
STATUTORY INSTRUMENTS

2005 No. 1803

The General Product Safety Regulations 2005

PART 3

ENFORCEMENT

Enforcement

10.—(1) It shall be the duty of every authority to which paragraph (4) applies to enforce within its area these Regulations and safety notices.

(2) An authority in England or Wales to which paragraph (4) applies shall have the power to investigate and prosecute for an alleged contravention of any provision imposed by or under these Regulations which was committed outside its area in any part of England and Wales.

(3) A district council in Northern Ireland shall have the power to investigate and prosecute for an alleged contravention of any provision imposed by or under these Regulations which was committed outside its area in any part of Northern Ireland.

(4) The authorities to which this paragraph applies are:

- (a) in England, a county council, district council, London Borough Council, the Common Council of the City of London in its capacity as a local authority and the Council of the Isles of Scilly,
- (b) in Wales, a county council or a county borough council,
- (c) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽¹⁾,
- (d) in Northern Ireland any district council.

(5) An enforcement authority shall in enforcing these Regulations act in a manner proportionate to the seriousness of the risk and shall take due account of the precautionary principle. In this context, it shall encourage and promote voluntary action by producers and distributors. Notwithstanding the foregoing, an enforcement authority may take any action under these Regulations urgently and without first encouraging and promoting voluntary action if a product poses a serious risk.

Suspension notices

11.—(1) Where an enforcement authority has reasonable grounds for suspecting that a requirement of these Regulations has been contravened in relation to a product, the authority may, for the period needed to organise appropriate safety evaluations, checks and controls, serve a notice (“a suspension notice”) prohibiting the person on whom it is served from doing any of the following things without the consent of the authority, that is to say—

- (a) placing the product on the market, offering to place it on the market, agreeing to place it on the market or exposing it for placing on the market, or
- (b) supplying the product, offering to supply it, agreeing to supply it or exposing it for supply.

(1) 1994 c. 39.

(2) A suspension notice served by an enforcement authority in relation to a product may require the person on whom it is served to keep the authority informed of the whereabouts of any such product in which he has an interest.

(3) A consent given by the enforcement authority for the purposes of paragraph (1) may impose such conditions on the doing of anything for which the consent is required as the authority considers appropriate.

Requirements to mark

12.—(1) Where an enforcement authority has reasonable grounds for believing that a product is a dangerous product in that it could pose risks in certain conditions, the authority may serve a notice (“a requirement to mark”) requiring the person on whom the notice is served at his own expense to undertake either or both of the following, as specified in the notice—

- (a) to ensure that the product is marked in accordance with requirements specified in the notice with warnings as to the risks it may present,
- (b) to make the marketing of the product subject to prior conditions as specified in the notice so as to ensure the product is a safe product.

(2) The requirements referred to in paragraph (1)(a) shall be such as to ensure that the product is marked with a warning which is suitable, clearly worded and easily comprehensible.

Requirements to warn

13. Where an enforcement authority has reasonable grounds for believing that a product is a dangerous product in that it could pose risks for certain persons, the authority may serve a notice (“a requirement to warn”) requiring the person on whom the notice is served at his own expense to undertake one or more of the following, as specified in the notice—

- (a) where and to the extent it is practicable to do so, to ensure that any person who could be subject to such risks and who has been supplied with the product be given warning of the risks in good time and in a form specified in the notice,
- (b) to publish a warning of the risks in such form and manner as is likely to bring those risks to the attention of any such person,
- (c) to ensure that the product carries a warning of the risks in a form specified in the notice.

Withdrawal notices

14.—(1) Where an enforcement authority has reasonable grounds for believing that a product is a dangerous product, the authority may serve a notice (“a withdrawal notice”) prohibiting the person on whom it is served from doing any of the following things without the consent of the authority, that is to say—

- (a) placing the product on the market, offering to place it on the market, agreeing to place it on the market or exposing it for placing on the market, or
- (b) supplying the product, offering to supply it, agreeing to supply it or exposing it for supply.

(2) A withdrawal notice may require the person on whom it is served to take action to alert consumers to the risks that the product presents.

(3) In relation to a product that is already on the market, a withdrawal notice may only be served by an enforcement authority where the action being undertaken by the producer or the distributor concerned in fulfilment of his obligations under these Regulations is unsatisfactory or insufficient to prevent the risks concerned to the health and safety of persons.

(4) Paragraph (3) shall not apply in the case of a product posing a serious risk requiring, in the view of the enforcement authority, urgent action.

(5) A withdrawal notice served by an enforcement authority in relation to a product may require the person on whom it is served to keep the authority informed of the whereabouts of any such product in which he has an interest.

(6) A consent given by the enforcement authority for the purposes of paragraph (1) may impose such conditions on the doing of anything for which the consent is required as the authority considers appropriate.

Recall notices

15.—(1) Subject to paragraph (4), where an enforcement authority has reasonable grounds for believing that a product is a dangerous product and that it has already been supplied or made available to consumers, the authority may serve a notice (“a recall notice”) requiring the person on whom it is served to use his reasonable endeavours to organise the return of the product from consumers to that person or to such other person as is specified in the notice.

(2) A recall notice may require—

(a) the recall to be effected in accordance with a code of practice applicable to the product concerned, or

(b) the recipient of the recall notice to—

(i) contact consumers who have purchased the product in order to inform them of the recall, where and to the extent it is practicable to do so,

(ii) publish a notice in such form and such manner as is likely to bring to the attention of purchasers of the product the risk the product poses and the fact of the recall, or

(iii) make arrangements for the collection or return of the product from consumers who have purchased it or for its disposal,

and may impose such additional requirements on the recipient of the notice as are reasonable and practicable with a view to achieving the return of the product from consumers to the person specified in the notice or its disposal.

(3) In determining what requirements to include in a recall notice, the enforcement authority shall take into consideration the need to encourage distributors, users and consumers to contribute to its implementation.

(4) A recall notice may only be issued by an enforcement authority where—

(a) other action which it may require under these Regulations would not suffice to prevent the risks concerned to the health and safety of persons,

(b) the action being undertaken by the producer or the distributor concerned in fulfilment of his obligations under these Regulations is unsatisfactory or insufficient to prevent the risks concerned to the health and safety of persons, and

(c) the authority has given not less than seven days notice to the person on whom the recall notice is to be served of its intention to serve such a notice and where that person has before the expiry of that period by notice required the authority to seek the advice of such person as the Institute determines on the questions of—

(i) whether the product is a dangerous product,

(ii) whether the issue of a recall notice is proportionate to the seriousness of the risk, and the authority has taken account of such advice.

(5) Paragraphs (4)(b) and (c) shall not apply in the case of a product posing a serious risk requiring, in the view of the enforcement authority, urgent action.

(6) Where a person requires an enforcement authority to seek advice as referred to in paragraph (4) (c), that person shall be responsible for the fees, costs and expenses of the Institute and of the person appointed by the Institute to advise the authority.

(7) In paragraphs 4(c) and (6) “the Institute” means the charitable organisation with registered number 803725 and known as the Chartered Institute of Arbitrators.

(8) A recall notice served by an enforcement authority in relation to a product may require the person on whom it is served to keep the authority informed of the whereabouts of any such product to which the recall notice relates, so far as he is able to do so.

(9) Where the conditions in paragraph (1) for serving a recall notice are satisfied and either the enforcement authority has been unable to identify any person on whom to serve a recall notice, or the person on whom such a notice has been served has failed to comply with it, then the authority may itself take such action as could have been required by a recall notice.

(10) Where—

- (a) an authority has complied with the requirements of paragraph (4); and
- (b) the authority has exercised its powers under paragraph (9) to take action following the failure of the person on whom the recall notice has been served to comply with that notice,

then the authority may recover from the person on whom the notice was served summarily as a civil debt, any costs or expenses reasonably incurred by it in undertaking the action referred to in subparagraph (b).

(11) A civil debt recoverable under the preceding paragraph may be recovered—

- (a) in England and Wales by way of complaint (as mentioned in section 58 of the Magistrates' Courts Act 1980⁽²⁾),
- (b) in Northern Ireland in proceedings under Article 62 of the Magistrate's Court (Northern Ireland) Order 1981⁽³⁾.

Supplementary provisions relating to safety notices

16.—(1) Whenever feasible, prior to serving a safety notice the authority shall give an opportunity to the person on whom the notice is to be served to submit his views to the authority. Where, due to the urgency of the situation, this is not feasible the person shall be given an opportunity to submit his views to the authority after service of the notice.

(2) A safety notice served by an enforcement authority in respect of a product shall—

- (a) describe the product in a manner sufficient to identify it;
- (b) state the reasons on which the notice is based;
- (c) indicate the rights available to the recipient of the notice under these Regulations and (where applicable) the time limits applying to their exercise; and
- (d) in the case of a suspension notice, state the period of time for which it applies.

(3) A safety notice shall have effect throughout the United Kingdom.

(4) Where an enforcement authority serves a suspension notice in respect of a product, the authority shall be liable to pay compensation to a person having an interest in the product in respect of any loss or damage suffered by reason of the notice if—

- (a) there has been no contravention of any requirement of these Regulations in relation to the product; and

(2) 1980 c. 43.

(3) SI 1675/1981 (N.I.26).

(b) the exercise by the authority of the power to serve the suspension notice was not attributable to any neglect or default by that person.

(5) Where an enforcement authority serves a withdrawal notice in respect of a product, the authority shall be liable to pay compensation to a person having an interest in the product in respect of any loss or damage suffered by reason of the notice if—

(a) the product was not a dangerous product; and

(b) the exercise by the authority of the power to serve the withdrawal notice was not attributable to any neglect or default by that person.

(6) Where an enforcement authority serves a recall notice in respect of a product, the authority shall be liable to pay compensation to the person on whom the notice was served in respect of any loss or damage suffered by reason of the notice if—

(a) the product was not a dangerous product; and

(b) the exercise by the authority of the power to serve the recall notice was not attributable to any neglect or default by that person.

(7) An enforcement authority may vary or revoke a safety notice which it has served provided that the notice is not made more restrictive for the person on whom it is served or more onerous for that person to comply with.

(8) Wherever feasible prior to varying a safety notice the authority shall give an opportunity to the person on whom the original notice was served to submit his views to the authority.

Appeals against safety notices

17.—(1) A person on whom a safety notice has been served and a person having an interest in a product in respect of which a safety notice (other than a recall notice) has been served may, before the end of the period of 21 days beginning with the day on which the notice was served, apply for an order to vary or set aside the terms of the notice.

(2) On an application under paragraph (1) the court or the sheriff, as the case may be, shall make an order setting aside the notice only if satisfied that—

(a) in the case of a suspension notice, there has been no contravention in relation to the product of any requirement of these Regulations,

(b) in the case of a requirement to mark or a requirement to warn, the product is not a dangerous product,

(c) in the case of a withdrawal notice—

(i) the product is not a dangerous product, or

(ii) where applicable, regulation 14(3) has not been complied with by the enforcement authority concerned,

(d) in the case of a recall notice—

(i) the product is not a dangerous product, or

(ii) regulation 15(4) has not been complied with,

(e) in any case, the serving of the safety notice concerned was not proportionate to the seriousness of the risk.

(3) On an application concerning the period of time specified in a suspension notice as the period for which it applies, the court or the sheriff, as the case may be, may reduce the period to such period as it considers sufficient for organising appropriate safety evaluations, checks and controls.

(4) On an application to vary the terms of a notice, the court or the sheriff, as the case may be, may vary the requirements specified in the notice as it considers appropriate.

(5) A person on whom a recall notice has been served and who proposes to make an application under paragraph (1) in relation to the notice may, before the end of the period of seven days beginning with the day on which the notice was served, apply to the court or the sheriff for an order suspending the effect of the notice and the court or the sheriff may, in any case where it considers it appropriate to do so, make an order suspending the effect of the notice.

(6) If the court or the sheriff makes an order suspending the effect of a recall notice under paragraph (5) in the absence of the enforcement authority, the enforcement authority may apply for the revocation of such order.

(7) An order under paragraph (5) shall take effect from the time it is made until—

- (a) it is revoked under paragraph (6),
- (b) where no application is made under paragraph (1) in respect of the recall notice within the time specified in that paragraph, the expiration of that time,
- (c) where such an application is made but is withdrawn or dismissed for want of prosecution, the date of dismissal or withdrawal of the application, or
- (d) where such an application is made and is not withdrawn or dismissed for want of prosecution, the determination of the application.

(8) Subject to paragraph (6), in Scotland the sheriff's decision under paragraph (5) shall be final.

(9) An application under this regulation may be made—

- (a) by way of complaint to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland—
 - (i) in respect of a contravention in relation to the product of a requirement imposed by or under these Regulations; or
 - (ii) for the forfeiture of the product under regulation 18;
- (b) where no such proceedings have been brought, by way of complaint to any magistrates' court; or
- (c) in Scotland, by summary application to the sheriff.

(10) A person aggrieved by an order made pursuant to an application under paragraph (1) by a magistrates' court in England, Wales or Northern Ireland, or by a decision of such a 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.

Forfeiture: England and Wales and Northern Ireland

18.—(1) An enforcement authority in England and Wales or Northern Ireland may apply for an order for the forfeiture of a product on the grounds that the product is a dangerous product.

(2) An application under paragraph (1) may be made—

- (a) where proceedings have been brought in a magistrates' court for an offence in respect of a contravention in relation to the product of a requirement imposed by or under these Regulations, to that court,
- (b) where an application with respect to the product has been made to a magistrates' court under regulation 17 (appeals against safety notices) or 25 (appeals against detention of products and records) to that court, and
- (c) otherwise, by way of complaint to a magistrates' court.

(3) An enforcement authority making an application under paragraph (1) shall serve a copy of the application on any person appearing to it to be the owner of, or otherwise to have an interest

in, the product to which the application relates, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the product should not be forfeited.

(4) A person on whom notice is served under paragraph (3) and any other person claiming to be the owner of, or otherwise to have an interest in, the product to which the application relates shall be entitled to appear at the hearing of the application and show cause why the product should not be forfeited.

(5) The court shall not make an order for the forfeiture of a product—

- (a) if any person on whom notice is served under paragraph (3) does not appear, unless service of the notice on that person is proved, or
- (b) if no notice under paragraph (3) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The court may make an order for the forfeiture of a product only if it is satisfied that the product is a dangerous product.

(7) Any person aggrieved by an order made by a magistrates' court for the forfeiture of a product, or by a decision of such a 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.

(8) An order for the forfeiture of a product shall not take effect until the later of—

- (i) the end of the period within which an appeal under paragraph (7) may be brought or within which an 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) may be made, or
- (ii) if an appeal or an application is so made, when the appeal or application is determined or abandoned.

(9) Subject to the following paragraph, where a product is forfeited it shall be destroyed in accordance with such directions as the court may give.

(10) On making an order for forfeiture of a product a magistrates' court may, if it considers it appropriate to do so, direct that the product shall (instead of being destroyed) be delivered up to such person as the court may specify, on condition that the person—

- (a) does not supply the product to any person otherwise than as mentioned in paragraph (11), and
- (b) on condition, if the court considers it appropriate, that he complies with any order to pay costs or expenses (including any order under regulation 28) which has been made against him in the proceedings for the order for forfeiture.

(11) The supplies which may be permitted under the preceding paragraph are—

- (a) a supply to a person who carries on a business of buying products of the same description as the product concerned and repairing or reconditioning them,
- (b) a supply to a person as scrap (that is to say, for the value of materials included in the product rather than for the value of the product itself),
- (c) a supply to any person, provided that being so supplied the product is repaired by or on behalf of the person to whom the product was delivered up by direction of the court and that following such repair it is not a dangerous product.

(4) 1980 c. 43.

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

Forfeiture: Scotland

19.—(1) In Scotland a sheriff may make an order for forfeiture of a product on the grounds that the product is a dangerous product—

- (a) on an application by a 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 a contravention in relation to the product of a requirement imposed by or under these Regulations, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under paragraph (1)(a) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the 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 product should not be forfeited.

(3) Service under paragraph (2) 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) A person upon whom notice is served under paragraph (2) and any other person claiming to be the owner of, or otherwise to have an interest in, the product to which the application relates shall be entitled to appear at the hearing of the application to show cause why the product should not be forfeited.

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

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

(6) The sheriff may make an order under this regulation only if he is satisfied that the product is a dangerous product.

(7) Where an order for the forfeiture of a product is made following an application by the procurator-fiscal under paragraph (1)(a), any person who appeared, or was entitled to appear to show cause why the product 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 paragraph as it applies to a stated case under Part X of that Act.

(8) An order following an application under paragraph (1)(a) 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 paragraph (7) within that period, until the appeal is determined or abandoned.

(9) An order under paragraph (1)(b) shall not take effect—

- (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.

(10) Subject to paragraph (11), a product forfeited under this regulation shall be destroyed in accordance with such directions as the sheriff may give.

(6) 1995 c. 46.

(11) If he thinks fit, the sheriff may direct that the product be released to such person as he may specify, on condition that that person does not supply the product to any other person otherwise than as mentioned in paragraph (11) of regulation 18.

Offences

20.—(1) A person who contravenes regulations 5 or 8(1)(a) shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding 12 months or to a fine not exceeding £20,000 or to both, or on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

(2) A person who contravenes regulation 7(1), 7(3) (by failing to take any of the measures specified in regulation 7(4)), 8(1)(b)(i), (ii) or (iii) or 9(1) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

(3) A producer or distributor who does not give notice to an enforcement authority under regulation 9(1) in respect of a product he has placed on the market or supplied commits an offence where it is proved that he ought to have known that the product poses risks to consumers that are incompatible with the general safety requirement and he shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

(4) A person who contravenes a safety notice shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding 12 months or to a fine not exceeding £20,000 or to both, or on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

Test purchases

21.—(1) An enforcement authority shall have power to organise appropriate checks on the safety properties of a product, on an adequate scale, up to the final stage of use or consumption and for that purpose may make a purchase of a product or authorise an officer of the authority to make a purchase of a product.

- (2) Where a product purchased under paragraph (1) is submitted to a test and the test leads to—
- (a) the bringing of proceedings for an offence in respect of a contravention in relation to the product of any requirement imposed by or under these Regulations or for the forfeiture of the product under regulation 18 or 19, or
 - (b) the serving of a safety notice in respect of the product, and
 - (c) the authority is requested to do so and it is practicable for the authority to comply with the request,

then the authority shall allow the person from whom the product was purchased, a person who is a party to the proceedings, on whom the notice was served or who has an interest in the product to which the notice relates, to have the product tested.

Powers of entry and search etc.

22.—(1) An officer of an enforcement authority may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by the following provisions of this regulation.

(2) The officer may, for the purposes of ascertaining whether there has been a contravention of a requirement imposed by or under these Regulations, enter any premises other than premises occupied only as a person's residence and inspect any record or product.

(3) The officer may, for the purpose of ascertaining whether there has been a contravention of a requirement imposed by or under these Regulations, examine any procedure (including any arrangements for carrying out a test) connected with the production of a product.

(4) If the officer has reasonable grounds for suspecting that the product has not been placed on the market or supplied in the United Kingdom since it was manufactured or imported he may for the purpose of ascertaining whether there has been a contravention in relation to the product of a requirement imposed by or under these Regulations—

- (a) require a person carrying on a commercial activity, or employed in connection with a commercial activity, to supply all necessary information relating to the activity, including by the production of records,
- (b) require any record which is stored in an electronic form and is accessible from the premises to be produced in a form —
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible.
- (c) for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain samples of the product,
- (d) take copies of, or of an entry in, any records produced by virtue of sub-paragraph (a).

(5) If the officer has reasonable grounds for suspecting that there has been a contravention in relation to a product of a requirement imposed by or under these Regulations, he may—

- (a) for the purpose of ascertaining whether there has been any such contravention, require a person carrying on a commercial activity, or employed in connection with a commercial activity, to supply all necessary information relating to the activity, including by the production of records,
- (b) for the purpose of ascertaining whether there has been any such contravention, require any record which is stored in an electronic form and is accessible from the premises to be produced in a form –
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible,
- (c) for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain samples of the product,
- (d) take copies of, or of an entry in, any records produced by virtue of sub-paragraph (a).

(6) The officer may seize and detain any products or records which he has reasonable grounds for believing may be required as evidence in proceedings for an offence in respect of a contravention of any requirement imposed by or under these Regulations.

(7) If and to the extent that it is reasonably necessary to do so to prevent a contravention of any requirement imposed by or under these Regulations, the officer may, for the purpose of exercising his power under paragraphs (4) to (6) to seize products or records—

- (a) require any person having authority to do so to open any container or to open any vending machine; and
- (b) himself open or break open any such container or machine where a requirement made under sub-paragraph (a) in relation to the container or machine has not been complied with.

Provisions supplemental to regulation 22 and search warrants etc.

23.—(1) An officer seizing any products or records shall, before he leaves the premises, provide to the person from whom they were seized a written notice—

- (a) specifying the products (including the quantity thereof) and records seized,

- (b) stating the reasons for their seizure, and
- (c) explaining the right of appeal under regulation 25.

(2) References in paragraph (1) and regulation 25 to the person from whom something has been seized, in relation to a case in which the power of seizure was exercisable by reason of the product having been found on any premises, are references to the occupier of the premises at the time of the seizure.

(3) If a justice of the peace—

(a) is satisfied by written information on oath that there are reasonable grounds for believing either—

(i) that any products or records which an officer has power to inspect under regulation 22 are on any premises and that their inspection is likely to disclose evidence that there has been a contravention of any requirement imposed by or under these Regulations, or

(ii) that such a contravention has taken place, is taking place or is about to take place on any premises, and

(b) is also satisfied by such information either—

(i) that admission to the premises has been or is likely to be refused and that notice of the intention to apply for a warrant under this paragraph has been given to the occupier, or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return.

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise any officer of an enforcement authority to enter the premises, if need be by force.

(4) An officer entering premises by virtue of regulation 22 or a warrant under paragraph (3) may take him such other persons and equipment as may appear to him necessary.

(5) On leaving any premises which a person is authorised to enter by a warrant under paragraph (3), that person shall, if the premises are unoccupied or the occupier is temporarily absent—

(a) leave the premises as effectively secured against trespassers as he found them,

(b) attach a notice such as is mentioned in paragraph (1) in a prominent place at the premises.

(6) Where a product seized by an officer of an enforcement authority under regulation 22 or 23 is submitted to a test, the authority shall inform the person mentioned in paragraph (1) of the result of the test and, if—

(a) proceedings are brought for an offence in respect of a contravention in relation to the product of any requirement imposed by or under these Regulations or for the forfeiture of the product under regulation 18 or 19; or

(b) a safety notice is served in respect of the product; and

(c) the authority is requested to do so and it is practicable for him to comply with the request,

then the authority shall allow a person who is a party to the proceedings or, on whom the notice was served or who has an interest in the product to which the notice relates to have the product tested.

(7) If a person who is not an officer of an enforcement authority purports to act as such under regulation 22 or under this regulation he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) In the application of this section to Scotland, the reference in paragraph (3) to a justice of the peace shall include a reference to a sheriff and the reference to written information on oath shall be construed as a reference to evidence on oath.

(9) In the application of this section to Northern Ireland, the reference in paragraph (3) to a justice of the peace shall include a reference to a lay magistrate and the references to an information on oath shall be construed as a reference to a complaint on oath.

Obstruction of officers

24.—(1) A person who—

- (a) intentionally obstructs an officer of an enforcement authority who is acting in pursuance of any provision of regulations 22 or 23; or
- (b) intentionally fails to comply with a requirement made of him by an officer of an enforcement authority under any provision of those regulations; or
- (c) without reasonable cause fails to give an officer of an enforcement authority who is so acting any other assistance or information which the officer may reasonably require of him for the purposes of the exercise of the officer's functions under any provision of those regulations,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person shall be guilty of an offence if, in giving any information which is required by him by virtue of paragraph (1)(c)—

- (a) he makes a statement which he knows is false in a material particular; or
 - (b) he recklessly makes a statement which is false in a material particular.
- (3) A person guilty of an offence under paragraph (2) shall be liable—
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

Appeals against detention of products and records

25.—(1) A person referred to in regulation 23(1) may apply for an order requiring any product or record which is for the time being detained under regulation 22 or 23 by an enforcement authority or by an officer of such an authority to be released to him or to another person.

(2) An application under the preceding paragraph may be made—

- (a) to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland—
 - (i) for an offence in respect of a contravention in relation to the product of a requirement imposed by or under these Regulations, or
 - (ii) for the forfeiture of the product under regulation 18,
- (b) where no such proceedings have been brought, by way of complaint to a magistrates' court;
- (c) in Scotland, by summary application to the sheriff.

(3) On an application under paragraph (1) to a magistrates' court or to the sheriff, the court or the sheriff may make an order requiring a product or record to be released only if the court or sheriff is satisfied—

- (a) that proceedings

- (i) for an offence in respect of any contravention in relation to the product or, in the case of a record, the product to which the record relates, of any requirement imposed by or under these Regulations; or
- (ii) for the forfeiture of the product or, in the case of a record, the product to which the record relate, under regulation 18 or 19,

have not been brought or, having been brought, have been concluded without the product being forfeited; and

- (b) where no such proceedings have been brought, that more than six months have elapsed since the product or records was seized.

(4) In determining whether to make an order under this regulation requiring the release of a product or record the court or sheriff shall take all the circumstances into account including the results of any tests on the product which have been carried out by or on behalf of the enforcement authority and any statement made by the enforcement authority to the court or sheriff as to its intention to bring proceedings for an offence in respect of a contravention in relation to the product of any requirement imposed by or under these Regulations.

(5) Where—

- (a) more than 12 months have elapsed since a product or records were seized and the enforcement authority has not commenced proceedings for an offence in respect of a contravention in relation to the product (or, in the case of records, the product to which the records relate) of any requirement imposed by or under these Regulations or for the forfeiture of the product under regulation 18 or 19, or
- (b) an enforcement authority has brought proceedings for an offence as mentioned in subparagraph (a) and the proceedings were dismissed and all rights of appeal have been exercised or the time for appealing has expired,

the authority shall be under a duty to return the product or records detained under regulation 22 or 23 to the person from whom they were seized.

(6) Where the authority is satisfied that some other person has a better right to a product or record than the person from whom they were seized, the authority shall, instead of the duty in paragraph (5), be under a duty to return it to that other person or, as the case may be, to the person appearing to the authority to have the best right to the product or record in question.

(7) Where different persons claim to be entitled to the return of a product or record that is required to be returned under paragraph (5), then it may be retained for as long as it reasonably necessary for the determination in accordance with paragraph (6) of the person to whom it must be returned.

(8) A person aggrieved by an order made under this regulation by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a 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 the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980⁽⁷⁾ or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981⁽⁸⁾ (statement of case)).

(7) 1980 c. 43.

(8) SI 1675/1981 (N.I.26).

Compensation for seizure and detention

26. Where an officer of an enforcement authority exercises any power under regulation 22 or 23 to seize and detain a product, the enforcement authority shall be liable to pay compensation to any person having an interest in the product in respect of any loss or damage caused by reason of the exercise of the power if—

- (a) there has been no contravention in relation to the product of any requirement imposed by or under these Regulations, and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

Recovery of expenses of enforcement

27.—(1) This regulation shall apply where a court—

- (a) convicts a person of an offence in respect of a contravention in relation to a product of any requirement imposed by or under these Regulations, or
- (b) makes an order under regulation 18 or 19 for the forfeiture of a product.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted or, as the case may be, any person having an interest in the product to reimburse an enforcement authority for any expenditure which has been or may be incurred by that authority—

- (a) in connection with any seizure or detention of the product by or on behalf of the authority, or
- (b) in connection with any compliance by the authority with directions given by the court for the purposes of any order for the forfeiture of the product.

Power of Secretary of State to obtain information

28.—(1) If the Secretary of State considers that, for the purposes of deciding whether to serve a safety notice, or to vary or revoke a safety notice which he has already served, he requires information or a sample of a product he may serve on a person a notice requiring him:

- (a) to furnish to the Secretary of State, within a period specified in the notice, such information as is specified;
- (b) to produce such records as are specified in the notice at a time and place so specified (and to produce any such records which are stored in any electronic form in a form in which they are visible and legible) and to permit a person appointed by the Secretary of State for that purpose to take copies of the records at that time and place;
- (c) to produce such samples of a product as are specified in the notice at a time and place so specified.

(2) A person shall be guilty of an offence if he—

- (a) fails, without reasonable cause, to comply with a notice served on him under paragraph (1); or
- (b) in purporting to comply with a requirement which by virtue of paragraph (1)(a) or (b) is contained in such a notice—
 - (i) furnishes information or records which he knows are false in a material particular, or
 - (ii) recklessly furnishes information or records which are false in a material particular.

(3) A person guilty of an offence under paragraph (2) shall—

- (a) in the case of an offence under sub-paragraph (a) of that paragraph, be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (b) in the case of an offence under sub-paragraph (b) of that paragraph, be liable—

- (i) on conviction on indictment, to a fine;
- (ii) on summary conviction, to a fine not exceeding the statutory maximum.

Defence of due diligence

29.—(1) Subject to the following provisions of this regulation, in proceedings against a person for an offence under these Regulations it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

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

- (a) to the act or default of another, or
- (b) to 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, in England, Wales and Northern Ireland, the hearing of the proceedings or, in Scotland, the trial diet, he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who—

- (a) committed the act or default, or
- (b) gave the information,

as is in the possession of the person serving the notice at the time he serves it.

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

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

Defence in relation to antiques

30.—(1) This regulation shall apply in proceedings against any person for an offence under regulation 20(1) in respect of the supply, offer or agreement to supply or exposure or possession for supply of second hand products supplied as antiques.

(2) It shall be a defence for that person to show that the terms on which he supplied the product or agreed or offered to supply the product or, in the case of a product which he exposed or possessed for supply, the terms on which he intended to supply the product, contemplated the acquisition of an interest in the product by the person supplied or to be supplied.

(3) Paragraph (2) applies only if the producer or distributor clearly informed the person to whom he supplied the product, or offered or agreed to supply the product or, in the case of a product which he exposed or possessed for supply, he intended to so inform that person, that the product is an antique.

Liability of person other than principal offender

31.—(1) Where the commission by a person of an offence under these Regulations is due to an act or default committed by some other person in the course of a commercial activity of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) Where a Scottish partnership is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner in the partnership, he, as well as the partnership, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.