

## SCHEDULE 3

### Construction products enforcement rules – Northern Ireland

## 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(1) 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.

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(1) [S.I. 2012/1848](#).

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- (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.

(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

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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.