

SCHEDULE 3

Regulation 5

Construction products enforcement rules – Northern Ireland

PART 1

General

Application and interpretation

1.—(1) The provisions of this Schedule apply to the United Kingdom in respect of Northern Ireland.

(2) In this Schedule—

“enforcement authority” means any district council in Northern Ireland;

“supply” includes offering to supply, agreeing to supply, exposing for supply and possessing for supply, and related expressions shall be construed accordingly.

Competent authority

2. The competent authority for the United Kingdom in respect of Northern Ireland for the purposes of the RAMS Regulation, as it applies to construction products, and of the EU Construction Products Regulation is—

- (a) the Secretary of State or an enforcement authority; and
- (b) such person as the Secretary of State thinks fit to authorise from time to time to be a United Kingdom competent authority, or to perform certain functions of a competent authority, in addition to or in substitution for the Secretary of State.

PART 2

REQUIREMENTS RELATING TO CONSTRUCTION PRODUCTS

CHAPTER 1

Offences in relation to the EU Construction Products Regulation

Prohibition on supply etc.

3.—(1) A person who supplies a construction product in respect of Northern Ireland that is covered by a harmonised standard or conforms to a European Technical Assessment that has been issued for it shall be guilty of an offence unless—

- (a) there is supplied with the product a relevant declaration; and
- (b) the product has affixed to it the relevant marking as specified in sub-paragraph (2).

(2) For the purposes of sub-paragraph (1)—

- (a) a relevant declaration is—
 - (i) where the product is a UK-assessed product, a declaration of performance for the product drawn up and supplied in accordance with Articles 4, 6 and 7 of the EU Construction Products Regulation (as modified by regulation 4 of these Regulations);

- (ii) where the product is an EU-assessed product, a declaration of performance for the product drawn up and supplied in accordance with Articles 4, 6 and 7 of the EU Construction Products Regulation;
- (b) the relevant marking is—
 - (i) where the product is a UK-assessed product, the CE marking accompanied by the UK(NI) indication in accordance with Article 8(2) of the EU Construction Products Regulation (as modified by regulation 4 of these Regulations);
 - (ii) where the product is an EU-assessed product, the CE marking in accordance with Article 8(2) of the EU Construction Products Regulation.
- (3) Sub-paragraph (1) does not apply in the case of a product that is subject to one or more of the derogations in Article 5 of the EU Construction Products Regulation.
- (4) A person who supplies a construction product to which—
 - (a) the CE marking has been affixed in breach of any provision of Article 8 or 9 of the EU Construction Products Regulation, or
 - (b) the CE marking and accompanying UK(NI) indication has been affixed in breach of Article 8 or 9 of the EU Construction Products Regulation (as modified by regulation 4 of these Regulations),

shall be guilty of an offence.

(5) A person guilty of an offence under this paragraph shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

Breaches of duty by economic operators

- 4.—(1) A person to whom sub-paragraph (2) applies shall be guilty of an offence.
- (2) This sub-paragraph applies in respect of Northern Ireland to the following persons—
- (a) a manufacturer who fails to comply with any requirement of Article 11(7) (manufacturer's duty to take necessary corrective measures etc.) of the EU Construction Products Regulation;
 - (b) an importer who fails to comply with any requirement of the second sub-paragraph of Article 13(2) (importer's duty not to place non-conforming or non-compliant product on the market etc.) of the EU Construction Products Regulation;
 - (c) an importer who fails to comply with any requirement of Article 13(7) (importer's duty to take necessary corrective measures etc.) of the EU Construction Products Regulation;
 - (d) a distributor who fails to comply with any requirement of the second sub-paragraph of Article 14(2) (distributor's duty not to make non-conforming or non-compliant product available etc.) of the EU Construction Products Regulation; and
 - (e) a distributor who fails to comply with any requirement of Article 14(4) (distributor's duty to take necessary corrective measures etc.) of the EU Construction Products Regulation.
- (3) For the purposes of compliance with the provisions of the EU Construction Products Regulation mentioned in sub-paragraph (2), a reference in that Regulation to the competent national authority or, as the case may be, the market surveillance authorities is a reference to the enforcement authority for the area in which the person is established.
- (4) A person guilty of an offence under this paragraph shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

Other breaches of the EU Construction Products Regulation

5.—(1) A person who supplies a construction product in respect of Northern Ireland in relation to which—

- (a) there has been a failure to comply with any requirement in a provision of the EU Construction Products Regulation specified in sub-paragraph (2); and
- (b) the instructions or information to which the requirement in question relates is not provided with the product at the time of supply,

shall be guilty of an offence.

(2) The provisions of the EU Construction Products Regulation referred to in sub-paragraph (1) (a) are—

- (a) Article 11(4) (manufacturer's duty to provide product identification);
- (b) Article 11(5) (manufacturer's duty to provide contact information etc.);
- (c) Article 11(6) (manufacturer's duty to provide instructions and safety information);
- (d) Article 13(3) (importer's duty to provide contact information etc.);
- (e) Article 13(4) (importer's duty to provide instructions and safety information);
- (f) the duties in the first sub-paragraph of Article 14(2) (obligations of distributors) to ensure that a product is accompanied by instructions and safety information, and that the manufacturer and importer have complied with Articles 11(4) and (5) and 13(3) respectively; and
- (g) Article 15 (cases in which obligations of manufacturers apply to importers and distributors), insofar as it imposes duties in relation to Article 11(4) to (6).

(3) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

CHAPTER 2

Suspension notices and forfeiture

Suspension notices

6.—(1) When in relation to any construction products in respect of Northern Ireland an enforcement authority—

- (a) has reasonable grounds for suspecting that any offence under paragraph 3, 4 or 5 has been committed; or
- (b) considers that there are grounds for the service of a notice under this paragraph in accordance with paragraph 16 (grounds for service of notices),

the authority may serve a notice ("a suspension notice") prohibiting the person on whom it is served, for such period ending not more than six months after the date of the notice as specified in the notice, from supplying the products without the consent of the authority.

(2) A suspension notice may also require that person to keep the authority informed of the whereabouts throughout that period of any of the products concerned.

(3) A suspension notice may include a requirement that any construction products to which it relates that have been made available on the market be recalled.

(4) Where a suspension notice has been served on any person in respect of any construction products, no further such notice may be served on that person in respect of the same products unless—

- (a) proceedings against that person for an offence in relation to the products under a provision of this Part of this Schedule (not being an offence under this paragraph);
- (b) procedures in relation to the products involving Member States or the Commission under Article 56 (procedure to deal at national level with construction products presenting a risk), 57 (Union safeguard procedure) or 58 (complying construction products which nevertheless present a risk to health and safety) of the EU Construction Products Regulation; or
- (c) proceedings for the forfeiture of the products under paragraph 9 (forfeiture),

are pending at the end of the period specified in the first-mentioned notice.

(5) A consent given by an enforcement authority for the purposes of sub-paragraph (1) may impose such conditions on the doing of anything for which the consent is required as the authority considers appropriate.

(6) Any person who contravenes a suspension notice shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

Suspension notices: further provisions

7.—(1) A suspension notice served by an enforcement authority in respect of any construction products must—

- (a) describe the products in a manner sufficient to identify them;
- (b) set out the reasons why the authority considers the grounds described in paragraph 6(1) to be made out;
- (c) specify any requirement under paragraph 6(2) to keep the authority informed of the whereabouts of any of the products;
- (d) where the construction products are to be recalled, state the terms of the recall;
- (e) specify the day on which the notice is to come into force, and the duration of the notice; and
- (f) state that, and set out the manner in which, the person on whom the notice is served may appeal against the notice under paragraph 8 (suspension notices: appeals).

(2) A notice that is based on the ground in paragraph 16(6)(a) must, in order to allow the enforcement authority to comply with Article 21 of the RAMS 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) Where an enforcement authority serves a suspension notice in respect of any construction products, the authority shall be liable to pay compensation to any person having an interest in the products in respect of any loss or damage caused by reason of the service of the notice if—

- (a) no offence under paragraph 3, 4 or 5 has been committed in relation to the products;
- (b) none of the grounds for service of a suspension notice in paragraph 16 has been made out in relation to the products; and
- (c) the exercise of the power is not attributable to any neglect or default by that person.

(4) Any disputed question as to the right to, or the amount of, any compensation payable under sub-paragraph (3) shall be determined by arbitration.

Suspension notices: appeals

8.—(1) Any person having an interest in any construction products in respect of which a suspension notice is for the time being in force may apply for an order setting aside the notice.

(2) An application under this paragraph may be made—

(a) to any magistrates' court in which proceedings have been brought in Northern Ireland—

(i) for an offence in relation to the products under any provision of this Part of this Schedule, or

(ii) for the forfeiture of the products under paragraph 9 (forfeiture);

(b) where no such proceedings have been brought, by way of complaint to a magistrates' court.

(3) On an application under this paragraph, the court may make an order setting aside the suspension notice only if the court is satisfied that—

(a) no offence under paragraph 3, 4 or 5 has been committed in relation to the products;

(b) none of the grounds for service of a suspension notice in paragraph 16 has been made out in relation to the products; and

(c) no procedures are pending in relation to the products involving Member States or the Commission under Article 56 (procedure to deal at national level with construction products presenting a risk), 57 (Union safeguard procedure) or 58 (complying construction products which nevertheless present a risk to health and safety) of the EU Construction Products Regulation.

(4) Any person aggrieved by an order made under this paragraph by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision to the county court, and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981⁽¹⁾ (cases stated by magistrates' courts)).

(5) This paragraph is without prejudice to the operation of—

(a) Article 21(4) (restrictive measures: withdrawal of measures after effective action) of the RAMS Regulation in respect of paragraph 16(6)(a);

(b) Article 57(2), second sentence (Union safeguard procedure: national measure considered unjustified) of the EU Construction Products Regulation in respect of paragraph 16(6)(b); 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 EU Construction Products Regulation in respect of paragraph 16(6)(c).

Forfeiture

9.—(1) An enforcement authority may apply under this paragraph for an order for the forfeiture of any construction products on any of the grounds on which the enforcement authority may serve a suspension notice under paragraph 6(1) in relation to the products.

(2) An application under this paragraph may be made—

(a) where proceedings have been brought in a magistrates' court for an offence in relation to some or any of the products under any provision of this Part of this Schedule, to that court;

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- (b) where an application with respect to some or all of the products has been made to a magistrates' court under paragraph 8 (suspension notices: appeals) or under paragraph 22 (appeals against detention of products), to that court; and
 - (c) in any other case by way of complaint to a magistrates' court.
- (3) On an application under this paragraph the court may make an order for the forfeiture of any products only if it is satisfied that one or more of the grounds described in sub-paragraph (1) is made out in relation to the products.
- (4) A court may infer for the purposes of this paragraph that one or more of the grounds described in sub-paragraph (1) is made out in relation to any products if it is satisfied that one or more of those grounds is made out in relation to 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).
- (5) Any person aggrieved by an order made under this paragraph by a magistrates' court in Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision to the county court, and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (cases stated by magistrates' courts)).
- (6) Subject to sub-paragraph (7), where any products are forfeited under this paragraph they shall be destroyed in accordance with such directions as the court may give.
- (7) On making an order under this paragraph a magistrates' court may, if it considers it appropriate to do so, direct that the products to which the order relates shall (instead of being destroyed) be released to such person as the court may specify on condition that the person—
- (a) does not supply those products to any person otherwise than—
 - (i) to a person who carries on a business of buying products of the same description as those products and repairing or reconditioning them, or
 - (ii) as scrap (that is to say, for the value of materials included in the products rather than for the value of the products themselves); and
 - (b) complies with any order to pay costs or expenses (including any order under paragraph 24 (recovery of expenses)) which has been made against that person in the proceedings for the order for forfeiture.

Duty of enforcement authority to give notice of suspension notices and forfeiture applications etc.

- 10.** An enforcement authority must give immediate notice to the Secretary of State of any—
- (a) suspension notice served by it in respect of any construction products;
 - (b) application made by it for an order for forfeiture of any such products; or
 - (c) other thing done in respect of any such products for the purposes of or in connection with paragraphs 6 to 9.

CHAPTER 3

Prohibition notices and notices to warn

Prohibition notices

11.—(1) The Secretary of State may serve on any person a notice (“a prohibition notice”) prohibiting that person, except with the consent of the Secretary of State, from supplying any construction products in respect of Northern Ireland which are described in the notice and in relation to which the Secretary of State—

- (a) has reasonable grounds for suspecting that an offence under paragraph 3 or 4 has been committed; or
 - (b) considers that there are grounds for the service of a prohibition notice in accordance with paragraph 16 (grounds for service of notices).
- (2) A prohibition notice may include a requirement that any construction products to which it relates that have been made available on the market be recalled.
- (3) A consent given by the Secretary of State for the purposes of a prohibition notice may impose such conditions on the doing of anything for which the consent is required as the Secretary of State considers appropriate.
- (4) A person who contravenes a prohibition notice shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.
- (5) 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 sub-paragraph (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 paragraph (a) are not the case.
- (6) A notice that is based on the ground in paragraph 16(6)(a) must, in order to allow the Secretary of State to comply with Article 21 of the RAMS 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.
- (7) 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.
- (8) The Secretary of State may not vary a prohibition notice so as to make the effect of the notice more restrictive for the recipient.
- (9) The service of a notification under sub-paragraph (7) shall be sufficient to satisfy the requirement in paragraph 12(10) that the recipient must be informed of the decision of the Secretary of State.

Prohibition notices: further provisions

12.—(1) If representations in writing about a prohibition notice served under paragraph 11 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 sub-paragraph.
- (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—

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- (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 11(5)(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 11(5)(a) are not the case; and
 - (b) call and examine witnesses in connection with the representations.
- (5) 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, sub-paragraphs (6) to (8) shall apply instead of sub-paragraphs (1) to (4).
- (6) 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—
- (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 11(5)(a) are not the case.
- (7) The time specified in a notification served for the purposes of sub-paragraph (6)(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 sub-paragraph (2)(b).
- (8) A person on whom a notification has been served for the purposes of sub-paragraph (6)(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 11(5)(a) are not the case; and
 - (b) call and examine witnesses in connection with the representations.
- (9) 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 sub-paragraph (6)(a);
 - (b) any oral representations made under sub-paragraph (4) or (8); and
 - (c) any statement made by witnesses in connection with the oral representations,
- and, after considering any matters under this sub-paragraph, to make a report (including recommendations) to the Secretary of State about the matters so considered and the notice.
- (10) It shall be the duty of the Secretary of State to consider any report made under sub-paragraph (9) and, after considering the report, to inform the recipient of the decision with respect to the prohibition notice to which the report relates.
- (11) This paragraph and paragraph 11 are without prejudice to the operation of—

- (a) Article 21(4) (restrictive measures: withdrawal of measures after effective action) of the RAMS Regulation in the case of a prohibition notice based on the ground in paragraph 16(6)(a);
- (b) Article 57(2), second sentence (Union safeguard procedure: national measure considered unjustified) of the EU Construction Products Regulation in the case of a prohibition notice based on the ground in paragraph 16(6)(b); 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 EU Construction Products Regulation in the case of a prohibition notice based on the ground in paragraph 16(6)(c).

(12) Where in a notification served on any person under this paragraph 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 sub-paragraphs (4) and (8) shall have effect accordingly.

(13) For the purposes of this paragraph 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, to consider those representations or statements has died or appears to the Secretary of State to be otherwise unable to act.

(14) In this paragraph—

“the appointed person”, in relation to a prohibition notice means the person for the time being appointed under this paragraph 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.

Notices to warn

13.—(1) The Secretary of State may serve on any person a notice (“a notice to warn”) requiring that person, at that person’s own expense, to publish, in a form and manner and on occasions specified in the notice, a warning about any construction products which that person supplies or has supplied in respect of Northern Ireland which are described in the notice and in respect of which the Secretary of State—

- (a) has reasonable grounds for suspecting that any offence under paragraph 3 or 4 has been committed; or
- (b) considers that there are grounds for the service of a notice to warn in accordance with paragraph 16.

(2) A person who contravenes a notice to warn shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

(3) 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 in writing 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;

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- (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 sub-paragraph (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 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 paragraph (a) are not the case if, before the end of the period of 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.
- (4) 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 (3) (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 14(1).
- (5) 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.

Notices to warn: further provision

14.—(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 13(3)(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 paragraph.

(2) Where—

- (a) the Secretary of State has appointed a person to consider representations about a notice to warn; and
- (b) the person whose representations are to be considered has informed the Secretary of State for the purposes of paragraph 13(3)(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 13(3)(c) are not the case; and
 - (b) call and examine witnesses in connection with the representations.
- (5) 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 sub-paragraph (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.
- (6) It shall be the duty of the Secretary of State to consider any report made under sub-paragraph (5) 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.
- (7) If at any time after serving a notification on a person under paragraph 13(3) 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 paragraphs 13(3) and (4) and this paragraph 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.
- (8) 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 (6) must either be in the form of the draft or must be less onerous than the draft.
- (9) This paragraph and paragraph 13 are without prejudice to the operation of—
- (a) Article 21(4) (restrictive measures: withdrawal of measures after effective action) of the RAMS Regulation in the case of a notice to warn based on the ground in paragraph 16(6)(a);
 - (b) Article 57(2), second sentence (Union safeguard procedure: national measure considered unjustified) of the EU Construction Products Regulation in the case of a notice to warn based on the ground in paragraph 16(6)(b); 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 EU Construction Products Regulation in the case of a notice to warn based on the ground in paragraph 16(6)(c).

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(10) Where, in a notification served on any person under paragraph 13(3), 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 sub-paragraph (4) shall have effect accordingly.

(11) For the purposes of this paragraph 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.

(12) In this paragraph—

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

“notification” means notification in writing.

Power to obtain information

15.—(1) If the Secretary of State considers that, for the purpose of deciding whether—

- (a) to serve, vary or revoke a prohibition notice; or
- (b) to serve or revoke a notice to warn,

information is required which another person is likely to be able to provide, the Secretary of State may serve on the other person a notice under this paragraph.

(2) A notice served on any person under this paragraph may require that person—

- (a) to provide to the Secretary of State such information as is specified in the notice, within a period so specified;
- (b) to produce such records as are specified in the notice at a time and place so specified and to permit a person appointed by the Secretary of State for the purpose to take copies of the records at that time and place.

(3) A person shall be guilty of an offence if the person—

- (a) fails, without reasonable cause, to comply with a notice served on that person under this paragraph; or
- (b) in purporting to comply with a requirement which by virtue of sub-paragraph (2)(a) is contained in such a notice—
 - (i) provides information which the person knows is false in a material particular, or
 - (ii) recklessly provides information which is false in a material particular.

(4) A person guilty of an offence under sub-paragraph (3) shall—

- (a) in the case of an offence under paragraph (a) of that sub-paragraph, be liable on summary conviction to a fine not exceeding level 5 on the standard scale;
- (b) in the case of an offence under paragraph (b) of that sub-paragraph, be liable—
 - (i) on conviction on indictment, to a fine,
 - (ii) on summary conviction, to a fine not exceeding level 5 on the standard scale.

Grounds for service of notices

16.—(1) There are grounds for the service of a suspension notice under paragraph 6(1)(b), a prohibition notice under paragraph 11(1)(b) or a notice to warn under paragraph 13(1)(b), as the case

may be, where one or more of the following sub-paragraphs applies in relation to the construction products concerned.

(2) This sub-paragraph applies where the service of such a notice is appropriate because there has been a failure to comply in respect of Northern Ireland with any requirement under any of the following provisions of the EU Construction Products Regulation—

- (a) Article 11(2) (duty of manufacturer of construction product to keep technical documentation and declaration of performance for 10 years etc);
- (b) Article 11(8) (duty of manufacturer of construction product to provide information and documentation to demonstrate conformity with declaration of performance etc.);
- (c) Article 12(2) (duty of manufacturer's authorised representative to keep technical documentation and declaration of performance etc.);
- (d) Article 13(8) (duty of importer of construction product to keep technical documentation and declaration of performance etc.);
- (e) Article 13(9) (duty of importer of construction product to provide information and documentation to demonstrate conformity with declaration of performance etc.);
- (f) Article 14(5) (duty of distributor of construction product to provide information and documentation to demonstrate conformity with declaration of performance etc.); or
- (g) insofar as it imposes duties in relation to Article 11(2) and (8), Article 15 (duties of importer and distributor to comply with Article 11 as if a manufacturer etc.).

(3) This sub-paragraph applies where Article 20 (products presenting a serious risk) of the RAMS Regulation is applicable to the products.

(4) This sub-paragraph applies where Article 29(1) (control of products entering the Community market (national measures): serious risk) of the RAMS Regulation is applicable to the products.

(5) This sub-paragraph applies where the service of such a notice is appropriate in accordance with Article 29(2) (control of products entering the Community market (national measures): product not complying with Community harmonisation legislation) of the RAMS Regulation.

(6) This sub-paragraph applies where the service of such a notice is appropriate in accordance with—

- (a) the second sub-paragraph of Article 56(1) (procedure to deal at national level with construction products presenting a risk) of the EU Construction Products Regulation;
- (b) Article 56(4) or (8) of the EU Construction Products Regulation; or
- (c) Article 58(1) (complying construction products which nevertheless present a risk to health and safety) of the EU Construction Products Regulation.

(7) This sub-paragraph applies where the product must be withdrawn from the market in the European Union (including Northern Ireland) as a non-compliant construction product by virtue of Article 57(2) (Union safeguard procedures) of the EU Construction Products Regulation.

(8) This sub-paragraph applies where the service of such a notice is appropriate in accordance with Article 59(2) (formal non-compliance) of the EU Construction Products Regulation, without prejudice to sub-paragraph (2).

PART 3

Enforcement of Part 2 and market surveillance

Enforcement

17.—(1) It shall be the duty of an enforcement authority in its area to—

- (a) enforce the provisions of Part 2 of this Schedule; and
- (b) carry out market surveillance duties under the RAMS Regulation, as it applies to construction products, and under the EU Construction Products Regulation.

(2) A district council in Northern Ireland shall be competent to investigate and prosecute in respect of any offence under Part 2 of this Schedule that was committed outside its area in any part of Northern Ireland.

Test purchases

18.—(1) An enforcement authority may make a purchase of any construction products for the purpose of ascertaining whether there has been any failure to comply with any requirement of the EU Construction Products Regulation, or any offence has been committed under Part 2 of this Schedule, in relation to any construction products.

(2) Where—

- (a) any construction products purchased under this paragraph by or on behalf of an enforcement authority are submitted to test; and
- (b) the test leads to—
 - (i) the bringing of proceedings for an offence in relation to the products under any provision of Part 2 of this Schedule or for the forfeiture of the products under paragraph 9, or
 - (ii) the serving of a suspension notice in respect of any products; and
- (c) the authority is requested to do so and it is practicable for the authority to comply with the request,

the authority shall allow the person from whom the products were purchased or any person who is a party to the proceedings or has an interest in any products to which the notice relates to have the products tested.

Powers of search etc.

19.—(1) Subject to the following provisions of this Part of this Schedule, a duly authorised officer of an enforcement authority may—

- (a) at any reasonable hour;
- (b) on production, if required, of the officer's credentials; and
- (c) having given reasonable notice to the occupier, unless giving such notice would defeat the object of entry,

exercise any of the powers conferred by this paragraph.

(2) The officer may, for the purpose of ascertaining whether there has been any failure to comply with any requirement of the EU Construction Products Regulation, or any offence has been committed under Part 2 of this Schedule, inspect any construction products and enter any premises other than a dwelling.

(3) The officer may, for the purpose of ascertaining whether there has been any failure to comply with any requirement of the EU Construction Products Regulation, or any offence has been committed under Part 2 of this Schedule, examine any procedure (including any arrangements for carrying out a test) connected with the production of any construction products.

(4) If the officer has reasonable grounds for suspecting that there has been any failure to comply with any requirement of the EU Construction Products Regulation, or that any offence has been committed under Part 2 of this Schedule, the officer may—

- (a) for the purpose of ascertaining whether there has been any such failure or offence, require any person carrying on a business, or employed in connection with a business, to produce any records relating to the business;
- (b) for the purpose of ascertaining (by testing or otherwise) whether there has been any such failure or offence, seize and detain the products; and
- (c) take copies of, or of an entry in, any records produced by virtue of paragraph (a).

(5) The officer may seize and detain—

- (a) any construction products or records which the officer has reasonable grounds for believing may be required as evidence in proceedings for an offence under any provision of Part 2 of this Schedule; and
- (b) any construction products which the officer has reasonable grounds for suspecting may be liable to be forfeited under paragraph 9.

(6) If and to the extent that it is reasonably necessary to do so to prevent any failure to comply with any requirement of the EU Construction Products Regulation, or the commission of any offence under Part 2 of this Schedule, the officer may, for the purpose of exercising the power under subparagraph (4) or (5) to seize any construction products or records—

- (a) require any person having authority to do so to open any container; and
- (b) open or break open any such container where a requirement made under paragraph (a) has not been complied with.

(7) The records referred to in this paragraph include any that are stored electronically, and the officer may require such records to be made available in printed form.

(8) In this paragraph “dwelling” means any building or shelter wholly or mainly used as a place of residence or abode (including any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling).

Powers of search etc.: further provisions

20.—(1) An officer seizing any construction products or records under paragraph 19 must give a written notice stating what products or records have been so seized to the following persons—

- (a) the person from whom they are seized; and
- (b) in the case of imported products seized while under the control of the Commissioners for Her Majesty’s Revenue and Customs, the importer of those products (within the meaning of the Customs and Excise Management Act 1979⁽²⁾).

(2) If a justice of the peace—

- (a) is satisfied by written information on oath that there are reasonable grounds for believing either—
 - (i) that any construction products or records which any officer has power to inspect or to require to be produced under paragraph 19 are on any premises and that inspection

(2) 1979 c.2; “importer” is defined in section 1(1).

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of those products or records is likely to disclose evidence that there has been any failure to comply with any requirement of the EU Construction Products Regulation, or that any offence has been committed under Part 2 of this Schedule, or

(ii) that such a failure or offence has taken place, is taking place or is about to take place on any premises; and

(b) is also satisfied by any such information either—

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this paragraph has been given to the occupier, or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of entry to await the return of the occupier,

the justice may by warrant under the justice's hand, which shall continue in force for a period of one month, authorise any officer of an enforcement authority to enter the premises, if need be by force.

(3) An officer entering any premises by virtue of paragraph 19 or a warrant under sub-paragraph (2) may be accompanied by such other persons, and bring such equipment, as may appear necessary to the officer.

(4) On leaving any premises which a person is authorised to enter by a warrant under sub-paragraph (2), that person must, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against unauthorised entry as that person found them.

(5) Where any construction products seized by an officer under paragraph 19 are submitted to a test, the officer must inform the persons mentioned in sub-paragraph (1) of the result of the test and, if—

(a) proceedings are brought for an offence in relation to the products under any provision of Part 2 of this Schedule or for the forfeiture of the products under paragraph 9, or a suspension notice is served in respect of the products; and

(b) the officer is requested to do so and it is practicable to comply with the request,

the officer must allow any person who is a party to the proceedings or, as the case may be, has an interest in the products to which the notice relates to have the products tested.

(6) The references in sub-paragraph (2) to any information on oath shall be construed as references to any complaint on oath.

(7) If any person who is not an officer of an enforcement authority purports to act as such under paragraph 19 or this paragraph, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Obstruction of authorised officer

21.—(1) A person shall be guilty of an offence if the person—

(a) intentionally obstructs any officer of an enforcement authority who is acting in pursuance of any provision of this Schedule; or

(b) intentionally fails to comply with any requirement made of that person by any officer of an enforcement authority under any provision of this Schedule; or

(c) without reasonable cause fails to give any officer of an enforcement authority any other assistance or information which the officer may reasonably require of that person for the purposes of the exercise of the officer's functions in relation to any provision of this Schedule.

(2) A person shall be guilty of an offence if in giving any information which any officer of an enforcement authority may reasonably require of that person for the purposes of the exercise of the officer's functions in relation to any provision of this Schedule—

- (a) the person makes any statement which the person knows is false in a material particular; or
- (b) the person recklessly makes a statement which is false in a material particular.

(3) A person guilty of an offence under sub-paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person guilty of an offence under sub-paragraph (2) shall be liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding level 5 on the standard scale.

Appeals against detention of products

22.—(1) Any person having an interest in any construction products which are for the time being detained under any provision of this Part of this Schedule by an enforcement authority or by an officer of such an authority may apply for an order requiring the products to be released to that person or to another person.

(2) An application under this paragraph may be made—

- (a) to any magistrates' court in which proceedings have been brought in Northern Ireland—
 - (i) for an offence in relation to the products under any provision of Part 2 of this Schedule, or
 - (ii) for the forfeiture of the products under paragraph 9;
- (b) where no such proceedings have been so brought, by way of complaint to a magistrates' court.

(3) On an application under this paragraph to a magistrates' court, an order requiring products to be released may be made only if the court is satisfied—

- (a) that proceedings—
 - (i) for an offence in relation to the products under any provision of Part 2 of this Schedule, or
 - (ii) for the forfeiture of the products under paragraph 9,have not been brought or, having been brought, have been concluded without the products being forfeited;
- (b) that no procedures are pending in relation to the products involving Member States or the Commission under Article 56 (procedure to deal at national level with construction products presenting a risk), 57 (Union safeguard procedure) or 58 (complying construction products which nevertheless present a risk to health and safety) of the EU Construction Products Regulation; and
- (c) where no proceedings under paragraph (a) have been brought, that more than six months have elapsed since the products were seized.

(4) Any person aggrieved by an order made under this paragraph by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision to the county court, and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981).

Compensation for seizure and detention

23.—(1) Where an officer of an enforcement authority exercises any power under paragraph 19 to seize and detain construction products, the enforcement authority shall be liable to pay compensation to any person having an interest in the products in respect of any loss or damage caused by reason of the exercise of the power if—

- (a) no offence under paragraphs 3, 4 or 5 has been committed in relation to the product;
- (b) no suspension notice, prohibition notice, or notice to warn has had effect in relation to the product; and
- (c) the exercise of the power is not attributable to any neglect or default by that person.

(2) Any disputed question as to the right to or the amount of any compensation payable under this paragraph shall be determined by arbitration.

Recovery of expenses of enforcement

24.—(1) This paragraph shall apply where a court—

- (a) convicts a person of an offence in relation to any construction products under any provision of Part 2 of this Schedule; or
- (b) makes an order under paragraph 9 for the forfeiture of any construction products.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted or, as the case may be, any person having an interest in the products to reimburse an enforcement authority for any expenditure which has been or may be incurred by that authority—

- (a) in connection with any seizure or detention of the products by or on behalf of the authority; or
- (b) in connection with any compliance by the authority with directions given by the court for the purposes of any order for the forfeiture of the products.

PART 4**Miscellaneous and supplemental****Restrictions on the disclosure of information**

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

(2) This sub-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 this Schedule;
- (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 paragraphs 11 to 14, 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 paragraph 15;
- (d) which was obtained by that person in consequence of the exercise by any person of any power conferred by Part 3 of this Schedule; or

- (e) which relates to any construction product and was disclosed to or through that person by virtue of Article 27(2) of the RAMS 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(3) applies.
- (3) This sub-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 this Schedule,
 - (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 this Schedule),
 - (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 sub-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 paragraph 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 paragraph—

“relevant person” means any of the following—

 - (a) a Minister of the Crown or Northern Ireland department;
 - (b) any district council;
 - (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 paragraph, in proceedings against a person for an offence to which this paragraph 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 sub-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 sub-paragraph (3) on the person bringing the proceedings.

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(3) A notice under this sub-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 sub-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 paragraph applies to an offence under paragraph 3(1) or (4), 4(1), 5(1), 6(6), 11(4) or 13(2).

Liability of persons other than principal offender

27.—(1) Where the commission by any person of an offence to which paragraph 26 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 this Schedule (including where it is so guilty by virtue of sub-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, sub-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.

Service of documents etc.

28.—(1) Any document required or authorised by virtue of this Schedule 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, 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

29. In relation to any offence under paragraph 3(1) or (4), 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.

Transitional provisions

30.—(1) In respect of a construction product which is made available on the market in respect of Northern Ireland during the pre-exit period, notwithstanding the amendments made by the 2019 Regulations and Schedule 2 to these Regulations, regulation 4 of the Construction Products Regulations 2013 continues to have effect as it did immediately before those amendments came into force.

(2) Where a suspension notice, which relates to construction products in respect of Northern Ireland, is served before IP completion day on any of the grounds in Schedule 1 to the Construction Products Regulations 2013, the reference to those grounds in paragraphs 3(b), 7(b) and 8(b) of Schedule 2 to those Regulations is to be read on or after IP completion day as a reference to the grounds as they had effect immediately before that day.

(3) Where a prohibition notice, which relates to construction products in respect of Northern Ireland, is served before IP completion day under regulation 11(1) of the Construction Products Regulations 2013, any reference in Schedule 3 to those Regulations to establishing that the grounds for the service of the notice are not made out is to be read on or after IP completion day as a reference to the grounds as they had effect immediately before that day.

(4) In this paragraph “pre-exit period” means the period beginning with 1st July 2013 and ending immediately before IP completion day.