

## [F1] SCHEDULE 12

### ENFORCEMENT POWERS IN RESPECT OF TRANSFERS, AND THE PLACING ON THE MARKET, OF CIVIL EXPLOSIVES, MARKET SURVEILLANCE, COMPLIANCE, WITHDRAWAL AND RECALL NOTICES, DEFENCE OF DUE DILIGENCE, APPEALS AGAINST NOTICES AND FURTHER PROVISIONS IN RELATION TO ENFORCEMENT

#### Textual Amendments

- F1** Sch. 12 substituted (20.4.2016) by [The Explosives Regulations 2014 \(Amendment\) Regulations 2016 \(S.I. 2016/315\)](#), reg. 1, **Sch. 1** (with regs. 2(1), 15)

## PART 3

### DEFENCE OF DUE DILIGENCE, APPEALS AGAINST NOTICES AND FURTHER PROVISIONS IN RELATION TO ENFORCEMENT

#### Defence of due diligence

**20.**—(1) Subject to paragraphs (2) and (4), in proceedings for an offence under section 33(1)(c) of the 1974 Act involving a contravention of Part 13 or paragraph 18, it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under paragraph (1) which involves a third party allegation unless P has—

- (a) served a notice in accordance with paragraph (3); or
- (b) obtained the leave of the court.

(3) The notice must—

- (a) give any information in P’s possession which identifies or assists in identifying the person who—
  - (i) committed the act or default; or
  - (ii) supplied the information on which P relied; and
- (b) be served on the person bringing the proceedings not less than 7 clear days before—
  - (i) in England and Wales, the hearing of the proceedings;
  - (ii) in Scotland, the trial diet.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied upon the information, having regard in particular—

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

(5) In this regulation, “third party allegation” means an allegation that the commission of the offence was due—

- (a) to the act or default of another person; or
- (b) to reliance on information supplied by another person.

### **Service of a compliance, withdrawal or recall notice or a defence of due diligence notice**

**21.**—(1) Section 46 of the 1974 Act applies to the service of—

- (a) a compliance, withdrawal or recall notice served by the Executive as it applies to notices served under that Act on a person other than an inspector appointed under section 19 of that Act; and
- (b) a notice served by a person under paragraph 20 as it applies to notices served under that Act on an inspector appointed under section 19 of that Act.

### **Action by enforcing authority**

**22.**—(1) The Executive may itself take action which an economic operator could have been required to take by a notice served under or by virtue of Parts 1 or 2 of this Schedule where the conditions for serving such a notice are met and either—

- (a) the Executive has been unable to identify any economic operator on whom to serve such a notice; or
- (b) the economic operator on whom such a notice has been served has failed to comply with it.

(2) If the Executive has taken action as a result of the condition in paragraph (1)(b) being met, the Executive may recover from the economic operator, as a civil debt, any costs or expenses reasonably incurred by the Executive in taking the action.

(3) A civil debt recoverable under paragraph (2) may be recovered summarily in England and Wales by way of a complaint pursuant to section 58 of the Magistrates' Courts Act 1980.

### **Appeals against notices**

**23.**—(1) An application for an order to vary or set aside the terms of a notice served under Part 2 of this Schedule may be made to the appropriate court—

- (a) by the economic operator on whom the notice has been served; and
- (b) in the case of a notice other than a recall notice, by a person having an interest in the civil explosive in respect of which the notice has been served.

(2) An application must be made before the end of the period of 21 days beginning with the day on which the notice was served.

(3) The appropriate court may only make an order setting aside a notice served under Part 2 of this Schedule if satisfied—

- (a) that the civil explosive to which that notice relates is in conformity with Part 13 and does not present a risk; or
- (b) that the enforcing authority failed to comply with paragraph 4 when serving the notice.

(4) On an application to vary the terms of a notice served by virtue of Part 2 of this Schedule, the appropriate court may vary the terms of the notice as it considers appropriate.

(5) In this paragraph, the “appropriate court” is to be determined in accordance with paragraph 24 (appropriate court for appeals against notices).

### **Appropriate court for appeals against notices**

**24.**—(1) In England and Wales, the appropriate court for the purposes of paragraph 23 is—

- (a) the court in which proceedings have been brought for an offence in relation to the civil explosive under section 33 of the 1974 Act;

**Changes to legislation:** There are currently no known outstanding effects for the  
*The Explosives Regulations 2014, PART 3. (See end of Document for details)*

- (b) an employment tribunal seized of appeal proceedings against a notice which relates to the civil explosive and which has been served under or by virtue of Part 1 of this Schedule; or
  - (c) in any other case, a magistrates' court.
- (2) In Scotland, the appropriate court for the purposes of paragraph 23 is—
- (a) the sheriff of a sheriffdom in which the person making the appeal resides or has a registered or principal office; or
  - (b) an employment tribunal seized of appeal proceedings against a notice which relates to the civil explosive and which has been served under or by virtue of Part 1 of this Schedule.
- (3) A person aggrieved by an order made by a magistrates' court in England and Wales pursuant to an application under paragraph 23, or by a decision of such a court not to make such an order, may appeal against that order or decision to the Crown Court.]

**Changes to legislation:**

There are currently no known outstanding effects for the The Explosives Regulations 2014, PART 3.