SCHEDULE 2 Regulation 7(6)

PART 1

Suspension notices

1. A suspension notice served by an enforcement authority in respect of any construction products must—

(a) describe the products in a manner sufficient to identify them;

(b) set out the reasons why the authority considers the grounds described in regulation 7(1) to be made out;

(c) specify any requirement under regulation 7(2) to keep the authority informed of the whereabouts of any of the products;

(d) where the construction products are to be recalled, state the terms of the recall;

(e) specify the day on which the notice is to come into force, and the duration of the notice; and

(f) state that, and set out the manner in which, the person on whom the notice is served may appeal against the notice under Part 2 of this Schedule.

2. A notice that is based on the ground in paragraph 6(a) of Schedule 1 must, in order to allow the enforcement authority to comply with Article 21 of the 2008 Regulation, state that it shall not have effect until the end of the period of ten days beginning on the day after it is served, but this requirement does not apply if the circumstances leading to the issue of the notice are such that paragraph (3) of that Article permits a measure to be taken without a period of consultation.

3. Where an enforcement authority serves a suspension notice in respect of any construction products, the 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 service of the notice if—

(a) no offence under regulation 4, 5 or 6 has been committed in relation to the products;

(b) none of the grounds for service of a suspension notice in Schedule 1 has been made out in relation to the products; and

(c) the exercise of the power is not attributable to any neglect or default by that person.

4. Any disputed question as to the right to, or the amount of, any compensation payable under paragraph 3 shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

PART 2

Appeals against suspension notices

5. Any person having an interest in any construction products in respect of which a suspension notice is for the time being in force may apply for an order setting aside the notice.

6. An application under this Part of this Schedule 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 of these Regulations, or

(ii) for the forfeiture of the products under regulation 8;

(b) where no such proceedings have been brought, by way of complaint to a magistrates' court; or

(c) in Scotland, by summary application to the sheriff.

7. On an application under this Part of this Schedule to a magistrates' court in England and Wales or Northern Ireland the court may make an order setting aside the suspension notice only if the court is satisfied that—

(a) no offence under regulation 4, 5 or 6 has been committed in relation to the products;

(b) none of the grounds for service of a suspension notice in Schedule 1 has been made out in relation to the products; and

(c) 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.

8. On an application under this Part of this Schedule to the sheriff, the sheriff may make an order setting aside the suspension notice only if satisfied that at the date of making the order—

(a) proceedings—

(i) for an offence in relation to the products under regulation 4, 5 or 6, or

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

have not been brought or, having been brought, have been concluded;

(b) none of the grounds for service of a suspension notice in Schedule 1 has been made out in relation to the products; and

(c) 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.

9. Any person aggrieved by an order made under this Part of this Schedule 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)).

10. In Scotland, any person aggrieved by an order made under this Part of this Schedule 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.

11. This Part of this Schedule is without prejudice to the operation of—

(**1**) 1980 c.43.
(**2**) S.I. 1981/1675 (N.I. 26).

(a) Article 21(4) (restrictive measures: withdrawal of measures after effective action) of the 2008 Regulation in respect of paragraph 6(a) of Schedule 1;

(b) Article 57(2), second sentence (Union safeguard procedure: national measure considered unjustified) of the 2011 Regulation in respect of paragraph 6(b) of Schedule 1; and

(c) Article 58(4) (complying construction products which nevertheless present a risk to health and safety: evaluation of national measures by the Commission) of the 2011 Regulation in respect of paragraph 6(c) of Schedule 1.