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## SCHEDULE 5

### ENFORCEMENT

#### *Powers of the Health and Safety Executive and the Office of Rail Regulation as enforcement authorities*

7. In relation to the enforcement of these Regulations by the Health and Safety Executive or the Office of Rail Regulation—

- (a) sections 19 to 28(1), 33 to 35(2), 38, 39, 41 and 42 of the 1974 Act shall apply as provided in paragraph 8; and
- (b) sections 36(1) and (2) and 37 of the 1974 Act shall apply in relation to offences under section 33 as applied in relation to these Regulations and modified by paragraph 8.

8. For the purposes of the enforcement of these Regulations by the Health and Safety Executive or the Office of Rail Regulation, and in respect of any related proceedings for contravention of these Regulations, the provisions specified in paragraph 7 shall apply as if—

- (a) references to relevant statutory provisions were references to those provisions as modified by this paragraph and to these Regulations;
- (b) references to articles, substances, articles and substances, or plant, were references to machinery or partly completed machinery, or a machine or partly completed machine, as the context may require;
- (c) references to an “enforcing authority” were references to the Health and Safety Executive or the Office of Rail Regulation, as appropriate;
- (d) references to the field of responsibility of an enforcing authority, however expressed, were omitted;
- (e) in section 20, subsection (3) were omitted;
- (f) section 22, as well as permitting an inspector to serve a prohibition notice in the circumstances specified in section 22(2), permitted an inspector to serve a prohibition notice in any case where—

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- (1) Sections 18, 27, 28 and 34(1) were amended by S.I. 2008/960. Section 20(7) was amended by the Civil Partnership Act 2004 (c.33), section 261(1) and Schedule 27, paragraph 49. Sections 22 and 28(1)(a) were amended, and sections 25A and 27A were inserted, by section 36 of, and Schedule 3 to, the 1987 Act. Section 23(4) was amended by the Fire and Rescue Services Act 2004 (c.21), Schedule 1, paragraph 44 and by S.I. 2005/1541, S.I. 2006/475, and (in relation to Scotland) S.S.I. 2005/383. Section 24 was amended by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c.8). Section 27 was amended by the Employment Act 1989 (c.38), Schedule 6, paragraph 10 and Schedule 7, Part I. Section 27A was amended by the Commissioners for Revenue and Customs Act 2005 (c.11), Schedule 4, paragraph 18. Section 28(1)(a) was amended by section 105(2) of the Railways and Transport Safety Act 2003 (c.20). Subsections (3), (4) and (5) of section 28 were amended by the Environment Act 1995 (c.25), Schedule 22, paragraph 30(6); subsection (3)(c) was also amended by the Water Act 1989 (c.15), Schedule 25, paragraph 46, and (in relation to Scotland) by the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 93 and S.I. 2004/1822. Section 28(3)(f) was inserted by S.I. 2004/3363. Section 28(5) was amended by the Water Act 1989, Schedule 25, paragraph 46, S.I. 2004/1822 and S.I. 2004/3363. Section 28(6) was amended by the Local Government Act 1985 (c.51), Schedule 14, paragraph 52, by the Education Reform Act 1988 (c.40), Schedule 13, Part I, by the Greater London Authority Act 1999 (c.29), Schedule 29, Part I, paragraph 23, and by the Local Government and Public Involvement in Health Act 2007 (c.28), Schedule 13, Part 2, paragraph 32. Section 28(9) was inserted by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 9. Section 28(9A) was inserted by S.I. 2004/3363. Section 28(10) was inserted by the Norfolk and Suffolk Broads Act 1988 (c.4), Schedule 6, paragraph 13, and substituted by the Environment Act 1995, Schedule 10, paragraph 12. Section 33(2) was amended by section 31 of, and Schedule 6 to, the Criminal Law Act 1977 (c.45) and sections 37 and 46 of the Criminal Justice Act 1982 (c.48).
  - (2) Section 33 was amended by the Employment Protection Act 1975, Schedule 15, paragraph 11 and Schedule 18, by section 32(2) of the Magistrates’ Courts Act 1980 (c.43), by the Forgery and Counterfeiting Act 1981 (c.45), Schedule, Part I, by section 36 of, and Schedule 3 to, the 1987 Act, and by section 4 of the Offshore Safety Act 1992 (c.15). In section 34, subsection (5) was amended by section 461(1) of, and Schedule 9, paragraph 51 to, the Criminal Procedure (Scotland) Act 1975 (c.21); and subsection (6) was inserted, in relation to Scotland, by the Gas Act 1986 (c.44), Schedule 7, paragraph 18.

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- (i) a responsible person has failed to comply with the requirements of these Regulations in relation to CE marking; and
- (ii) the responsible person—
  - (aa) has been served with a notice under regulation 21(3), or an improvement notice under section 21, in respect of that failure; and
  - (bb) has continued to fail to comply with those requirements after the period for remedying the contravention specified in the improvement notice;
- (g) in section 23, subsections (3), (4) and (6) were omitted;
- (h) in section 33—
  - (i) in subsection (1) the whole of paragraphs (a) to (d) were omitted;
  - (ii) subsection (1A) were omitted;
  - (iii) in subsection (2), the reference to paragraph (d) of subsection (1) were omitted;
  - (iv) subsection (2A) were omitted;
  - (v) for subsection (3) there were substituted the following—
    - “(3) A person guilty of an offence under any paragraph of subsection (1) not mentioned in subsection (2), or of an offence under subsection (1)(e) not falling within subsection (2), shall be liable—
    - (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
    - (b) on conviction on indictment—
      - (i) in the case of an offence under subsection (1)(g) or of an offence under subsection (1)(j), to imprisonment for a term not exceeding two years, or a fine, or both; or
      - (ii) in all other cases, to a fine.”; and
  - (vi) subsection (4) were omitted;
- (i) in section 34—
  - (i) paragraphs (a) and (b) of subsection (1) were omitted; and
  - (ii) in subsection (3) for “six months” there were substituted “twelve months”; and
- (j) in section 42, subsections (4) and (5) were omitted.