

SCHEDULE 2

Regulation 5

Enforcement Powers of the Health and Safety Executive and the Office for Nuclear Regulation under the 1974 Act

Enforcement powers under the 1974 Act

1. For the purposes of enforcing EU Regulation 2016/425 and these Regulations, the following sections of the 1974 Act apply subject to the modifications in paragraph 2—

- (a) section 19 (appointment of inspectors);
- (b) section 20 (powers of inspectors);
- (c) section 21 (improvement notices);
- (d) section 22 (prohibition notices);
- (e) section 23 (provisions supplementary to sections 21 and 22);
- (f) section 24 (appeal against improvement or prohibition notice);
- (g) section 25 (power to deal with cause of imminent danger);
- (h) section 25A (power of customs office to detain articles and substances);
- (i) section 26 (power of enforcing authorities to indemnify inspectors);
- (j) section 27 (obtaining of information by the Executive, enforcing authorities etc);
- (k) section 27A (information communicated by Commissioners for Revenue and Customs);
- (l) section 28 (restrictions on disclosure of information);
- (m) section 33 (offences);
- (n) section 34 (extension of time for bringing summary proceedings);
- (o) section 35 (venue);
- (p) section 39 (prosecution by inspectors);
- (q) section 41 (evidence); and
- (r) section 42 (power of court to order cause of offence to be remedied, or in certain cases, forfeiture).

Modifications to the 1974 Act

2. The sections of the 1974 Act referred to in paragraph 1 apply as if—

- (a) references to “relevant statutory provisions” were references to—
 - (i) the provisions of the 1974 Act set out in paragraph 1, as modified by this paragraph;
and
 - (ii) these Regulations;
- (b) references to “risk” were references to “risk” as defined in regulation 1(2) of these Regulations;
- (c) in section 19—
 - (i) in subsection (1)—
 - (aa) for “Every enforcing authority” there were substituted “ The Health and Safety Executive and the Office for Nuclear Regulation ”;
 - (bb) for references to “it” there were substituted “ they ”;
 - (cc) for “thinks” there were substituted “ think ”;

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- (dd) “within its field of responsibility” were omitted;
 - (ii) in subsection (2), paragraph (b) were omitted;
 - (iii) in subsection (3), for “enforcing authority which appointed him” there were substituted “ Health and Safety Executive or the Office for Nuclear Regulation as the case may be ”;
- (d) in section 20—
- (i) in subsection (1), “within the field of responsibility of the enforcing authority which appointed him” were omitted;
 - (ii) in subsection (2)(c)(i), for “his (the inspector's) enforcing authority” there were substituted “ the Health and Safety Executive or the Office for Nuclear Regulation as the case may be ”;
 - (iii) in subsection (2)(h), for “him to have caused or to be likely to cause danger to health and safety”, there were substituted “ contravene the relevant statutory provisions or present a risk ”; and
 - (iv) subsection (3) were omitted;
- (e) in section 21—
- (i) before paragraph (a), there were inserted—
 - “(za) is making available on the market personal protective equipment which presents a risk;”;
 - (ii) after “specifying the”, there were inserted “ risk, or ”; and
 - (iii) after “requiring that person to”, there were inserted “ address the risk or ”;
- (f) for section 22(2) there were substituted—
- “(2) An inspector may serve a notice (in this Part referred to as “a prohibition notice”) on a person if, as regards any activities to which this section applies, the inspector is of the opinion that, as carried on or likely to be carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve—
- (a) a risk; or
 - (b) a contravention of a relevant statutory provision.”;
- (g) in section 23, subsections (3), (4) and (6) were omitted;
- (h) for section 25A(1) there were substituted—
- “(1) A customs officer may, for the purposes of facilitating the exercise or performance by the Health and Safety Executive, the Office for Nuclear Regulation or an inspector (as the case may be), of any of their powers and duties under any of the relevant statutory provisions, seize any imported article or imported substance and retain it for not more than two working days.”;
- (i) for the heading to section 26, there were substituted “ Power to indemnify inspectors ”;
 - (j) in section 26, there were substituted “ the body ” for each of the following references—
 - (i) “the enforcing authority”;
 - (ii) “that authority”; and
 - (iii) “the authority”;
- (k) in section 27—
- (i) for “Executive”, on each occasion it appears, there were substituted “ Health and Safety Executive or the Office for Nuclear Regulation as the case may be ”;

- (ii) in subsection (1), paragraph (b) were omitted; and
- (iii) in subsection (1), “or, as the case may be to the enforcing authority in question” were omitted;
- (l) for section 27A(2) there were substituted—
 - “(2) This subsection applies to the Health and Safety Executive, the Office for Nuclear Regulation and to an inspector.”;
- (m) in section 28—
 - (i) for “Executive”, on each occasion that it appears, there were substituted “ Health and Safety Executive ”;
 - (ii) in subsection (1)(a), “, other than the Office for Nuclear Regulation (or an inspector appointed by it,” and “, by virtue of section 43A(6) below” were omitted;
 - (iii) in subsection (3)(a), “or any enforcing authority” were omitted;
 - (iv) in subsection (4), “or an enforcing authority” and “or authority (including, in the case of an enforcing authority, any inspector appointed by it)” were omitted;
 - (v) in subsection (5)(a), “or the purposes of the enforcing authority in question in connection with the relevant statutory provisions” were omitted;
 - (vi) in subsection (7), “14(4)(a) or” were omitted;
 - (vii) for subsection (7)(b), there were substituted—
 - “(b) for the purposes of any legal proceedings or for the purposes of a report of any such proceedings,”; and
 - (viii) subsection (9B) were omitted;
- (n) in section 33—
 - (i) in subsection (1), paragraphs (a) to (i) and (k) to (m) were omitted;
 - (ii) for subsection (2), there were substituted—
 - “(2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction—
 - (i) in England and Wales, to a fine or imprisonment for a term not exceeding three months, or to both;
 - (ii) in Scotland, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding three months, or to both;
 - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years , or to both.”; and
- (o) section 33(3) were omitted;
- (p) in section 34—
 - (i) in subsection (1), paragraphs (a) and (b) were omitted; and
 - (ii) in subsection (1), for the words from “and it appears” to the end, there were substituted—
 - “and it appears from the investigation or, in a case falling within paragraph (d), from the proceedings at the inquiry, that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject-matter of the investigation or inquiry, summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within three months of the conclusion of the investigation or inquiry.”; and

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- (iii) subsections (3) to (6) were omitted;
- (q) in section 35, for “any enforcing authority”, there were substituted “ the Health and Safety Executive or the Office for Nuclear Regulation as the case may be ”;
- (r) in section 39(1), for enforcing authority” there were substituted “ Health and Safety Executive or the Office for Nuclear Regulation as the case may be ”; and
- (s) in section 42 , subsections (3A), (4) and (5) were omitted.

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