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STATUTORY INSTRUMENTS

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**2013 No. 1478**

**The Cosmetic Products Enforcement Regulations 2013**

**PART 2**

**Offences, Penalties and Enforcement**

**Enforcement authorities**

6.—(1) It is the duty of the enforcement authority to enforce the EU Cosmetics Regulation and these Regulations, and carry out market surveillance activities under Article 22 (in-market control) of the EU Cosmetics Regulation.

(2) An enforcement authority in England or Wales shall have the power to investigate and prosecute an alleged contravention of any obligations imposed by the EU Cosmetics Regulation and these Regulations which was committed outside its area in any part of England and Wales.

(3) An enforcement authority in Northern Ireland shall have the power to investigate and prosecute an alleged contravention of any obligations imposed by the EU Cosmetics Regulation and these Regulations which was committed outside its area in any part of Northern Ireland.

(4) An enforcement authority in Scotland shall have the power to investigate an alleged contravention of any obligations imposed by the EU Cosmetics Regulation and these Regulations which was committed outside its area in any part of Scotland.

(5) Nothing in these Regulations authorises an enforcement authority or competent authority to bring proceedings in Scotland for an offence.

**Market surveillance and enforcement powers**

7.—(1) In order to fulfil its obligations under Article 22 (in-market control) of the EU Cosmetics Regulation, or where it considers that there may be a breach of the EU Cosmetics Regulation or these Regulations, the enforcement authority may—

- (a) exercise its powers as a competent authority under the EU Cosmetics Regulation and Schedule 2 (test purchases, powers of entry etc and warrants) of these Regulations;
- (b) exercise the powers set out in RAMS to the extent they apply to cosmetic products.

(2) Schedule 3 (providing for the performance of sampling and testing of goods seized or purchased under Schedule 2) has effect.

**Notice of requests made and measures required under Articles 25, 26 and 27 of the EU Cosmetics Regulations**

8.—(1) An enforcement authority must provide written notice when requiring measures to be taken under Articles 25 (non-compliance by the responsible person), 26 (non-compliance by distributors) and 27 (safeguard clause) of the EU Cosmetics Regulation.

(2) The notice referred to in paragraph (1) must meet the requirements set out in Article 28 of the EU Cosmetics Regulation.

(3) A request made by an enforcement authority under Article 5(3) (obligations of responsible persons) or Article 6(5) (obligations of distributors) of the EU Cosmetics Regulation must be in writing.

(4) Any notice may be served by:

- (a) delivering it to the person in person;
- (b) leaving it at the person's proper address or;
- (c) sending it by post or electronic means to that person's proper address.

(5) In the case of a body corporate, a document may be served on a director of that body.

(6) In the case of a partnership, a document may be served on a partner or a person having control or management of the partnership business.

(7) For the purposes of this regulations, "proper address" means—

- (a) in the case of a body corporate or its director—
  - (i) the registered or principal office of that body; or
  - (ii) the email address of the secretary or clerk of that body;
- (b) in the case of a partnership, including a Scottish partnership, a partner or person having control or management of the partnership business—
  - (i) the principal office of the partnership; or
  - (ii) the email address of a partner or a person having that control or management;
- (c) in any other case, a person's last known address, which includes an email address.

(8) If a person has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept service, that address must also be treated as that person's proper address.

#### **Authorisation of provisional measures taken under Article 27**

9. Where an enforcement authority ascertains, or has reasonable grounds for concern, that a cosmetic product presents or could present a serious risk to human health in accordance with Article 27 (safeguard clause) of the EU Cosmetics Regulation, it must obtain authorisation from the Secretary of State prior to taking provisional measures under Article 27.

#### **Notification to the Secretary of State of enforcement action etc**

10. An enforcement authority that is not the Secretary of State must immediately notify the Secretary of State of any action taken by it, finding made or other opinion formed by it, or other matter within its knowledge, which is required by the EU Cosmetics Regulation to be notified to the Commission or the other member States.

#### **Contents of authorisation request or notification to the Secretary of State**

11. A request for authorisation under regulation 9 or a notification under regulation 10 must be in writing and must provide at least the following information—

- (a) information enabling the cosmetic product to be identified;
- (b) a description of the risk involved, including a summary of the results of any test or analysis and of their conclusions which are relevant to assessing the level of risk;
- (c) the nature and the duration of the measures or action taken or decided on, or proposed, if applicable;

- (d) information on supply chains and distribution of the product, in particular on destination countries.

## **Offences**

**12.**—(1) It is an offence for a person to contravene a provision of the EU Cosmetics Regulation set out in Schedule 4.

(2) It is an offence—

- (a) intentionally to obstruct any person acting in the execution or enforcement of the EU Cosmetics Regulation;
- (b) without reasonable cause, to fail to give to any such person any assistance or information which that person may reasonably require for those purposes;
- (c) knowingly or recklessly to furnish to any such person any information knowing it to be false or misleading in a material particular; or
- (d) to fail to produce a document or record to any such person when required to do so.

(3) It is an offence to fail to comply with any of the requirements made by the enforcement authority acting under Articles 25 (non-compliance by the responsible person), 26 (non-compliance by distributors) or 27 (safeguard clause) of the EU Cosmetics Regulation.

(4) Proceedings must not be commenced against a responsible person or a distributor under paragraph (1) where—

- (a) an enforcement authority has required the responsible person or the distributor to take measures under Articles 25(1) or 26 of the EU Cosmetics Regulation in terms of the non-compliance; and
- (b) any time period for compliance specified by the enforcement authority in the notice served under regulation 8 when requesting those measures has not expired.

## **Penalties**

**13.**—(1) A person guilty of an offence under regulation 12(1) by breaching Articles 3, 5, 6, 7, 10, 14, 15, 18, 19, 20, or 23 of the EU Cosmetics Regulation shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment not exceeding three months, or to both;
- (b) on conviction on indictment, to a fine not exceeding £20,000 or to imprisonment not exceeding twelve months, or to both.

(2) A person guilty of an offence under regulation 12(1) by breaching a requirement of Articles 11, 13, 16, 21 or 24 of the EU Cosmetics Regulation, shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment not exceeding three months, or to both.

(3) A person guilty of an offence under regulation 12(2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person guilty of an offence under regulation 12(3) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment not exceeding three months, or to both;
- (b) on conviction on indictment, to a fine not exceeding £20,000 or to imprisonment not exceeding twelve months, or to both.

### Appeal rights

**14.**—(1) An application for an order to vary or set aside the notice issued by an enforcement authority under regulation 8 or RAMS may be made by a responsible person, distributor, or other person having an interest in the product in respect of which the notice is issued.

(2) An application must be made before the end of the period of 21 days beginning with the day on which the enforcement authority's notice was served on the responsible person or distributor.

(3) The appropriate court (as determined in accordance with regulation 16) may only make an order setting aside the measures if satisfied—

- (a) that no contravention of the EU Cosmetics Regulation has occurred; or
- (b) that the measures required were not proportionate to the breach of the EU Cosmetics Regulation or these Regulations.

(4) On an application to vary the terms of the notice, the appropriate court may vary the terms of the notice as it considers appropriate.

**15.**—(1) Any person having an interest in any cosmetic product which is for the time being detained under paragraph 4 of Schedule 2 by an enforcement authority or by an officer of such an authority may apply for an order requiring the goods to be released to him or to another person.

(2) On an application under this section to the appropriate court (as determined in accordance with regulation 16), an order requiring goods to be released shall be made only if the court is satisfied—

- (a) that proceedings—
  - (i) for an offence in respect of a contravention of any provision of the EU Cosmetics Regulation or these Regulations; or
  - (ii) for the forfeiture of the goods under regulation 20 or 21, have not been brought or, having been brought, have been concluded without the goods being forfeited; and
- (b) where no such proceedings have been brought, that more than six months have elapsed since the goods were seized.

### Appropriate court for appeals against notices etc and further appeals

**16.**—(1) In England and Wales or Northern Ireland the appropriate court for the purposes of regulations 14 and 15 is—

- (a) the court in which proceedings have been brought for an offence under regulations 12(1) or (3);
- (b) the court in which forfeiture proceedings have been brought under regulations 20 or 21; or
- (c) in any other case a magistrates' court in England and Wales or Northern Ireland.

(2) In Scotland—

- (a) an application under regulations 14 and 15 may be made by summary application to the sheriff; and
- (b) the sheriff is the appropriate court for the purposes of regulations 14 and 15.

(3) A person aggrieved by an order made by a magistrates' court in England, Wales or Northern Ireland<sup>(1)</sup> pursuant to an application under regulations 14 or 15, or by a decision of such a court not to make such an order, may appeal against that order or decision—

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(1) In Scotland the making of, or refusal to make, an order by a sheriff is subject to appeal in accordance with sections 27 and 28 of the Sheriff Courts (Scotland) Act 1907 (c.51), as amended.

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

### **Compensation for seizure and detention etc**

**17.**—(1) Where an enforcement authority takes, or requires a responsible person or distributor to take, certain measures in accordance with Articles 25 (Non-compliance by the responsible person), 26 (Non-compliance by distributors) or 27 (Safeguard clause) of the EU Cosmetics Regulation, or RAMS, the authority shall be 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 taking of those measures if—

- (a) no contravention of the EU Cosmetics Regulation has occurred or is likely to occur; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(2) Where an officer of an enforcement authority exercises any power under paragraph 4 of Schedule 2 to seize and detain goods the enforcement authority shall be 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 taking of those measures if—

- (a) no contravention of the EU Cosmetics Regulation has occurred or is likely to occur; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(3) Any disputed question as to the right to or the amount of any compensation payable under this section shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

### **Remediation orders**

**18.**—(1) This regulation applies where a person commits an offence under these Regulations in respect of a matter which appears to the court to be a matter which it is in the person's power to remedy.

(2) The court may specify in an order (“a remediation order”)—

- (a) the steps that the person must take to remedy any of the matters for which that person has been convicted; and
- (b) the period within which those steps must be taken.

(3) The court may, at its discretion, extend a period specified in a remediation order if an application is made to the court within that period.

(4) If a person is ordered to remedy a matter, that person is not liable under regulation 12 (Offences) in respect of that matter during the period or the extended period.

(5) A remediation order may be made in addition to, or instead of, any penalty.

### **Recovery of expenses of enforcement**

**19.**—(1) — This regulation applies—

- (a) where a person commits an offence under regulation 12 (Offences);
- (b) where a court or sheriff makes an order under regulations 20 or 21 (forfeiture).

(2) The court or sheriff may (in addition to any other order it may make as to costs or expenses) order the person to reimburse the enforcement authority for any expenditure which the authority has reasonably incurred in connection with—

- (a) investigating the offence, including in purchasing or in testing or examining any cosmetic products in respect of which the offence was committed; or

- (b) taking action in accordance with Articles 25(5) and 27 of the EU Cosmetics Regulations, or RAMS.

### **Forfeiture: England, Wales and Northern Ireland**

**20.**—(1) An enforcement authority in England and Wales or Northern Ireland may apply for an order for the forfeiture of any cosmetic product on the grounds that a breach of Article 3 (Safety) of the EU Cosmetics Regulation (“Article 3”) has occurred.

(2) An application under this regulation may be made to a magistrates’ court—

- (a) where proceedings have been brought in that court in respect of an offence in relation to the cosmetic product under regulation 12;
- (b) where an application with respect to the cosmetic product has been made to that court under regulations 14 or 15; or
- (c) by way of complaint, where no application for the forfeiture of the cosmetic product has been made under sub-paragraph (a) or (b).

(3) On an application under this regulation the court may make an order for the forfeiture of the cosmetic product only if satisfied that a breach of Article 3 has occurred.

(4) A court may infer for the purposes of this regulation that a cosmetic product is in breach of Article 3 in relation to any cosmetic product if satisfied that a breach of Article 3 has occurred in relation to a cosmetic product which is representative of that cosmetic product (whether by reason of its being part of the same batch or otherwise).

(5) Any person aggrieved by an order made under this regulation 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<sup>(2)</sup>, or Article 146 of the Magistrates’ Courts (Northern Ireland) Order 1981<sup>(3)</sup> (statement of case)).

(6) Where any cosmetic product is forfeited under this regulation it shall be destroyed in accordance with such directions as the court may give.

### **Forfeiture: Scotland**

**21.**—(1) In Scotland a sheriff may make an order for the forfeiture of any cosmetic product on the grounds that a breach of Article 3 (Safety) of the EU Cosmetics Regulation (“Article 3”) has occurred—

- (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995<sup>(4)</sup> (“the 1995 Act”); 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 paragraph (1)(a) shall serve on any person appearing to the procurator-fiscal to be the owner of, or otherwise to have an interest in, cosmetic products to which the application relates a copy of the application, together with a notice giving that

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(2) 1980 c. 43.

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

(4) 1995 c. 46.

person the opportunity to appear at the hearing of the application to show cause why the cosmetic 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 1995 Act.

(4) Any person upon whom a notice is served under paragraph (2) and any other person claiming to be the owner of, or otherwise to have an interest in, the cosmetic product to which an application under this regulation relates shall be entitled to appear at the hearing of the application to show cause why the cosmetic 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 court 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 satisfied that a breach of Article 3 has occurred in relation to the cosmetic product.

(7) The sheriff may infer for the purposes of this regulation that a breach of Article 3 has occurred in relation to any cosmetic product if satisfied that a breach of Article 3 has occurred in relation to a cosmetic product which is representative of that cosmetic product (whether by reason of being of the same batch or otherwise).

(8) Where an order for the forfeiture of any cosmetic 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 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 1995 Act shall apply to an appeal under this paragraph as it applies to a stated case under Part 10 of that Act.

(9) 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 (8) within that period, until the appeal is determined or abandoned.

(10) 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 1995 Act; or
- (b) if an appeal is made within that period, until the appeal is determined or abandoned.

(11) A cosmetic product forfeited under this regulation shall be destroyed in accordance with such directions as the sheriff may give.

### **Time Limit for prosecution of offences**

**22.—**(1) In England and Wales an information relating to an offence that is triable by a magistrates' court may be so tried if it is laid within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(2) In Scotland

- (a) summary proceedings for an offence may only be commenced before the end of twelve months from the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to the Lord Advocate's knowledge, and

(b) section 136(3) of the Criminal Procedure (Scotland) Act 1995 (time limit for certain offences) applies for the purpose of this paragraph as it applies for the purpose of that section.

(3) In Northern Ireland summary proceedings for an offence may be instituted within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the knowledge of the prosecutor.

(4) No proceedings are to be brought more than three years after the commission of the offence.

(5) For the purposes of this regulation a certificate of the prosecutor (or in Scotland, the Lord Advocate) as to the date on which such evidence as is referred to above came to their notice is conclusive evidence.

### **Defence of due diligence**

**23.**—(1) In proceedings for an offence under these Regulations, it is a defence for a person to show that they took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) A person is not, without the leave of the court, entitled to rely on the defence if it 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 supplied by another;

unless, not less than seven clear days before the hearing of the proceedings (in England, Wales and Northern Ireland), or the trial diet (in Scotland), the person has served a notice on the person bringing the proceedings.

(3) The notice must give the information in the possession of the person (“A”) serving the notice which identifies or assists in identifying the person (“B”) who—

- (a) committed the act or default; or
- (b) supplied the information which was relied on.

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

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

### **Liability of persons other than the principal offender**

**24.**—(1) Where the commission by a person of an offence under these Regulations is due to anything which another person did or failed to do in the course of a business, that other person is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person.

(2) Where an offence under these Regulations is committed by a body corporate and it is proved that the offence was committed—

- (a) with the consent or connivance of a relevant person; or
- (b) as a result of the negligence of a relevant person,

that person, as well as the body corporate, is guilty of the offence.

(3) A “relevant person” means—

- (a) a director, manager, secretary or other similar officer of the body corporate;



- (b) in relation to a body corporate managed by its members, a member of that body performing managerial functions;
- (c) in relation to a partnership, a partner;
- (d) a person purporting to act as a person described in (a), (b) or (c).