

SCHEDULE 6

Powers of enforcement

PART 3

Local (consumer safety) authorities

SECTION 1

Powers of entry

1. An authorised person may at any reasonable hour and on production, if required, of that person's credentials exercise any of the powers conferred by the following provisions of this section.

2. An authorised person may, for the purposes of ascertaining whether there has been any contravention of a listed REACH provision, inspect any goods and enter any premises other than premises occupied only as a person's residence.

3. An authorised person may, for the purpose of ascertaining whether there has been any contravention of a listed REACH provision, examine any procedure (including any arrangements for carrying out a test) connected with the production of any goods.

4. If an authorised person has reasonable grounds for suspecting that there has been a contravention of a listed REACH provisions, the authorised person may—

- (a) require any person carrying on a business, or employed in connection with a business, to produce any records relating to the business;
- (b) for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain the goods;
- (c) take copies of, or of any entry in, any records produced by virtue of sub-paragraph (a).

5. An authorised person may seize and detain any goods or records which the authorised person has reasonable grounds for believing may be required as evidence in proceedings for any offence in respect of a contravention of a listed REACH provision.

6. If and to the extent that it is reasonably necessary to prevent a contravention of a listed REACH provision, the authorised person may—

- (a) require any person having authority to do so to open any container or to open any vending machine; and
- (b) 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.

7. An authorised person seizing any goods or records under this Part must inform the following persons that the goods or records have been so seized, that is to say—

- (a) the person from whom they are seized; and
- (b) in the case of imported goods seized on any premises under the control of the Commissioners for Revenue and Customs, the importer of those goods (within the meaning of the Customs and Excise Management Act 1979⁽¹⁾).

8. If a justice of the peace—

(1) 1979 c.2.

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- (a) is satisfied by any written information on oath that there are reasonable grounds for believing either—
 - (i) that any goods or records which any authorised person has power to inspect under this Part are on any premises and that their inspection is likely to disclose evidence that there has been a contravention of a listed REACH provision; 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 any such information either—
 - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this section 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 the occupier's return,

the justice may by warrant, which shall continue in force for a period of one month, authorise any authorised person to enter the premises, if need be by force.

9. An authorised person entering any premises by virtue of this section may be accompanied by such other persons and may take such equipment as may appear to the authorised person to be necessary.

10. On leaving any premises which an authorised person is authorised to enter by a warrant under this section, that person must, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as the authorised person found them.

11. Where any goods seized by an authorised person under this Part are submitted to a test, the authorised person must inform the persons mentioned in paragraph 7 of the result of the test and, if—

- (a) proceedings are brought for an offence in respect of a contravention of a listed REACH provision; and
- (b) the authorised person is requested to do so and it is practicable to comply with the request,

the authorised person must allow any person who is a party to the proceedings or, as the case may be, has an interest in the goods to which the notice relates, to have the goods tested.

12. In the application of this section to Scotland, the reference in paragraph 8 to a justice of the peace includes a reference to a sheriff and the references to written information on oath include references to evidence on oath.

13. In the application of this section to Northern Ireland, the reference in paragraph 8 to a justice of the peace includes a reference to a lay magistrate and references to any information on oath include references to any complaint on oath.

SECTION 2

Notices

14. Where an authorised person has reasonable grounds for suspecting that a listed REACH provision has been contravened in relation to any goods, the authorised person may serve a notice (“a suspension notice”).

15. A suspension notice may prohibit the person on whom it is served, for such period ending not more than six months after the date of the notice as is specified in the notice, from doing any of the following without the consent of an authorised person—

- (a) supplying the goods;

- (b) offering to supply them;
 - (c) agreeing to supply them or exposing them for supply.
- 16.** A suspension notice served by an authorised person in respect of any goods must—
- (a) describe the goods in a manner sufficient to identify them;
 - (b) set out the grounds on which the authorised person suspects that a listed REACH provision has been contravened in relation to the goods; and
 - (c) state that, and the manner in which, the person on whom the notice is served may appeal against the notice.
- 17.** A suspension notice may require a person to keep the enforcing authority informed of the whereabouts throughout the period of the notice of any of those goods in which that person has an interest.
- 18.** Where a suspension notice has been served on any person in respect of any goods, no further such notice must be served on that person in respect of the same goods unless—
- (a) proceedings against that person for an offence in respect of a contravention, in relation to the goods, of a listed REACH provision; or
 - (b) proceedings for the forfeiture of the goods,
- are pending at the end of the period specified in the notice.
- 19.** A consent given by an authorised person for the purposes of paragraph 15 may impose such conditions on the doing of anything for which the consent is required as the authorised person considers appropriate.
- 20.** Where an authorised person serves a suspension notice in respect of any goods, the authorised person is liable to pay compensation to any person having an interest in the goods in respect of any loss or damage caused by reason of the service of the notice if—
- (a) there has been no contravention in relation to the goods of a listed REACH provision; and
 - (b) the exercise of the power is not attributable to any neglect or default by that person having an interest in the goods.
- 21.** Any disputed question as to the right to or the amount of any compensation payable under this section must be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

SECTION 3

Forfeiture

- 22.** An authorised person in England and Wales or Northern Ireland may apply under this section for an order for the forfeiture of any goods on the grounds that there has been a contravention in relation to the goods of a listed REACH provision.
- 23.** An application under this section may be made—
- (a) where proceedings have been brought in a magistrates' court for an offence in respect of a contravention of a listed REACH provision in relation to some or all of the goods, to that court;
 - (b) where no application for the forfeiture of the goods has been made under sub-paragraph (a) by way of complaint to a magistrates' court.

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24. On an application under this section the court may make an order for the forfeiture of any goods only if it is satisfied that there has been a contravention of a listed REACH provision in relation to the goods.

25. A court may infer for the purposes of this section that there has been a contravention of a listed REACH provision in relation to any goods if it is satisfied that any such provision has been contravened in relation to 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).

26. Any person aggrieved by an order made under this section by a magistrates' court, 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⁽²⁾ or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981⁽³⁾(statement of case).

27. Subject to paragraph 28, where any goods are forfeited under this section they must be destroyed in accordance with such directions as the court may give.

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

- (a) does not supply those goods to any person otherwise than as specified;
- (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.

29. In Scotland a sheriff may make an order for forfeiture of any goods in relation to which there has been a contravention of a listed REACH provision—

- (a) on an application by the procurator-fiscal; 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.

30. The procurator-fiscal making an application under paragraph 29 must serve on any person appearing to be the owner of, or otherwise to have an interest in, the goods to which the application relates a copy of the application, together with a notice giving the opportunity to appear at the hearing of the application to show cause why the goods should not be forfeited.

31. Service under paragraph 30 must be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings.

32. Any person upon whom notice is served under paragraph 30 and any other person claiming to be the owner of, or otherwise to have an interest in, goods to which an application under this section relates is entitled to appear at the hearing of the application to show cause why the goods should not be forfeited.

33. The sheriff must not make an order following an application under paragraph 29—

- (a) if any person on whom notice is served under paragraph 30 does not appear, unless service of the notice on that person is proved; or

(2) 1980 c.43.

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

- (b) if no notice under paragraph 30 has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

34. An order under this section may be made only if the sheriff is satisfied that there has been a contravention in relation to those goods of a listed REACH provision.

35. The sheriff may infer for the purposes of this section that there has been a contravention of a listed REACH provision in relation to any goods if the sheriff is satisfied that any such provision has been contravened in relation to any 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).

36. Where an order for the forfeiture of any goods is made following an application by the procurator-fiscal under paragraph 29, any person who appeared, or was entitled to appear, to show cause why goods 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⁽⁴⁾ applies to an appeal under this section as it applies to a stated case under Part X of that Act.

37. An order following an application under paragraph 29 does 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 36 within that period, until the appeal is determined or abandoned.

38. An order under paragraph 29 does 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.

39. Subject to paragraph 40, goods forfeited under this section must be destroyed in accordance with such directions as the sheriff may give.

40. The sheriff may direct that the goods be released, to such person as may be specified, on condition that that person does not supply those goods to any other person otherwise than as mentioned in section 46(7)(a) or (b) of the Consumer Protection Act 1987⁽⁵⁾.

(4) 1995 c.46.

(5) 1987 c.43.

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