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STATUTORY INSTRUMENTS

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**2016 No. 1152**

**The Non-automatic Weighing Instruments Regulations 2016**

**PART 9**

**OFFENCES**

**Unauthorised application of authorised marks**

- 71.**—(1) Subject to paragraph (2), a person is guilty of an offence if, that person—
- (a) affixes an authorised mark to a regulated non-automatic weighing instrument otherwise than in accordance with these Regulations;
  - (b) alters or defaces an authorised mark affixed to a regulated non-automatic weighing instrument (otherwise than as authorised by any provision of these Regulations);
  - (c) removes an authorised mark affixed to a regulated non-automatic weighing instrument; or
  - (d) affixes any other marking to a regulated non-automatic weighing instrument which is likely to deceive any person as to the meaning or form, or both, of an authorised mark.
- (2) Where the alteration, defacement or removal of an authorised mark is occasioned solely—
- (a) in the course of the adjustment or repair of a regulated non-automatic weighing instrument by a person regularly engaged in the business of repair of such instruments, or by that person's authorised agent; or
  - (b) by an enforcement officer or approved verifier in the carrying out of any of their functions under these Regulations,

that person or that person's authorised agent, enforcement officer or approved verifier is not guilty of an offence under paragraph (1)(b) or (1)(c).

(3) A person is guilty of an offence if that person places on the market, puts into service or uses for a purpose mentioned in regulation 3(2) a regulated non-automatic weighing instrument—

- (a) from which, to that person's knowledge, an authorised mark has been removed; or
- (b) which to that person's knowledge, bears—
  - (i) an authorised mark affixed otherwise than in accordance with these Regulations;
  - (ii) an authorised mark that has been altered or defaced otherwise than in the circumstances referred to in paragraph (2); or
  - (iii) any marking which is likely to deceive any person as to the meaning or form, or both, of an authorised mark.

(4) A regulated non-automatic weighing instrument in respect of which an offence under this regulation has been committed and any implement used in the commissioning of the offence shall be liable to be forfeited.

- (5) In this regulation, "authorised mark" means
- (a) the CE marking,
  - (b) the M marking,

- (c) the identification number of the notified body which carried out the conformity assessment procedure in respect of the regulated non-automatic weighing instrument,
- (d) a disqualification mark or
- (e) a re-qualification mark.

### **Offences by economic operators etc.**

**72.**—(1) In this regulation, “event of default” means—

- (a) The placing on the market of a regulated non-automatic weighing instrument which—
  - (i) does not meet the essential requirements applicable to it;
  - (ii) has not been the subject of an applicable conformity assessment procedure;
  - (iii) does not bear the markings or inscriptions required by these Regulations; or
  - (iv) is not accompanied by the documents and information required by these Regulations;
- (b) any failure to—
  - (i) create or maintain any records required to be created or maintained under these Regulations;
  - (ii) provide to a competent authority documents or information pursuant to a requirement imposed by or under these Regulations; or
  - (iii) co-operate with the market surveillance authority under regulation 58(3);
- (c) any failure to comply with regulation 46 (requirements for non-regulated non-automatic weighing instruments);
- (d) any failure to comply with regulation 55 (putting into service of regulated non-automatic weighing instruments for the purposes listed in regulation 3(2)); or
- (e) any failure to comply with obligations arising under regulation 69 (testing of regulated non-automatic weighing instruments).

(2) Where an event of default of a kind mentioned in paragraph (1)(a), (1)(b) or (1)(c) occurs as a result of the failure of an economic operator to comply with an obligation imposed on that economic operator by any provision of these Regulations, that economic operator is guilty of an offence.

(3) Where an event of default of a kind mentioned in paragraph (1)(d) or (1)(e) occurs, the person responsible for that event of default is guilty of an offence.

### **Penalties for offences**

**73.** A person guilty of an offence under any provision of these Regulations is liable, on summary conviction—

- (a) in England and Wales to a fine; and
- (b) in Scotland or Northern Ireland to a fine not exceeding level 5 on the standard scale.

### **Defence of due diligence**

**74.**—(1) In proceedings against a person for an offence under these Regulations (other than regulation 71(3)), it shall be a defence for that person to show that that person took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where, in proceedings against a person for such an offence, the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or

(b) reliance on information given by another, that person shall not, without the leave of the court, be entitled to rely on the defence, unless, not less than seven clear days before the hearing of the proceedings (or, in Scotland, the trial diet), that person has served a notice in accordance with paragraph (3) on the person bringing the proceedings.

(3) A notice under this regulation must give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time that person serves it.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of reliance on information supplied by another, unless that person shows it was reasonable in all the circumstances for that person to have relied on the information, having regard in particular to—

- (a) the steps which that person took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) whether that person had any reason to disbelieve the information.

#### **Liability of persons other than the principal offender**

**75.**—(1) Where the commission by a person (“A”) of an offence under these Regulations is due to the act or default of another person (“B”) in the course of any business of A, B is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against A.

(2) Where a body corporate commits an offence and it is proved that the offence was committed—

- (a) with the consent or connivance of an officer of the body corporate; or
- (b) as a result of the negligence of an officer of the body corporate,

the officer, as well as the body corporate, is guilty of the offence.

(3) In paragraph (2), a reference to an officer of a body corporate includes a reference to—

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b) a person purporting to act as a director, manager, secretary or other similar officer; and
- (c) if the affairs of the body corporate are managed by its members, a member.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland, and in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.