

---

STATUTORY INSTRUMENTS

---

**2013 No. 1478**

**The Cosmetic Products Enforcement Regulations 2013**

**PART 2**

**Offences, Penalties and Enforcement**

**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(1) (“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 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.