
STATUTORY INSTRUMENTS

1991 No. 1620

The Construction Products Regulations 1991

PART II

REQUIREMENTS RELATING TO CONSTRUCTION PRODUCTS

Requirement to be satisfied by products

3.—(1) A construction product, other than a minor part product, shall have such characteristics that the works in which it is to be incorporated, assembled, applied or installed can, if properly designed and built, satisfy the essential requirements when, where and to the extent that such works are subject to regulations containing such requirements.

(2) In paragraph (1) above “regulations” includes any rule, regulation or other provision which has the force of law.

(3) A minor part product shall have been manufactured in compliance with, and the manufacturer shall have issued in respect of the product a declaration of compliance with, the acknowledged rule of technology.

Products bearing the EC mark

4. Any construction product which bears the EC mark shall be presumed to satisfy the relevant requirement in regulation 3 unless there are reasonable grounds for suspecting that the product does not satisfy that requirement or that the EC mark has not been affixed in accordance with regulation 5.

EC mark and other information on or accompanying products

5.—(1) Where a construction product is not a minor part product and—

- (a) (i) complies with the relevant national standards which are applicable to the product; or
- (ii) complies with a European technical approval which is applicable to the product; or
- (iii) in as much as no harmonised specifications are applicable to the product, complies with the national technical specifications which are so applicable,

and the manufacturer, or his agent established in the Community, has followed the appropriate attestation procedures; or

- (b) has not been manufactured, or has been manufactured only partly, in conformity with the relevant technical specifications applicable to the product, but
 - (i) the appropriate attestation procedures are the procedures described in the second and third possibilities set out in paragraph 4 of Schedule 3; and
 - (ii) the manufacturer has followed the attestation procedure described in the third possibility set out in that paragraph,

and an EC certificate or declaration of conformity has been issued or made in respect of the product, and the product complies with the requirements of any other Community

directive applying to it, the manufacturer, or his agent established in the Community, may affix the EC mark to the product.

(2) The EC mark shall be accompanied by sufficient information to enable the manufacturer of the product easily to be identified and, where appropriate:

- (a) indications to identify the characteristics of the product, by reference to relevant technical specifications where they apply;
- (b) the last two digits of the year of manufacture;
- (c) identification of the approved body involved;
- (d) the number of EC certificate of conformity.

(3) Any person who—

- (a) makes an EC declaration of conformity in respect of a construction product which does not satisfy the criteria set out in sub-paragraph (a) or (b) of paragraph (1) above;
- (b) affixes the EC mark to a construction product otherwise than in accordance with paragraphs (1) and (2) above;
- (c) affixes to a construction product any mark which is likely to be confused with the EC mark;
- (d) supplies, on the first occasion on which it is supplied in the Community, a construction product to which the EC mark has been affixed outside the Community otherwise than in accordance with paragraphs (1) and (2) above or the Directive as implemented under the law of a member State other than the United Kingdom; or
- (e) supplies, on the first occasion on which it is supplied in the Community, a construction product to which any mark which is likely to be confused with the EC mark has been affixed outside the Community,

shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

Requirement to keep available and give information about products which bear the EC mark

6.—(1) This regulation applies—

- (a) where the person who has affixed the EC mark to a construction product is established in the United Kingdom, to that person;
- (b) where the person who has affixed the EC mark to a construction product is not established in the United Kingdom, and the first place of supply of the product in the Community is in the United Kingdom, to the person who supplies the product on the first occasion on which it is supplied in the United Kingdom.

(2) A person to whom this regulation applies shall, for a period of 10 years after the material data, keep the EC certificate of conformity or, as the case may be, the EC declaration of conformity relating to the product, or a copy of it, available for inspection by an enforcement authority or any of its officers and, if required to do so by any such authority or officer at a reasonable time, produce the document so kept and permit any such officer to take copies of it.

(3) In paragraph (2) above, “the material date” means—

- (a) in the case of a person to whom this regulation applies by virtue of paragraph (1)(a) above, the date on which the EC mark is affixed;
- (b) in the case of a person to whom this regulation applies by virtue of paragraph (1)(b) above, the date on which the product is first supplied in the United Kingdom.

Requirement to give information about products which do not bear the EC mark

7. A person who supplies a construction product which does not bear the EC mark shall give to an enforcement authority, or any of its officers, all information which he has about the product and which the authority or officer may reasonably require for the purposes of ascertaining whether the product satisfies the requirement in regulation 3 or is one to which these Regulations do not apply.

Prohibition on supply

8.—(1) A person shall be guilty of an offence if he supplies any construction product which does not satisfy the requirement in regulation 3.

(2) In any proceedings against any person for an offence under this regulation in respect of any construction product it shall be a defence for that person to show—

- (a) that he reasonably believed that the product would not be used in the Community; or
- (b) that the following conditions are satisfied, that is to say—
 - (i) that he supplied the product in the course of carrying on a general retail business; and
 - (ii) that, at the time he supplied the product, he neither knew nor had reasonable grounds for believing that the product failed to satisfy the relevant requirement in regulation 3; or
- (c) that the terms on which he supplied the product—
 - (i) indicated that the product was not supplied or to be supplied as a new product; and
 - (ii) provided for, or contemplated, the acquisition of an interest in the product by the persons supplied or to be supplied.

(3) For the purposes of paragraph (2)(b) above, a product is supplied in the course of carrying on a general retail business if—

- (a) whether or not it is itself acquired for a person's private use, it is supplied in the course of carrying on a business of making a supply of goods which are ordinarily intended for private use or consumption available to persons who generally acquire them for private use or consumption; and
- (b) the descriptions of goods the supply of which is made available in the course of that business do not, to a significant extent, include construction products.

(4) A person guilty of an offence under this regulation shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

Prohibition notices and notices to warn

9.—(1) The Secretary of State may—

- (a) serve on any person a notice “a prohibition notice” prohibiting that person, except with the consent of the Secretary of State, from supplying any construction products which the Secretary of State considers do not satisfy the relevant requirement in regulation 3 and which are described in the notice;
- (b) serve on any person a notice “a notice to warn” requiring that person at his own expense to publish, in a form and manner and on occasions specified in the notice, a warning about any construction products which the Secretary of State considers do not satisfy the relevant requirement in regulation 3, which that person supplies or has supplied and which are described in the notice.

(2) Schedule 4 shall have effect with respect to prohibition notices and notices to warn.

(3) A consent given by the Secretary of State for the purposes of a prohibition notice may impose such conditions on the doing of anything for which the consent is required as the Secretary of State considers appropriate.

(4) A person who contravenes a prohibition notice or a notice to warn shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

Suspension notices

10.—(1) Where an enforcement authority has reasonable grounds for suspecting that any provision of regulation 5, 6, 7 or 8 has been contravened in relation to any construction products, the authority may serve a notice (“a suspension notice”) prohibiting the person on whom it is served, for such period ending not more than six months after the date of the notice as is specified therein, from supplying the products without the consent of the authority.

(2) A suspension notice served by an enforcement authority in respect of any construction products shall—

- (a) describe the products in a manner sufficient to identify them;
- (b) set out the grounds on which the authority suspects that a provision of regulation 5, 6, 7 or 8 has been contravened in relation to the products; and
- (c) state that, and the manner in which, the person on whom the notice is served may appeal against the notice under regulation 11.

(3) A suspension notice served by an enforcement authority for the purpose of prohibiting a person for any period from supplying any construction products may also require that person to keep the authority informed of the whereabouts throughout that period of any of those products in which he has an interest.

(4) Where a suspension notice has been served on any person in respect of any construction products, no further such notice shall be served on that person in respect of the same products unless—

- (a) proceedings against that person for an offence in relation to the products under a provision of this Part (not being an offence under this regulation); or
- (b) proceedings for the forfeiture of the products under regulation 12 or 13,

are pending at the end of the period specified in the first-mentioned notice.

(5) A consent given by an enforcement authority for the purposes of paragraph (1) above may impose such conditions on the doing of anything for which the consent is required as the authority considers appropriate.

(6) Any person who contravenes a suspension notice shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

(7) Where an enforcement authority serves a suspension notice in respect of any construction products, the authority shall be liable to pay compensation to any person having an interest in the products in respect of any loss or damage caused by reason of the service of the notice if—

- (a) there has been no contravention in relation to the products of any provision of regulation 5, 6, 7 or 8; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(8) Any disputed question as to the right to or the amount of any compensation payable under this regulation shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

(9) In England and Wales section 31 of the Arbitration Act 1950⁽¹⁾ and, in Northern Ireland, section 28 of the Arbitration Act (Northern Ireland) 1937⁽²⁾, shall have effect for the purposes of an arbitration under paragraph (8) as if it were an arbitration under any other Act within the meaning of those sections.

Appeals against suspension notices

11.—(1) Any person having an interest in any construction products in respect of which a suspension notice is for the time being in force may apply for an order setting aside the notice.

(2) An application under this regulation 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 relation to the products under any provision of this Part; or
 - (ii) for the forfeiture of the products under regulation 12;
- (b) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or
- (c) in Scotland, by summary application to the sheriff.

(3) On an application under this regulation to a magistrates' court in England and Wales or Northern Ireland the court shall make an order setting aside the suspension notice only if the court is satisfied that there has been no contravention in relation to the products of any provision of regulation 5, 6, 7 or 8.

(4) On an application under this regulation to the sheriff he shall make an order setting aside the suspension notice only if he is satisfied that at the date of making the order—

- (a) proceedings for an offence in relation to the products under any provision of this Part; or
- (b) proceedings for the forfeiture of the products under regulation 13,

have not been brought or, having been brought, have been concluded.

(5) Any 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⁽³⁾ or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981⁽⁴⁾ (statement of case)).

(6) In Scotland, any person aggrieved by an order made under this regulation by the sheriff, or by a decision of the sheriff not to make such an order, may appeal against that order or decision on a point of law to the sheriff principal and, notwithstanding the generality of powers available to the sheriff at common law, any order so made by the sheriff may contain such provision as appears to him to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

(1) 1950 c. 27.

(2) 1937 c. 8 (N.I.).

(3) 1980 c. 43.

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

Forfeiture: England and Wales and Northern Ireland

12.—(1) An enforcement authority in England and Wales or Northern Ireland may apply under this regulation for an order for the forfeiture of any construction products on the grounds that there has been a contravention in relation to the products of a provision of regulation 5, 6, 7 or 8.

(2) An application under this regulation may be made—

- (a) where proceedings have been brought in a magistrates' court for an offence in relation to some or any of the products under any provision of this Part, to that court;
- (b) where an application with respect to some or all of the products has been made to a magistrates' court under regulation 11 or 21, to that court; and
- (c) where no application for the forfeiture of the products has been made under subparagraph (a) or (b) above, by way of complaint to a magistrates' court.

(3) On an application under this regulation the court shall make an order for the forfeiture of any products only if it is satisfied that there has been a contravention in relation to the products of a provision of regulation 5, 6, 7 or 8.

(4) For the avoidance of doubt it is declared that a court may infer for the purposes of this regulation that there has been a contravention in relation to any products of a provision of regulation 5, 6, 7 or 8 if it is satisfied that any such provision has been contravened in relation to products which are representative of those products (whether by reason or being of the same design or part of the same consignment or batch or otherwise).

(5) Any person aggrieved by an order made under this regulation by a magistrates' court, 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' Court Act 1980 or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

(6) Subject to paragraph (7) below, where any products are forfeited under this regulation they shall be destroyed in accordance with such directions as the court may give.

(7) On making an order under this regulation a magistrates' court may, if it considers it appropriate to do so, direct that the products to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person—

- (a) does not supply those products to any person otherwise than—
 - (i) to a person who carries on a business of buying products of the same description as those products and repairing or reconditioning them; or
 - (ii) as scrap (that is to say, for the value of materials included in the products rather than for the value of the products themselves); and
- (b) complies with any order to pay costs or expenses (including any order under regulation 23) which has been made against that person in the proceedings for the order for forfeiture.

Forfeiture: Scotland

13.—(1) In Scotland a sheriff may make an order for forfeiture of any construction products in relation to which there has been a contravention of a provision of regulation 5, 6, 7 or 8—

- (a) on an application by the procurator-fiscal made in the manner specified in section 310 of the Criminal Procedure (Scotland) Act 1975(5); 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 paragraph (1)(a) above shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the products to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the products should not be forfeited.
- (3) Service under paragraph (2) above shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1975.
- (4) Any person upon whom notice is served under paragraph (2) above and any other person claiming to be the owner of, or otherwise to have an interest in, products to which an application under this regulation relates shall be entitled to appear at the hearing of the application to show cause why the products should not be forfeited.
- (5) The sheriff shall not make an order following an application under paragraph (1)(a) above—
- (a) if any person on whom notice is served under paragraph (2) above does not appear, unless service of the notice on that person is proved; or
 - (b) if no notice under paragraph (2) above has been served, unless he 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 regulation only if he is satisfied that there has been a contravention in relation to the products of a provision of regulation 5, 6, 7 or 8.
- (7) For the avoidance of doubt it is declared that the sheriff may infer for the purposes of this regulation that there has been a contravention in relation to any products of a provision of regulation 5, 6, 7 or 8 if he is satisfied that any such provision has been contravened in relation to any products which are representative of those products (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 products is made following an application by the procurator-fiscal under paragraph (1)(a) above, any person who appeared, or was entitled to appear, to show cause why products 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 452 of the Criminal Procedure (Scotland) Act 1975(6) shall apply to an appeal under this paragraph as it applies to a stated case under Part II of that Act.
- (9) An order following an application under paragraph (1)(a) above 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 paragraph (8) above within that period, until the appeal is determined or abandoned.
- (10) An order under paragraph (1)(b) above shall not take effect—
- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1975; or
 - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (11) Subject to paragraph (12) below, products forfeited under this regulation shall be destroyed in accordance with such directions as the sheriff may give.

(5) 1975 c. 21; section 310 was amended by the Criminal Justice (Scotland) Act 1980 (c. 62), Schedule 7, paragraph 53, and Schedule 8.

(6) Section 452 was substituted by the Criminal Justice (Scotland) Act 1980, Schedule 3, paragraph 11.

(12) If he thinks fit, the sheriff may direct that the products be released, to such person as he may specify, on condition that that person does not supply those products to any other person otherwise than—

- (a) to a person who carries on a business of buying products of the same description as those products and repairing or reconditioning them; or
- (b) as scrap (that is to say, for the value of materials included in the products rather than for the value of the products themselves).

Power to obtain information

14.—(1) If the Secretary of State considers that, for the purpose of deciding whether—

- (a) to serve, vary or revoke a prohibition notice; or
- (b) to serve or revoke a notice to warn,

he requires information which another person is likely to be able to furnish, the Secretary of State may serve on the other person a notice under this regulation.

(2) A notice served on any person under this regulation may require that person—

- (a) to furnish to the Secretary of State, within a period specified in the notice, such information as is so specified;
- (b) to produce such records as are specified in the notice at a time and place so specified and to permit a person appointed by the Secretary of State for the purpose to take copies of the records at that time and place.

(3) A person shall be guilty of an offence if he—

- (a) fails, without reasonable cause, to comply with a notice served on him under this regulation; or
- (b) in purporting to comply with a requirement which by virtue of paragraph (2)(a) above is contained in such a notice—
 - (i) furnishes information which he knows is false in a material particular; or
 - (ii) recklessly furnishes information which is false in a material particular.

(4) A person guilty of an offence under paragraph (3) above shall—

- (a) in the case of an offence under sub-paragraph (a) of that paragraph, be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (b) in the case of an offence under sub-paragraph (b) of that paragraph be liable—
 - (i) on conviction on indictment, to a fine;
 - (ii) on summary conviction, to a fine not exceeding level 5 on the standard scale.