
5. In section 111 (rights of entry)—
 - (a) in subsection (1)(a), for the words after “contravention” substitute “of any provisions of the Herbal Regulations, or”;
 - (b) in subsection (1)(b), for “this Act or under any such regulations or order” substitute “those Regulations or any of the provisions of this Act applied by regulation 11 of those Regulations”;
 - (c) in subsection (2)(a), for the words from “this Act or of any regulations” onwards substitute “the Herbal Regulations;”; and
 - (d) in subsection (3)—
 - (i) for “licence or certificate under Part II of this Act” substitute “registration under the Herbal Regulations”, and
 - (ii) for “licence or certificate”, in the second place those words appear, substitute “registration”.
6. In section 112 (power to inspect, take samples and seize goods and documents)—
 - (a) in subsection (1), for the words before paragraph (a) substitute—

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“For the purpose of ascertaining whether there is or has been a contravention of the Herbal Regulations, any person duly authorised in writing by an enforcement authority shall have a right to inspect—”;

- (b) in subsection (4)—
 - (i) for “offence under this Act is” substitute—
 - “offence—
 - (a) under the Herbal Regulations, or
 - (b) under section 114, 118 or 123 of this Act,is”, and
 - (ii) for “under this Act”, in the second place those words appear, substitute “under those Regulations or under any of the provisions of this Act applied by regulation 11 of those Regulations”;
 - (c) in subsection (5), for “this Act and any regulations or order made thereunder” substitute “the Herbal Regulations”;
 - (d) in subsection (7)—
 - (i) for “a licence or certificate under Part II of this Act” substitute “a registration under the Herbal Regulations”, and
 - (ii) for “licence or certificate”, in the second place those words appear, substitute “registration”; and
 - (e) in subsection (9), for “this Act”, in the second place those words appear, substitute “the Herbal Regulations”.
- 7.** In section 115 (analysis of samples in other cases)—
- (a) in subsection (7), for “form prescribed by the Ministers” substitute “prescribed form”; and
 - (b) omit subsection (9).
- 8.** In section 116 (liability to forfeiture under Customs and Excise Management Act 1979)—
- (a) for “this Act”, in both places those words appear, substitute “the Herbal Regulations”; and
 - (b) after subsection (3) insert—
 - “(4) In this section “the Ministers” means the Secretary of State and the Department for Health, Social Services and Public Safety, acting jointly.”.
- 9.** In section 118 (restrictions on disclosure of information), in subsection (1)(b), for “this Act” substitute “the Herbal Regulations or any provision of this Act applied by regulation 11 of those Regulations”.
- 10.** In section 119 (protection for officers of enforcement authorities)—
- (a) in subsection (1)—
 - (i) for “this Act”, in the first place those words appear, substitute “relevant legislation”, and
 - (ii) for “this Act”, in the second place those words appear, substitute “that legislation”;
 - (b) in subsection (2)—
 - (i) for “this Act”, in the first place those words appear, substitute “relevant legislation”, and
 - (ii) for “this Act”, in the second place those words appear, substitute “that legislation”;
 - (c) in subsection (3), for “this Act” substitute “relevant legislation”; and

- (d) after subsection (3) insert—
 - “(4) In this section “relevant legislation” means—
 - (a) the Herbal Regulations, or
 - (b) any provision of this Act applied by regulation 11 of those Regulations.”.
- 11.** In section 121 (contravention due to default of other person)—
 - (a) in subsection (1), for “to which this section applies constitutes an offence under this Act” substitute “of the Herbal Regulations constitutes an offence under those Regulations”;
 - (b) in subsection (2), for “this Act in respect of a contravention of a provision to which this section applies” substitute “the Herbal Regulations in respect of a contravention of a provision of those Regulations”; and
 - (c) Omit subsection (4).
- 12.** In section 122 (warranty as defence)—
 - (a) in subsection (1), for “this Act in respect of a contravention of a provision to which this section applies” substitute “the Herbal Regulations”; and
 - (b) Omit subsection (2).
- 13.** In section 124 (offences by bodies corporate)—
 - (a) in subsection (1), for “this Act” substitute “the Herbal Regulations, or under section 114, 118 or 123 of this Act,”; and
 - (b) after subsection (2) insert the following subsection—
 - “(2A) In subsections (1) and (2) of this section “body corporate” includes a Scottish partnership and “director”, in relation to such a partnership, includes any of its partners”.
- 14.** In section 125 (prosecutions)—
 - (a) in subsections (1) and (2), for “under this Act” substitute “under the Herbal Regulations, or for an offence under section 114, 118 or 123 of this Act,”;
 - (b) omit subsection (3);
 - (c) in subsection (4) after “this Act”, in the second place those words appear, insert “or under the Herbal Regulations”; and
 - (d) omit subsections (6) and (7).
- 15.** In section 127 (service of documents)—
 - (a) for “any provision of this Act” substitute “relevant legislation”; and
 - (b) at the end add—
 - “In this section “relevant legislation” means any provision of the Herbal Regulations or any provision of this Act applied by regulation 11 of those Regulations”.
- 16.** In Schedule 3 (sampling)—
 - (a) in paragraph 1(1)(a), for the words from “this Act or of any Regulations” onwards substitute “the Herbal Regulations, or”;
 - (b) in paragraph 1(1)(b), for the words from “of their functions” onwards substitute “(in this Schedule referred to as “the relevant enforcement authority”) of their functions under those Regulations or under any provision of this Act applied by regulation 11 of those Regulations,”;
 - (c) in paragraph 19(3), for “form prescribed by the Ministers” substitute “prescribed form”;
 - (d) omit paragraph 20(2); and

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- (e) in each of paragraphs 21 and 22, for “under this Act” substitute “under the Herbal Regulations, or under section 114, 118 or 123 of this Act.”
- (f) in paragraph 24(1), for “under this Act,” substitute “under the Herbal Regulations, or under section 114, 118 or 123 of this Act.”