

## SCHEDULE 4

Regulation 12(2)

### Notices to warn

1.—(1) If the Secretary of State proposes to serve a notice to warn on any person in respect of any construction products, the Secretary of State, must, before service of the notice, serve on that person a notification which—

- (a) contains a draft of the proposed notice;
- (b) states that the Secretary of State proposes to serve a notice in the form of the draft on that person;
- (c) states that in respect of the products described in the draft the Secretary of State considers that one or more of the grounds for the service of a notice to warn in regulation 12(1) is made out in relation to the products, and specify which are the grounds in question;
- (d) sets out the reasons why the Secretary of State considers the matters described in sub-paragraph (c) to be the case;
- (e) states that the person may make representations to the Secretary of State for the purpose of establishing that the matters stated in accordance with sub-paragraph (a) are not the case if, before the end of the period the fourteen days beginning with the day on which the notification is served, the person informs the Secretary of State —
  - (i) that the person intends to make representations, and
  - (ii) whether the representations will be made only in writing or both in writing and orally.

(2) Where the Secretary of State has served a notification containing a draft of a proposed notice to warn on any person, it must not serve a notice to warn on that person in respect of the products to which the proposed notice relates unless—

- (a) the period of fourteen days beginning with the day on which the notification was served expires without the Secretary of State being informed as mentioned in sub-paragraph (1) (e);
- (b) the period of twenty-eight days beginning with that day expires without any written representations being made by that person to the Secretary of State about the proposed notice; or
- (c) the Secretary of State has considered a report about the proposed notice by a person appointed under paragraph 2(1).

2.—(1) Where a person on whom a notification containing a draft of a proposed notice to warn has been served—

- (a) informs the Secretary of State as mentioned in paragraph 1(1)(e) before the end of the period of fourteen days beginning with the day on which the notification was served; and
- (b) makes written representations to the Secretary of State about the proposed notice before the end of the period of twenty-eight days beginning with that day,

the Secretary of State must appoint a person to consider those representations, any further representations made by that person about the draft notice and the statements of any witnesses examined under this Schedule.

(2) Where—

- (a) the Secretary of State has appointed a person to consider representations about a notice to warn; and

**Changes to legislation:** *There are currently no known outstanding effects for the The Construction Products Regulations 2013, SCHEDULE 4. (See end of Document for details)*

- (b) the person whose representations are to be considered has informed the Secretary of State for the purposes of paragraph 1(1)(e) that the representations the person intends to make will include oral representations,

the Secretary of State must inform the person intending to make the representations of the place and time at which oral representations may be made to the appointed person.

(3) Where a person on whom a notification containing a draft of a proposed notice to warn has been served is informed of a time for the purposes of sub-paragraph (2), that time must not be—

- (a) before the end of the period of twenty-eight days beginning with the day on which the notification was served; or
- (b) before the end of the period of seven days beginning with the day on which that person is informed of the time.

(4) A person who has been informed of a place and time for the purposes of sub-paragraph (2) or the person's representative may, at that place and time—

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

**3.—(1)** Where a person is appointed to consider representations about a proposed notice to warn, it shall be the duty of that person to consider—

- (a) any written representations made by the person on whom it is proposed to serve the notice; and
- (b) in a case where a place and time has been appointed under paragraph 2(2) for oral representations to be made by that person or that person's representative, any representations so made and any statements made by witnesses in connection with those representations,

and, after considering those matters, to make a report (including recommendations) to the Secretary of State about the matters so considered and the proposal to serve 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 person on whom it was proposed that a notice to warn should be served of its decision with respect to the proposal.

(3) If at any time after serving a notification on a person under paragraph 1 the Secretary of State decides not to serve on that person either the proposed notice to warn or that notice with modifications, the Secretary of State must inform that person of the decision; and nothing done for the purposes of any of the preceding provisions of this Schedule before that person was so informed shall—

- (a) entitle the Secretary of State subsequently to serve the proposed notice or that notice with modifications; or
- (b) require the Secretary of State, or any person appointed to consider representations about the proposed notice, subsequently to do anything in respect of, or in consequence of, any such representations.

(4) Where a notification containing a draft of a proposed notice to warn is served on a person in respect of any products, a notice to warn served on that person in consequence of a decision made under sub-paragraph (2) must either be in the form of the draft or must be less onerous than the draft.

**4.** The Secretary of State may revoke a notice to warn by serving on the person on whom the notice was served a notification stating that the notice is revoked.

**5.** 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 notice to warn based on the ground in paragraph 6(a) of Schedule 1 [F1.]

F2(b) .....

F2(c) .....

**Textual Amendments**

- F1** Sch. 4 para. 5(a) full stop substituted for semicolon by S.I. 2019/465, **Sch. 2 para. 16(a)** (as substituted by [The Construction Products \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1359\)](#), reg. 1, **Sch. 2**)
- F2** Sch. 4 para. 5(b)(c) omitted (31.12.2020) by virtue of S.I. 2019/465, **Sch. 2 para. 16(b)** (as substituted by [The Construction Products \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1359\)](#), reg. 1, **Sch. 2**)

6.—(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 paragraph 2(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.

7. In this Schedule—

“the appointed person”, in relation to a proposal to serve a notice to warn, means the person for the time being appointed under this Schedule to consider representations about the proposed notice; and

“notification” means notification in writing.

**Changes to legislation:**

There are currently no known outstanding effects for the The Construction Products Regulations 2013, SCHEDULE 4.