

SCHEDULE 15

Regulation 19

ENFORCEMENT

Enforcement in Great Britain

1. In Great Britain in relation to relevant products for use in the workplace—
 - (a) it shall be the duty of the Executive to make adequate arrangements for the enforcement of these Regulations, and accordingly a reference in the provisions applied for the purposes of such enforcement by sub-paragraph (b) below to an “enforcing authority” shall be construed as a reference to the Executive;
 - (b) sections 19 to 28(1), 33 to 35(2), 38, 39, 41 and 42 of the 1974 Act shall apply for the purposes of providing for the enforcement of these Regulations and in respect of proceedings for contravention thereof as if—
 - (i) references to relevant statutory provisions were references to those sections as applied by this paragraph and to these Regulations;
 - (ii) references to articles, substances, articles and substances, or plant, were references to relevant products;
 - (iii) references to the field of responsibility of an enforcing authority, however expressed, were omitted;
 - (iv) in section 20, subsection (3) were omitted;
 - (v) in section 23, subsections (3), (4) and (6) were omitted;
 - (vi) in section 33—
 - (aa) in subsection (1) the whole of paragraphs (a) to (d) were omitted;
 - (bb) subsection (1A) were omitted;
 - (cc) in subsection (2), the reference to paragraph (d) of subsection (1) were omitted;
 - (dd) subsection (2A) were omitted;
 - (ee) for subsection (3) there were substituted the following:—

“(3) A person guilty of an offence under any paragraph of subsection (1) above not mentioned in subsection (2) above or of an offence under subsection (1)(e) above not falling within that subsection 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), (j) or (o), to imprisonment for a term not exceeding two years, or a fine, or both; or

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- (1) In section 22, subsections (1) and (2) were amended and subsection (4) was added by paragraph 2, of Schedule 3 to, and section 36 of, the Consumer Protection Act 1987 (c. 43). Sections 25A and 27A were inserted by paragraphs 3 and 4 respectively, and section 28(1)(a) was amended by paragraph 5, of Schedule 3 to, and section 36 of, 1987 c. 43; section 27 was amended by the repeal of subsection (2)(b) and the word “or” immediately preceding it by section 29(3) and (4) of, and paragraph 10(1) and (2) of Schedule 6 and Schedule 7 to, the Employment Act 1989 (c. 38), and in subsection (3) by section 33(1) of, and paragraph 7(a) of Part II of Schedule 3 to, the Employment Act 1988 (c. 19) and section 29(3) of, and paragraph 10(3) of Schedule 6 to, 1989 c. 38.
 - (2) Section 33 was amended in subsection (1) in paragraph (h) by section 36 of, and paragraph 6 of Schedule 3 to, 1987 c. 43, and in paragraph (m) by section 30 of, and Part I of the Schedule to, the Forgery and Counterfeiting Act 1981 (c. 45); in subsection (2) as it applies to England and Wales by section 46 of the Criminal Justice Act 1982 (c. 48).

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- (ii) in all other cases, to a fine.”; and
 - (ff) subsection (4) were omitted;
 - (vii) in section 34—
 - (aa) paragraphs (a) and (b) were omitted from subsection (1); and
 - (bb) in subsection (3) for “six months” there were substituted “twelve months”;and
 - (viii) in section 42, subsections (4) and (5) were omitted; and
 - (c) sections 36(1) and (2) and 37 shall apply in relation to offences under section 33 as applied by sub-paragraph (b)(vi) above.
2. In Great Britain in relation to relevant products for private use and consumption—
- (a) these Regulations may be enforced by the Secretary of State;
 - (b) sections 14, 15, 28 to 35, 37, 38, 44 and 47 of the 1987 Act shall apply for the purposes of providing for the enforcement of these Regulations and in respect of proceedings for contravention thereof as if—
 - (i) references to safety provisions were references to these Regulations;
 - (ii) references to goods were references to relevant products as the context may require;
 - (iii) in section 14, in sub-section (6), for “six months” there were substituted “three months”;
 - (iv) in sections 28, 29, 30, 33, 34 and 35, the words “or any provision made by or under Part III of this Act” on each occasion that they occur, were omitted;
 - (v) in section 28, sub-sections (3), (4) and (5) were omitted;
 - (vi) in section 29, sub-section (4) was omitted;
 - (vii) in section 30, sub-sections (7) and (8) were omitted; and
 - (viii) in section 38(1), paragraphs (a) to (b) were omitted;
 - (c) sections 39 and 40 of the 1987 Act shall apply to offences under section 32 of that Act as it is applied to these Regulations by sub-paragraph (b) above; and
 - (d) in England and Wales, a magistrates' court may try an information in respect of an offence committed under these Regulations if the information is laid within twelve months from the time when the offence is committed, and in Scotland summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.

Enforcement in Northern Ireland in relation to relevant products

3.—(1) In Northern Ireland it shall be the duty of the Department of Economic Development to make adequate arrangements for the enforcement of these Regulations in relation to relevant products and a reference in the provisions applied to these Regulations by sub-paragraph (2) below to an “enforcing authority” or to its “field of responsibility” (however expressed) shall be construed accordingly.

- (2) In Northern Ireland, in relation to relevant products for use in the workplace—
 - (a) for the purposes of providing for the enforcement of these Regulations and in respect of proceedings for contravention thereof, Articles 21 to 33(3), 35, 36, 38 and 39 of the Order shall apply as if—

(3) Article 24(1) and (2) was amended, and Article 24(3) substituted, by Article 28 of, and paragraph 3 of Schedule 2 to, the Consumer Protection (Northern Ireland) Order 1987 S.I.1987/2049 (N.I. 20). Article 26(4) was repealed by Article 35 of,

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- (i) references to relevant statutory provisions were references to those Articles as applied by this paragraph and to these Regulations;
 - (ii) references to articles, substances, articles and substances, or plant, were references to relevant products;
 - (iii) in Article 22, paragraph (3) was omitted;
 - (iv) in Article 25, paragraphs (3), (4) and (5) were omitted;
 - (v) in Article 31—
 - (aa) in paragraph (1), the whole of sub-paragraphs (a) to (d) were omitted;
 - (bb) paragraph (1A) was omitted;
 - (cc) in paragraph (2), the reference to sub-paragraph (d) of paragraph (1) was omitted;
 - (dd) paragraph (2A) was omitted;
 - (ee) paragraph (3) was omitted;
 - (ff) for paragraph (4) there was substituted the following:—
 - “(4) A person guilty of an offence under any sub-paragraph of paragraph (1) not mentioned in paragraph (2) or of an offence under paragraph (1)(e) not falling within paragraph (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 paragraph (1)(g), (j) or (o), to imprisonment for a term not exceeding two years, or a fine, or both; or
 - (ii) in all other cases, to a fine”; and
 - (gg) paragraph (5) was omitted;
 - (vi) in Article 32—
 - (aa) sub-paragraphs (a) and (b) were omitted from paragraph (1); and
 - (bb) in paragraph (3), for “six months” there was substituted “twelve months”; and
 - (vii) in Article 39, paragraphs (4) and (5) were omitted; and
 - (b) Articles 34(1) and (2) shall apply in relation to offences under Article 31 as it is applied by sub-paragraph (2)(a) above.
- (3) In Northern Ireland, in relation to relevant products for private use and consumption—
- (a) the provisions of paragraph 2(b) and (c) of this Schedule shall have effect; and

and Schedule 4 to, the Industrial Training (Northern Ireland) Order 1984 S.I. 1984/1159 (N.I. 9). Articles 27A and 29A were inserted, and Articles 30(1)(a) and 31(1)(h), amended by Article 28 of, and paragraphs 4, 5, 6 and 7 respectively of Schedule 2, to S.I. 1987/2049 (N.I. 20). Article 29(2) to (4) was repealed by Article 10(1)(c) of the Statistics of Trade and Employment (Northern Ireland) Order 1988 S.I. 1988/595 (N.I. 3). Article 31(1)(j) was amended by Article 10(1)(c) of S.I. 1988/595 (N.I. 3); Article 31(1)(m) was amended by Article 13(3) of, and Schedule 5 to, the Criminal Justice (Northern Ireland) Order 1986 S.I. 1986/1883 (N.I. 15); Article 31(1A) and (2A) was respectively inserted by Article 6(3) and 6(4) of the Offshore, and Pipelines, Safety (Northern Ireland) Order 1992 S.I. 1992/1728 (N.I. 17); Article 31(4) was amended by Article 6(5) of S.I. 1992/1728 (N.I. 17); Article 31(5)(d) and (6) was repealed by Article 6(6) of S.I. 1992/1728 (N.I. 17); and Article 31(7) was repealed by section 30 of, and Part III of the Schedule to, the Forgery and Counterfeiting Act 1981 (c. 45). There are other amendments to Articles 31 and 32 which are not relevant to these Regulations.

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- (b) a magistrates' court may try a complaint in respect of an offence committed under these Regulations if the complaint is made within twelve months from the time when the offence is committed.

Forfeiture of relevant products for private use or consumption: England and Wales and Northern Ireland

4.—(1) An enforcement authority in England and Wales or Northern Ireland may apply under this paragraph for an order for the forfeiture of any relevant product for private use or consumption on the grounds that there has been a contravention in relation thereto of regulation 8, 9, 10 or 11(1) or (2).

(2) An application under this paragraph may be made—

- (a) where proceedings have been brought in a magistrates' court in respect of an offence in relation to some or all of the relevant products under regulation 20 to that court; and
- (b) where no application for the forfeiture of the relevant product has been made under sub-paragraph (a) above, by way of complaint to a magistrates' court.

(3) On an application under this paragraph the court shall make an order for the forfeiture of the relevant products only if it is satisfied that there has been a contravention in relation thereto of regulation 8, 9, 10 or 11(1) or (2).

(4) For the avoidance of doubt it is hereby declared that a court may infer for the purposes of this paragraph that there has been a contravention in relation to any relevant products of regulation 8, 9, 10 or 11(1) or (2) if it is satisfied that that regulation has been contravened in relation to a relevant product which is representative of that relevant product (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) Any person aggrieved by an order made under this paragraph by a magistrates' court, or by a decision of such court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court
- (b) in Northern Ireland, to the county court,

and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of an order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980⁽⁴⁾, or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981⁽⁵⁾ (statement of Case)).

(6) Subject to sub-paragraph (7) below, where any relevant product is forfeited under this paragraph it shall be destroyed in accordance with such directions as the court may give.

(7) On making an order under this paragraph a magistrates' court may, if it considers it appropriate to do so, direct that the relevant product to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person—

- (a) does not supply the relevant product to any person otherwise than—
 - (i) to a person who carries on a business of buying relevant products of the same description as the first mentioned product and repairing or reconditioning it; or
 - (ii) as scrap (that is to say, for the value of materials included in the relevant product rather than for the value of the relevant product itself); and
- (b) complies with any order to pay costs or expenses which has been made against that person in the proceedings for the order for forfeiture.

(4) 1980 c. 43.

(5) S.I. 1981/1675 (N.I. 26).

Forfeiture of relevant products for private use or consumption: Scotland

5.—(1) In Scotland a sheriff may make an order for forfeiture of any relevant product for private use or consumption in relation to which there has been a contravention of any provision of regulation 8, 9, 10 or 11(1) or (2)—

- (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995⁽⁶⁾; or
- (b) where a person is convicted of any offence in respect of any such contravention, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under sub-paragraph (1)(a) above shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the relevant product to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the relevant product should not be forfeited.

(3) Service under sub-paragraph (2) above shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.

(4) Any person upon whom a notice is served under sub-paragraph (2) above and any other person claiming to be the owner of, or otherwise to have an interest in, the relevant product to which an application under this paragraph relates shall be entitled to appear at the hearing of the application to show cause why the relevant product as the case may be should not be forfeited.

(5) The sheriff shall not make an order following an application under sub-paragraph (1)(a) above—

- (a) if any person on which notice is served under sub-paragraph (2) above does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under sub-paragraph (2) above has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The sheriff shall make an order under this paragraph only if he is satisfied that there has been a contravention in relation to the relevant product of regulation 8, 9, 10 or 11(1) or (2).

(7) For the avoidance of doubt it is declared that the sheriff may infer for the purposes of this paragraph that there has been a contravention in relation to any relevant product of regulation 8, 9, 10 or 11(1) or (2) if he is satisfied that that regulation has been contravened in relation to a relevant product which is representative of that relevant product (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(8) Where an order for the forfeiture of any relevant product is made following an application by the procurator-fiscal under sub-paragraph (1)(a) above, any person who appeared, or was entitled to appear, to show cause why it should not be forfeited may, within twenty-one days of the making of the order, appeal to the High Court by Bill of Suspension on the ground of an alleged miscarriage of justice; and section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under this sub-paragraph as it applies to a stated case under Part X of that Act.

(9) An order following an application under sub-paragraph (1)(a) above shall not take effect—

- (a) until the end of the period of twenty-one days beginning with the day after the day on which the order is made; or
- (b) if an appeal is made under sub-paragraph (8) above within that period, until the appeal is determined or abandoned.

(10) An order under sub-paragraph (1)(b) shall not take effect—

(6) 1995 c. 46.

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- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995; or
 - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (11) Subject to sub-paragraph (12) below, relevant products forfeited under this paragraph shall be destroyed in accordance with such directions as the sheriff may give.
- (12) If he thinks fit, the sheriff may direct the relevant product to be released to such person as he may specify, on condition that that person does not supply it to any person otherwise than—
- (a) to a person who carries on a business of buying relevant products of the same description as the first-mentioned relevant product and repairing or reconditioning it; or
 - (b) as scrap (that is to say, for the value of materials included in the relevant product rather than for the value of the relevant product itself).

Duty of enforcement authority to inform Secretary of State of action taken

6. An enforcement authority shall, where action has been taken by it to prohibit or restrict the placing on the market, the supply or putting into service (whether under these Regulations or otherwise) of any relevant product which bears the CE marking, forthwith inform the Secretary of State of the action taken, and the reasons for it, with a view to this information being passed by him to the Commission.

Savings

7. Nothing in these Regulations shall authorise an enforcement authority to bring proceedings in Scotland for an offence.

Interpretation

8. In this Schedule—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974(7);

“the 1987 Act” means the Consumer Protection Act 1987(8);

“the Executive” means the Health and Safety Executive established under section 10 of the 1974 Act;

“the Order” means the Health and Safety at Work (Northern Ireland) Order 1978; and

“relevant product” means a lift or safety component, as the case may be, to which these Regulations apply.

(7) 1974 c. 37.

(8) 1987 c. 43.