

SCHEDULE 5

Regulation 16

OFFENCES, ENFORCEMENT AND OTHER MATTERS

PART I

Provisions as to Offences

Offences and penalties

1.—(1) It shall be an offence to contravene or fail to comply with—

- (a) regulation 6 (placing on the market—technical documentation);
- (b) regulation 7 (supplier’s duties in respect of labels);
- (c) regulation 8 (supplier’s duties in respect of the information notice);
- (d) regulation 10(1) (supplier’s duties in respect of the accuracy of labels and information notices);
- (e) regulation 11 (dealer’s duty in respect of displayed regulated household air conditioners);
- (f) regulation 12 (information in respect of mail order and other distance sales);
- (g) regulation 14 (misleading information);
- (h) paragraph 5 of this Schedule (obstruction of authorised officers and false statements);
- (i) paragraph 8(8) of this Schedule (prohibition of purported search and seizure by unauthorised persons); or
- (j) paragraph 12(1) of this Schedule (restrictions on undue disclosure of information).

(2) A person guilty of the offence of contravening paragraph 12(1) of this Schedule shall be liable, on summary conviction, to a fine not exceeding the statutory maximum, and on conviction on indictment, to a fine.

(3) A person guilty of any other offence specified in sub-paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Prosecution of offences

2. Proceedings for an offence under these Regulations shall not be instituted—

- (a) in England and Wales, except by an enforcement authority;
- (b) in Northern Ireland, except by or on behalf of an enforcement authority or the Director of Public Prosecutions.

Defences

3.—(1) In proceedings against a person for an offence under these Regulations, it shall be a defence for that person to show that he believed that these Regulations did not apply and he had no reasonable grounds for believing that these Regulations might apply.

(2) In proceedings against a person for an offence under these Regulations, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

Liability of a person other than the principal offender

4.—(1) Where the commission by any person of an offence under these Regulations is due to an act or default committed by some other person in the course of any business of his, that other person shall be guilty of the offence and may be proceeded against and punished by virtue of this sub-paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of sub-paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, sub-paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) Where a Scottish partnership is guilty of an offence under these Regulations (including where it is so guilty by virtue of sub-paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner in the partnership, he, as well as the partnership, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

PART II

Provisions as to Enforcement

Obstruction of authorised officers

5.—(1) A person shall not—

- (a) intentionally obstruct a duly authorised officer of an enforcement authority acting in pursuance of any provision of these Regulations; or
- (b) intentionally fail to comply with any requirement properly made to him by such an officer under any provision of these Regulations; or
- (c) without reasonable excuse fail to give to any such officer of an enforcement authority who is so acting any other assistance or information which he may reasonably require of him for the purposes of the exercise of the officer's functions under any provision of these Regulations.

(2) A person shall not, in giving any information which is required of him by virtue of sub-paragraph (1)(c)—

- (a) make any statement which he knows is false in any material particular; or
- (b) recklessly make a statement which is false in any material particular.

Power of enforcement authority to require technical documentation

6. Where an enforcement authority has reason to suspect that the information given on a label or in an information notice is incorrect, the authority may by notice served on the supplier of the regulated household air conditioner to which the label or information notice refers, require him to furnish to the authority within such reasonable time as may be specified in the notice such technical documentation within the meaning of regulation 6 (placing on the market—technical documentation) as the authority considers appropriate.

Test purchases

7.—(1) An enforcement authority shall have power, for the purpose of ascertaining whether any provision of these Regulations has been contravened, to purchase, or to authorise an officer of the authority to purchase, any regulated household air conditioner.

(2) Where—

- (a) a regulated household air conditioner purchased under this paragraph on behalf of an enforcement authority is submitted to a test;
- (b) the test leads to the bringing of proceedings in respect of an offence under these Regulations; and
- (c) the authority is requested to do so and it is practicable for the authority to comply with the request,

the authority shall allow the person from whom the air conditioner was purchased or any person who is a party to the proceedings or has an interest in the air conditioner to have the air conditioner tested.

(3) A test of a regulated household air conditioner purchased under this paragraph, or seized or detained under paragraph 8 (power to enter premises and seize or detain regulated household air conditioners etc.), shall be carried out in accordance with the test procedures of the harmonised standards.

Power to enter premises and inspect, seize and detain regulated household air conditioners and records relating to them

8.—(1) A duly authorised officer of an enforcement authority may on—

- (a) identifying himself and producing authority in writing from the enforcement authority which appointed him for the exercise by him of powers conferred on the authority by these Regulations; and
- (b) stating the purpose of his actions and his grounds for taking them,

exercise, at all reasonable hours, the powers set out in sub-paragraph (2).

(2) The powers referred to in sub-paragraph (1) are—

- (a) for the purpose of ascertaining whether an offence under these Regulations has been committed, to inspect any regulated household air conditioner and to enter into any premises other than premises used only as a dwelling;
- (b) if there is reasonable cause to suspect that an offence under these Regulations has been committed and for the purpose of ascertaining whether it has been committed, to require any person carrying on or employed in connection with a business to produce any records relating to the regulated household air conditioner in question and to take copies of, or of any entry in, the records;
- (c) if there is reasonable cause to suspect that an offence under these Regulations has been committed, to seize and detain any regulated household air conditioner for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
- (d) to seize and detain any regulated household air conditioner or records where there is reason to believe that these may be required as evidence in proceedings for an offence under these Regulations;
- (e) for the purpose of exercising powers of seizure under this sub-paragraph, but only if and to the extent that it is reasonably necessary to do so in order to secure that the provisions of these Regulations are duly observed, to require any person having authority to do so to break open any container and, if that person does not comply with the requirement or if there is no such authorised person present, to open it.

(3) For the purposes of sub-paragraph (2)(b) and (d), the officer may require information stored electronically to be made available to him in printed form.

(4) If a justice of the peace is satisfied by any written information on oath—

(a) that there are reasonable grounds for believing either—

(i) that any regulated household air conditioners or records, which a duly authorised officer has power under this paragraph to inspect, copy, seize or require to be produced, are on any premises and that their inspection, copying, seizure or production is likely to produce evidence of the commission of an offence under these Regulations; or

(ii) that any offence under these Regulations has been, is being or is about to be committed on any premises; and

(b) either—

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this sub-paragraph has been given to the occupier; or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise an officer of an enforcement authority to enter the premises, if need be by force.

(5) An officer entering any premises by authority of a warrant granted under sub-paragraph (4) shall, if the occupier is present, give to the occupier or, if the occupier is temporarily absent, leave in a prominent place on the premises or appropriate part of the premises a notice in writing—

(a) summarising the officer's powers of seizure and detention of regulated household air conditioners and records under this paragraph;

(b) explaining that compensation may be payable for damage caused in entering premises and seizing and removing regulated household air conditioners and records therefrom, and giving the address to which an application for compensation should be directed; and

(c) indicating at which office of the enforcement authority and between which hours a copy of these Regulations is available to be consulted.

(6) An officer entering any premises by virtue of this paragraph may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

(7) An officer exercising any power of seizure and detention under this paragraph shall as soon as practicable give to the person against whom the power has been exercised a written notice—

(a) stating precisely what has been so seized and detained; and

(b) explaining where, within what period and on what grounds an appeal against such detention may be brought under paragraph 9 (appeals against detention of regulated household air conditioners etc.), and whether the things detained would be released while an appeal were pending.

(8) A person who is not a duly authorised officer of an enforcement authority shall not purport to act as such under this paragraph.

(9) In the application of this paragraph to Scotland, the reference in sub-paragraph (4) to a justice of the peace shall include a reference to a sheriff and the references to written information on oath shall be construed as references to evidence on oath.

(10) In the application of this paragraph to Northern Ireland, the references in sub-paragraph (4) to any information on oath shall be construed as references to any complaint on oath.

Appeals against detention of regulated household air conditioners and records relating to them

9.—(1) Any person having an interest in any regulated household air conditioner or records which are for the time being detained under paragraph 8 (power to enter premises and seize or detain regulated household air conditioners etc.) by an enforcement authority or by a duly authorised officer of an enforcement authority may apply for an order requiring the regulated household air conditioner or records to be released to him or to another person.

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

- (a) to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland for an offence in respect of a contravention of any provision of these Regulations in relation to the regulated household air conditioner or records;
- (b) where no such proceedings have been so brought, by way of a complaint to a magistrates' court;
- (c) in Scotland, by summary application to the sheriff.

(3) A magistrates' court or the sheriff shall not make an order under this paragraph unless the court or sheriff is satisfied—

- (a) that proceedings have not been brought for an offence in respect of a contravention of any provision of these Regulations in relation to the regulated household air conditioners or records; and
- (b) that more than twelve months have elapsed since the seizure was carried out.

(4) Any person aggrieved by an order made under this paragraph by a magistrates' court in England and Wales or Northern Ireland, or by a decision 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 a 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 the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Court Act 1980⁽¹⁾ or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)⁽²⁾).

Compensation for loss etc. of regulated household air conditioners or records seized

10.—(1) Where a duly authorised officer of an enforcement authority exercises any powers under paragraph 8 to seize and detain any regulated household air conditioners or records, the enforcement authority shall be liable to pay compensation to any person having an interest in the regulated household air conditioner or records in respect of any loss or damage caused by the exercise of the power if—

- (a) there has been no contravention of any provision of these Regulations in relation to the regulated household air conditioners or records; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(1) 1980 c. 43.

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

Status: This is the original version (as it was originally made).

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

Recovery of expenses of enforcement

11.—(1) This paragraph shall apply where a court convicts a person of an offence in respect of a contravention of any provision of these Regulations in relation to any regulated household air conditioner or records.

(2) The court may (in addition to any other order it may make as to costs and expenses) order the person convicted to reimburse an enforcement authority for any expenditure which has been or may be incurred by that authority in connection with any seizure or detention by or on behalf of the authority of the regulated household air conditioner or records.

PART III

Miscellaneous and Supplemental

Restrictions on disclosure of information

12.—(1) Subject to the following provisions of this paragraph, a person shall not disclose any information—

- (a) which was obtained by him in consequence of it being given to any person in compliance with any requirement imposed by these Regulations; or
- (b) which consists in a secret manufacturing process or trade secret and was obtained by him in consequence of the exercise by any person of any power or duty conferred by these Regulations.

(2) Sub-paragraph (1) shall not apply to a disclosure of information if the information is publicised information or the disclosure is made—

- (a) for the purpose of facilitating the exercise of a relevant person's functions under these Regulations or any enactment mentioned in sub-paragraph (3);
- (b) in pursuance of a Community obligation;
- (c) in connection with the investigation of any criminal offence or for the purposes of any civil or criminal proceedings; or
- (d) in pursuance of regulation 3 of the Environmental Information Regulations 1992(3).

(3) The enactments referred to in sub-paragraph (2)(a) are—

- (a) the Trade Descriptions Act 1968(4);
- (b) Parts II and III and section 125 of the Fair Trading Act 1973(5);
- (c) the relevant statutory provisions within the meaning of Part I of the Health and Safety at Work etc Act 1974(6) or within the meaning of the Health and Safety at Work (Northern Ireland) Order 1978(7);
- (d) the Weights and Measures Act 1985(8);

(3) S.I.1992/3240, to which there are amendments not relevant to these regulations.

(4) S.I. 1968 c. 29.

(5) 1973 c. 41.

(6) 1974 c. 37.

(7) S.I. 1981/1039 (N.I. 9); to which there are amendments not relevant to these Regulations.

(8) 1985 c. 72.

- (e) the Weights and Measures (Northern Ireland) Order 1981⁽⁹⁾;
- (f) the Consumer Protection Act 1987⁽¹⁰⁾;
- (g) the Consumer Protection (Northern Ireland) Order 1987⁽¹¹⁾;
- (h) the Electrical Equipment (Safety) Regulations 1994⁽¹²⁾; and
- (i) any enactment made for the purpose of securing compliance with Council Directive [84/450/EEC](#) on the approximation of laws, regulations and administrative provisions of the member States concerning misleading advertising⁽¹³⁾.

(4) In sub-paragraph (2)(a) the reference to a person's functions shall include a reference to any function of making, amending or revoking any regulations or order.

(5) In this paragraph—

“publicised information” means any information which has been disclosed in open court in any civil or criminal proceedings; and

“relevant person” means any of the following, that is to say—

- (a) a Minister of the Crown, Government Department or Northern Ireland Department;
- (b) the Director General of Fair Trading;
- (c) the Health and Safety Executive;
- (d) an enforcement authority;
- (e) any person who is charged with enforcing any of the enactments referred to in sub-paragraph (3).

Savings for certain privileges

13. Save for paragraph 6 (power of enforcement authority to require technical documentation), nothing in these Regulations shall be taken as requiring any person—

- (a) to produce any records if he would be entitled to refuse to produce those records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, that they contain a confidential communication made by or to an advocate or solicitor in that capacity, or as authorising any person to take possession of any records which are in the possession of a person who would be so entitled; or
- (b) to answer any question or give any information if to do so would incriminate that person or that person's spouse.

Saving for civil rights

14. A contract relating to a regulated household air conditioner shall not be void or unenforceable by reason only of a contravention of any provision of these Regulations.

Service of documents

15.—(1) Any document required or authorised by virtue of these Regulations to be served on a person may be so served—

- (a) by delivering it to him or leaving it at his proper address or by sending it by post to him at that address; or

⁽⁹⁾ S.I. 1981/231 (N.I. 10); to which there are amendments not relevant to these Regulations.

⁽¹⁰⁾ 1987 c. 43.

⁽¹¹⁾ S.I. 1987/2049 (N.I. 12); to which there are amendments not relevant to these Regulations.

⁽¹²⁾ S.I. 1994/3260.

⁽¹³⁾ OJNo. L250, 19.9.1984, p. 17.

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- (b) if the person is a body corporate, by serving it in accordance with sub-paragraph (a) on the secretary or clerk of that body; or
- (c) if the person is a partnership, by serving it in accordance with that sub-paragraph on a partner or on a person having control or management of the partnership business.

(2) For the purposes of sub-paragraph (1), and for the purposes of section 7 of the Interpretation Act 1978⁽¹⁴⁾ which relates to the service of documents by post) in its application to that paragraph, the proper address of any person on whom a document is to be served by virtue of these Regulations shall be his last known address except that—

- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate;
- (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership;

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

(14) 1978 c. 30.