
STATUTORY INSTRUMENTS

1991 No. 1620

The Construction Products Regulations 1991

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

Power of Commissioners of Customs and Excise to disclose information

24.—(1) If they think it appropriate to do so for the purpose of facilitating the exercise by any person to whom paragraph (2) below applies of any functions conferred on that person by these Regulations, the Commissioners of Customs and Excise may authorise the disclosure to that person of any information obtained for the purposes of the exercise by the Commissioners of their functions in relation to imported construction products.

(2) This paragraph applies to an enforcement authority and to any officer of an enforcement authority.

(3) A disclosure of information made to any person under paragraph (1) above shall be made in such manner as may be directed by the Commissioners of Customs and Excise and may be made through such persons acting on behalf of that person as may be so directed.

(4) Information may be disclosed to a person under paragraph (1) above whether or not the disclosure of the information has been requested by or on behalf of that person.

Restrictions on the disclosure of information

25.—(1) Subject to the following provisions of this regulation, a person shall be guilty of an offence if he discloses any information—

- (a) which was obtained by him in consequence of its being given to any person in compliance with any requirement imposed by these Regulations;
- (b) which consists in a secret manufacturing process or a trade secret and was obtained by him in consequence of the inclusion of the information—
 - (i) in written or oral representations made for the purpose of Part I or Part II of Schedule 4; or
 - (ii) in a statement of a witness in connection with any such oral representations;
- (c) which was obtained by him in consequence of the exercise by the Secretary of State of the power conferred on him by regulation 14;
- (d) which was obtained by him in consequence of the exercise by any person or any power conferred by Part III; or
- (e) which was disclosed to or through him under regulation 24.

(2) Paragraph (1) above shall not apply to a disclosure of information if the information is publicised information or the disclosure is made—

- (a) for the purpose of facilitating the exercise of a relevant person's functions under these Regulations;

- (b) for the purpose of facilitating the exercise of a relevant person's enforcement or regulatory functions under any enactment or subordinate legislation (whether passed or made before or after the making of these Regulations);
 - (c) for the purposes of compliance with a Community obligation; or
 - (d) in connection with the investigation of any criminal offence or for the purposes of any civil or criminal proceedings.
- (3) In paragraph (2)(b) above the reference to a person's functions shall include a reference to any function of making, amending or revoking any regulations or order.
- (4) A person guilty of an offence under this regulation shall be liable—
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (5) In this regulation—
- “publicised information” means any information which has been disclosed in any civil or criminal proceedings or is or has been required to be contained in a warning published in pursuance of a notice to warn; and
- “relevant person” means any of the following, that is to say—
- (a) a Minister of the Crown, Government department or Northern Ireland department;
 - (b) any weights and measures authority or any district council in Northern Ireland;
 - (c) any other person on whom enforcement or regulatory functions are conferred by or under any enactment.

Defence of due diligence

26.—(1) Subject to the following provisions of this regulation, in proceedings against a person for an offence to which this regulation applies it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided by paragraph (1) above involves an allegation that the commission of the offence was due—

- (a) to the act or default of another; or
- (b) to reliance on information given by another,

that person shall not, without leave of the court, be entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings, he has served a notice under paragraph (3) below on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) above by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

(5) This regulation applies to an offence under regulation 5(3), 8(1), 9(4) or 10(6).

Liability of persons other than principal offender

27.—(1) Where the commission by any person of an offence to which regulation 26 applies is due to an act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1) above) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) In Scotland, where a partnership is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1) above) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner in the partnership, he, as well as the partnership, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Service of documents etc.

28.—(1) Any document required or authorised by virtue of these Regulations to be served on a person may be so served—

- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
- (b) if the person is a body corporate, by serving it in accordance with sub-paragraph (a) above on the secretary or clerk of that body; or
- (c) if the person is a partnership, by serving it in accordance with that subparagraph on a partner or on a person having control or management of the partnership business.

(2) For the purposes of paragraph (1) above, and for the purpose of section 7 of the Interpretation Act 1978⁽¹⁾ (which relates to the service of documents by post) in its application to that paragraph, the proper address of any person on whom a document is to be served by virtue of these Regulations shall be his last known address except that—

- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate;
- (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership;

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

Savings for certain privileges

29.—(1) Nothing in these Regulations shall be taken as requiring any person to produce any records if he would be entitled to refuse to produce those records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, that they

(1) 1978 c. 30.

contain a confidential communication made by or to an advocate or solicitor in that capacity, or as authorising any person to take possession of any records which are in the possession of a person who would be so entitled.

(2) Nothing in these Regulations shall be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person's spouse.

Duties of enforcement authorities

30. Every authority and council on whom a duty is imposed by virtue of regulation 15 shall give immediate notice to the Secretary of State of any suspension notice served by it in respect of, or any application made by it for an order for forfeiture of, any construction products or any other thing done in respect of any such products for the purposes of or in connection with regulations 10 to 13.

Commencement of proceedings

31. In England, Wales and Northern Ireland a magistrates' court may try an information (in the case of England and Wales) or a complaint (in the case of Northern Ireland) in respect of an offence committed under regulation 5(3) or 8(1) if (in the case of England and Wales) the information is laid or (in the case of Northern Ireland) the complaint is made within twelve months from the time when the offence is committed, and in Scotland summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.

Rules of public and certain private bodies

32. It shall be unlawful for any public body, or any private body acting as a public undertaking or acting as a public body on the basis of a monopoly position, to make, impose or enforce, or purport to make, impose or enforce any rules or conditions relating to matters covered by the essential requirements which have the effect of impeding the use for the purpose for which they are intended of construction products which satisfy the requirement in regulation 3.

Health and safety at work

33.—(1) In any proceedings against a person for an offence under any of the relevant statutory provisions (as defined in section 53(1) of the Health and Safety at Work etc. Act 1974⁽²⁾ or Article 2(2) of the Health and Safety at Work (Northern Ireland) Order 1987⁽³⁾) which impose requirements with respect to any matter it shall be a defence for that person to show that the requirements of these Regulations were satisfied in relation to that matter.

(2) Where an improvement notice or a prohibition notice has been served on any person pursuant to section 21 or, as the case may be, section 22 of the Health and Safety at Work etc. Act 1974⁽⁴⁾ (or pursuant to Article 23 or, as the case may be, Article 24 of the Health and Safety at Work (Northern Ireland) Order 1987⁽⁵⁾), if the person upon whom the notice was served appeals to an industrial tribunal pursuant to section 24 of the said Act (or Article 26 of the said Order) and shows that the notice relates to any matter in respect of which the requirements of these Regulations are satisfied, the tribunal shall cancel the notice.

(2) 1974 c. 37.

(3) S.I.1978/1039 (N.I. 9).

(4) Section 22 was amended by the Consumer Protection Act 1987 (c. 43), section 36 and Schedule 3, paragraph 2.

(5) Relevant amending instruments are S.I. 1984/1159 (N.I. 9) and 1987/2049 (N.I. 20).