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STATUTORY INSTRUMENTS

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**1991 No. 1620**

**The Construction Products Regulations 1991**

**PART II**

**REQUIREMENTS RELATING TO CONSTRUCTION PRODUCTS**

**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(1); 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).

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(1) 1975 c. 21; section 310 was amended by the Criminal Justice (Scotland) Act 1980 (c. 62), Schedule 7, paragraph 53, and Schedule 8.

(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<sup>(2)</sup> 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.

(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).

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