

## SCHEDULE 1 **N.I.**

Regulation 5(2)(a)

### Investigatory powers

#### Interpretation of terms used in this Schedule **N.I.**

1. In this Schedule—

“premises” includes any trading stall, vehicle, vessel or aircraft;

“proceedings” may include an application for forfeiture.

[<sup>F1</sup>“Regulation (EU) 2017/745 on medical devices” means Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC.]

[<sup>F2</sup>“Regulation (EU) 2017/746 on *in vitro* diagnostic medical devices” means Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on *in vitro* diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU.]

#### Textual Amendments

**F1** Words in Sch. 1 para. 1 inserted (27.7.2021) by The Medical Devices (Northern Ireland Protocol) Regulations 2021 (S.I. 2021/905), regs. 1(2), **43(3)(a)**

**F2** Words in Sch. 1 para. 1 inserted (21.3.2024) by The Medical Devices (In Vitro Diagnostic Devices etc.) (Amendment) Regulations 2024 (S.I. 2024/221), regs. 1(2), **26(a)**

#### Commencement Information

**I1** Sch. 1 para. 1 in force at 16.7.2021, see reg. 1(1)

#### Power to require the production of information **N.I.**

2.—(1) An enforcer or an officer of an enforcer may give notice to a person requiring the person to provide the enforcer with the information specified in the notice.

(2) The information may include information of the kinds specified in Article 14(4)(a) to (c) of the MSC Regulation.

(3) An enforcer may exercise the powers in this paragraph for the purpose of ascertaining whether there is, or has been, any non-compliance.

#### Commencement Information

**I2** Sch. 1 para. 2 in force at 16.7.2021, see reg. 1(1)

#### Procedure for notice under paragraph 2 **N.I.**

3.—(1) A notice under paragraph 2 must be in writing and specify the purpose for which the information is required.

(2) If the purpose is to enable a person to exercise or to consider whether to exercise a function, the notice must specify the function concerned.

(3) The notice may specify—

**Changes to legislation:** There are currently no known outstanding effects for the The Market Surveillance (Northern Ireland) Regulations 2021. (See end of Document for details)

- (a) the time within which and the manner in which the person to whom it is given must comply with it;
  - (b) the form in which information must be provided.
- (4) The notice may require—
- (a) the creation of documents, or documents of a description, specified in the notice, and
  - (b) the provision of those documents to the enforcer or an officer of the enforcer.
- (5) A requirement to provide information or create a document is a requirement to do so in a legible form.
- (6) A notice under paragraph 2 does not require a person to provide any information or create any documents which the person would be entitled to refuse to provide or produce in proceedings in the High Court on the grounds of legal professional privilege.

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**Commencement Information**

**I3** Sch. 1 para. 3 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Enforcement of notice under paragraph 2** **N.I.**

4.—(1) If a person fails to comply with a notice under paragraph 2, the enforcer or an officer of the enforcer may make an application under this paragraph to the court.

(2) If it appears to the court that the person has failed to comply with the notice, it may make an order under this paragraph.

(3) An order under this paragraph is an order requiring the person to do anything that the court thinks it is reasonable for the person to do, for any of the purposes for which the notice was given, to ensure that the notice is complied with.

(4) An order under this paragraph may require the person to meet the costs or expenses of the application.

(5) If the person is a company, partnership or unincorporated association, the court in acting under sub-paragraph (4) may require an official who is responsible for the failure to meet the costs or expenses.

(6) In this paragraph, “the court” means—

- (a) the High Court; or
- (b) a county court;

“official” means—

- (a) in the case of a company, a director, manager, secretary or other similar officer;
- (b) in the case of a limited liability partnership, a member;
- (c) in the case of a partnership other than a limited liability partnership, a partner; and
- (d) in the case of an unincorporated association, a person who is concerned in the management or control of its affairs.

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**Commencement Information**

**I4** Sch. 1 para. 4 in force at 16.7.2021, see [reg. 1\(1\)](#)

## Limitations on use of information provided in response to a notice under paragraph 2 **N.I.**

5.—(1) This paragraph applies if a person provides information in response to a notice under paragraph 2.

(2) This includes information contained in a document created by a person in response to such a notice.

(3) In any criminal proceedings against the person—

(a) no evidence relating to the information may be adduced by or on behalf of the prosecution, and

(b) no question relating to the information may be asked by or on behalf of the prosecution.

(4) Sub-paragraph (3) does not apply if, in the proceedings—

(a) evidence relating to the information is adduced by or on behalf of the person providing it, or

(b) a question relating to the information is asked by or on behalf of that person.

(5) Sub-paragraph (3) does not apply if the proceedings are for—

(a) an offence under paragraph 21 (obstruction),

(b) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979<sup>M1</sup> (false statutory declarations and other false unsworn statements).

### Commencement Information

**I5** Sch. 1 para. 5 in force at 16.7.2021, see [reg. 1\(1\)](#)

### Marginal Citations

**M1** [S.I. 1979/1714 \(N.I. 19\)](#), to which there are amendments not relevant to these Regulations.

## Power to purchase products **N.I.**

6.—(1) An officer of an enforcer may—

(a) make a purchase of a product, or

(b) enter into an agreement to secure the provision of a product.

(2) For the purposes of exercising the power in sub-paragraph (1), an officer may—

(a) at any reasonable time, enter premises to which the public has access (whether or not the public has access at that time), and

(b) inspect any product on the premises which the public may inspect.

(3) The power of entry in sub-paragraph (2) may be exercised without first giving notice or obtaining a warrant.

(4) An enforcer may exercise any power in this paragraph for the purpose of ascertaining whether there has been any non-compliance.

(5) The powers in this paragraph may be exercised by an officer acting under a cover identity.

### Commencement Information

**I6** Sch. 1 para. 6 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Power to observe carrying on of a business etc** **N.I.**

7.—(1) An officer of an enforcer may enter premises to which the public has access in order to observe the carrying on of a business on those premises.

(2) The power in sub-paragraph (1) may be exercised at any reasonable time (whether or not the public has access at that time).

(3) The power of entry in sub-paragraph (1) may be exercised without first giving notice or obtaining a warrant.

(4) An enforcer may exercise the power in this paragraph for the purpose of ascertaining whether there has been any non-compliance.

**Commencement Information**

**17** Sch. 1 para. 7 in force at 16.7.2021, see **reg. 1(1)**

**Power to enter premises without a warrant** **N.I.**

8.—(1) An officer of an enforcer may enter premises at any reasonable time.

(2) Sub-paragraph (1) does not authorise the entry into premises used wholly or mainly as a dwelling.

(3) If an officer of an enforcer enters premises under sub-paragraph (1) and finds one or more occupiers on the premises, the officer must produce evidence of the officer's identity and authority to that occupier or (if there is more than one) to at least one of them.

(4) An officer need not comply with sub-paragraph (3) if it is not reasonably practicable to do so.

(5) Proceedings resulting from the exercise of the power under sub-paragraph (1) are not invalid merely because of a failure to comply with sub-paragraph (3).

(6) An officer entering premises under sub-paragraph (1) may be accompanied by such persons, and may take onto the premises such equipment, as the officer thinks necessary.

(7) An enforcer may exercise the power in this paragraph for the purpose of ascertaining whether there has been any non-compliance.

**Commencement Information**

**18** Sch. 1 para. 8 in force at 16.7.2021, see **reg. 1(1)**

**Application of paragraphs 10 to 17** **N.I.**

9. Paragraphs 10 to 17 apply if an officer of an enforcer has entered any premises under the power in paragraph 8(1) or under a warrant under paragraph 18.

**Commencement Information**

**19** Sch. 1 para. 9 in force at 16.7.2021, see **reg. 1(1)**

**Power to inspect products etc** **N.I.**

10.—(1) The officer may inspect any product on the premises.

(2) The officer may examine any procedure (including any arrangements for carrying out a test) connected with the production of a product.

(3) The officer may inspect and take copies of, or of anything purporting to be—

- (a) a record of a kind mentioned in regulation 5(2) or 9(1) of the 2011 Regulations, or
- (b) evidence of a kind mentioned in regulation 9(3) of the 2011 Regulations.

(4) The powers in sub-paragraph (5) are also available to an officer of an enforcer acting pursuant to the duty in regulation 52(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations 2016.

(5) The officer may—

- (a) inspect any apparatus or fixed installation (as defined in those Regulations), or
- (b) examine any procedure (including any arrangements for carrying out a test) connected with the production of apparatus.

(6) An enforcer may exercise the power in this paragraph for the purpose of ascertaining whether there has been any non-compliance.

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#### Commencement Information

**I10** Sch. 1 para. 10 in force at 16.7.2021, see [reg. 1\(1\)](#)

#### Power to test equipment **N.I.**

**11.**—(1) An officer of an enforcer may test any weighing or measuring equipment—

- (a) which is, or which the officer has reasonable cause to believe may be, used for trade or in the possession of any person or on any premises for such use, or
- (b) which has been, or which the officer has reasonable cause to believe to have been, passed by an approved verifier, or by a person purporting to act as such a verifier, as fit for such use.

(2) Expressions used in sub-paragraph (1) have the same meaning as in the Weights and Measures (Northern Ireland) Order 1981.

(3) The powers in sub-paragraph (4) are available to an officer of an enforcer acting pursuant to the duty in regulation 10(1) of the 2011 Regulations.

(4) The officer may test any equipment which the officer has reasonable cause to believe is used in—

- (a) making up packages (as defined in regulation 2 of the 2011 Regulations), or
- (b) carrying out a check mentioned in paragraphs (1) and (3) of regulation 9 of the 2011 Regulations.

(5) An enforcer may exercise the power in this paragraph for the purpose of ascertaining whether there has been any non-compliance.

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#### Commencement Information

**I11** Sch. 1 para. 11 in force at 16.7.2021, see [reg. 1\(1\)](#)

#### Power to require the production of documents **N.I.**

**12.**—(1) The officer may, at any reasonable time—

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- (a) require a trader occupying the premises, or a person on the premises acting on behalf of such a trader, to produce any documents relating to the trader's business to which the trader has access, and
  - (b) take copies of, or of any entry in, any such document.
- (2) The power in sub-paragraph (1) is available regardless of whether—
- (a) the purpose for which the documents are required relates to the trader or some other person, or
  - (b) the proceedings referred to in sub-paragraph (6)(b) could be taken against the trader or some other person.
- (3) That power includes power to require the person to give an explanation of the documents.
- (4) Where a document required to be produced under sub-paragraph (1) contains information recorded electronically, the power in that sub-paragraph includes power to require the production of a copy of the document in a form in which it can easily be taken away and in which it is visible and legible.
- (5) This paragraph does not permit an officer to require a person to create a document other than as described in sub-paragraph (4).
- (6) An enforcer may exercise the power in this paragraph for the following purposes—
- (a) to ascertain compliance by an economic operator with the MSC Regulation or the enforcer's legislation;
  - (b) to ascertain whether the documents may be required as evidence in proceedings for non-compliance.
- (7) This paragraph does not permit an officer to require a person to produce any document which the person would be entitled to refuse to produce in proceedings in the High Court on the grounds of legal professional privilege.
- (8) In this paragraph “trader” means a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf.

#### Commencement Information

**I12** Sch. 1 para. 12 in force at 16.7.2021, see [reg. 1\(1\)](#)

#### Power to seize and detain products **N.I.**

**13.**—(1) The officer may seize and detain products other than documents (for which see paragraph 14).

(2) An officer seizing products under this paragraph from premises which are occupied must produce evidence of the officer's identity and authority to an occupier of the premises before seizing them.

(3) The officer need not comply with sub-paragraph (2) if it is not reasonably practicable to do so.

(4) An officer seizing products under this paragraph must take reasonable steps to—

- (a) inform the person from whom they are seized that they have been seized, and
- (b) provide that person with a written record of what has been seized.

(5) If, under this paragraph, an officer seizes any products from a vending machine, the duty in sub-paragraph (4) also applies in relation to—

- (a) the person whose name and address are on the vending machine as the owner of the machine, or
  - (b) if there is no such name and address on the machine, the occupier of the premises on which the machine stands or to which it is fixed.
- (6) In determining the steps to be taken under sub-paragraph (4), an officer exercising a power under this paragraph must have regard to any relevant provision about the seizure of property made by a code of practice under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 <sup>M2</sup>.
- (7) An enforcer may exercise the power in this paragraph in relation to—
- (a) products which an officer of the enforcer reasonably suspects may disclose (by means of testing or otherwise) non-compliance;
  - (b) products which an officer of the enforcer reasonably suspects are liable to forfeiture under the enforcer's legislation; and
  - (c) products which an officer of the enforcer reasonably suspects may be required as evidence in proceedings for a breach of, or under, that legislation.
- (8) Products seized under this paragraph (except products seized for a purpose mentioned in sub-paragraph (7)(b)) may not be detained—
- (a) for a period of more than 3 months beginning with the day on which they were seized, or
  - (b) where the products are reasonably required to be detained for a longer period by the enforcer for a purpose for which they were seized, for longer than they are required for that purpose.

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#### Commencement Information

**I13** Sch. 1 para. 13 in force at 16.7.2021, see [reg. 1\(1\)](#)

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#### Marginal Citations

**M2** [S.I. 1989/1341 \(N.I. 12\)](#); relevant amending instruments are [S.I. 2007/288 \(N.I. 2\)](#), and paragraph 22 of Schedule 9 to the [Protection of Freedoms Act 2012 \(c. 9\)](#).

### Power to seize documents required as evidence **N.I.**

- 14.—**(1) The officer may seize and detain documents.
- (2) An officer seizing documents under this paragraph from premises which are occupied must produce evidence of the officer's identity and authority to an occupier of the premises before seizing them.
- (3) The officer need not comply with sub-paragraph (2) if it is not reasonably practicable to do so.
- (4) An officer seizing documents under this paragraph must take reasonable steps to—
- (a) inform the person from whom they are seized that they have been seized, and
  - (b) provide that person with a written record of what has been seized.
- (5) In determining the steps to be taken under sub-paragraph (4), an officer exercising a power under this paragraph must have regard to any relevant provision about the seizure of property made by a code of practice under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989.
- (6) An enforcer may exercise the power in this paragraph in relation to documents which an officer of the enforcer reasonably suspects may be required as evidence—

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- (a) in proceedings for non-compliance; or
- (b) in proceedings under these Regulations or the enforcer's legislation.

(7) This paragraph does not confer any power on an officer to seize from a person any document which the person would be entitled to refuse to produce in proceedings in the High Court on the grounds of legal professional privilege.

- (8) Documents seized under this paragraph may not be detained—
  - (a) for a period of more than 3 months beginning with the day on which they were seized, or
  - (b) where the documents are reasonably required to be detained for a longer period by the enforcer for the purposes of the proceedings for which they were seized, for longer than they are required for those purposes.

#### Commencement Information

**I14** Sch. 1 para. 14 in force at 16.7.2021, see [reg. 1\(1\)](#)

#### Power to decommission or switch off fixed installations **N.I.**

**15.**—(1) The power in sub-paragraph (2) is available to an officer of an enforcer acting pursuant to the duty in regulation 52(1)(b)(ii) of the Electromagnetic Compatibility Regulations 2016.

(2) The officer may decommission or switch off any fixed installation (as defined in those Regulations) or part of such an installation.

- (3) An enforcer may exercise the power in this paragraph—
  - (a) if an officer of the enforcer reasonably suspects a contravention of an obligation on an economic operator under the MSC Regulation or the Electromagnetic Compatibility Regulations 2016; and
  - (b) for the purpose of ascertaining (by means of testing or otherwise) whether there has been such non-compliance.

#### Commencement Information

**I15** Sch. 1 para. 15 in force at 16.7.2021, see [reg. 1\(1\)](#)

#### Power to decommission or switch off any medical device **N.I.**

**16.**—(1) The power in sub-paragraph (2) is available to an officer of an enforcer acting [<sup>F3</sup>pursuant to—

- (a) the duty in regulation 61(1A) or (1B) of the Medical Devices Regulations 2002,
- (b) a duty in regulations made under section 15(1) of the Medicines and Medical Devices Act 2021, or
- (c) the duty in regulation 26(1) or (2) of the Medical Devices (Northern Ireland Protocol) Regulations 2021.]

[<sup>F4</sup>(2) The officer may decommission or switch off any medical device to which the Medical Devices Regulations 2002, [Regulation \(EU\) 2017/745](#) on medical devices or [Regulation \(EU\) 2017/746](#) on *in vitro* diagnostic medical devices apply which is installed at a given location.]

- (3) An enforcer may exercise the power in this paragraph—



- (a) if an officer of the enforcer reasonably suspects a contravention of an obligation on an economic operator under any of—
- (i) the Medical Devices Regulations 2002;
  - (ii) regulations made under section 15(1) of the Medicines and Medical Devices Act 2021; <sup>F5</sup>...
  - [<sup>F6</sup>(iii) the Medical Devices (Northern Ireland Protocol) Regulations 2021;
  - (iv) Regulation (EU) 2017/745 on medical devices; <sup>F7</sup>...] ]
  - [<sup>F8</sup>(v) Regulation (EU) 2017/746 on *in vitro* diagnostic medical devices; and]
- (b) for the purpose of ascertaining (by means of testing or otherwise) whether there has been such non-compliance.

#### Textual Amendments

- F3** Words in Sch. 1 para. 16(1) substituted (27.7.2021) by The Medical Devices (Northern Ireland Protocol) Regulations 2021 (S.I. 2021/905), regs. 1(2), **43(3)(b)(i)**
- F4** Sch. 1 para. 16(2) substituted (21.3.2024) by The Medical Devices (In Vitro Diagnostic Devices etc.) (Amendment) Regulations 2024 (S.I. 2024/221), regs. 1(2), **26(b)(i)**
- F5** Word in Sch. 1 para. 16(3)(a)(ii) omitted (27.7.2021) by virtue of The Medical Devices (Northern Ireland Protocol) Regulations 2021 (S.I. 2021/905), regs. 1(2), **43(3)(b)(iii)**
- F6** Sch. 1 para. 16(3)(a)(iii)(iv) inserted (27.7.2021) by The Medical Devices (Northern Ireland Protocol) Regulations 2021 (S.I. 2021/905), regs. 1(2), **43(3)(b)(iv)**
- F7** Word in Sch. 1 para. 16(3)(a)(iv) omitted (21.3.2024) by virtue of The Medical Devices (In Vitro Diagnostic Devices etc.) (Amendment) Regulations 2024 (S.I. 2024/221), regs. 1(2), **26(b)(ii)**
- F8** Sch. 1 para. 16(3)(a)(v) inserted (21.3.2024) by The Medical Devices (In Vitro Diagnostic Devices etc.) (Amendment) Regulations 2024 (S.I. 2024/221), regs. 1(2), **26(b)(ii)**

#### Commencement Information

- I16** Sch. 1 para. 16 in force at 16.7.2021, see reg. 1(1)

#### Power to break open container etc **N.I.**

17.—(1) The officer may, for the purpose of exercising any of the powers in paragraphs 13 to 16, require a person with authority to do so to—

- (a) break open any container,
- (b) open any vending machine, or
- (c) access any electronic device in which information may be stored or from which it may be accessed.

(2) Where a requirement under sub-paragraph (1) has not been complied with, the officer may, for the purpose of exercising any of the powers in paragraphs 13 to 16—

- (a) break open the container,
- (b) open the vending machine, or
- (c) access the electronic device.

(3) Sub-paragraph (1) or (2) applies if and to the extent that the exercise of the power in that sub-paragraph is reasonably necessary for the purposes for which that power may be exercised.

(4) An enforcer may exercise any power in this paragraph for the purpose of ascertaining whether there has been any non-compliance.

(5) In this paragraph “container” means anything in which products may be stored.

**Commencement Information**

**I17** Sch. 1 para. 17 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Power to enter premises with warrant** **N.I.**

**18.**—(1) A lay magistrate may issue a warrant authorising an officer of an enforcer to enter premises if satisfied, on a written complaint on oath given by such an officer, that there are reasonable grounds for believing that—

- (a) condition A or B is met, and
- (b) condition C, D or E is met.

(2) Condition A is that on the premises there are—

- (a) products which an officer of the enforcer has power to inspect under paragraph 10, or
- (b) documents which an officer of the enforcer could require a person to produce under paragraph 12.

(3) Condition B is that, on the premises, in the case of an enforcer, there has been or is about to be a breach of the enforcer's legislation or the MSC Regulation.

(4) Condition C is that—

- (a) access to the premises has been or is likely to be refused, and
- (b) notice of the enforcer's intention to apply for a warrant under this paragraph has been given to the occupier of the premises.

(5) Condition D is that it is likely that products or documents on the premises would be concealed or interfered with if notice of entry on the premises were given to the occupier of the premises.

(6) Condition E is that—

- (a) the premises are unoccupied, or
- (b) the occupier of the premises is absent, and it might defeat the purpose of the entry to wait for the occupier's return.

(7) A warrant may be issued under sub-paragraph (1) for the purpose of ascertaining whether there has been any non-compliance.

**Commencement Information**

**I18** Sch. 1 para. 18 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Entry to premises under warrant** **N.I.**

**19.**—(1) A warrant under paragraph 18 authorises an officer of the enforcer to enter the premises at any reasonable time, using reasonable force if necessary.

(2) A warrant under that paragraph ceases to have effect at the end of the period of one month beginning with the day it is issued.

(3) An officer entering premises under a warrant under paragraph 18 may be accompanied by such persons, and may take onto the premises such equipment, as the officer thinks necessary.

(4) If the premises are occupied when the officer enters them, the officer must produce the warrant for inspection to an occupier of the premises.

- (5) Sub-paragraph (6) applies if the premises are unoccupied or the occupier is temporarily absent.
- (6) On leaving the premises the officer must—
- (a) leave a notice on the premises stating that the premises have been entered under a warrant under paragraph 18, and
  - (b) leave the premises as effectively secured against trespassers as the officer found them.
- (7) An enforcer may exercise the power in this paragraph for the purpose of ascertaining whether there has been any non-compliance.

**Commencement Information**

**I19** Sch. 1 para. 19 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Power to require assistance from person on premises** **N.I.**

**20.**—(1) If an officer of an enforcer has entered premises under the power in paragraph 8(1) or under a warrant under paragraph 18, the officer may require any person on the premises to provide such assistance or information as the officer reasonably considers necessary.

(2) Sub-paragraph (3) applies if an officer of an enforcer has entered premises under the power in paragraph 8(1) or under a warrant under paragraph 18 for the purposes of the enforcement of the 2011 Regulations.

(3) The officer may, in particular, require any person on the premises to provide such information as the person possesses about the name and address of the packer and of any importer of a package which the officer finds on the premises.

(4) An enforcer may exercise any power in this paragraph for the purpose of ascertaining whether there has been any non-compliance.

(5) In sub-paragraph (3) “importer”, “package” and “packer” have the same meaning as in the 2011 Regulations.

**Commencement Information**

**I20** Sch. 1 para. 20 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Offence of obstruction** **N.I.**

- 21.**—(1) A person commits an offence if the person—
- (a) intentionally obstructs an enforcer or an officer of an enforcer who is exercising or seeking to exercise a power under this Schedule,
  - (b) intentionally fails to comply with a requirement properly imposed by an enforcer or an officer of an enforcer under this Schedule, or
  - (c) without reasonable cause fails to give an enforcer or an officer of an enforcer any other assistance or information which the enforcer or officer reasonably requires of the person for a purpose for which the enforcer or officer may exercise a power under this Schedule.
- (2) A person commits an offence if, in giving information of a kind referred to in sub-paragraph (1)(c), the person—
- (a) makes a statement which the person knows is false or misleading in a material respect, or
  - (b) recklessly makes a statement which is false or misleading in a material respect.

(3) A person who is guilty of an offence under sub-paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Nothing in this paragraph requires a person to answer any question or give any information if to do so might incriminate that person.

**Commencement Information**

**I21** Sch. 1 para. 21 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Offence of purporting to act as an officer** **N.I.**

**22.**—(1) A person who is not an officer of an enforcer commits an offence if the person purports to act as such under this Schedule.

(2) A person who is guilty of an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Commencement Information**

**I22** Sch. 1 para. 22 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Access to seized products and documents** **N.I.**

**23.**—(1) This paragraph applies where anything seized by an officer of an enforcer under this Schedule is detained by the enforcer.

(2) If a request for permission to be granted access to that thing is made to the enforcer by a person who had custody or control of it immediately before it was seized, the enforcer must allow that person access to it under the supervision of an officer of the enforcer.

(3) If a request for a photograph or copy of that thing is made to the enforcer by a person who had custody or control of it immediately before it was seized, the enforcer must—

- (a) allow that person access to it under the supervision of an officer of the enforcer for the purpose of photographing or copying it, or
- (b) photograph or copy it, or cause it to be photographed or copied.

(4) Where anything is photographed or copied under sub-paragraph (3)(b), the photograph or copy must be supplied to the person who made the request within a reasonable time from the making of the request.

(5) This paragraph does not require access to be granted to, or a photograph or copy to be supplied of, anything if the enforcer has reasonable grounds for believing that to do so would prejudice the investigation for the purposes of which it was seized.

(6) An enforcer may recover the reasonable costs of complying with a request under this paragraph from the person by whom or on whose behalf it was made.

(7) References in this paragraph to a person who had custody or control of a thing immediately before it was seized include a representative of such a person.

**Commencement Information**

**I23** Sch. 1 para. 23 in force at 16.7.2021, see [reg. 1\(1\)](#)

## Notice of testing of products **N.I.**

**24.**—(1) Sub-paragraphs (3) and (4) apply where products purchased by an officer of an enforcer under paragraph 6 are submitted to a test and as a result—

- (a) proceedings are brought for a breach of, or under, the enforcer's legislation or for the forfeiture of the products by the enforcer, or
- (b) a notice is served by the enforcer preventing a person from doing any thing.

(2) Sub-paragraphs (3) and (4) also apply where products seized by an officer of an enforcer under paragraph 13 are submitted to a test.

(3) The enforcer must inform the relevant person of the results of the test.

(4) The enforcer must allow a relevant person to have the products tested if it is reasonably practicable to do so.

(5) In sub-paragraph (3) “relevant person” means the person from whom the products were purchased or seized or, where the products were purchased or seized from a vending machine—

- (a) the person whose name and address are on the vending machine as the owner of the machine, or
- (b) if there is no such name and address on the machine, the occupier of the premises on which the machine stood or to which it was fixed.

(6) In sub-paragraph (4) “relevant person” means—

- (a) a person within sub-paragraph (5),
- (b) in a case within sub-paragraph (1)(a), a person who is a party to the proceedings, and
- (c) in a case within sub-paragraph (1)(b), a person with an interest in the products.

### Commencement Information

**I24** Sch. 1 para. 24 in force at 16.7.2021, see [reg. 1\(1\)](#)

## Appeals against detention of products and documents **N.I.**

**25.**—(1) This paragraph applies where products or documents are being detained as the result of the exercise of a power in this Schedule.

(2) A person with an interest in the products or documents may apply for an order requiring them to be released to that or another person.

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

- (a) to any magistrates' court in which proceedings have been brought for an offence as the result of the investigation in the course of which the products or documents were seized,
- (b) to any magistrates' court in which proceedings have been brought for the forfeiture of the products or documents or (in the case of seized documents) any products to which the documents relate, or
- (c) if no proceedings within paragraph (a) or (b) have been brought, by way of complaint to a magistrates' court.

(4) On an application under this paragraph, the court may make an order requiring products to be released only if satisfied that condition A or B is met.

(5) Condition A is that—

- (a) no proceedings have been brought—

**Changes to legislation:** There are currently no known outstanding effects for the The Market Surveillance (Northern Ireland) Regulations 2021. (See end of Document for details)

- (i) for an offence as the result of the investigation in the course of which the products or documents were seized, or
  - (ii) for the forfeiture of the products or documents or (in the case of seized documents) any products to which the documents relate, and
- (b) the period of 6 months beginning with the date the products or documents were seized has expired.
- (6) Condition B is that—
- (a) proceedings of a kind mentioned in sub-paragraph (5)(a) have been brought, and
  - (b) those proceedings have been concluded without the products or documents being forfeited.
- (7) A person aggrieved by an order made under this paragraph by a magistrates' court, or by the decision of a magistrates' court not to make such an order, may appeal against the order or decision to a county court.
- (8) An order made under this paragraph by a magistrates' court may contain such provision as the court thinks appropriate for delaying its coming into force pending the making and determination of any appeal.
- (9) In sub-paragraph (8) “appeal” includes an application under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 <sup>M3</sup> (cases stated by magistrates' courts).

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#### Commencement Information

**I25** Sch. 1 para. 25 in force at 16.7.2021, see [reg. 1\(1\)](#)

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#### Marginal Citations

**M3** S.I. 1981/1675 (N.I. 26), to which there are amendments not relevant to these Regulations.

### Compensation **N.I.**

**26.—**(1) This paragraph applies where an officer of an enforcer has seized and detained products under this Schedule for a purpose within paragraph 13(7)(a).

(2) The enforcer must pay compensation to any person with an interest in the products in respect of any loss or damage caused by the seizure and detention, if the condition in sub-paragraph (3) that is relevant to the enforcer is met.

(3) The condition that is relevant to an enforcer is that—

- (a) the products have not disclosed a breach of the enforcer's legislation, and
- (b) the power to seize and detain the products was not exercised as a result of any neglect or default of the person seeking the compensation.

(4) Any dispute about the right to or amount of any compensation payable under this paragraph is to be determined by arbitration.

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#### Commencement Information

**I26** Sch. 1 para. 26 in force at 16.7.2021, see [reg. 1\(1\)](#)

### Powers of a district council **N.I.**

**27.—**(1) Sub-paragraph (2) applies in relation to the exercise by an enforcer, who is a district council in Northern Ireland—

- (a) in accordance with this Schedule, of a power in this Schedule; or
- (b) of an investigatory power under the enforcer's legislation or for the purpose of ascertaining whether there has been a breach of that legislation or of any notice issued by the enforcer under that legislation.

(2) The district council may exercise the power in a part of Northern Ireland which is outside that council's district.

**Commencement Information**

**I27** Sch. 1 para. 27 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Civil proceedings** **N.I.**

**28.**—(1) Sub-paragraph (4) applies in relation to civil proceedings which may be brought by an enforcer under—

- (a) these Regulations, or
- (b) the enforcer's legislation.

(2) Sub-paragraph (4) also applies in relation to an application for forfeiture which may be made by an enforcer, in circumstances where there are no related criminal proceedings, under the enforcer's legislation.

(3) In sub-paragraph (4), the reference to civil proceedings includes a reference to an application mentioned in sub-paragraph (2).

(4) A district council in Northern Ireland may bring civil proceedings in respect of conduct in a part of Northern Ireland which is outside that council's district.

**Commencement Information**

**I28** Sch. 1 para. 28 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Criminal proceedings** **N.I.**

**29.**—(1) A district council in Northern Ireland may bring proceedings for a consumer offence allegedly committed in a part of Northern Ireland which is outside that council's district.

(2) In sub-paragraph (1) “a consumer offence” means—

- (a) an offence under the enforcer's legislation which a district council in Northern Ireland has a duty or power to enforce,
- (b) an offence under legislation under which legislation within paragraph (a) is made,
- (c) an offence originating from an investigation into a breach of legislation mentioned in paragraph (a) or (b), or
- (d) an offence described in paragraph 21 or 22 of this Schedule.

**Commencement Information**

**I29** Sch. 1 para. 29 in force at 16.7.2021, see [reg. 1\(1\)](#)

SCHEDULE 2 **N.I.**

Regulation 5(2)(b)

## Powers under the Consumer Protection Act 1987

**Enforcement powers under the 1987 Act** **N.I.**

1. For the purposes of enforcing the MSC Regulation and the enforcer's legislation, the following provisions of the 1987 Act apply subject to the modifications in paragraph 2—

- (a) section 13 (prohibition notices and notices to warn);
- (b) section 14 (suspension notices);
- (c) section 16 (forfeiture: England and Wales and Northern Ireland) as it applies to Northern Ireland;
- (d) section 18 (power to obtain information);
- (e) section 19 (interpretation of Part 2);
- (f) section 29 (powers of search etc);
- (g) section 30 (provisions supplemental to section 29);
- (h) section 31 (powers of customs officer to detain goods);
- (i) section 33 (appeals against detention of goods);
- (j) section 34 (compensation for seizure and detention);
- (k) section 35 (recovery of expenses of enforcement);
- (l) section 37 (power of Commissioners for Revenue and Customs);
- (m) section 45 (interpretation);
- (n) in section 46—
  - (i) subsection (1) (meaning of “supply”);
  - (ii) subsection (7)(a) and (b) so far as having effect for the purposes of section 16(7)(a);
- (o) Schedule 2 (prohibition notices and notices to warn).

**Commencement Information**

**I30** Sch. 2 para. 1 in force at 16.7.2021, see **reg. 1(1)**

**Modifications to the 1987 Act** **N.I.**

2. The sections of the 1987 Act referred to in paragraph 1 apply as if—

- (a) in section 13—
  - (i) in subsection (1), for “unsafe” on each occasion that it appears, there were substituted “non-compliant”;
  - (ii) in subsection (1), “relevant” were omitted each time it appears;
  - (iii) in subsection (2), the words from “; and the Secretary of State may” to the end were omitted;
  - (iv) subsections (4) to (7) were omitted;
- (b) in section 14—
  - (i) in subsection (1), after “any safety provision has been contravened in relation to any goods”, there were inserted “or that the goods present a risk”;



- (ii) in subsection (2)(b), after “any safety provision has been contravened in relation to the goods”, there were inserted “ or that the goods present a risk ”;
- (iii) in subsection (2)(c), “under section 15 below” were omitted;
- (iv) in subsection (4)(a), omit the words “(not being an offence under this section)”;
- (v) subsections (6) to (8) were omitted;
- (c) in section 16—
  - (i) in subsection (1)—
    - (aa) the words “England and Wales or” were omitted; and
    - (bb) after “a contravention in relation to goods of a safety provision” there were inserted “ or that the goods present a risk ”;
  - (ii) for subsection (2)(b) there were substituted—
    - “(b) where an application with respect to some or all of the goods has been made to a magistrates’ court under paragraph 4 of Schedule 4 (appeals against notices) to the 2021 Regulations, or under section 33, to that court; and”;
  - (iii) in subsection (3) after “a contravention in relation to goods of a safety provision” there were inserted “ or that the goods present a risk ”;
  - (iv) after subsection (4) there were inserted—
    - “(4A) A court may infer for the purposes of this section that any goods present a risk if it is satisfied that a risk is presented by goods which are representative of those goods (whether by reason of being of the same design or part of the same consignment or batch or otherwise).”;
  - (v) in subsection (5), paragraph (a) and the words “section 111 of the Magistrates’ Court Act 1980 or” were omitted;
- (d) in section 18, subsections (3) and (4) were omitted;
- (e) in section 29—
  - (i) in subsection (4)—
    - (aa) for “the United Kingdom” substitute “ Northern Ireland ”;
    - (bb) in paragraph (a) after “any contravention of any safety provision in relation to the goods” there were inserted “ or whether the goods present a risk ”;
    - (cc) in paragraph (b), after “any such contravention” there were inserted “ or whether the goods present a risk ”;
  - (ii) after subsection (9), there were inserted—
    - “(10) In this section, “imported goods” means goods that are in Northern Ireland as a result of having been brought there from a place in Great Britain or outside the United Kingdom.”;
- (f) in section 30—
  - (i) in subsection (2), for “justice of the peace” there were substituted “ lay magistrate ”, and for “the justice” there were substituted “ the lay magistrate ”;
  - (ii) at the end of subsection (2)(a)(ii), for “and” there were substituted “ or ”;
  - (iii) after subsection (2)(a)(ii), there were inserted—
    - “(iii) that any goods which any officer has power to inspect under section 29(4) are on any premises and their inspection is likely to demonstrate that they present a risk; and” and

- (iv) subsections (5), (7), (8) and (9) were omitted;
- (g) in section 31—
  - (i) in subsection (1), for “Part II of this Act”, there were substituted “ the Market Surveillance Regulation or the enforcer's legislation (within the meaning of the 2021 Regulations) ”;
  - (ii) after subsection (4), there were inserted—

“(5) In this section, “imported goods” means goods that are in Northern Ireland as a result of having been brought there from a place in Great Britain or outside the United Kingdom.”
- (h) in section 33—
  - (i) in subsection (2)(a) the words “England and Wales or” were omitted;
  - (ii) in subsection (2)(b), the word “or” were omitted;
  - (iii) subsection (2)(c) was omitted;
  - (iv) in subsection (3), in the words before paragraph (a), the words “or to the sheriff” and “or sheriff” were omitted;
  - (v) in subsection (4)—
    - (aa) in the words before paragraph (a), the words “England and Wales or” were omitted;
    - (bb) paragraph (a) was omitted;
    - (cc) in the words after paragraph (b), the words “section 111 of the Magistrates' Courts Act 1980 or” were omitted;
- (i) in section 34—
  - (i) the word “and” at the end of subsection (1)(a) were omitted; and
  - (ii) in subsection (1), after paragraph (a), there were inserted—

“(aa) the goods do not present a risk; and”;
- (j) in section 37—
  - (i) in subsection (1), for “Part II of this Act”, there were substituted “ the Market Surveillance Regulation or the enforcer's legislation (within the meaning of the 2021 Regulations) ”;
  - (ii) after subsection (4), there were inserted—

“(5) In this section, “imported goods” means goods that are in Northern Ireland as a result of having been brought there from a place in Great Britain or outside the United Kingdom.”;
- (k) in section 45(1)—
  - (i) the definitions of “conditional sale agreement”, “credit-sale agreement”, “gas”, “motor vehicle”, and “subordinate legislation” were omitted;
  - (ii) before the definition of “aircraft”, there were inserted—

““the 2021 Regulations” means the Market Surveillance (Northern Ireland) Regulations 2021;”
  - (iii) before the definition of enforcement authority there were inserted—

““economic operator” has the same meaning as in the Market Surveillance Regulation;”;
  - (iv) for the definition of “enforcement authority” there were substituted—

““enforcement authority” means an enforcer within the meaning of the 2021 Regulations;”;

(v) after the definition of enforcement authority there were inserted—

““the Market Surveillance Regulation” means Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011;”;

(vi) for the definition of “goods” there were substituted—

““goods” means products to which the 2021 Regulations apply;”;

(vii) after the definition of “modifications” there were inserted—

““non-compliant” in relation to any goods means that—

- (a) a safety provision has been contravened in relation to the goods, or
- (b) the goods present a risk,

and the goods are “compliant” if they are not non-compliant;”;

(viii) after the definition of “premises”, there were inserted—

“goods “present a risk” if they have the potential to affect adversely—

- (a) health and safety of persons in general;
- (b) health and safety in the workplace;
- (c) protection of consumers;
- (d) the environment;
- (e) public security; and
- (f) other public interests,

to a degree which goes beyond that considered reasonable and acceptable in relation to their intended purpose or under the normal or reasonably foreseeable conditions of use of the goods, including the duration of use and, where applicable, their putting into service, installation and maintenance requirements;”;

(ix) for the definition of “safety provision” there were substituted—

““safety provision” means any provision imposing an obligation in relation to goods on an economic operator in—

- (a) the Market Surveillance Regulation; or
- (b) the, or (as the context requires) any, enforcer's legislation (within the meaning of the 2021 Regulations);”;

(x) for the definition of “safety regulations” there were substituted—

““safety regulations” means—

- (a) the Market Surveillance Regulation; and
- (b) the, or (as the context requires) any, enforcer's legislation (within the meaning of the 2021 Regulations);”;

(l) subsection 45(5) were omitted;

(m) in subsection 46(1)—

(i) in the words before paragraph (a), the words “Subject to the following provisions of this section,” were omitted; and

**Changes to legislation:** There are currently no known outstanding effects for the The Market Surveillance (Northern Ireland) Regulations 2021. (See end of Document for details)

- (ii) after paragraph (f), the words “and, in relation to gas or water, those references shall be construed as including references to providing the service by which the gas or water is made available for use” were omitted;
- (n) in Schedule 2—
  - (i) for “unsafe”, on each occasion that it appears, there were substituted “ non-compliant ”; and
  - (ii) for “safe” on each occasion that it appears, there were substituted “ compliant ”.

#### Commencement Information

**I31** Sch. 2 para. 2 in force at 16.7.2021, see [reg. 1\(1\)](#)

### SCHEDULE 3 **N.I.**

Regulation 5(2)(c)

#### Powers under the Health and Safety at Work (Northern Ireland) Order 1978

#### **HSAW enforcer** **N.I.**

1. In this Schedule, a “HSAW enforcer” means—
  - (a) the Health and Safety Executive for Northern Ireland;
  - (b) the Department for the Economy in Northern Ireland;
  - (c) the Department of Justice in Northern Ireland; or
  - (d) the Secretary of State.

#### Commencement Information

**I32** Sch. 3 para. 1 in force at 16.7.2021, see [reg. 1\(1\)](#)

#### **Enforcement powers under the 1978 Order** **N.I.**

2.—(1) An Article of the 1978 Order listed in sub-paragraph (2) applies, as modified by paragraph 3, for the purposes of the enforcement of the MSC Regulation in relation to a product to which these Regulations apply if, and to the extent that, the Article applies for the purposes of the HSAW enforcer in relation to a relevant product.

- (2) Those Articles are—
  - (a) Article 21 (appointment of inspectors);
  - (b) Article 22 (powers of inspectors);
  - (c) Article 23 (improvement notices);
  - (d) Article 24 (prohibition notices);
  - (e) Article 25 (provisions supplementary to Articles 23 and 24);
  - (f) Article 26 (appeal against improvement or prohibition notice);
  - (g) Article 27 (power to deal with cause of imminent danger);
  - (h) Article 27A (power of customs officer to detain articles and substances);

- (i) Article 28 (power of enforcing authorities to indemnify inspectors);
- (j) Article 29 (obtaining of information by the Executive, enforcing authorities etc);
- (k) Article 29A (information communicated by Commissioners for Revenue and Customs);
- (l) Article 30 (restrictions on disclosure of information);
- (m) Article 31 (offences);
- (n) Article 32 (extension of time for bringing summary proceedings);
- (o) Article 33 (venue);
- (p) Article 36 (prosecution by inspectors);
- (q) Article 38 (evidence);
- (r) Article 39 (power of court to order cause of offence to be remedied and, in certain cases, forfeiture).

#### Commencement Information

**I33** Sch. 3 para. 2 in force at 16.7.2021, see [reg. 1\(1\)](#)

#### Modifications to the 1978 Order **N.I.**

3. Those Articles of the 1978 Order apply as if—
- (a) references in those Articles to “relevant statutory provisions” were references to—
    - (i) the provisions of the 1978 Order set out in paragraph 2, as modified by this paragraph;
    - (ii) the provisions of the enforcer's legislation which the HSAW enforcer has a duty or power to enforce under the 1978 Order;
    - (iii) the MSC Regulation; and
    - (iv) these Regulations;
  - (b) references in those Articles to “enforcing authority” were references to a HSAW enforcer;
  - (c) references in those Articles to “risk”, in relation to a product, were references to the potential to affect adversely—
    - (i) health and safety of persons in general;
    - (ii) health and safety in the workplace;
    - (iii) protection of consumers;
    - (iv) the environment;
    - (v) public security; and
    - (vi) other public interests,to a degree which goes beyond that considered reasonable and acceptable in relation to the product's intended purpose or under the normal or reasonably foreseeable conditions of use of the product, including the duration of use and, where applicable, any putting into service, installation and maintenance requirements;
  - (d) in Article 22—
    - (i) in paragraph (2)(h), for “him to have caused or to be likely to cause danger to health or safety”, there were substituted “ contravene any of the relevant statutory provisions or present a risk ”; and

- (ii) paragraph (3) were omitted;
- (e) in Article 24—
  - (i) for paragraph (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 paragraph 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) the contravention of any of the relevant statutory provisions.
    - (2A) A prohibition notice must—
      - (a) state the inspector's opinion;
      - (b) specify the matters which in the inspector's opinion give, or as the case may be, will give rise to the risk or contravention;
      - (c) where in the inspector's opinion any of those matters involves or, as the case may be, will involve a contravention of any of the relevant statutory provisions, specify the provision or provisions concerned and give particulars of the reasons why the inspector is of that opinion; and
      - (d) direct that the activities to which the notice relates must not be carried on by or under the control of the person on whom the notice is served unless the matters specified in pursuance of sub-paragraph (b) and any contraventions of provisions specified in pursuance of sub-paragraph (c) have been remedied.”;
  - (ii) in paragraph (3), for “(2)(d)” there were substituted “ (2A)(d) ”;
- (f) in Article 25, paragraphs (3), (4) and (5) were omitted;
- (g) in Article 30—
  - (i) in paragraph (6), “16(4)(a) or” were omitted;
  - (ii) for paragraph (6)(b), there were substituted—
    - “(b) for the purposes of any legal proceedings or for the purposes of a report of any such proceedings;”;
- (h) in Article 31—
  - (i) in paragraph (1), sub-paragraphs (a) to (i) and (k) to (m) were omitted;
  - (ii) for paragraphs (2) and (3), there were substituted—
    - “(2) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”;
- (i) in Article 32—
  - (i) in paragraph (1), sub-paragraphs (a) and (b) were omitted;
  - (ii) in paragraph (1), for the words from “and it appears” to the end, there were substituted “ and it appears from the proceedings at the inquest that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject-matter of the inquest, 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 inquest. ”; and
  - (iii) paragraphs (3) and (4) were omitted;

(j) in Article 39, paragraphs (3A), (4) and (5) were omitted.

**Commencement Information**

**I34** Sch. 3 para. 3 in force at 16.7.2021, see [reg. 1\(1\)](#)

SCHEDULE 4 **N.I.**

Regulation 5(2)(d)

Notices

**Compliance Notice** **N.I.**

1.—(1) An enforcer may serve a compliance notice on an economic operator in respect of a product to which these Regulations apply if the enforcer has reasonable grounds for believing that there is non-compliance.

(2) A compliance notice must—

(a) require the economic operator on which it is served to—

(i) end the non-compliance within such period as may be specified in the notice; or

(ii) provide evidence, within such period as may be specified in the notice, demonstrating to the satisfaction of the enforcer that the non-compliance has not in fact occurred; and

(b) warn the economic operator that, if the non-compliance persists or if satisfactory evidence has not been produced under paragraph (a) within the period specified in the notice, further action may be taken in respect of the non-compliance by the economic operator.

(3) A compliance notice may include—

(a) directions as to the measures to be taken by the economic operator to secure compliance, including different ways of securing compliance;

(b) a requirement, where no other means are available to eliminate a serious risk, for the economic operator to remove content referring to the product from an online interface or to display a warning to end users when they access an online interface.

(4) Subject to sub-paragraph (5), an enforcer may revoke or vary a compliance notice by serving a notification on the economic operator.

(5) An enforcer may not vary a compliance notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

**Commencement Information**

**I35** Sch. 4 para. 1 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Withdrawal Notice** **N.I.**

2.—(1) An enforcer may serve a withdrawal notice on an economic operator in respect of a product to which these Regulations apply if the enforcer has reasonable grounds for believing that there is non-compliance.

(2) A withdrawal notice must prohibit the economic operator from making the product available on the market without the consent of the enforcer.

(3) A withdrawal notice may require the economic operator to take action to alert end users to any risk presented by the product.

(4) A withdrawal notice may require the economic operator to keep the enforcer informed of the whereabouts of any product referred to in the notice.

(5) A consent given by the enforcer pursuant to a withdrawal notice, may impose such conditions on the making available on the market as the enforcer considers appropriate.

(6) Subject to sub-paragraph (7), an enforcer may revoke or vary a withdrawal notice by serving a notification on the economic operator.

(7) An enforcer may not vary a withdrawal notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

(8) A withdrawal notice has effect in Northern Ireland.

#### Commencement Information

**I36** Sch. 4 para. 2 in force at 16.7.2021, see [reg. 1\(1\)](#)

#### Recall notice **N.I.**

**3.—(1)** The enforcer may serve a recall notice on an economic operator in respect of a product to which these Regulations apply if the enforcer has reasonable grounds for believing that there is non-compliance.

(2) A recall notice must require the economic operator to use reasonable endeavours to organise—

- (i) where relevant, the dismantling and safe disposal of the product, or
- (ii) the return of the product from end-users to the relevant economic operator or another person specified in the notice.

(3) A recall notice may—

- (a) require the recall to be effected in accordance with a code of practice;
- (b) require the economic operator to—
  - (i) contact end-users in order to inform them of the recall, to the extent that it is practicable to do so;
  - (ii) publish a notice in such form and such manner as is likely to bring to the attention of end-users any risk the product poses and the fact of the recall; or
  - (iii) make arrangements for the collection or return of the product from end-users or its disposal;
- (c) impose such additional requirements on the economic operator as are reasonable and practicable with a view to achieving the dismantling and safe disposal of the product or the return of the product.

(4) In determining what requirements to include in a recall notice, the enforcer must take into consideration the need to encourage economic operators and end-users to contribute to its implementation.

(5) A recall notice may only be issued by the enforcer where—

- (a) other action which it may require under these Regulations would not suffice to address the non-compliance;
- (b) the action being undertaken by the economic operator is unsatisfactory or insufficient to address the non-compliance;



(c) the enforcer has given not less than 10 days' notice to the economic operator of its intention to serve such a notice; and

(d) the enforcer has taken account of any advice obtained under sub-paragraph (6).

(6) An economic operator which has received notice from the enforcer of an intention to serve a recall notice may at any time prior to the service of the recall notice require the enforcer to seek the advice of such person as the Institute determines on the questions of—

(a) whether there is non-compliance; and

(b) whether the issue of a recall notice would be proportionate.

(7) Sub-paragraphs (5)(b), (c) and (d) do not apply in the case of a product presenting a serious risk requiring, in the view of the enforcer, urgent action.

(8) Where an economic operator requires the enforcer to seek advice under sub-paragraph (6), that economic operator is to be responsible for the fees, costs and expenses of the Institute and of the person appointed by the Institute to advise the enforcer.

(9) In this paragraph, “Institute” means the charitable organisation with registered number 803725 and known as the Chartered Institute of Arbitrators.

(10) A recall notice served by the enforcer may require the economic operator to keep the authority informed of the whereabouts of a product to which the recall notice relates, so far as the economic operator is able to do so.

(11) Subject to sub-paragraph (12), an enforcer may revoke or vary a recall notice by serving a notification on the economic operator.

(12) An enforcer may not vary a recall notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

(13) A recall notice has effect in Northern Ireland.

#### **Commencement Information**

**I37** Sch. 4 para. 3 in force at 16.7.2021, see [reg. 1\(1\)](#)

#### **Appeals against notices** **N.I.**

**4.—(1)** An application for an order to vary or set aside the terms of a notice may be made to the appropriate court—

(a) by the economic operator on whom the notice has been served; and

(b) in the case of a notice other than a recall notice, by a person having an interest in the product in respect of which the notice has been served.

(2) An application must be made before the end of the period of 21 days beginning with the day on which the notice was served.

(3) The appropriate court may only make an order setting aside a notice if satisfied that no contravention of—

(a) the MSC Regulation; or

(b) the enforcer's legislation;

has occurred in relation to the product to which the notice relates.

(4) On an application to vary the terms of a notice, the appropriate court may vary the terms of the notice as it considers appropriate.

(5) In this paragraph—

**Changes to legislation:** There are currently no known outstanding effects for the The Market Surveillance (Northern Ireland) Regulations 2021. (See end of Document for details)

- (a) the “appropriate court” is to be determined in accordance with paragraph 5 (appropriate court for appeals against notices); and
- (b) “notice” means any of the following—
  - (i) a prohibition notice given under the 1987 Act as applied by Schedule 2 (enforcement powers under the 1987 Act);
  - (ii) a notice to warn given under the 1987 Act as applied by Schedule 2;
  - (iii) a suspension notice given under the 1987 Act as applied by Schedule 2;
  - (iv) a compliance notice served in accordance with paragraph 1 (compliance notice);
  - (v) a withdrawal notice served in accordance with paragraph 2 (withdrawal notice);
  - (vi) a recall notice served in accordance with paragraph 3 (recall notice).

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**Commencement Information**

**I38** Sch. 4 para. 4 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Appropriate court for appeals against notices etc and further appeals** **N.I.**

**5.—(1)** The appropriate court for the purposes of paragraph 4 is—

- (a) the court in which proceedings have been brought for an offence under Schedule 6 (offences);
- (b) an industrial tribunal seized of appeal proceedings against a notice which has been served under or by virtue of these Regulations; or
- (c) in any other case, a magistrates' court in Northern Ireland.

(2) A person aggrieved by an order made by a magistrates' court in Northern Ireland, pursuant to an application under paragraph 4 of this Schedule, or by a decision of such a court not to make such an order, may appeal against that order or decision to the county court.

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**Commencement Information**

**I39** Sch. 4 para. 5 in force at 16.7.2021, see [reg. 1\(1\)](#)

SCHEDULE 5 **N.I.**

Regulation 5(2)(e)

Information Society Service Providers

**Online interface notice** **N.I.**

**1.** Where paragraph 2 applies, an enforcer may serve on an ISSP a notice (“an online interface notice”) requiring that ISSP to take such steps as are specified in the notice.

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**Commencement Information**

**I40** Sch. 5 para. 1 in force at 16.7.2021, see [reg. 1\(1\)](#)

2. This paragraph applies where the enforcer considers that service of an online interface notice is appropriate in accordance with—

- (a) Article 7(2) (obligation of ISSPs to cooperate with market surveillance authorities) of the MSC Regulation, or
- (b) Article 14(4)(k)(ii) (restricting access to an online interface) of the MSC Regulation.

**Commencement Information**

**I41** Sch. 5 para. 2 in force at 16.7.2021, see [reg. 1\(1\)](#)

3. An online interface notice must specify only such steps as the enforcer considers appropriate—

- (a) in connection with the supply of a product to which these Regulations apply, and
- (b) in accordance with the requirements of Article 7(2) or 14(4)(k)(ii) of the MSC Regulation.

**Commencement Information**

**I42** Sch. 5 para. 3 in force at 16.7.2021, see [reg. 1\(1\)](#)

4. An ISSP must take the steps specified in an online interface notice when it is requested by an enforcer to do so.

**Commencement Information**

**I43** Sch. 5 para. 4 in force at 16.7.2021, see [reg. 1\(1\)](#)

5. The duty imposed by paragraph (4) is enforceable only—

- (a) by way of an action for damages for breach of statutory duty against the ISSP on which the notice was served, and
- (b) by a person supplied in Northern Ireland with the product to which the notice relates through the use of an online service provided by that ISSP.

**Commencement Information**

**I44** Sch. 5 para. 5 in force at 16.7.2021, see [reg. 1\(1\)](#)

6. For the purposes of this Schedule, “ISSP” means an information society service provider.

**Commencement Information**

**I45** Sch. 5 para. 6 in force at 16.7.2021, see [reg. 1\(1\)](#)

SCHEDULE 6 **N.I.**

Regulation 8

## Offences

**Offences** **N.I.**

1.—(1) It is an offence for a person to place a product on the market in contravention of Article 4(1) of the MSC Regulation.

(2) It is an offence for an economic operator defined in Article 4(2) of the MSC Regulation to contravene a requirement of Article 4(3) of the MSC Regulation to perform a task.

(3) It is an offence for an economic operator defined in Article 4(2) of the MSC Regulation to fail to ensure that the information set out in Article 4(4) of the MSC Regulation is indicated on a product or its packaging, the parcel or an accompanying document, in contravention of Article 4(4).

(4) It is an offence for an authorised representative to contravene a requirement of Article 5(2) of the MSC Regulation to perform the tasks specified in its mandate or to provide a copy of the mandate to a market surveillance authority.

(5) It is an offence for an economic operator to contravene the requirement of Article 7(1) of the MSC Regulation to cooperate with market surveillance authorities.

(6) It is an offence for any person to contravene any requirement of a withdrawal or recall notice served on that person by an enforcer under these Regulations.

(7) Proceedings must not be commenced against a person under sub-paragraphs (1) to (6) if the person has been given a time period within which to comply or take action, and that time period has not expired.

(8) Sub-paragraphs (1) to (5) do not apply where the acts or omissions constituting a contravention of a provision of the MSC Regulation also constitute a contravention of or an offence pursuant to a provision of enforcer's legislation.

**Commencement Information**

**I46** Sch. 6 para. 1 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Penalties** **N.I.**

2. A person guilty of an offence under paragraph 1 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Commencement Information**

**I47** Sch. 6 para. 2 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Defence of due diligence** **N.I.**

3.—(1) In proceedings for an offence under these Regulations, it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under sub-paragraph (1) which involves a third party allegation unless P has—

- (a) served notice in accordance with sub-paragraph (3); or
- (b) obtained leave of the court.

- (3) The notice must—
- (a) give any information in the possession of P which identifies or assists in identifying the person who—
    - (i) is alleged to have committed the act or default; or
    - (ii) supplied the information on which P relies; and
  - (b) be served on the person bringing the proceedings not less than seven clear days before the hearing of the proceedings.

(4) P may not rely on a defence under sub-paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable in all the circumstances to have relied on the information, having regard in particular to—

- (a) the steps that P took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) whether P had any reason to disbelieve the information.

(5) In this paragraph, “third party allegation” means an allegation that the commission of the offence was due to—

- (a) the act or default of another person; or
- (b) reliance on information supplied by another person.

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**Commencement Information**

**I48** Sch. 6 para. 3 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Liability of persons other than the principal offender** **N.I.**

4.—(1) Where the commission by a person (“P”) of an offence under these Regulations is due to anything which another person (“S”) did or failed to do in the course of business, S is guilty of that offence and may be proceeded against and punished, whether or not proceedings are taken against P.

(2) Where a body corporate commits an offence under these Regulations, a relevant person is also guilty of the offence where the offence was committed by the body corporate—

- (a) with the consent or connivance of a relevant person; or
- (b) as a result of the negligence of a relevant person.

(3) In sub-paragraph (2) a “relevant person” means—

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b) in relation to a body corporate managed by its members, a member of that body performing managerial functions; or
- (c) a person purporting to act as a person described in paragraphs (a) or (b).

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**Commencement Information**

**I49** Sch. 6 para. 4 in force at 16.7.2021, see [reg. 1\(1\)](#)

**Changes to legislation:** There are currently no known outstanding effects for the The Market Surveillance (Northern Ireland) Regulations 2021. (See end of Document for details)

**Time limit for prosecution of offences** **N.I.**

5.—(1) Summary proceedings for an offence under these Regulations may be instituted within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the knowledge of the prosecutor.

(2) No proceedings are to be brought more than three years after the commission of the offence.

(3) For the purposes of this paragraph a certificate of the prosecutor as to the date on which such evidence as is referred to in sub-paragraph (1) came to their notice is conclusive evidence of that fact.

(4) This paragraph has effect subject to paragraph 2(2)(n) of Schedule 3 (extension of time for bringing summary proceedings).

**Commencement Information**

**I50** Sch. 6 para. 5 in force at 16.7.2021, see **reg. 1(1)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Market Surveillance (Northern Ireland) Regulations 2021.