

SCHEDULE 5

ENFORCEMENT

Forfeiture: Scotland

15.—(1) In Scotland a sheriff may make an order for forfeiture of any machinery or partly completed machinery in relation to which there has been a contravention of any provision of regulation 7 or 8—

- (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”); or
- (b) where a person is convicted of any offence in respect of any such contravention, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under sub-paragraph (1)(a) shall serve on any person appearing to the procurator-fiscal to be the owner of, or otherwise to have an interest in, machinery or partly completed machinery to which the application relates a copy of the application, together with a notice giving that person the opportunity to appear at the hearing of the application to show cause why the machinery or partly completed machinery should not be forfeited.

(3) Service under sub-paragraph (2) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the 1995 Act.

(4) Any person upon whom a notice is served under sub-paragraph (2) and any other person claiming to be the owner of, or otherwise to have an interest in, the machinery or partly completed machinery to which an application under this paragraph relates shall be entitled to appear at the hearing of the application to show cause why the machinery or partly completed machinery should not be forfeited.

(5) The sheriff shall not make an order following an application under sub-paragraph (1)(a)—

- (a) if any person on whom notice is served under sub-paragraph (2) does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under sub-paragraph (2) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The sheriff shall make an order under this paragraph only if satisfied that there has been a contravention in relation to the machinery or partly completed machinery of regulation 7 or 8.

(7) The sheriff may infer for the purposes of this paragraph that there has been a contravention of regulation 7 or 8 in relation to any machinery or partly completed machinery if satisfied that either of those regulations has been contravened in relation to a machine or partly completed machine which is representative of that machinery or partly completed machinery (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(8) Where an order for the forfeiture of any machinery or partly completed machinery is made following an application by the procurator-fiscal under sub-paragraph (1)(a), any person who appeared, or was entitled to appear, to show cause why it should not be forfeited may, within twenty-one days of the making of the order, appeal to the High Court by Bill of Suspension on the ground of an alleged miscarriage of justice; and section 182(5)(a) to (e) of the 1995 Act shall apply to an appeal under this sub-paragraph as it applies to a stated case under Part 10 of that Act.

(9) An order following an application under sub-paragraph (1)(a) shall not take effect—

- (a) until the end of the period of twenty-one days beginning with the day after the day on which the order is made; or
- (b) if an appeal is made under sub-paragraph (8) within that period, until the appeal is determined or abandoned.

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(10) An order under sub-paragraph (1)(b) shall not take effect—

- (a) until the end of the period within which an appeal against the order could be brought under the 1995 Act; or
- (b) if an appeal is made within that period, until the appeal is determined or abandoned.

(11) Subject to sub-paragraph (12), machinery or partly completed machinery forfeited under this paragraph shall be destroyed in accordance with such directions as the sheriff may give.

(12) The sheriff may direct the machinery or partly completed machinery to be released to such person as the sheriff may specify, on condition that that person does not supply it to any person otherwise than—

- (a) to a person who carries on a business of buying machinery or partly completed machinery of the same description as that machinery or partly completed machinery and repairing or reconditioning it; or
- (b) as scrap (that is to say, for the value of materials included in the machinery or partly completed machinery rather than for the value of the machinery or partly completed machinery itself).