

SCHEDULE 6

Regulation 8

Offences

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1.—(1) It is an offence for a person to place a product on the market in contravention of Article 4(1) of the MSC Regulation.

(2) It is an offence for an economic operator defined in Article 4(2) of the MSC Regulation to contravene a requirement of Article 4(3) of the MSC Regulation to perform a task.

(3) It is an offence for an economic operator defined in Article 4(2) of the MSC Regulation to fail to ensure that the information set out in Article 4(4) of the MSC Regulation is indicated on a product or its packaging, the parcel or an accompanying document, in contravention of Article 4(4).

(4) It is an offence for an authorised representative to contravene a requirement of Article 5(2) of the MSC Regulation to perform the tasks specified in its mandate or to provide a copy of the mandate to a market surveillance authority.

(5) It is an offence for an economic operator to contravene the requirement of Article 7(1) of the MSC Regulation to cooperate with market surveillance authorities.

(6) It is an offence for any person to contravene any requirement of a withdrawal or recall notice served on that person by an enforcer under these Regulations.

(7) Proceedings must not be commenced against a person under sub-paragraphs (1) to (6) if the person has been given a time period within which to comply or take action, and that time period has not expired.

(8) Sub-paragraphs (1) to (5) do not apply where the acts or omissions constituting a contravention of a provision of the MSC Regulation also constitute a contravention of or an offence pursuant to a provision of enforcer's legislation.

Penalties

2. A person guilty of an offence under paragraph 1 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

3.—(1) In proceedings for an offence under these Regulations, 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 sub-paragraph (1) which involves a third party allegation unless P has—

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

(3) The notice must—

- (a) give any information in the possession of P which identifies or assists in identifying the person who—
 - (i) is alleged to have committed the act or default; or
 - (ii) supplied the information on which P relies; and
- (b) be served on the person bringing the proceedings not less than seven clear days before the hearing of the proceedings.

(4) P may not rely on a defence under sub-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 in all the circumstances to have relied on the information, having regard in particular to—

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

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

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

Liability of persons other than the principal offender

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

(2) Where a body corporate commits an offence under these Regulations, a relevant person is also guilty of the offence where the offence was committed by the body corporate—

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

(3) In sub-paragraph (2) 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; or
- (c) a person purporting to act as a person described in paragraphs (a) or (b).

Time limit for prosecution of offences

5.—(1) Summary proceedings for an offence under these Regulations may be instituted within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the knowledge of the prosecutor.

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

(3) For the purposes of this paragraph a certificate of the prosecutor as to the date on which such evidence as is referred to in sub-paragraph (1) came to their notice is conclusive evidence of that fact.

(4) This paragraph has effect subject to paragraph 2(2)(n) of Schedule 3 (extension of time for bringing summary proceedings).