

SCHEDULES

SCHEDULE 2

Section 13.

PROHIBITION NOTICES AND NOTICES TO WARN

PART I

PROHIBITION NOTICES

- 1 A prohibition notice in respect of any goods shall—
 - (a) state that the Secretary of State considers that the goods are unsafe;
 - (b) set out the reasons why the Secretary of State considers that the goods are unsafe;
 - (c) specify the day on which the notice is to come into force: and
 - (d) state that the trader may at any time make representations in writing to the Secretary of State for the purpose of establishing that the goods are safe.
- 2 (1) If representations in writing about a prohibition notice are made by the trader to the Secretary of State, it shall be the duty of the Secretary of State to consider whether to revoke the notice and—
 - (a) if he decides to revoke it, to do so:
 - (b) in any other case, to appoint a person to consider those representations, any further representations made (whether in writing or orally) by the trader about the notice and the statements of any witnesses examined under this Part of this Schedule.
- (2) Where the Secretary of State has appointed a person to consider representations about a prohibition notice, he shall serve a notification on the trader which—
 - (a) states that the trader may make oral representations to the appointed person for the purpose of establishing that the goods to which the notice relates are safe: and
 - (b) specifies the place and time at which the oral representations may be made.
- (3) The time specified in a notification served under sub-paragraph (2) above shall not be before the end of the period of twenty-one days beginning with the day on which the notification is served, unless the trader otherwise agrees.
- (4) A person on whom a notification has been served under sub-paragraph (2) above or his representative may, at the place and time specified in the notification—
 - (a) make oral representations to the appointed person for the purpose of establishing that the goods in question are safe; and
 - (b) call and examine witnesses in connection with the representations.
- 3 (1) Where representations in writing about a prohibition notice are made by the trader to the Secretary of State at any time after a person has been appointed to consider representations about that notice, then, whether or not the appointed person has made

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a report to the Secretary of State, the following provisions of this paragraph shall apply instead of paragraph 2 above.

- (2) The Secretary of State shall, before the end of the period of one month beginning with the day on which he receives the representations, serve a notification on the trader which states—
 - (a) that the Secretary of State has decided to revoke the notice, has decided to vary it or, as the case may be, has decided neither to revoke nor to vary it; or
 - (b) that, a person having been appointed to consider representations about the notice, the trader may, at a place and time specified in the notification, make oral representations to the appointed person for the purpose of establishing that the goods to which the notice relates are safe.
 - (3) The time specified in a notification served for the purposes of sub-paragraph (2)(b) above shall not be before the end of the period of twenty-one days beginning with the day on which the notification is served, unless the trader otherwise agrees or the time is the time already specified for the purposes of paragraph 2(2)(b) above.
 - (4) A person on whom a notification has been served for the purposes of sub-paragraph (2)(b) above or his representative may, at the place and time specified in the notification—
 - (a) make oral representations to the appointed person for the purpose of establishing that the goods in question are safe; and
 - (b) call and examine witnesses in connection with the representations.
- 4 (1) Where a person is appointed to consider representations about a prohibition notice, it shall be his duty to consider—
- (a) any written representations made by the trader about the notice, other than those in respect of which a notification is served under paragraph 3(2)(a) above;
 - (b) any oral representations made under paragraph 2(4) or 3(4) above; and
 - (c) any statements made by witnesses in connection with the oral representations,
- and, after considering any matters under this paragraph, to make a report (including recommendations) to the Secretary of State about the matters considered by him and the notice.
- (2) It shall be the duty of the Secretary of State to consider any report made to him under sub-paragraph (1) above and, after considering the report, to inform the trader of his decision with respect to the prohibition notice to which the report relates.
- 5 (1) The Secretary of State may revoke or vary a prohibition notice by serving on the trader a notification stating that the notice is revoked or, as the case may be is varied as specified in the notification.
- (2) The Secretary of State shall not vary a prohibition notice so as to make the effect of the notice more restrictive for the trader.
- (3) Without prejudice to the power conferred by section 13(2) of this Act, the service of a notification under sub-paragraph (1) above shall be sufficient to satisfy the requirement of paragraph 4(2) above that the trader shall be informed of the Secretary of State's decision.

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PART II

NOTICES TO WARN

- 6 (1) If the Secretary of State proposes to serve a notice to warn on any person in respect of any goods, the Secretary of State, before he serves the notice, shall serve on that person a notification which—
- (a) contains a draft of the proposed notice;
 - (b) states that the Secretary of State proposes to serve a notice in the form of the draft on that person;
 - (c) states that the Secretary of State considers that the goods described in the draft are unsafe;
 - (d) sets out the reasons why the Secretary of State considers that those goods are unsafe; and
 - (e) states that that person may make representations to the Secretary of State for the purpose of establishing that the goods are safe if, before the end of the period of fourteen days beginning with the day on which the notification is served, he informs the Secretary of State—
 - (i) of his intention to make representations; and
 - (ii) whether the representations will be made only in writing or both in writing and orally.
- (2) Where the Secretary of State has served a notification containing a draft of a proposed notice to warn on any person, he shall not serve a notice to warn on that person in respect of the goods to which the proposed notice relates unless—
- (a) the period of fourteen days beginning with the day on which the notification was served expires without the Secretary of State being informed as mentioned in sub-paragraph (1)(e) above;
 - (b) the period of twenty-eight days beginning with that day expires without any written representations being made by that person to the Secretary of State about the proposed notice: or
 - (c) the Secretary of State has considered a report about the proposed notice by a person appointed under paragraph 7(1) below.
- 7 (1) Where a person on whom a notification containing a draft of a proposed notice to warn has been served—
- (a) informs the Secretary of State as mentioned in paragraph 6(1)(e) above before the end of the period of fourteen days beginning with the day on which the notification was served; and
 - (b) makes written representations to the Secretary of State about the proposed notice before the end of the period of twenty-eight days beginning with that day,

the Secretary of State shall appoint a person to consider those representations, any further representations made by that person about the draft notice and the statements of any witnesses examined under this Part of this Schedule.

- (2) Where—
- (a) the Secretary of State has appointed a person to consider representations about a proposed notice to warn; and
 - (b) the person whose representations are to be considered has informed the Secretary of State for the purposes of paragraph 6(1)(e) above that the representations he intends to make will include oral representations,

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the Secretary of State shall inform the person intending to make the representations of the place and time at which oral representations may be made to the appointed person.

- (3) Where a person on whom a notification containing a draft of a proposed notice to warn has been served is informed of a time for the purposes of sub-paragraph (2) above, that time shall not be—
- (a) before the end of the period of twenty-eight days beginning with the day on which the notification was served; or
 - (b) before the end of the period of seven days beginning with the day on which that person is informed of the time.
- (4) A person who has been informed of a place and time for the purposes of sub-paragraph (2) above or his representative may, at that place and time—
- (a) make oral representations to the appointed person for the purpose of establishing that the goods to which the proposed notice relates are safe; and
 - (b) call and examine witnesses in connection with the representations.
- 8 (1) Where a person is appointed to consider representations about a proposed notice to warn, it shall be his duty to consider—
- (a) any written representations made by the person on whom it is proposed to serve the notice; and
 - (b) in a case where a place and time has been appointed under paragraph 7(2) above for oral representations to be made by that person or his representative, any representations so made and any statements made by witnesses in connection with those representations,
- and, after considering those matters, to make a report (including recommendations) to the Secretary of State about the matters considered by him and the proposal to serve the notice.
- (2) It shall be the duty of the Secretary of State to consider any report made to him under sub-paragraph (1) above and, after considering the report, to inform the person on whom it was proposed that a notice to warn should be served of his decision with respect to the proposal.
- (3) If at any time after serving a notification on a person under paragraph 6 above the Secretary of State decides not to serve on that person either the proposed notice to warn or that notice with modifications, the Secretary of State shall inform that person of the decision: and nothing done for the purposes of any of the preceding provisions of this Part of this Schedule before that person was so informed shall—
- (a) entitle the Secretary of State subsequently to serve the proposed notice or that notice with modifications: or
 - (b) require the Secretary of State, or any person appointed to consider representations about the proposed notice, subsequently to do anything in respect of, or in consequence of, any such representations.
- (4) Where a notification containing a draft of a proposed notice to warn is served on a person in respect of any goods, a notice to warn served on him in consequence of a decision made under sub-paragraph (2) above shall either be in the form of the draft or shall be less onerous than the draft.
- 9 The Secretary of State may revoke a notice to warn by serving on the person on whom the notice was served a notification stating that the notice is revoked.

PART III

GENERAL

- 10 (1) Where in a notification served on any person under this Schedule the Secretary of State has appointed a time for the making of oral representations or the examination of witnesses, he may, by giving that person such notification as the Secretary of State considers appropriate, change that time to a later time or appoint further times at which further representations may be made or the examination of witnesses may be continued; and paragraphs 2(4), 3(4) and 7(4) above shall have effect accordingly.
- (2) For the purposes of this Schedule the Secretary of State may appoint a person (instead of the appointed person) to consider any representations or statements, if the person originally appointed, or last appointed under this sub-paragraph, to consider those representations or statements has died or appears to the Secretary of State to be otherwise unable to act.
- 11 In this Schedule—
- "the appointed person" in relation to a prohibition notice or a proposal to serve a notice to warn, means the person for the time being appointed under this Schedule to consider representations about the notice or as the case may be about the proposed notice;
- "notification" means a notification in writing;
- "trader", in relation to a prohibition notice, means the person on whom the notice is or was served.