

SCHEDULE 3

Regulation 11(4)

Prohibition notices

1. A prohibition notice in respect of any construction products must—
 - (a) state that the Secretary of State considers that one or more of the grounds for the service of a prohibition notice in regulation 11(1) is made out in relation to the products, and specify which are the grounds in question;
 - (b) set out the reasons why the Secretary of State considers those grounds to be made out;
 - (c) where the construction products are to be recalled, state the terms of the recall;
 - (d) specify the day on which the notice is to come into force; and
 - (e) state that the person on whom it is served may at any time make representations in writing to the Secretary of State for the purpose of establishing that the matters stated in accordance with sub-paragraph (a) are not the case.
2. A notice that is based on the ground in paragraph 6(a) of Schedule 1 must, in order to allow the Secretary of State to comply with Article 21 of the 2008 Regulation, state that it shall not have effect until the end of the period of ten days beginning on the day after it is served, but this requirement does not apply if the circumstances leading to the issue of the notice are such that paragraph (3) of that Article permits a measure to be taken without a period of consultation.
- 3.—(1) If representations in writing about a prohibition notice are made by the recipient to the Secretary of State, it shall be the duty of the Secretary of State to consider whether to revoke the notice and—
 - (a) if the Secretary of State decides to revoke it, to do so;
 - (b) in any other case, to appoint a person to consider those representations, any further representations made (whether in writing or orally) by the recipient about the notice and the statements of any witnesses examined under this Schedule.(2) Where the Secretary of State has appointed a person to consider representations about a prohibition notice, it must serve a notification on the recipient which—
 - (a) states that the recipient may make oral representations to the appointed person for the purpose of establishing that the matters stated in accordance with paragraph 1(a) are not the case; and
 - (b) specifies the place and time at which the oral representations may be made.(3) The time specified in a notification served under sub-paragraph (2) must not be before the end of the period of twenty-one days beginning with the day on which the notification is served, unless the recipient otherwise agrees.
- (4) A person on whom a notification has been served under sub-paragraph (2) or that person's representative may, at the place and time specified in the notification—
 - (a) make oral representations to the appointed person for the purpose of establishing that the matters stated in accordance with paragraph 1(a) are not the case; and
 - (b) call and examine witnesses in connection with the representations.
- 4.—(1) Where representations in writing about a prohibition notice are made by the recipient to the Secretary of State at any time after a person has been appointed to consider representations about that notice, then, whether or not the appointed person has made a report to the Secretary of State, the following provisions of this paragraph shall apply instead of paragraph 3.
 - (2) The Secretary of State must, before the end of the period of one month beginning with the day on which it receives the representations, serve a notification on the recipient which states—

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- (a) that the Secretary of State has decided to revoke the notice, has decided to vary it or, as the case may be, has decided neither to revoke nor vary it; or
- (b) that, a person having been appointed to consider representations about the notice, the recipient may, at a place and time specified in the notification, make oral representations to the appointed person for the purpose of establishing that the matters stated in accordance with paragraph 1(a) are not the case.

(3) The time specified in a notification served for the purposes of sub-paragraph (2)(b) must not be before the end of the period of twenty-one days beginning with the day on which the notification is served, unless the recipient otherwise agrees or the time is the time already specified for the purposes of paragraph 3(2)(b).

(4) A person on whom a notification has been served for the purposes of sub-paragraph (2)(b) or that person's representative may, at the place and time specified in the notification—

- (a) make oral representations to the appointed person for the purpose of establishing that the matters stated in accordance with paragraph 1(a) are not the case; and
- (b) call and examine witnesses in connection with the representations.

5.—(1) Where a person is appointed to consider representations about a prohibition notice, it shall be the duty of that person to consider—

- (a) any written representations made by the recipient about the notice, other than those in respect of which a notification is served under paragraph 4(2)(a);
- (b) any oral representations made under paragraph 3(4) or 4(4); and
- (c) any statement made by witnesses in connection with the oral representations,

and, after considering any matters under this paragraph, to make a report (including recommendations) to the Secretary of State about the matters so considered and the notice.

(2) It shall be the duty of the Secretary of State to consider any report made under sub-paragraph (1) and, after considering the report, to inform the recipient of the decision with respect to the prohibition notice to which the report relates.

6.—(1) The Secretary of State may revoke or vary a prohibition notice by serving on the recipient a notification stating that the notice is revoked or, as the case may be, is varied as specified in the notification.

(2) The Secretary of State may not vary a prohibition notice so as to make the effect of the notice more restrictive for the recipient.

(3) The service of a notification under sub-paragraph (1) shall be sufficient to satisfy the requirement of paragraph 5(2) that the recipient must be informed of the decision of the Secretary of State.

7. This Schedule is without prejudice to the operation of—

- (a) Article 21(4) (restrictive measures: withdrawal of measures after effective action) of the 2008 Regulation in the case of a prohibition notice based on the ground in paragraph 6(a) of Schedule 1;
- (b) Article 57(2), second sentence (Union safeguard procedure: national measure considered unjustified) of the 2011 Regulation in the case of a prohibition notice based on the ground in paragraph 6(b) of Schedule 1; and
- (c) Article 58(4) (complying construction products which nevertheless present a risk to health and safety: evaluation of national measures by the Commission) of the 2011 Regulation in the case of a prohibition notice based on the ground in paragraph 6(c) of Schedule 1.

8.—(1) Where in a notification served on any person under this Schedule the Secretary of State has appointed a time for the making of oral representations or the examination of witnesses, it may, by giving that person such notification as the Secretary of State considers appropriate, change the time to a later time or appoint further times at which further representations may be made or the examination of witnesses may be continued; and paragraphs 3(4) and 4(4) shall have effect accordingly.

(2) For the purposes of this Schedule the Secretary of State may appoint a person (instead of the appointed person) to consider any representations or statements, if the person originally appointed, or last appointed under this sub-paragraph, to consider those representations or statements has died or appears to the Secretary of State to be otherwise unable to act.

9. In this Schedule—

“the appointed person”, in relation to a prohibition notice means the person for the time being appointed under this Schedule to consider representations about the notice;

“notification” means notification in writing; and

“recipient”, in relation to a prohibition notice, means the person on whom the notice is or was served.