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STATUTORY INSTRUMENTS

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**2013 No. 1387**

**The Construction Products Regulations 2013**

**PART 2**

**REQUIREMENTS RELATING TO CONSTRUCTION PRODUCTS**

**CHAPTER 2**

**Suspension notices and forfeiture**

**Forfeiture: Scotland**

9.—(1) In Scotland a sheriff may make an order for forfeiture of any construction products on any of the grounds on which an enforcement authority may serve a suspension notice under regulation 7(1) in relation to the products.

(2) An order under this regulation may be made—

- (a) on an application by the procurator fiscal made in the manner specified in section 134 (incidental applications) of the Criminal Procedure (Scotland) Act 1995 <sup>M1</sup>; or
- (b) where a person is convicted of an offence under regulation 4, 5 or 6, in addition to any other penalty which the sheriff may impose.

(3) The procurator fiscal making an application under paragraph (2)(a) must serve on any person appearing to the procurator fiscal to be the owner of, or otherwise to have an interest in, the products to which the application relates a copy of the application, together with a notice giving that person the opportunity to appear at the hearing of the application to show cause why the products should not be forfeited.

(4) Service under paragraph (3) must be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.

(5) Any person upon whom notice is served under paragraph (3) and any other person claiming to be the owner of, or otherwise to have an interest in, products to which an application under this regulation relates shall be entitled to appear at the hearing of the application to show cause why the products should not be forfeited.

(6) The sheriff may not make an order following an application under paragraph (2)(a)—

- (a) if any person on whom notice is served under paragraph (3) does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under paragraph (3) has been served, unless the sheriff is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(7) The sheriff may make an order under this regulation only if the sheriff is satisfied that one or more of the grounds described in paragraph (1) is made out in relation to the products

(8) The sheriff may infer for the purposes of this regulation that one or more of the grounds described in paragraph (1) is made out in relation to any products if the sheriff is satisfied that one or more of the those grounds is made out in relation to any products which are representative of

those products (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(9) Where an order for the forfeiture of any products is made following an application by the procurator fiscal under paragraph (2)(a), any person who appeared, or was entitled to appear, to show cause why products should not be forfeited may, within twenty-one days of the making of the order, appeal to the High Court by bill of suspension on the ground of an alleged miscarriage of justice, and section 182 (stated case: hearing of appeal) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under this paragraph as it applies to a stated case under Part 10 of that Act.

(10) An order following an application under paragraph (2)(a) shall not take effect—

- (a) until the end of the period of twenty-one days beginning with the day after the day on which the order is made; or
- (b) if an appeal is made under paragraph (9) within that period, until the appeal is determined or abandoned.

(11) An order under paragraph (2)(b) shall not take effect—

- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995; or
- (b) if an appeal is made within that period, until the appeal is determined or abandoned.

(12) Subject to paragraph (13), products forfeited under this regulation shall be destroyed in accordance with such directions as the sheriff may give.

(13) If the sheriff thinks fit, the sheriff may direct that the products be released to such person as the sheriff may specify on condition that the person does not supply those products to any other person otherwise than—

- (a) to a person who carries on a business of buying products of the same description as those products and repairing or reconditioning them; or
- (b) as scrap (that is to say, for the value of materials included in the products rather than for the value of the products themselves).

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**Marginal Citations**

**M1** 1995 c.46.

**Changes to legislation:**

There are currently no known outstanding effects for the The Construction Products Regulations 2013, Section 9.