

SCHEDULE 4

Offences, Enforcement And Other Matters

PART II

Provisions as to Enforcement

Obstruction of, and false statements to, 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 imposed on 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 subparagraph (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 sheet is incorrect, the authority may, by notice served on the supplier of the regulated appliance 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 appliance.

(2) Where—

- (a) a regulated appliance 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 regulated appliance was purchased or any person who is a party to the proceedings or has an interest in the regulated appliance to have that appliance tested.

Status: This is the original version (as it was originally made).

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

Power to enter premises and inspect, seize and detain a regulated appliance and records relating to it

- 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 duly authorised officers of an enforcement 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 appliance 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 appliance 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 appliance for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
 - (d) to seize and detain any regulated appliance 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), paragraphs (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 appliance 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 a regulated appliance and records under this paragraph;
- (b) explaining that compensation may be payable for damage caused in entering premises and seizing and removing a regulated appliance and records, 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 a regulated appliance etc), and whether the things detained would be released while an appeal were pending.

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

(9) 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 a regulated appliance and records relating to it

9.—(1) Any person having an interest in any regulated appliance or records which are for the time being detained under paragraph 8 (power to enter premises and inspect, seize and detain a regulated appliance etc), may apply for an order requiring the regulated appliance 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 appliance 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.

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

(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 appliance 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⁽²⁾ (statement of case).

Compensation for loss etc of a regulated appliance 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 appliance or records, the enforcement authority shall be liable to pay compensation to any person having an interest in the regulated appliance 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 appliance or records; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(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 appliance 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 appliance or records.

(1) 1980 c. 43; there are amendments to this Act not relevant to these Regulations.

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