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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Council Directive [89/106/EEC](#) on the approximation of laws, regulations and administrative provisions of the member States relating to construction products “the Directive”. The Directive is based on the Council resolution of 7th May 1985 on a new approach to technical harmonisation and standards (OJNo. C136, 4.6.85, p. 1).

Regulation 3(1) requires construction products, except “minor part products” (this and other expressions are defined in regulation 2), to have such characteristics that the works in which they are incorporated can, if properly designed and built, satisfy essential requirements insofar as those requirements apply to the works. The essential requirements, which are expressed in terms of general objectives in Schedule 2, will be given concrete form in interpretive documents published in the Official Journal of the European Communities. The interpretative documents will in turn lead to the formulation of harmonised standards for construction products; these standards will be transposed into “relevant national standards”.

Regulation 4 provides that in the case of a construction product which bears the EC mark denoting conformity with the relevant technical specifications applicable to that product there shall be a presumption that the product satisfies the relevant requirement in regulation 3.

The EC mark may be affixed to a construction product which is not a minor part product by the manufacturer or his agent in the United Kingdom if the criteria set out in regulation 5(1) are satisfied. Those criteria involve the attestation, by means of an EC certificate or declaration of conformity, that the product complies with a relevant technical specification. The EC mark is to be accompanied by the information described in regulation 5(2). In the case of products bearing the EC mark, regulation 6 requires certain people to keep available and produce the EC certificate or declaration of conformity or a copy of it. Regulation 7 requires the supplier of a product which is not so marked to provide information about the product.

Regulation 5(3) makes it an offence to make an EC declaration of conformity in respect of, or to affix the EC mark to, a construction product otherwise than in accordance with the Regulations. Where the EC mark has been affixed otherwise than in accordance with the Directive, it is also an offence to supply a construction product on the first occasion when it is supplied in the Community.

In the case of minor part products the Regulations require that they shall have been, and declared to have been, manufactured in accordance with the acknowledged rule of technology (regulation 3(3)).

Regulation 8 makes it an offence to supply a construction product which does not satisfy the requirement in regulation 3.

Regulations 9 to 14, which are similar in form to sections 13 to 18 of the Consumer Protection Act 1987 (c. 43) “the 1987 Act”, enable action to be taken to remove from the market construction products which do not satisfy the requirements of the Regulations. The Secretary of State may serve a notice prohibiting a person from supplying a product (a prohibition notice), requiring him to publish a warning about products supplied (a notice to warn), or requiring him to provide information to enable the Secretary of State to decide whether to exercise these powers. Failure to comply with such a notice is an offence. Enforcement authorities may apply to the court for an order that products be forfeited.

Parts III and IV are similar to Parts IV and V of the 1987 Act. Regulations 16 to 18 confer powers on officers of enforcement authorities to make test purchases, search premises and examine, seize and detain products and records, and regulation 19 permits a customs officer to seize and detain imported

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products. Regulation 20 creates offences of obstructing an officer with enforcement powers, failing to comply with any requirement made under the Regulations by such an officer, failing to provide information and making false statements to such an officer. Regulation 21 confers a right of appeal against the detention of a product and regulation 22 provides for compensation to be payable in certain circumstances in respect of loss or damage resulting from the seizure and detention of products. Regulation 23 provides that where a court convicts a person of an offence under Part II or makes an order for forfeiture of any products it may order the person concerned to reimburse the enforcement authority's expenses of seizing and detaining or forfeiting the products.

Regulation 24 permits the Commissioners of Customs and Excise to disclose information relating to imported products to enforcement authorities and their officers. Regulation 25 imposes restrictions on the disclosure of information obtained in the exercise of the powers conferred by the Regulations. Regulation 26 applies a defence of due diligence to certain offences under the Regulations. Regulation 27 provides for the liability of persons whose act or default leads to the commission of an offence by others. Regulations 28 to 31 contain miscellaneous provisions relating to the service of documents, savings for certain privileges, notifications to the Secretary of State and the commencement of proceedings for certain offences.

Regulation 32 provides that it is unlawful for public and certain other bodies to make, impose or enforce any rules or conditions relating to matters covered by the essential requirements which would have the effect of restricting the supply or use of products, which satisfy the relevant requirement in regulation 3.

Regulation 33 makes provision in respect of certain cases where there may be an overlap between the Regulations and the health and safety at work legislation.