
STATUTORY INSTRUMENTS

2013 No. 1387

The Construction Products Regulations 2013

PART 4

Miscellaneous and supplemental

Restrictions on the disclosure of information

22.—(1) A person shall be guilty of an offence if that person discloses any information to which paragraph (2) applies, except in a case where paragraph (3) applies.

(2) This paragraph applies to information—

- (a) which was obtained by that person 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 that person in consequence of the inclusion of the information—
 - (i) in written or oral representations made for the purposes of Schedule 3 or 4, or
 - (ii) in a statement of a witness in connection with any such oral representations;
- (c) which was obtained by that person in consequence of the exercise by the Secretary of State of the power conferred by regulation 13;
- (d) which was obtained by that person in consequence of the exercise by any person of any power conferred by Part 3; or
- (e) which relates to any construction product and was disclosed to or through that person by virtue of Article 27(2) of the 2008 Regulation, other than information to which regulation 3 (offence of disclosure of restricted information by specified persons) of the Customs Disclosure of Information and Miscellaneous Amendments Regulations 2012(1) applies.

(3) This paragraph applies where—

- (a) the disclosure is of information which—
 - (i) has been disclosed in any civil or criminal proceedings, or
 - (ii) is or has been required to be contained in a warning published in pursuance of a notice to warn; or
- (b) the disclosure is made—
 - (i) for the purpose of facilitating the exercise of a relevant person's functions under these Regulations,
 - (ii) for the purpose of facilitating the exercise of a relevant person's enforcement or regulatory functions under any enactment (whether passed or made before or after the making of these Regulations),
 - (iii) for the purposes of compliance with an EU obligation, or

(iv) in connection with the investigation of any criminal offence or for the purposes of any civil or criminal proceedings.

(4) In paragraph (3)(b)(ii) the reference to a person's functions shall include a reference to any function of making, amending or revoking any regulations or order.

(5) 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.

(6) In this regulation—

“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 local weights and measures authority or, in Northern Ireland, any district council;
- (c) any other person on whom enforcement or regulatory functions are conferred by or under any enactment; and

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

Defence of due diligence

23.—(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 the person 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) 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, the person has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph must 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 when that person serves it.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of reliance on information supplied by another, unless the person shows that it was reasonable in all the circumstances to have relied on the information, having regard in particular to—

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

(5) This regulation applies to an offence under regulation [4\(1\)](#) or (3), [5\(1\)](#), [6\(1\)](#), [7\(7\)](#), [11\(5\)](#) or [12\(3\)](#).

Liability of persons other than principal offender

24.—(1) Where the commission by any person of an offence to which regulation [23](#) applies is due to an act or default committed by some other person in the course of any business of that other

person, that 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)) 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, or any partner in a limited liability partnership, that person, 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) shall apply in relation to the acts and defaults of a member in connection with that member's functions of management as if that member 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)) 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, that partner, 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.

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

- (a) by—
 - (i) delivering it to that person, or by leaving it at that person's usual or last known address or by sending it by post to that address, or
 - (ii) sending it by electronic mail to that person's electronic mail address; or
- (b) in the case of a body corporate, on the secretary or clerk of that body, by—
 - (i) delivering it to the secretary or clerk, or by leaving it at the address of the registered or principal office of the body corporate or by sending it by post to that address, or
 - (ii) sending it by electronic mail to his or her electronic mail address; or
- (c) in the case of a partnership, including a Scottish partnership, on a partner or on a person having control or management of the partnership business, by—
 - (i) delivering it to the partner or the person having control or management of the partnership business, or by leaving it at the address of the principal office of the partnership or by sending it by post to that address, or
 - (ii) sending it by electronic mail to his or her electronic mail address.

(2) 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.

Commencement of proceedings

26.—(1) This regulation applies in respect of any offence under regulation 4(1) or (3).

(2) In England and Wales a magistrates' court may try an information for such an offence if the information is laid within twelve months from the time when the offence is committed.

(3) In Northern Ireland a magistrates' court may try a complaint for such an offence if the complaint is made within twelve months from the time when the offence is committed.

(4) 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.

Review

27.—(1) Before the end of each review period the Secretary of State must—

- (a) carry out a review of Parts 2 and 3;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how provision for the operation of the 2008 Regulation, as it applies to construction products, and the 2011 Regulation is made in other Member States of the European Union.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by those Parts;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) In this regulation, “review period” means—

- (a) the period of five years beginning with the day on which these Regulations come into force; and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this regulation is published before the last day of the review period to which it relates, the next review period will begin with the day on which that report is published.

Revocations and amendments

28.—(1) The Construction Products Regulations 1991⁽²⁾ and the Construction Products (Amendment) Regulations 1994⁽³⁾ are revoked.

(2) Schedule 5 (amendments to statutory instruments) has effect.

Transitional provisions

29.—(1) Chapters 2 and 3 of Part 2 shall have effect, with the modifications in paragraph (2), in relation to anything done before the coming into force of these Regulations pursuant to Part 2 of the Construction Products Regulations 1991 (“the 1991 Regulations”), as if that thing had been done pursuant to Part 2 of these Regulations.

(2) The modifications referred to in paragraph (1) are that—

- (a) any reference to the grounds for serving a suspension notice, a prohibition notice or a notice to warn, or for forfeiture, shall have effect as a reference to the grounds on which, or the circumstances in which, a similar notice could be served, or forfeiture order made, under the 1991 Regulations; and
- (b) any reference to an offence under regulation 4, 5 or 6, other than such a reference in a provision to which sub-paragraph (a) applies, shall have effect as a reference to an offence under regulations 5, 6, 7 or 8 of the 1991 Regulations.

(2) S.I. 1991/1620.

(3) S.I. 1994/3051.

(3) Regulation 21 (recovery of expenses of enforcement) shall have effect in relation to any proceedings to which paragraph (1) applies.

(4) Such other provisions of these Regulations as are necessary to the operation of paragraph (1) shall have effect for that purpose.

(5) Regulations 21 (appeals against detention of products) and 22 (compensation for seizure and detention) of the 1991 Regulations shall continue to have effect in relation to any construction products seized or detained under regulation 17 (powers of search etc.) of those Regulations.