

## SCHEDULE 10

Enforcement and investigatory powers conferred on the enforcing authority and the market surveillance authority

### PART 1

#### Powers

##### **Enforcement powers under the 1987 Act**

1. For the purposes of enforcing these Regulations, the following sections of the 1987 Act apply subject to the modifications in paragraph 2—

- (a) section 13 (prohibition notices and notices to warn),
- (b) section 14 (suspension notices),
- (c) section 16 (forfeiture: England, Wales and Northern Ireland),
- (d) section 17 (forfeiture: Scotland),
- (e) section 18 (power to obtain information),
- (f) section 29 (powers of search etc),
- (g) section 30 (provisions supplemental to s 29),
- (h) section 31 (power of customs officer to detain goods),
- (i) section 33 (appeals against detention of goods),
- (j) section 34 (compensation for seizure and detention),
- (k) section 35 (recovery of expenses of enforcement),
- (l) section 37 (power of Commissioners for Revenue and Customs to disclose information)),
- (m) section 45 (interpretation),
- (n) section 46(1) (meaning of “supply”), and
- (o) Schedule 2 (prohibition notices and notices to warn).

##### **Modifications to the 1987 Act**

2. The sections of the 1987 Act referred to in paragraph 1 are to apply as if—

- (a) in section 13—
  - (i) in subsection (1), “relevant” were omitted on each occasion that it appears,
  - (ii) for “unsafe”, on each occasion that it appears, there were substituted “non-compliant”,
  - (iii) in subsection (2), the words from “; and the Secretary of State may” to the end were omitted, and
  - (iv) subsections (4) to (7) were omitted;
- (b) in section 14—
  - (i) in subsection (1), after “any safety provision has been contravened in relation to any goods”, there were inserted “or that such goods present a risk”,
  - (ii) in subsection 2(b), after “a safety provision has been contravened in relation to the goods”, there were inserted “or that such goods present a risk”,

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- (iii) in subsection (2)(c), “under section 15 below” were omitted, and
- (iv) subsections (6) to (8) were omitted;
- (c) in section 16—
  - (i) in subsection (1), after “a contravention in relation to the goods of a safety provision”, there were inserted “or that such goods present a risk”,
  - (ii) for subsection 2(b) there were substituted—
    - “(b) where an application with respect to some or all of the goods has been made to a magistrates’ court under regulation 73 (appeals against notices) of the 2017 Regulations or section 33, to that court; and”,
  - (iii) in subsection (3), after “a contravention in relation to the goods of a safety provision”, there were inserted “or that such goods present a risk”,
  - (iv) after subsection (4), there were inserted—
    - “(4A) A court may infer for the purposes of this section that any goods present a risk, if it is satisfied that such a risk is presented by goods which are representative of those goods (whether by reason of being of the same design or part of the same consignment or batch or otherwise).”;
  - (v) in subsection (6), the words “Subject to subsection (7) below,” were omitted, and
  - (vi) subsection (7) were omitted;
- (d) in section 17—
  - (i) in subsection (1), after “a contravention of a safety provision”, there were inserted “or where the goods present a risk”,
  - (ii) in subsection (6), after “a contravention in relation to those goods of a safety provision”, there were inserted “or that those goods present a risk”, and
  - (iii) after subsection (7), there were inserted—
    - “(7A) The sheriff may infer for the purposes of this section that any goods present a risk, if the sheriff is satisfied that such a risk is presented by goods which are representative of those goods (whether by reason of being of the same design or part of the same consignment or batch or otherwise).”;
- (e) in section 18, subsections (3) and (4) were omitted;
- (f) in section 29—
  - (i) in subsection 4(a), after “any contravention of any safety provision in relation to the goods”, there were inserted “or whether the goods present a risk”; and
  - (ii) in subsection 4(b), after “any such contravention”, there were inserted “or whether the goods present a risk”;
- (g) in section 30—
  - (i) at the end of subsection (2)(a)(ii), for “and” there were substituted “or”,
  - (ii) after subsection (2)(a)(ii), there were inserted—
    - “(iii) that any goods which any officer has power to inspect under section 29 are on any premises and their inspection is likely to demonstrate that they present a risk; and”, and
  - (iii) subsections (5), (7) and (8) were omitted;
- (h) in section 31(1), for “Part II of this Act”, there were substituted “the 2017 Regulations”,
- (i) in section 34—

- (i) omit the word “and” at the end of subsection (1)(a), and
- (ii) after that subsection, insert—
  - “(aa) the goods do not present a risk; and”,
- (j) in section 37(1), for “Part II of this Act”, there were substituted “the 2017 Regulations”,
- (k) in section 45(1)—
  - (i) the definitions of “conditional sale agreement”, “gas”, “motor vehicle”, “personal injury”, “subordinate legislation” and “substance” were omitted,
  - (ii) before the definition of “aircraft”, there were inserted—
    - ““the 2017 Regulations” means the Radio Equipment Regulations 2017;”,
  - (iii) for the definition of “enforcement authority” there were substituted—
    - ““enforcement authority” means an enforcing authority as defined in regulation 2(1) of the 2017 Regulations;”,
  - (iv) for the definition of “goods” there were substituted—
    - ““goods” means radio equipment within the scope of the 2017 Regulations;”,
  - (v) after the definition of “motor vehicle”, there were inserted—
    - ““non-compliant” in relation to any goods means that—
      - (a) a safety provision has been contravened in relation to the goods; or
      - (b) the goods present a risk”,
  - (vi) after the definition of “premises” there were inserted—
    - ““present a risk” means present a risk where “risk” has the meaning set out in regulation 2(5) of the 2017 Regulations;”,
  - (vii) for the definition of “safety provision” there were substituted—
    - ““safety provision” means any provision of the 2017 Regulations;”, and
  - (viii) for the definition of “safety regulations” there were inserted—
    - ““safety regulations” means the 2017 Regulations;”,
- (l) in section 46(1), there were omitted from “and, in relation to gas or water” to the end; and
- (m) in Schedule 2—
  - (i) for “unsafe”, on each occasion that it appears, there were substituted “non-compliant”, and
  - (ii) for “safe”, on each occasion that it appears, there were substituted “not non-compliant”.

### **Application of Schedule 5 to the Consumer Rights Act 2015**

3. Schedule 5 to the Consumer Rights Act 2015 (investigatory powers etc)(1) applies to OFCOM as if—

- (a) OFCOM were a domestic enforcer within the meaning of that Schedule, and
- (b) the enforcer’s legislation within the meaning of that Schedule, in relation to OFCOM, were the legislation and notices which, by virtue of regulation 56(1)(a)(i) or (b)(i), OFCOM has a duty or power to enforce.

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(1) 2015 c.15.

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