

Changes to legislation: There are currently no known outstanding effects for the Birmingham Commonwealth Games Act 2020, SCHEDULE 3. (See end of Document for details)

SCHEDULES

SCHEDULE 3 U.K.

Section 20

ENFORCEMENT OF OFFENCES UNDER PART 3

Introductory

- 1 In this Schedule—
- “the 2015 Act” means the Consumer Rights Act 2015;
 - “officer”, in relation to a relevant authority, is to be read in accordance with paragraph 7(1) and (2) of Schedule 5 to the 2015 Act, but as if the powers conferred by this Schedule were powers in that Schedule;
 - “relevant authority” means—
 - (a) in the case of an offence under section 10—
 - (i) a local weights and measures authority in Great Britain, or
 - (ii) the Department for the Economy in Northern Ireland;
 - (b) in the case of an offence under section 13 or 16, a local weights and measures authority in England;
 - “relevant offence” means an offence under section 10, 13 or 16.

Conditions for seizure and detention under Schedule 5 to the 2015 Act

- 2 (1) For the purposes of enforcing a relevant offence, an officer of a relevant authority may exercise a power in paragraph 28 or 29 of Schedule 5 to the 2015 Act to seize and detain any goods or documents only if the officer reasonably suspects that it is necessary to do so for the purpose of—
- (a) ending the commission of the offence;
 - (b) preventing the commission of the offence;
 - (c) enabling the goods or documents to be used as evidence in proceedings for the offence.
- (2) Sub-paragraph (1) does not prevent the exercise of the power in relation to any other legislation of the authority (within the meaning of paragraph 9 of that Schedule).

Additional powers of search and seizure

- 3 (1) This paragraph applies where—
- (a) an officer of a relevant authority is lawfully in any public place otherwise than in reliance on a power conferred by paragraph 23(1) or 32 of Schedule 5 to the 2015 Act, and
 - (b) the officer reasonably suspects that a person has committed, is committing or is about to commit a relevant offence.
- (2) The officer may—

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- (a) search or examine anything which appears to be in the person's possession or control, and
 - (b) seize and detain or remove any item which appears to be in the person's possession or control.
- (3) The officer may seize an item under sub-paragraph (2)(b) only if the officer reasonably suspects that it is necessary to do so for the purpose of—
- (a) ending the commission of the offence;
 - (b) preventing the commission of the offence;
 - (c) enabling the item to be used as evidence in proceedings for the offence.
- 4 Paragraph 31 of Schedule 5 to the 2015 Act (power to break open container etc) applies for the purpose of exercising any power conferred by paragraph 3 of this Schedule as it applies for the purpose of exercising a power in paragraph 28 or 29 of that Schedule.

Protections relating to search and seizure under paragraph 3

- 5 (1) Before exercising any power under paragraph 3 in relation to a person, an officer must produce evidence of the officer's identity and authority to the person.
- (2) The officer need not comply with sub-paragraph (1) if it is not reasonably practicable to do so.
- 6 (1) An officer seizing any item from a person under paragraph 3(2)(b) must take reasonable steps to—
- (a) inform the person that it has been seized, and
 - (b) provide that person with a written record of what has been seized.
- (2) In determining the steps to be taken under sub-paragraph (1), the officer must have regard to any relevant provision about the seizure of property made by—
- (a) where the officer is acting in England and Wales, a code of practice under section 66 of the Police and Criminal Evidence Act 1984;
 - (b) where the officer is acting in Northern Ireland, a code of practice under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- 7 Paragraph 29(6) and (7) of Schedule 5 to the 2015 Act (which prohibits the seizure of legally privileged items) applies in relation to the power conferred by paragraph 3(2)(b) of this Schedule as it applies in relation to the power in paragraph 29 of that Schedule.
- 8 Nothing in paragraph 3 or 4 confers any power to search a person.

Retention etc of items seized under paragraph 3

- 9 An item seized under paragraph 3 by an officer of a relevant authority may not be detained—
- (a) for a period of more than 3 months beginning with the day on which it was seized, or
 - (b) where the item is reasonably required to be detained for a longer period by the authority for a purpose for which it was seized, for longer than it is required for that purpose.

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(For corresponding provision in relation to seizure under paragraph 28 or 29 of Schedule 5 to the 2015 Act, see paragraphs 28(7) and 29(8) of that Schedule.)

- 10 The following provisions of Schedule 5 to the 2015 Act apply in relation to items detained as the result of the exercise of the power conferred by paragraph 3 of this Schedule as they apply in relation to goods or documents detained as the result of the exercise of a power in Part 4 of that Schedule—
- (a) paragraph 38 (access to seized goods and documents);
 - (b) paragraph 40 (appeals against detention of goods and documents).

Disposal of seized items

- 11 (1) This paragraph applies where—
- (a) a relevant authority no longer wishes to retain a seized item for any purpose,
 - (b) the period of 3 months beginning with the day on which the item was seized has ended (but see sub-paragraph (4)), and
 - (c) reasonable efforts have been made, without success, to find a person entitled to the item, or it is for some other reason impracticable to return the item to a person entitled to it.
- (2) In this paragraph “seized item” means an item seized—
- (a) under paragraph 3 of this Schedule, or
 - (b) in the exercise of a power in paragraph 28 or 29 of Schedule 5 to the 2015 Act for the purpose of enforcing a relevant offence.
- (3) The authority may dispose of the item in whatever way the authority considers appropriate.
- (4) In the case of a perishable item which no longer has any commercial value, the authority may dispose of the item before the end of the period mentioned in sub-paragraph (1)(b).
- (5) The persons “entitled” to an item for the purposes of this paragraph are—
- (a) the person from whom it was seized;
 - (b) (if different) any person to whom it belongs.

Power to conceal or destroy advertising

- 12 (1) An officer of a local weights and measures authority in England may do anything which the officer considers necessary or expedient to conceal any advertising which the officer reasonably suspects is an offence under section 13.
- This does not affect any power of the officer to seize the advertising.
- (2) If the officer considers that it is not reasonably practicable to seize or conceal the advertising, the officer may deface or destroy the advertising.
- (3) An officer may exercise any power conferred by any of paragraphs 23 and 32 to 34(1) of Schedule 5 to the 2015 Act (powers of entry etc) for the purpose of exercising a power conferred by sub-paragraph (1) or (2) above.
- (4) Nothing may be concealed under sub-paragraph (1) for any longer than is necessary to prevent the commission of an offence under section 13.

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- (5) But a person is not liable by virtue of sub-paragraph (4) for failing to uncover any advertising if the person took all reasonable steps—
- (a) to uncover the advertising as soon as reasonably practicable after the concealment ceased to be necessary for the purpose mentioned in that sub-paragraph, or
 - (b) to ensure that any other person was able to do so.

Obstruction of officers etc

- 13 The following provisions of Schedule 5 to the 2015 Act have effect as if the powers conferred by this Schedule were powers in Part 4 of that Schedule—
- (a) paragraph 36(1)(a) (offence of obstruction);
 - (b) paragraph 37 (offence of purporting to act as an officer of an enforcer).

Exercise of powers outside authority's area

- 14 (1) A local weights and measures authority in England or Wales may exercise a power conferred by this Schedule in a part of England or Wales that is outside that authority's area.
- (2) A local weights and measures authority in Scotland may exercise a power conferred by this Schedule in a part of Scotland that is outside that authority's area.

Compensation

- 15 (1) A person whose property is damaged in the course of the exercise or purported exercise of a relevant power by an officer of a relevant authority is entitled to compensation from that authority if—
- (a) the exercise of the power was unlawful, or
 - (b) any force used in the exercise of the power was unreasonable.
- (2) In sub-paragraph (1) “relevant power” means—
- (a) a power conferred by this Schedule, or
 - (b) a power conferred by Part 3 or 4 of Schedule 5 to the 2015 Act that is exercised (or purportedly exercised) for the purpose of enforcing a relevant offence.
- (3) The amount of compensation payable is the sum of the following amounts—
- (a) an amount equal to—
 - (i) the cost of repairing the property to its previous condition, or
 - (ii) if it is impossible or not commercially worthwhile to repair the property to that condition, the cost of replacing it, and
 - (b) the amount of any other loss that is a direct result of the damage to the property.
- 16 (1) The Secretary of State may by regulations make provision supplementing the provisions of paragraph 15, including (among other things)—
- (a) provision about how to make a claim for compensation under that paragraph;
 - (b) provision about the person to whom a claim must be made;
 - (c) provision about the period within which a claim must be made;

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- (d) provision requiring a person to provide specified information when making a claim;
 - (e) provision conferring discretion on any person to decide whether a person is entitled to compensation under that paragraph and, if so, the amount to be paid;
 - (f) provision requiring a person making a claim to be given specified information about the decision on the claim;
 - (g) provision about reviews or appeals.
- (2) In sub-paragraph (1) “specified” means specified in the regulations.

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