

SCHEDULE 3

Construction products enforcement rules – Northern Ireland

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.

Status: This is the original version (as it was originally made).

(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(1)).

(2) If a justice of the peace—

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

- (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 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.