

SCHEDULES

SCHEDULE 11

Section 146

CONSTRUCTION PRODUCTS REGULATIONS

Introductory

- 1 (1) The Secretary of State may by regulations make provision in relation to the marketing and supply of construction products in the United Kingdom.
- (2) Regulations under [this paragraph](#) are called “construction products regulations”.

General safety requirements

- 2 (1) Construction products regulations may—
 - (a) prohibit the marketing or supply of construction products which are not safe products;
 - (b) impose other requirements for the purpose of securing that construction products which are not safe products are not marketed or supplied;
 - (c) impose requirements in relation to the marketing or supply of construction products which are safe products.
- (2) For the purposes of [this paragraph](#) a construction product is a “safe product” if, under normal or reasonably foreseeable conditions of use, and taking into account any matters specified for the purposes of [this paragraph](#) by construction products regulations—
 - (a) the product does not present any risk to the health or safety of persons, or
 - (b) if it does, the risk is as low as it can be compatibly with using the product.
- (3) In [this paragraph](#)—
 - “use” includes storage, transportation or packaging;
 - “reasonably foreseeable conditions” include reasonably foreseeable circumstances in which the construction product might come under stress (for example, a fire).

Construction products with designated standards or technical assessments

- 3 Construction products regulations may make provision for and in relation to—
 - (a) designated standards for construction products (see [paragraph 4](#));
 - (b) technical assessments for construction products (see [paragraph 5](#)).
- 4 (1) Provision under [paragraph 3\(a\)](#) (designated standards) may include provision—
 - (a) for the designation by the Secretary of State of standards prepared in accordance with the regulations or the 2011 Regulation;
 - (b) for the designation by the Secretary of State of EU harmonised standards or international standards;

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- (c) for EU harmonised standards or international standards to be designated standards.
- (2) Provision under [sub-paragraph \(1\)\(a\)](#) may include provision as to—
 - (a) the persons by whom standards may be proposed;
 - (b) the procedure by which and persons by whom standards are to be prepared;
 - (c) the matters to be covered by a standard.
- 5 (1) Provision under [paragraph 3\(b\)](#) (technical assessments) may include provision as to the procedure by which and persons by whom technical assessments are to be issued.
- (2) Provision under [sub-paragraph \(1\)](#) may include provision for assessment bodies to issue technical assessments on the basis of assessment documents developed or adopted by them, and in particular provision—
 - (a) for the designation of assessment bodies by the Secretary of State;
 - (b) as to the functions, operation and funding of assessment bodies;
 - (c) as to the contents of assessment documents and the procedure by which they are developed or adopted.
- 6 Construction products regulations may—
 - (a) impose requirements on persons carrying out activities in relation to construction products for which there are designated standards or technical assessments under the regulations (see [paragraph 7](#));
 - (b) confer powers on relevant authorities to impose requirements on such persons (see [paragraph 8](#)).
- 7 (1) Provision under [paragraph 6\(a\)](#) (imposition of requirements) may include provision for the imposition of requirements relating to—
 - (a) declarations of performance in respect of products which are or are to be marketed;
 - (b) the making of other statements or claims in relation to the performance of products which are or are to be marketed;
 - (c) the marking or packaging of products;
 - (d) the provision of information, including information about risk, to persons to whom products are supplied;
 - (e) the monitoring, assessment and verification of product performance, including sample testing;
 - (f) the storage and transportation of products;
 - (g) the taking of corrective action, including withdrawal of products from the market and recall of products from persons to whom they have been supplied;
 - (h) recording and investigating complaints;
 - (i) the production and retention of documentation or samples;
 - (j) the notification of risks to relevant authorities;
 - (k) information which must or may be provided to relevant authorities;
 - (l) co-operation with relevant authorities;
 - (m) the appointment of authorised representatives by persons carrying out activities in relation to construction products.
- (2) Provision about declarations of performance under [sub-paragraph \(1\)\(a\)](#) may include provision as to—

- (a) the technical documentation to be prepared in relation to a declaration of performance;
 - (b) the content of a declaration of performance;
 - (c) the form of a declaration of performance;
 - (d) how a declaration of performance is to be supplied or made available.
 - (3) Provision about the marking of products under [sub-paragraph \(1\)\(c\)](#) may include provision as to—
 - (a) the form and content of any marking;
 - (b) circumstances in which products must or must not be marked.
 - (4) Provision about the monitoring, assessment and verification of product performance under [sub-paragraph \(1\)\(e\)](#) may include provision as to—
 - (a) the carrying out of testing and other tasks by approved bodies;
 - (b) when and how a body may become or cease to be an approved body;
 - (c) the assessment and monitoring of approved bodies.
 - (5) Requirements which may be imposed on persons carrying out activities in relation to construction products under [paragraph 6\(a\)](#) may also be imposed on the authorised representatives of such persons.
- 8 (1) Provision under [paragraph 6\(b\)](#) (conferral of powers) may include provision conferring powers on a relevant authority to impose requirements on persons carrying out activities in relation to construction products in circumstances where—
 - (a) there has been no failure to comply with requirements imposed under [paragraph 6\(a\)](#), but
 - (b) in the view of the relevant authority the products nevertheless risk causing death or serious injury to any person.
- (2) The powers referred to in [sub-paragraph \(1\)](#) may include powers by notice to—
 - (a) require a person to warn others of the risks attaching to a product;
 - (b) require the marking of a product in respect of the risks attaching to it;
 - (c) suspend for a specified period or prohibit the marketing or supply of a product (or suspend or prohibit the marketing and supply of the product without the consent of a specified person);
 - (d) require the withdrawal of a product from the market;
 - (e) require the recall of a product from persons to whom it has been supplied.
- (3) Provision under [sub-paragraph \(2\)](#) may include provision for appeals against a notice.
- 9 Construction products regulations may include any provision—
 - (a) which is made in the 2011 Regulation or the 2019 or 2020 Regulations immediately after IP completion day, or
 - (b) which relates to any matter in respect of which provision is made in that Regulation or those Regulations immediately after that time.

Safety-critical products

- 10 (1) For the purposes of [this Schedule](#), “safety-critical products” means construction products which are included in a list contained in construction products regulations.
- (2) A construction product may only be included in a list under [sub-paragraph \(1\)](#) if—

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- (a) in the view of the Secretary of State any failure of the product would risk causing death or serious injury to any person, and
 - (b) the product is not one for which there are—
 - (i) designated standards under [paragraph 3\(a\)](#), or
 - (ii) standards which are designated standards for the purposes of the 2011 Regulation.
- (3) Before including a construction product in the list, or amending the list, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- 11 (1) Construction products regulations may make provision for and in relation to standards for safety-critical products (“safety-critical standards”).
- (2) Provision under [sub-paragraph \(1\)](#) may include provision as to—
 - (a) the persons by whom safety-critical standards may be proposed;
 - (b) the procedure by which and persons by whom safety-critical standards are to be prepared;
 - (c) the matters to be covered by a safety-critical standard.
- 12 Construction products regulations may—
 - (a) impose requirements on persons carrying out activities in relation to safety-critical products for which there are safety-critical standards under the regulations (see [paragraph 13](#));
 - (b) confer powers on relevant authorities to impose requirements on such persons (see [paragraph 14](#)).
- 13 Provision under [paragraph 12\(a\)](#) (imposition of requirements) may include any provision referred to in [paragraph 7](#).
- 14 (1) Provision under [paragraph 12\(b\)](#) (conferral of powers) may include provision conferring powers on a relevant authority to impose requirements on persons carrying out activities in relation to construction products in circumstances where—
 - (a) there has been no failure to comply with requirements imposed under [paragraph 12\(a\)](#), but
 - (b) in the view of the relevant authority the products nevertheless risk causing death or serious injury to any person.
- (2) The powers referred to in [sub-paragraph \(1\)](#) include powers by notice to—
 - (a) require a person to warn others of the risks attaching to a product;
 - (b) require the marking of a product in respect of the risks attaching to it;
 - (c) suspend for a specified period or prohibit the marketing or supply of a product (or suspend or prohibit the marketing and supply of the product without the consent of a specified person);
 - (d) require the withdrawal of a product from the market;
 - (e) require the recall of a product from persons to whom it has been supplied.
- (3) Provision under [sub-paragraph \(2\)](#) may include provision for appeals against a notice.

Enforcement

- 15 (1) Construction products regulations may make provision for and in relation to—
 - (a) monitoring compliance with construction product requirements and investigating suspected non-compliance;

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- (b) securing compliance with construction product requirements;
 - (c) sanctions for—
 - (i) non-compliance or suspected non-compliance with construction product requirements;
 - (ii) obstruction of, failure to assist or co-operate with, or provision of false or misleading information to, persons carrying out construction product functions.
- (2) Provision under [sub-paragraph \(1\)\(a\)](#) may include—
 - (a) provision for relevant authorities to carry out, or secure the carrying out of, market surveillance and test purchases;
 - (b) provision for relevant authorities to enter, inspect and search premises and to seize and retain products or evidence of non-compliance with construction product requirements (including provision for the payment of compensation);
 - (c) provision requiring the retention and provision of information (including provision for relevant authorities to require the provision of information to them).
- (3) Provision under [sub-paragraph \(1\)\(b\)](#) may include provision conferring powers on a relevant authority by notice to—
 - (a) require a person to warn others of the risks attaching to a product;
 - (b) require the marking of a product in respect of the risks attaching to it;
 - (c) suspend for a specified period or prohibit the marketing or supply of a product (or suspend or prohibit the marketing and supply of the product without the consent of a specified person);
 - (d) require the withdrawal of a product from the market;
 - (e) require the recall of a product from persons to whom it has been supplied;
 - (f) require a person to do or cease to do anything so as to end non-compliance or suspected non-compliance with construction product requirements.
- (4) Provision under [sub-paragraph \(1\)\(b\)](#) may also include—
 - (a) provision for—
 - (i) a relevant authority to accept undertakings relating to compliance with construction product requirements instead of taking other enforcement action;
 - (ii) sanctions for non-compliance or suspected non-compliance with such undertakings;
 - (b) provision for the forfeiture of products by court order (or, in Scotland, order of the sheriff).
- (5) Provision under [sub-paragraph \(1\)\(c\)](#) or [\(4\)\(a\)\(ii\)](#) may include—
 - (a) provision creating criminal offences;
 - (b) in relation to England and Wales and Northern Ireland, provision for the prosecution by relevant authorities of criminal offences created under [paragraph \(a\)](#);
 - (c) provision conferring powers on relevant authorities to impose civil sanctions (including fines).
- (6) Provision under [sub-paragraph \(1\)\(b\)](#) or [\(c\)](#) or [\(4\)\(a\)\(ii\)](#) may include provision for appeals against anything done by a relevant authority under that provision.

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- (7) Provision under [sub-paragraph \(1\)](#) may include any provision—
- (a) which is made by the 2013 Regulations, or
 - (b) which relates to any matter in respect of which provision is made by the 2013 Regulations.

Costs

- 16 (1) Construction products regulations may make provision for a relevant authority to impose charges on a person carrying out activities in relation to construction products, or an authorised representative of such a person, in respect of the exercise of the relevant authority's construction product functions in relation to such a person.
- (2) The regulations may include provision about—
- (a) who is liable to pay a charge;
 - (b) the circumstances in which a charge is payable;
 - (c) the amount of a charge (including how an amount is to be calculated);
 - (d) reductions and exemptions;
 - (e) waivers;
 - (f) how and when a charge is to be paid;
 - (g) the collection and recovery of payments;
 - (h) interest payable on outstanding payments;
 - (i) the resolution of disputes (including appeals).
- (3) Provision under [this paragraph](#) may confer a discretion on the relevant authority.

Information

- 17 (1) Construction products regulations may, in connection with the exercise by relevant authorities of their construction product functions, make provision for and in relation to—
- (a) the provision of information by relevant authorities to—
 - (i) other relevant authorities, or
 - (ii) persons specified, or of a description specified, in construction products regulations;
 - (b) the provision of information to relevant authorities by—
 - (i) persons specified, or of a description specified, in construction products regulations, or
 - (ii) other persons identified by relevant authorities.
- (2) Provision under [sub-paragraph \(1\)](#) may include provision—
- (a) as to the circumstances in which information may or must be provided (which may include circumstances in which the information could not otherwise have been lawfully provided or disclosed);
 - (b) as to how information may or must be provided;
 - (c) as to the uses to which information provided may be put;
 - (d) for the purpose of preventing the further disclosure of information (including provision for the creation of criminal offences);

- (e) for the purpose of securing that there is (taking into account any power or duty to provide information under the regulations) no contravention of the data protection legislation.
- 18 (1) Construction products regulations may make provision for and in relation to the publication by relevant authorities of information held by them in connection with their construction product functions.
- (2) Provision under [sub-paragraph \(1\)](#) may include provision as to—
 - (a) the circumstances in which information may or must be published (which may include circumstances in which the information could not otherwise have been lawfully published);
 - (b) how, where and in what form information may or must be published.
- 19 (1) Construction products regulations may make provision prohibiting the disclosure of information held by relevant authorities in connection with their construction product functions.
- (2) Provision under [sub-paragraph \(1\)](#) may include provision for the creation of criminal offences.

General and supplementary

- 20 (1) Construction products regulations may make—
 - (a) different provision for different purposes;
 - (b) different provision for or in relation to different parts of the United Kingdom;
 - (c) transitional, transitory, consequential and supplementary provision or savings.
- (2) The provision made by [paragraphs 2 to 19](#) does not limit the power conferred by [paragraph 1](#).
- 21 (1) Construction products regulations may make provision by repealing, amending or re-enacting—
 - (a) retained EU law (and in particular the 2011 Regulation and the 2013 Regulations);
 - (b) the 2019 and 2020 Regulations;
 - (c) any other enactment other than an Act.
- (2) Construction products regulations may under [paragraph 20\(1\)\(c\)](#) make consequential provision amending section 148 (liability relating to construction products), which may in particular include the omission or amendment of subsection (2)(b) and (c) of that section.
- 22 (1) Where construction products regulations contain provision creating a criminal offence, the provision must have the effect that—
 - (a) the offence is—
 - (i) triable summarily only, or
 - (ii) triable summarily or on indictment,
 - (b) the offence is punishable only—
 - (i) with a fine, or
 - (ii) with a term of imprisonment or a fine (or both),

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- (c) where the offence is triable summarily only, any fine with which the offence is punishable in Scotland or Northern Ireland does not exceed level 5 on the standard scale,
 - (d) where the offence is triable summarily or on indictment, any fine with which the offence is punishable on summary conviction in Scotland or Northern Ireland does not exceed the statutory maximum, and
 - (e) any term of imprisonment with which the offence is punishable on summary conviction does not exceed—
 - (i) in England and Wales, the relevant period,
 - (ii) in Scotland, 12 months, and
 - (iii) in Northern Ireland, 6 months.
- (2) In [sub-paragraph \(1\)\(e\)\(i\)](#), the “relevant period” means—
- (a) in relation to an offence that is triable only summarily—
 - (i) where the offence is committed before the coming into force of section 281 of the Criminal Justice Act 2003, 6 months, and
 - (ii) where the offence is committed after that time, 51 weeks;
 - (b) in relation to an offence that is triable summarily or on indictment—
 - (i) where the offence is committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020, 6 months, and
 - (ii) where the offence is committed after that time, 12 months.

Procedure

- 23 (1) Construction products regulations are to be made by statutory instrument.
- (2) Construction products regulations which contain provision specified in [sub-paragraph \(3\)](#) (with or without other provision) may not be made unless a draft of the instrument containing them has been laid before, and approved by resolution of, each House of Parliament.
- (3) The provision referred to in [sub-paragraph \(2\)](#) is—
- (a) the first provision to be made under [paragraph 10\(1\)](#) (list of safety-critical products);
 - (b) provision omitting a construction product from the list of safety-critical products under [paragraph 10\(1\)](#);
 - (c) provision creating a criminal offence;
 - (d) provision which repeals or amends the 2011 Regulation or other retained direct principal EU legislation;
 - (e) provision under [paragraph 21\(2\)](#) (consequential provision relating to liability for construction products).
- (4) A statutory instrument containing construction products regulations to which the requirements specified in [sub-paragraph \(2\)](#) do not apply is subject to annulment in pursuance of a resolution of either House of Parliament.

Interpretation

- 24 In [this Schedule](#)—

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“the 2011 Regulation” means [Regulation \(EU\) No. 305/2011](#) (regulation laying down harmonised conditions for the marketing of construction products);

“the 2013 Regulations” means the Construction Products Regulations 2013 ([S.I. 2013/1387](#));

“the 2019 Regulations” means the Construction Products (Amendment etc.) (EU Exit) Regulations 2019 ([S.I. 2019/465](#));

“the 2020 Regulations” means the Construction Products (Amendment etc.) (EU Exit) Regulations 2020 ([S.I. 2020/1359](#));

“authorised representative” means a person of a description specified in the regulations who is authorised to act on behalf of a person carrying out an activity in relation to construction products;

“construction product” has the meaning specified in construction products regulations;

“construction product functions”, in relation to a relevant authority, means—

- (a) the authority’s functions under construction products regulations, the 2011 Regulation or the 2019 or 2020 Regulations (including functions relating to the provision or receipt of information), and
- (b) any other functions of the authority relating to construction product requirements;

“construction product requirements” means requirements imposed by or under construction products regulations, the 2011 Regulation or the 2019 or 2020 Regulations;

“construction products regulations” has the meaning given in [paragraph 1\(2\)](#);

“data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“EU harmonised standard” means a harmonised standard adopted at any time by a standardisation body of the European Union;

“international standard” means a standard adopted by an international standardising body (which for these purposes has the same meaning as it has for the purposes of the Agreement on Technical Barriers to Trade, part of Annex 1A to the agreement establishing the World Trade Organisation signed at Marrakesh on 16 April 1994, as modified from time to time);

“local authority” means—

- (a) a county or district council in England,
- (b) a London borough council,
- (c) the Common Council of the City of London,
- (d) the Council of the Isles of Scilly,
- (e) a county or county borough council in Wales,
- (f) a council constituted under section 2 of the Local Government etc (Scotland) Act 1994, and
- (g) a district council in Northern Ireland;

references to the “marketing” of products are to making them available on the market in the United Kingdom;

“persons carrying out activities in relation to construction products” include (without limitation)—

- (a) a manufacturer of construction products,

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- (b) a person who markets or supplies construction products to others, and
 - (c) a person who imports construction products into the United Kingdom for use, marketing or supply;
- “relevant authority” means—
- (a) the Secretary of State or other Minister of the Crown, and
 - (b) a local authority (including, in England, Wales and Scotland, a local authority in its capacity as a local weights and measures authority);
- “requirement” includes a prohibition or restriction;
- “safety-critical products” has the meaning given in [paragraph 10](#);
- “technical assessment” means a documented assessment of the performance of a construction product.