
STATUTORY INSTRUMENTS

1991 No. 1620

The Construction Products Regulations 1991

PART III

ENFORCEMENT OF PART II

Enforcement

15.—(1) It shall be the duty of—

- (a) every weights and measures authority in Great Britain;
- (b) every district council in Northern Ireland.

to enforce within their area the provisions of Part II.

(2) Nothing in this regulation shall authorise any weights and measures authority to bring proceedings in Scotland for an offence.

Test purchases

16.—(1) An enforcement authority shall have power, for the purpose of ascertaining whether any provision of Part II has been contravened in relation to any construction products, to make, or to authorise an officer of the authority to make, any purchase of any construction products.

(2) Where—

- (a) any construction products purchased under this regulation by or on behalf of an enforcement authority are submitted to test; and
- (b) the test leads to—
 - (i) the bringing of proceedings for an offence in relation to the products under any provision of Part II or for the forfeiture of the products under regulation 12 or 13; or
 - (ii) the serving of a suspension notice in respect of any products; and
- (c) the authority is requested to do so and it is practicable for the authority to comply with the request,

the authority shall allow the person from whom the products were purchased or any person who is a party to the proceedings or has an interest in any products to which the notice relates to have the products tested.

Powers of search, etc.

17.—(1) Subject to the following provisions of this Part, a duly authorised officer of an enforcement authority may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by the following provisions of this regulation.

(2) The officer may, for the purpose of ascertaining whether there has been any contravention of any provision of Part II, inspect any construction products and enter any premises other than premises occupied only as a person's residence.

(3) The officer may, for the purpose of ascertaining whether there has been any contravention of any provision of Part II, examine any procedure (including any arrangements for carrying out a test) connected with the production of any construction products.

(4) If the officer has reasonable grounds for suspecting that there has been a contravention in relation to any construction products of any provision of Part II, he may—

- (a) for the purpose of ascertaining whether there has been any such contravention, require any person carrying on a business, or employed in connection with a business, to produce any records relating to the business;
- (b) for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain the products;
- (c) take copies of, or of an entry in, any records produced by virtue of subparagraph (a) above.

(5) The officer may seize and detain—

- (a) any construction products or records which he has reasonable grounds for believing may be required as evidence in proceedings for an offence under any provision of Part II;
- (b) any construction products which he has reasonable grounds for suspecting may be liable to be forfeited under regulation 12 or 13.

(6) If and to the extent that it is reasonably necessary to do so to prevent a contravention of any provision of Part II, the officer may, for the purpose of exercising his power under paragraph (4) or (5) above to seize any construction products or records—

- (a) require any person having authority to do so to open any container; and
- (b) himself open or break open any such container where a requirement made under subparagraph (a) above in relation to the container has not been complied with.

Provisions supplemental to regulation 17

18.—(1) An officer seizing any construction products or records under regulation 17 shall inform the following persons that the products or records have been so seized, that is to say—

- (a) the person from whom they are seized; and
- (b) in the case of imported products seized on any premises under the control of the Commissioners of Customs and Excise, the importer of those products (within the meaning of the Customs and Excise Management Act 1979⁽¹⁾).

(2) If a justice of the peace—

- (a) is satisfied by any written information on oath that there are reasonable grounds for believing either—
 - (i) that any construction products or records which any officer has power to inspect under regulation 17 are on any premises and that their inspection is likely to disclose evidence that there has been a contravention of any provision of Part II; or
 - (ii) that such a contravention has taken place, is taking place or is about to take place on any premises; and
- (b) is also satisfied by any such information either—
 - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this paragraph has been given to the occupier; or

(1) 1979 c. 2.

- (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of entry to await his return,

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise any officer of an enforcement authority to enter the premises, if need be by force.

(3) An officer entering any premises by virtue of regulation 17 or a warrant under paragraph (2) above may take with him such other persons and such equipment as may appear to him necessary.

(4) On leaving any premises which a person is authorised to enter by a warrant under paragraph (2) above, that person shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against unauthorised entry as he found them.

(5) If any person who is not an officer of an enforcement authority purports to act as such under regulation 17 of this regulation he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Where any construction products seized by an officer under regulation 17 are submitted to a test, the officer shall inform the persons mentioned in paragraph (1) above of the result of the test and, if—

- (a) proceedings are brought for an offence in relation to the products under any provision of Part II or for the forfeiture of the products under regulation 12 or 13, or a suspension notice is served in respect of the products; and
- (b) the officer is requested to do so and it is practicable to comply with the request,

the officer shall allow any person who is a party to the proceedings or, as the case may be, has an interest in the products to which the notice relates to have the products tested.

(7) In the application of this regulation to Scotland, the reference in paragraph (2) above to a justice of the peace shall include a reference to a sheriff and the references to written information on oath shall be construed as references to evidence on oath.

(8) In the application of this regulation to Northern Ireland, the references in paragraph (2) above to any information on oath shall be construed as references to any complaint on oath.

Power of customs officer to detain products

19.—(1) A customs officer may, for the purpose of facilitating the exercise by an enforcement authority or officer of such an authority of any functions conferred on the authority or officer by these Regulations, seize any imported construction products and detain them for not more than two working days.

(2) Anything seized and detained under this regulation shall be dealt with during the period of its detention in such manner as the Commissioners of Customs and Excise may direct.

(3) In paragraph (1) above the reference to two working days is a reference to a period of forty-eight hours calculated from the time when the products in question are seized but disregarding so much of any period as falls on a Saturday or Sunday or on Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(2) in the part of the United Kingdom where the products are seized.

(4) In this regulation and regulation 20 “customs officer” means any officer within the meaning of the Customs and Excise Management Act 1979.

Obstruction of authorised officer

20.—(1) Any person who—

(2) 1971 c. 80.

- (a) intentionally obstructs any officer of an enforcement authority who is acting in pursuance of any provision of these Regulations or any customs officer who is so acting; or
- (b) intentionally fails to comply with any requirement made of him by any officer of an enforcement authority under any provision of these Regulations; or
- (c) without reasonable cause fails to give any officer of an enforcement authority who is so acting any other assistance or information which the officer may reasonably require of him for the purposes of the exercise of the officer's functions under any provision of these Regulations,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person shall be guilty of an offence if, in giving any information which is required of him by virtue of paragraph (1)(c) above—

- (a) he makes any statement which he knows is false in a material particular; or
- (b) he recklessly makes a statement which is false in a material particular.

(3) A person guilty of an offence under paragraph (2) above shall be liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding level 5 on the standard scale.

Appeals against detention of products

21.—(1) Any person having an interest in any construction products which are for the time being detained under any provision of this Part by an enforcement authority or by an officer of such an authority may apply for an order requiring the products to be released to him or to another person.

(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 Part II; 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 or to the sheriff, an order requiring products to be released shall be made only if the court or sheriff is satisfied—

- (a) that proceedings—
 - (i) for an offence in relation to the products under any provision of Part II; or
 - (ii) for the forfeiture of the products under regulation 12 or 13,
 have not been brought or, having been brought, have been concluded without the products being forfeited; and
- (b) where no such proceedings have been brought, that more than six months have elapsed since the products were seized.

(4) 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)).

(5) 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.

Compensation for seizure and detention

22.—(1) Where an officer of an enforcement authority exercises any power under regulation 17 to seize and detain construction products, the enforcement 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 exercise of the power 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.

(2) 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.

(3) In England and Wales section 31 of the Arbitration Act 1950⁽⁵⁾ and, in Northern Ireland, section 28 of the Arbitration Act (Northern Ireland) 1937⁽⁶⁾, shall have effect for the purposes of an arbitration under paragraph (2) as if it were an arbitration under any other Act within the meaning of those sections.

Recovery of expenses of enforcement

23.—(1) This regulation shall apply where a court—

- (a) convicts a person of an offence in relation to any construction products of any provision of Part II; or
- (b) make an order under regulation 12 or 13 for the forfeiture of any construction products.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted or, as the case may be, any person having an interest in the products to reimburse an enforcement authority for any expenditure which has been or may be incurred by that authority—

- (a) in connection with any seizure or detention of the products by or on behalf of the authority; or
- (b) in connection with any compliance by the authority with directions given by the court for the purposes of any order for the forfeiture of the products.

(3) 1980 c. 43.

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

(5) 1950 c. 27.

(6) 1937 c. 8 (N.I.).