

SCHEDULE 6

ENFORCEMENT

Forfeiture: England and Wales and Northern Ireland

4.—(1) An enforcement authority in England and Wales or Northern Ireland may apply under this paragraph for an order for the forfeiture of any relevant machinery on the grounds that there has been a contravention in relation thereto of regulation 11.

(2) An application under this paragraph may be made—

- (a) where proceedings have been brought in a magistrates' court in respect of an offence in relation to some or all of the relevant machinery under regulation 29(a) or (b) to that court;
- (b) where an application with respect to some or all of the relevant machinery has been made to a magistrates' court under section 15 or 33 of the 1987 Act as applied for the purposes of the enforcement of these Regulations by paragraph 3(c) above, to that court; and
- (c) where no application for the forfeiture of the relevant machinery has been made under sub-paragraph (a) or (b) above, by way of complaint to a magistrates' court.

(3) On an application under this paragraph the court shall make an order for the forfeiture of the relevant machinery only if it is satisfied that there has been a contravention in relation thereto of regulation 11.

(4) For the avoidance of doubt it is hereby declared that a court may infer for the purposes of this paragraph that there has been a contravention in relation to any relevant machinery of regulation 11 if it is satisfied that that regulation has been contravened in relation to an item of relevant machinery which is representative of that relevant machinery (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) Any person aggrieved by an order made under this paragraph 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⁽¹⁾, or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981⁽²⁾ (statement of case)).

(6) Subject to sub-paragraph (7) below, where any relevant machinery is forfeited under this paragraph it shall be destroyed in accordance with such directions as the court may give.

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

- (a) does not supply the relevant machinery to any person otherwise than—
 - (i) to a person who carries on a business of buying relevant machinery of the same description as the first mentioned machinery and repairing or reconditioning it; or
 - (ii) as scrap (that is to say, for the value of materials included in the relevant machinery rather than for the value of the relevant machinery itself); and
- (b) complies with any order to pay costs or expenses (including any order under section 35 of the 1987 Act as applied for the purposes of the enforcement of these Regulations by

(1) 1980 c. 43.

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

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paragraph 3(c) above) which has been made against that person in the proceedings for the order for forfeiture.