
STATUTORY INSTRUMENTS

2013 No. 1387

The Construction Products Regulations 2013

PART 2

REQUIREMENTS RELATING TO CONSTRUCTION PRODUCTS

CHAPTER 2

Suspension notices and forfeiture

Suspension notices

7.—(1) When in relation to any construction products an enforcement authority—

- (a) has reasonable grounds for suspecting that any offence under regulation 4, 5 or 6 has been committed; or
- (b) considers that there are grounds for the service of a notice under this regulation in accordance with Schedule 1 (grounds for service of notices in relation to the 2008 Regulation and the 2011 Regulation),

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 in the notice, from supplying the products without the consent of the authority.

(2) A suspension notice may also require that person to keep the authority informed of the whereabouts throughout that period of any of the products concerned.

(3) A suspension notice may include a requirement that any construction products to which it relates that have been made available on the market be recalled.

(4) Where a suspension notice has been served on any person in respect of any construction products, no further such notice may 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);
- (b) procedures in relation to the products involving other Member States or the Commission under Article 56 (procedure to deal at national level with construction products presenting a risk), 57 (Union safeguard procedure) or 58 (complying construction products which nevertheless present a risk to health and safety) of the 2011 Regulation; or
- (c) proceedings for the forfeiture of the products under regulation 8 or 9,

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) may impose such conditions on the doing of anything for which the consent is required as the authority considers appropriate.

(6) Schedule 2 shall have effect with respect to suspension notices and appeals against suspension notices.

(7) 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.

Forfeiture: England and Wales and Northern Ireland

8.—(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 any of the grounds on which the enforcement authority may serve a suspension notice under regulation 7(1) in relation to the products.

(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 Part 2 of Schedule 2 (appeals against suspension notices) or under regulation 19 (appeals against detention of products), to that court; and
- (c) in any other case by way of complaint to a magistrates' court.

(3) On an application under this regulation the court may make an order for the forfeiture of any products only if it is satisfied that one or more of the grounds described in paragraph (1) is made out in relation to the products.

(4) A court may infer for the purposes of this regulation that one or more of the grounds described in paragraph (1) is made out in relation to any products if it is satisfied that one or more of the those grounds is made out in relation to 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).

(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⁽¹⁾ (statement of case) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981⁽²⁾ (cases stated by magistrates' courts)).

(6) Subject to paragraph (7), 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 the 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

(1) 1980 c.43.

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

- (b) complies with any order to pay costs or expenses (including any order under regulation 21) which has been made against that person in the proceedings for the order for forfeiture.

Forfeiture: Scotland

9.—(1) In Scotland a sheriff may make an order for forfeiture of any construction products on any of the grounds on which an enforcement authority may serve a suspension notice under regulation 7(1) in relation to the products.

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

- (a) on an application by the procurator fiscal made in the manner specified in section 134 (incidental applications) of the Criminal Procedure (Scotland) Act 1995(3); or
- (b) where a person is convicted of an offence under regulation 4, 5 or 6, in addition to any other penalty which the sheriff may impose.

(3) The procurator fiscal making an application under paragraph (2)(a) must serve on any person appearing to the procurator fiscal 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 that person the opportunity to appear at the hearing of the application to show cause why the products should not be forfeited.

(4) Service under paragraph (3) must 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 1995.

(5) Any person upon whom notice is served under paragraph (3) 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.

(6) The sheriff may not make an order following an application under paragraph (2)(a)—

- (a) if any person on whom notice is served under paragraph (3) does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under paragraph (3) has been served, unless the sheriff is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(7) The sheriff may make an order under this regulation only if the sheriff is satisfied that one or more of the grounds described in paragraph (1) is made out in relation to the products

(8) The sheriff may infer for the purposes of this regulation that one or more of the grounds described in paragraph (1) is made out in relation to any products if the sheriff is satisfied that one or more of the those grounds is made out 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).

(9) Where an order for the forfeiture of any products is made following an application by the procurator fiscal under paragraph (2)(a), 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 182 (stated case: hearing of appeal) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under this paragraph as it applies to a stated case under Part 10 of that Act.

(10) An order following an application under paragraph (2)(a) 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

(3) 1995 c.46.

- (b) if an appeal is made under paragraph (9) within that period, until the appeal is determined or abandoned.
- (11) An order under paragraph (2)(b) 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 1995; or
 - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (12) Subject to paragraph (13), products forfeited under this regulation shall be destroyed in accordance with such directions as the sheriff may give.
- (13) If the sheriff thinks fit, the sheriff may direct that the products be released to such person as the sheriff may specify on condition that the 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).

Duty of enforcement authority to give notice of suspension notices and forfeiture applications etc.

- 10.** An enforcement authority must give immediate notice to the Secretary of State of any—
- (a) suspension notice served by it in respect of any construction products;
 - (b) application made by it for an order for forfeiture of any such products; or
 - (c) other thing done in respect of any such products for the purposes of or in connection with regulations 7 to 9.