
STATUTORY INSTRUMENTS

2013 No. 1387

The Construction Products Regulations 2013

PART 2

REQUIREMENTS RELATING TO CONSTRUCTION PRODUCTS

CHAPTER 1

Offences in relation to the 2011 Regulation

Prohibition on supply etc.

4.—(1) A person who supplies a construction product that is covered by a harmonised standard or conforms to a European Technical Assessment that has been issued for it shall be guilty of an offence unless—

- (a) there is supplied with the product in accordance with Article 7 of the 2011 Regulation a declaration of performance for the product drawn up in accordance with Articles 4 and 6 of the 2011 Regulation; and
- (b) the product has affixed to it the CE marking in accordance with Article 8(2) of the 2011 Regulation.

(2) Paragraph (1) does not apply in the case of a product that is subject to one or more of the derogations in Article 5 of the 2011 Regulation.

(3) A person who supplies a construction product to which the CE marking has been affixed in breach of any provision of Article 8 or 9 of the 2011 Regulation shall be guilty of an offence.

(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.

Breaches of duty by economic operators

5.—(1) A person to whom paragraph (2) applies shall be guilty of an offence.

(2) This paragraph applies to the following persons—

- (a) a manufacturer who fails to comply with any requirement of Article 11(7) (manufacturer's duty to take necessary corrective measures etc. and in case of risk provide information to the competent authority) of the 2011 Regulation;
- (b) an importer who fails to comply with any requirement of the second sub-paragraph of Article 13(2) (importer's duty not to place non-conforming or non-compliant product on the market etc. and in case of risk to provide information to the manufacturer and market surveillance authorities) of the 2011 Regulation;
- (c) an importer who fails to comply with any requirement of Article 13(7) (importer's duty to take necessary corrective measures etc. and in case of risk provide information to the competent authority) of the 2011 Regulation;

- (d) a distributor who fails to comply with any requirement of the second sub-paragraph of Article 14(2) (distributor's duty not to make non-conforming or non-compliant product available etc. and in case of risk to provide information to manufacturer or importer and market surveillance authorities) of the 2011 Regulation; and
- (e) a distributor who fails to comply with any requirement of Article 14(4) (distributor's duty to take necessary corrective measures etc. and in case of risk provide information to the competent authority) of the 2011 Regulation.

(3) For the purposes of compliance with the provisions of the 2011 Regulation mentioned in paragraph (2) a reference to the competent authority or, as the case may be, the market surveillance authorities is a reference to the enforcement authority for the area in which the person is established.

(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.

Other breaches of the 2011 Regulation

- 6.—(1) A person who supplies a construction product in respect of which—
- (a) there has been a failure to comply with any requirement in a provision of the 2011 Regulation specified in paragraph (2); and
 - (b) the instructions or information to which the requirement in question relates is not provided with the product at the time of supply,

shall be guilty of an offence.

- (2) The provisions of the 2011 Regulation referred to in paragraph (1)(a) are—
- (a) Article 11(4) (manufacturer's duty to provide product identification);
 - (b) Article 11(5) (manufacturer's duty to provide contact information etc.);
 - (c) Article 11(6) (manufacturer's duty to provide instructions and safety information);
 - (d) Article 13(3) (importer's duty to provide contact information etc.);
 - (e) Article 13(4) (importer's duty to provide instructions and safety information);
 - (f) the duties in Article 14(2) (obligations of distributors) first sub-paragraph to ensure that a product is accompanied by instructions and safety information, and that the manufacturer and importer have complied with Articles 11(4) and (5) and 13(3) respectively; and
 - (g) Article 15 (cases in which obligations of manufacturers apply to importers and distributors), insofar as it imposes duties in relation to Article 11(4) to (6).

(3) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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
- (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.

(1) 1980 c.43.

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

(3) 1995 c.46.

- (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
 - (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.

CHAPTER 3

Prohibition notices and notices to warn

Prohibition notices

11.—(1) The Secretary of State may 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 are described in the notice and in relation to which the Secretary of State —

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

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

(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) Schedule 3 shall have effect with respect to prohibition notices.

(5) A person who contravenes a prohibition 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.

Notices to warn

12.—(1) The Secretary of State may serve on any person a notice (“a notice to warn”) requiring that person, at that person’s own expense, to publish, in a form and manner and on occasions specified in the notice, a warning about any construction products which that person supplies or has supplied which are described in the notice and in respect of which the Secretary of State —

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

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

(3) A person who contravenes 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.

Power to obtain information

13.—(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,

information is required which another person is likely to be able to provide, 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 provide to the Secretary of State such information as is specified in the notice, within a period 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 the person—
- (a) fails, without reasonable cause, to comply with a notice served on that person under this regulation; or
 - (b) in purporting to comply with a requirement which by virtue of paragraph (2)(a) is contained in such a notice—
 - (i) provides information which the person knows is false in a material particular, or
 - (ii) recklessly provides information which is false in a material particular.
- (4) A person guilty of an offence under paragraph (3) 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;
 - (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.