

## SCHEDULE 2

### 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,

**Status:** This is the original version (as it was originally made).

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>(1)</sup> (statement of case) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(2)</sup> (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—

- (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.

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(1) 1980 c.43.

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