
STATUTORY INSTRUMENTS

2005 No. 1803

The General Product Safety Regulations 2005

PART 3

ENFORCEMENT

Appeals against detention of products and records

25.—(1) A person referred to in regulation 23(1) may apply for an order requiring any product or record which is for the time being detained under regulation 22 or 23 by an enforcement authority or by an officer of such an authority to be released to him or to another person.

(2) An application under the preceding paragraph may be made—

(a) to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland—

(i) for an offence in respect of a contravention in relation to the product of a requirement imposed by or under these Regulation, or

(ii) for the forfeiture of the product under regulation 18,

(b) where no such proceedings have been brought, by way of complaint to a magistrates' court;

(c) in Scotland, by summary application to the sheriff.

(3) On an application under paragraph (1) to a magistrates' court or to the sheriff, the court or the sheriff may make an order requiring a product or record to be released only if the court or sheriff is satisfied—

(a) that proceedings

(i) for an offence in respect of any contravention in relation to the product or, in the case of a record, the product to which the record relates, of any requirement imposed by or under these Regulations; or

(ii) for the forfeiture of the product or, in the case of a record, the product to which the record relate, under regulation 18 or 19,

have not been brought or, having been brought, have been concluded without the product being forfeited; and

(b) where no such proceedings have been brought, that more than six months have elapsed since the product or records was seized.

(4) In determining whether to make an order under this regulation requiring the release of a product or record the court or sheriff shall take all the circumstances into account including the results of any tests on the product which have been carried out by or on behalf of the enforcement authority and any statement made by the enforcement authority to the court or sheriff as to its intention to bring proceedings for an offence in respect of a contravention in relation to the product of any requirement imposed by or under these Regulations.

(5) Where—

- (a) more than 12 months have elapsed since a product or records were seized and the enforcement authority has not commenced proceedings for an offence in respect of a contravention in relation to the product (or, in the case of records, the product to which the records relate) of any requirement imposed by or under these Regulations or for the forfeiture of the product under regulation 18 or 19, or
- (b) an enforcement authority has brought proceedings for an offence as mentioned in subparagraph (a) and the proceedings were dismissed and all rights of appeal have been exercised or the time for appealing has expired,

the authority shall be under a duty to return the product or records detained under regulation 22 or 23 to the person from whom they were seized.

(6) Where the authority is satisfied that some other person has a better right to a product or record than the person from whom they were seized, the authority shall, instead of the duty in paragraph (5), be under a duty to return it to that other person or, as the case may be, to the person appearing to the authority to have the best right to the product or record in question.

(7) Where different persons claim to be entitled to the return of a product or record that is required to be returned under paragraph (5), then it may be retained for as long as it reasonably necessary for the determination in accordance with paragraph (6) of the person to whom it must be returned.

(8) A person aggrieved by an order made under this regulation by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a 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 the 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)).

(1) 1980 c. 43.
(2) SI 1675/1981 (N.I.26).