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STATUTORY INSTRUMENTS

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**2013 No. 1387**

**The Construction Products Regulations 2013**

**PART 3**

**Enforcement of Part 2 and market surveillance**

**Enforcement**

**14.—(1)** It shall be the duty of an enforcement authority in its area to—

- (a) enforce the provisions of Part 2; and
- (b) carry out market surveillance duties under the 2008 Regulation, as it applies to construction products, and under the 2011 Regulation.

(2) A local weights and measures authority in England and Wales shall be competent to investigate and prosecute in respect of any offence under Part 2 that was committed outside its area in any part of England and Wales.

(3) A district council in Northern Ireland shall be competent to investigate and prosecute in respect of any offence under Part 2 that was committed outside its area in any part of Northern Ireland.

(4) Nothing in this regulation shall authorise an enforcement authority to bring proceedings in Scotland for an offence.

**Test purchases**

**15.—(1)** An enforcement authority may make a purchase of any construction products for the purpose of ascertaining whether there has been any failure to comply with any requirement of the 2011 Regulation, or any offence has been committed under Part 2, in relation to 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 2 or for the forfeiture of the products under regulation 8 or 9, 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.**

16.—(1) Subject to the following provisions of this Part, a duly authorised officer of an enforcement authority may—

- (a) at any reasonable hour;
- (b) on production, if required, of the officer's credentials; and
- (c) having given reasonable notice to the occupier, unless giving such notice would defeat the object of entry,

exercise any of the powers conferred by this regulation.

(2) The officer may, for the purpose of ascertaining whether there has been any failure to comply with any requirement of the 2011 Regulation, or any offence has been committed under Part 2, inspect any construction products and enter any premises other than a dwelling.

(3) The officer may, for the purpose of ascertaining whether there has been any failure to comply with any requirement of the 2011 Regulation, or any offence has been committed under Part 2, 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 any failure to comply with any requirement of the 2011 Regulation, or that any offence has been committed under Part 2, the officer may—

- (a) for the purpose of ascertaining whether there has been any such failure or offence, 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 failure or offence, seize and detain the products; and
- (c) take copies of, or of an entry in, any records produced by virtue of sub-paragraph (a).

(5) The officer may seize and detain—

- (a) any construction products or records which the officer has reasonable grounds for believing may be required as evidence in proceedings for an offence under any provision of Part 2; and
- (b) any construction products which the officer has reasonable grounds for suspecting may be liable to be forfeited under regulation 8 or 9.

(6) If and to the extent that it is reasonably necessary to do so to prevent any failure to comply with any requirement of the 2011 Regulation, or the commission of any offence under Part 2, the officer may, for the purpose of exercising the power under paragraph (4) or (5) to seize any construction products or records—

- (a) require any person having authority to do so to open any container; and
- (b) open or break open any such container where a requirement made under sub-paragraph (a) has not been complied with.

(7) The records referred to in this regulation include any that are stored electronically, and the officer may require such records to be made available in printed form.

(8) In this regulation “dwelling” means any building or shelter wholly or mainly used as a place of residence or abode (including any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling).

## Provisions supplemental to regulation 16

17.—(1) An officer seizing any construction products or records under regulation 16 must give a written notice stating what products or records have been so seized to the following persons—

- (a) the person from whom they are seized; and
  - (b) in the case of imported products seized while under the control of the Commissioners for Her Majesty's Revenue and Customs, 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 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 or to require to be produced under regulation 16 are on any premises and that inspection of those products or records is likely to disclose evidence that there has been any failure to comply with any requirement of the 2011 Regulation, or that any offence has been committed under Part 2, or
    - (ii) that such a failure or offence 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
    - (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 the return of the occupier,

the justice may by warrant under the justice's 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 16 or a warrant under paragraph (2) may be accompanied by such other persons and bring such equipment as may appear necessary to the officer.

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

(5) Where any construction products seized by an officer under regulation 16 are submitted to a test, the officer must inform the persons mentioned in paragraph (1) 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 2 or for the forfeiture of the products under regulation 8 or 9, 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 must 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.

(6) In the application of this regulation to Scotland, the reference in paragraph (2) 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.

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(1) 1979 c.2; "importer" is defined in section 1(1).

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

(8) If any person who is not an officer of an enforcement authority purports to act as such under regulation 16 or this regulation, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Obstruction of authorised officer**

**18.**—(1) A person shall be guilty of an offence if the person—

- (a) intentionally obstructs any officer of an enforcement authority who is acting in pursuance of any provision of these Regulations; or
- (b) intentionally fails to comply with any requirement made of that person 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 any other assistance or information which the officer may reasonably require of that person for the purposes of the exercise of the officer's functions in relation to any provision of these Regulations.

(2) A person shall be guilty of an offence if in giving any information which any officer of an enforcement authority may reasonably require of that person for the purposes of the exercise of the officer's functions in relation to any provision of these Regulations —

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

(3) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale

(4) A person guilty of an offence under paragraph (2) 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**

**19.**—(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 that person 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 2, or
  - (ii) for the forfeiture of the products under regulation 8;
- (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 may 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 2, or

(ii) for the forfeiture of the products under regulation 8 or 9,

have not been brought or, having been brought, have been concluded without the products being forfeited;

- (b) that no procedures are pending 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; and
- (c) where no proceedings under sub-paragraph (a) 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<sup>(2)</sup> (statement of case) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(3)</sup> (cases stated by magistrates' courts)).

(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 the sheriff 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**

**20.**—(1) Where an officer of an enforcement authority exercises any power under regulation 16 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) no offence under regulations 4, 5 or 6 has been committed in relation the product;
- (b) no suspension notice, prohibition notice, or notice to warn has had effect in relation to the product; and
- (c) 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.

### **Recovery of expenses of enforcement**

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

- (a) convicts a person of an offence in relation to any construction products under any provision of Part 2; or

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(2) 1980 c.43.

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

- (b) makes an order under regulation 8 or 9 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.