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STATUTORY INSTRUMENTS

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**1991 No. 1620**

**BUILDING AND BUILDINGS**

**The Construction Products Regulations 1991**

*Made* - - - - *15th July 1991*  
*Laid before Parliament* *22nd July 1991*  
*Coming into force* - - *27th December 1991*

The Secretary of State, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to construction products, in exercise of the powers conferred on him by the said section 2(2) and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

**PART I**  
**PRELIMINARY**

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Construction Products Regulations 1991 and shall come into force on 27th December 1991.

(2) These Regulations do not apply to any construction product which was supplied for the first time in the Community before 27th December 1991.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“the acknowledged rule of technology” means technical provision acknowledged by a majority of representative experts as reflecting the developed stage of technical capability at a given time as regards products, processes and services, based on the relevant consolidated findings of science, technology and experience;

“appropriate attestation procedure” means the procedure (being one of the procedures set out in paragraphs 2 and 4 of Schedule 3) indicated in relation to a construction product in the relevant technical specification or in the publication of that specification;

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(1) S.I.1989/2393.  
(2) 1972 c. 68.

- “approved body” means an approved laboratory, a certification body or an inspection body;
- “approved laboratory” means a testing laboratory designated for the purposes of the Directive by a member State and notified by that member State to the European Commission;
- “certification body” means a body designated as a certification body for the purposes of the Directive by a member State and notified by that member State to the European Commission;
- “the Community” means the European Economic Community;
- “construction product” means any product which is produced for incorporation in a permanent manner in works;
- “the Directive” means Council Directive [89/106/EEC](#) on the approximation of laws, regulations and administrative provisions of the member States relating to construction products<sup>(3)</sup>;
- “EC certificate of conformity” means a certificate of conformity issued by a certification body in accordance with paragraphs 1 to 3 of Schedule 3 or under the Directive as implemented under the law of a member State other than the United Kingdom;
- “EC declaration of conformity” means a declaration of conformity made in accordance with paragraphs 4 and 5 of Schedule 3 or under the Directive as implemented under the law of a member State other than the United Kingdom;
- “EC mark” means the EC mark of conformity referred to in regulation 5 consisting of the symbol “CE” of which a form is shown for the purposes of illustration in Schedule 1;
- “enforcement authority” means the Secretary of State, any other Minister of the Crown in charge of a Government department, any such department or any Northern Ireland department and any authority or council on whom functions under these Regulations are conferred by regulation 15;
- “the essential requirements” means requirements applicable to works which may influence the technical characteristics of a construction product; as set out in terms of objectives in Annex I to the Directive (which is reproduced in Schedule 2) and as they may be given concrete form in documents (interpretative documents) published in the "C" series of the Official Journal of the European Communities;
- “European technical approval” means a favourable technical assessment of the fitness for use of a construction product for an intended use, issued for the purposes of the Directive by a body authorised by a member State to issue European technical approvals for those purposes and notified by that member State to the European Commission;
- “factory production control” means the permanent internal control of production exercised by the manufacturer, whereby—
- (a) all the elements, requirements and provisions adopted by the manufacturer are documented in a systematic manner in the form of written policies and procedures, and
  - (b) that documentation ensures a common understanding of quality assurance and enables the achievement of the required product characteristics and the effective operation of the production control system to be checked;
- “inspection body” means a body designated as an inspection body for the purposes of the Directive by a member State and notified by that member State to the European Commission;
- “level 5 on the standard scale”, in relation to Northern Ireland, means £2,000;
- “magistrates' court”, in relation to Northern Ireland, means a court of summary jurisdiction within the meaning of Article 2(2) of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(4)</sup>;

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(3) OJ No. L40, 11.2.89, p. 12.

(4) S.I. 1981/1675 (N.I. 26).

“minor part product” means a construction product which is included in a list of products which play a minor part with respect to health and safety drawn up, managed and revised periodically by the European Commission;

“national technical specification” means a national technical specification which a member State regards as complying with the essential requirements, the text of which has been communicated by that member State to the European Commission, and reference to which is published in the Official Journal of the European Communities;

“notice to warn” means a notice under regulation 9(1)(b);

“officer”, in relation to an enforcement authority, means a person authorised in writing to assist the authority in carrying out its functions under or for the purposes of the enforcement of any of the provisions of these Regulations;

“premises” includes any place and any ship, aircraft or vehicle;

“prohibition notice” means a notice under regulation 9(1)(a);

“records” includes any books or documents and any records in non-documentary form;

“relevant national standard” means a national standard of which a reference is published—

- (a) in the United Kingdom, by the Secretary of State in such manner as he considers appropriate, or
- (b) in another member State,

and which corresponds to a harmonised standard the reference of which is published in the Official Journal of the European Communities;

“relevant technical specification” means a European technical approval, a national technical specification or a relevant national standard;

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

“works” means construction works, including both buildings and civil engineering works;

and other expressions used in the Directive have the same meanings as in the Directive.

(2) For the purposes of these Regulations, a mark is affixed to a construction product if it is affixed to the product, to a label attached to the product, to the packaging of the product or to any commercial document accompanying and relating to the product.

(3) Any reference in these Regulations to a numbered regulation, Part or Schedule is a reference to the regulation, Part or Schedule so numbered in these Regulations.

## PART II

### REQUIREMENTS RELATING TO CONSTRUCTION PRODUCTS

#### **Requirement to be satisfied by products**

3.—(1) A construction product, other than a minor part product, shall have such characteristics that the works in which it is to be incorporated, assembled, applied or installed can, if properly designed and built, satisfy the essential requirements when, where and to the extent that such works are subject to regulations containing such requirements.

(2) In paragraph (1) above “regulations” includes any rule, regulation or other provision which has the force of law.

(3) A minor part product shall have been manufactured in compliance with, and the manufacturer shall have issued in respect of the product a declaration of compliance with, the acknowledged rule of technology.

#### **Products bearing the EC mark**

4. Any construction product which bears the EC mark shall be presumed to satisfy the relevant requirement in regulation 3 unless there are reasonable grounds for suspecting that the product does not satisfy that requirement or that the EC mark has not been affixed in accordance with regulation 5.

#### **EC mark and other information on or accompanying products**

5.—(1) Where a construction product is not a minor part product and—

- (a) (i) complies with the relevant national standards which are applicable to the product; or
- (ii) complies with a European technical approval which is applicable to the product; or
- (iii) in as much as no harmonised specifications are applicable to the product, complies with the national technical specifications which are so applicable,

and the manufacturer, or his agent established in the Community, has followed the appropriate attestation procedures; or

- (b) has not been manufactured, or has been manufactured only partly, in conformity with the relevant technical specifications applicable to the product, but
  - (i) the appropriate attestation procedures are the procedures described in the second and third possibilities set out in paragraph 4 of Schedule 3; and
  - (ii) the manufacturer has followed the attestation procedure described in the third possibility set out in that paragraph,

and an EC certificate or declaration of conformity has been issued or made in respect of the product, and the product complies with the requirements of any other Community directive applying to it, the manufacturer, or his agent established in the Community, may affix the EC mark to the product.

(2) The EC mark shall be accompanied by sufficient information to enable the manufacturer of the product easily to be identified and, where appropriate:

- (a) indications to identify the characteristics of the product, by reference to relevant technical specifications where they apply;
- (b) the last two digits of the year of manufacture;
- (c) identification of the approved body involved;
- (d) the number of EC certificate of conformity.

(3) Any person who—

- (a) makes an EC declaration of conformity in respect of a construction product which does not satisfy the criteria set out in sub-paragraph (a) or (b) of paragraph (1) above;
- (b) affixes the EC mark to a construction product otherwise than in accordance with paragraphs (1) and (2) above;
- (c) affixes to a construction product any mark which is likely to be confused with the EC mark;
- (d) supplies, on the first occasion on which it is supplied in the Community, a construction product to which the EC mark has been affixed outside the Community otherwise than in accordance with paragraphs (1) and (2) above or the Directive as implemented under the law of a member State other than the United Kingdom; or

- (e) supplies, on the first occasion on which it is supplied in the Community, a construction product to which any mark which is likely to be confused with the EC mark has been affixed outside the Community,

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.

### **Requirement to keep available and give information about products which bear the EC mark**

6.—(1) This regulation applies—

- (a) where the person who has affixed the EC mark to a construction product is established in the United Kingdom, to that person;
- (b) where the person who has affixed the EC mark to a construction product is not established in the United Kingdom, and the first place of supply of the product in the Community is in the United Kingdom, to the person who supplies the product on the first occasion on which it is supplied in the United Kingdom.

(2) A person to whom this regulation applies shall, for a period of 10 years after the material date, keep the EC certificate of conformity or, as the case may be, the EC declaration of conformity relating to the product, or a copy of it, available for inspection by an enforcement authority or any of its officers and, if required to do so by any such authority or officer at a reasonable time, produce the document so kept and permit any such officer to take copies of it.

(3) In paragraph (2) above, “the material date” means—

- (a) in the case of a person to whom this regulation applies by virtue of paragraph (1)(a) above, the date on which the EC mark is affixed;
- (b) in the case of a person to whom this regulation applies by virtue of paragraph (1)(b) above, the date on which the product is first supplied in the United Kingdom.

### **Requirement to give information about products which do not bear the EC mark**

7. A person who supplies a construction product which does not bear the EC mark shall give to an enforcement authority, or any of its officers, all information which he has about the product and which the authority or officer may reasonably require for the purposes of ascertaining whether the product satisfies the requirement in regulation 3 or is one to which these Regulations do not apply.

### **Prohibition on supply**

8.—(1) A person shall be guilty of an offence if he supplies any construction product which does not satisfy the requirement in regulation 3.

(2) In any proceedings against any person for an offence under this regulation in respect of any construction product it shall be a defence for that person to show—

- (a) that he reasonably believed that the product would not be used in the Community; or
- (b) that the following conditions are satisfied, that is to say—
  - (i) that he supplied the product in the course of carrying on a general retail business; and
  - (ii) that, at the time he supplied the product, he neither knew nor had reasonable grounds for believing that the product failed to satisfy the relevant requirement in regulation 3; or
- (c) that the terms on which he supplied the product—
  - (i) indicated that the product was not supplied or to be supplied as a new product; and

(ii) provided for, or contemplated, the acquisition of an interest in the product by the persons supplied or to be supplied.

(3) For the purposes of paragraph (2)(b) above, a product is supplied in the course of carrying on a general retail business if—

- (a) whether or not it is itself acquired for a person's private use, it is supplied in the course of carrying on a business of making a supply of goods which are ordinarily intended for private use or consumption available to persons who generally acquire them for private use or consumption; and
- (b) the descriptions of goods the supply of which is made available in the course of that business do not, to a significant extent, include construction products.

(4) A person guilty of an offence under this regulation 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.

### **Prohibition notices and notices to warn**

9.—(1) The Secretary of State may—

- (a) 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 which the Secretary of State considers do not satisfy the relevant requirement in regulation 3 and which are described in the notice;
- (b) serve on any person a notice “a notice to warn” requiring that person at his own expense to publish, in a form and manner and on occasions specified in the notice, a warning about any construction products which the Secretary of State considers do not satisfy the relevant requirement in regulation 3, which that person supplies or has supplied and which are described in the notice.

(2) Schedule 4 shall have effect with respect to prohibition notices and notices to warn.

(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 or 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.

### **Suspension notices**

10.—(1) Where an enforcement authority has reasonable grounds for suspecting that any provision of regulation 5, 6, 7 or 8 has been contravened in relation to any construction products, 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 is specified therein, from supplying the products without the consent of the authority.

(2) A suspension notice served by an enforcement authority in respect of any construction products shall—

- (a) describe the products in a manner sufficient to identify them;
- (b) set out the grounds on which the authority suspects that a provision of regulation 5, 6, 7 or 8 has been contravened in relation to the products; and
- (c) state that, and the manner in which, the person on whom the notice is served may appeal against the notice under regulation 11.

(3) A suspension notice served by an enforcement authority for the purpose of prohibiting a person for any period from supplying any construction products may also require that person to keep the authority informed of the whereabouts throughout that period of any of those products in which he has an interest.

(4) Where a suspension notice has been served on any person in respect of any construction products, no further such notice shall 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 (not being an offence under this regulation); or
- (b) proceedings for the forfeiture of the products under regulation 12 or 13,

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 paragraph (1) above 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.

(7) 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) there has been no contravention in relation to the products of any provision of regulation 5, 6, 7 or 8; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(8) Any disputed question as to the right to or the amount of any compensation payable under this regulation shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

(9) In England and Wales section 31 of the Arbitration Act 1950<sup>(5)</sup> and, in Northern Ireland, section 28 of the Arbitration Act (Northern Ireland) 1937<sup>(6)</sup>, shall have effect for the purposes of an arbitration under paragraph (8) as if it were an arbitration under any other Act within the meaning of those sections.

### **Appeals against suspension notices**

**11.**—(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 regulation may be made—

- (a) to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland—
  - (i) for an offence in relation to the products under any provision of this Part; or
  - (ii) for the forfeiture of the products under regulation 12;
- (b) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or
- (c) in Scotland, by summary application to the sheriff.

(3) On an application under this regulation to a magistrates' court in England and Wales or Northern Ireland the court shall make an order setting aside the suspension notice only if the court

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<sup>(5)</sup> 1950 c. 27.

<sup>(6)</sup> 1937 c. 8 (N.I.).

is satisfied that there has been no contravention in relation to the products of any provision of regulation 5, 6, 7 or 8.

(4) On an application under this regulation to the sheriff he shall make an order setting aside the suspension notice only if he is satisfied that at the date of making the order—

- (a) proceedings for an offence in relation to the products under any provision of this Part; or
- (b) proceedings for the forfeiture of the products under regulation 13,

have not been brought or, having been brought, have been concluded.

(5) Any person aggrieved by an order made under this regulation by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, 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 section 111 of the Magistrates' Courts Act 1980<sup>(7)</sup> or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(8)</sup> (statement of case)).

(6) In Scotland, any person aggrieved by an order made under this regulation by the sheriff, or by a decision of the sheriff not to make such an order, may appeal against that order or decision on a point of law to the sheriff principal and, notwithstanding the generality of powers available to the sheriff at common law, any order so made by the sheriff may contain such provision as appears to him to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

### **Forfeiture: England and Wales and Northern Ireland**

**12.—**(1) An enforcement authority in England and Wales or Northern Ireland may apply under this regulation for an order for the forfeiture of any construction products on the grounds that there has been a contravention in relation to the products of a provision of regulation 5, 6, 7 or 8.

(2) An application under this regulation 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, to that court;
- (b) where an application with respect to some or all of the products has been made to a magistrates' court under regulation 11 or 21, to that court; and
- (c) where no application for the forfeiture of the products has been made under subparagraph (a) or (b) above, by way of complaint to a magistrates' court.

(3) On an application under this regulation the court shall make an order for the forfeiture of any products only if it is satisfied that there has been a contravention in relation to the products of a provision of regulation 5, 6, 7 or 8.

(4) For the avoidance of doubt it is declared that a court may infer for the purposes of this regulation that there has been a contravention in relation to any products of a provision of regulation 5, 6, 7 or 8 if it is satisfied that any such provision has been contravened in relation to products which are representative of those products (whether by reason or 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 regulation 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—

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(7) 1980 c. 43.

(8) S.I. 1981/1675 (N.I. 26).



- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, 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 section 111 of the Magistrates' Court Act 1980 or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

(6) Subject to paragraph (7) below, where any products are forfeited under this regulation they shall be destroyed in accordance with such directions as the court may give.

(7) On making an order under this regulation 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 that 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 regulation 23) which has been made against that person in the proceedings for the order for forfeiture.

### **Forfeiture: Scotland**

**13.**—(1) In Scotland a sheriff may make an order for forfeiture of any construction products in relation to which there has been a contravention of a provision of regulation 5, 6, 7 or 8—

- (a) on an application by the procurator-fiscal made in the manner specified in section 310 of the Criminal Procedure (Scotland) Act 1975<sup>(9)</sup>; or
- (b) where a person is convicted of any offence in respect of any such contravention, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under paragraph (1)(a) above shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the products to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the products should not be forfeited.

(3) Service under paragraph (2) above shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1975.

(4) Any person upon whom notice is served under paragraph (2) above and any other person claiming to be the owner of, or otherwise to have an interest in, products to which an application under this regulation relates shall be entitled to appear at the hearing of the application to show cause why the products should not be forfeited.

- (5) The sheriff shall not make an order following an application under paragraph (1)(a) above—
  - (a) if any person on whom notice is served under paragraph (2) above does not appear, unless service of the notice on that person is proved; or
  - (b) if no notice under paragraph (2) above has been served, unless he is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The sheriff shall make an order under this regulation only if he is satisfied that there has been a contravention in relation to the products of a provision of regulation 5, 6, 7 or 8.

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<sup>(9)</sup> 1975 c. 21; section 310 was amended by the Criminal Justice (Scotland) Act 1980 (c. 62), Schedule 7, paragraph 53, and Schedule 8.

(7) For the avoidance of doubt it is declared that the sheriff may infer for the purposes of this regulation that there has been a contravention in relation to any products of a provision of regulation 5, 6, 7 or 8 if he is satisfied that any such provision has been contravened in relation to any 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).

(8) Where an order for the forfeiture of any products is made following an application by the procurator-fiscal under paragraph (1)(a) above, any person who appeared, or was entitled to appear, to show cause why products should not be forfeited may, within twenty-one days of the making of the order, appeal to the High Court by Bill of Suspension on the ground of an alleged miscarriage of justice; and section 452 of the Criminal Procedure (Scotland) Act 1975<sup>(10)</sup> shall apply to an appeal under this paragraph as it applies to a stated case under Part II of that Act.

(9) An order following an application under paragraph (1)(a) above shall not take effect—

- (a) until the end of the period of twenty-one days beginning with the day after the day on which the order is made; or
- (b) if an appeal is made under paragraph (8) above within that period, until the appeal is determined or abandoned.

(10) An order under paragraph (1)(b) above shall not take effect—

- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1975; or
- (b) if an appeal is made within that period, until the appeal is determined or abandoned.

(11) Subject to paragraph (12) below, products forfeited under this regulation shall be destroyed in accordance with such directions as the sheriff may give.

(12) If he thinks fit, the sheriff may direct that the products be released, to such person as he may specify, on condition that that person does not supply those products to any other person otherwise than—

- (a) to a person who carries on a business of buying products of the same description as those products and repairing or reconditioning them; or
- (b) as scrap (that is to say, for the value of materials included in the products rather than for the value of the products themselves).

### **Power to obtain information**

**14.**—(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,

he requires information which another person is likely to be able to furnish, the Secretary of State may serve on the other person a notice under this regulation.

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

- (a) to furnish to the Secretary of State, within a period specified in the notice, such information as is 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 he—

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<sup>(10)</sup> Section 452 was substituted by the Criminal Justice (Scotland) Act 1980, Schedule 3, paragraph 11.

- (a) fails, without reasonable cause, to comply with a notice served on him under this regulation; or
- (b) in purporting to comply with a requirement which by virtue of paragraph (2)(a) above is contained in such a notice—
  - (i) furnishes information which he knows is false in a material particular; or
  - (ii) recklessly furnishes information which is false in a material particular.
- (4) A person guilty of an offence under paragraph (3) above shall—
  - (a) in the case of an offence under sub-paragraph (a) of that paragraph, be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
  - (b) in the case of an offence under sub-paragraph (b) of that 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.

### PART III

#### ENFORCEMENT OF PART II

##### **Enforcement**

- 15.—(1) It shall be the duty of—
- (a) every weights and measures authority in Great Britain;
  - (b) every district council in Northern Ireland.

to enforce within their area the provisions of Part II.

(2) Nothing in this regulation shall authorise any weights and measures authority to bring proceedings in Scotland for an offence.

##### **Test purchases**

16.—(1) An enforcement authority shall have power, for the purpose of ascertaining whether any provision of Part II has been contravened in relation to any construction products, to make, or to authorise an officer of the authority to make, any purchase of any construction products.

- (2) Where—
- (a) any construction products purchased under this regulation 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 II or for the forfeiture of the products under regulation 12 or 13; 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.**

17.—(1) Subject to the following provisions of this Part, a duly authorised officer of an enforcement authority may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by the following provisions of this regulation.

(2) The officer may, for the purpose of ascertaining whether there has been any contravention of any provision of Part II, inspect any construction products and enter any premises other than premises occupied only as a person's residence.

(3) The officer may, for the purpose of ascertaining whether there has been any contravention of any provision of Part II, 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 a contravention in relation to any construction products of any provision of Part II, he may—

- (a) for the purpose of ascertaining whether there has been any such contravention, 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 contravention, seize and detain the products;
- (c) take copies of, or of an entry in, any records produced by virtue of subparagraph (a) above.

(5) The officer may seize and detain—

- (a) any construction products or records which he has reasonable grounds for believing may be required as evidence in proceedings for an offence under any provision of Part II;
- (b) any construction products which he has reasonable grounds for suspecting may be liable to be forfeited under regulation 12 or 13.

(6) If and to the extent that it is reasonably necessary to do so to prevent a contravention of any provision of Part II, the officer may, for the purpose of exercising his power under paragraph (4) or (5) above to seize any construction products or records—

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

### **Provisions supplemental to regulation 17**

18.—(1) An officer seizing any construction products or records under regulation 17 shall inform the following persons that the products or records have been so seized, that is to say—

- (a) the person from whom they are seized; and
- (b) in the case of imported products seized on any premises under the control of the Commissioners of Customs and Excise, the importer of those products (within the meaning of the Customs and Excise Management Act 1979<sup>(11)</sup>).

(2) If a justice of the peace—

- (a) is satisfied by any 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 under regulation 17 are on any premises and that their inspection is likely to disclose evidence that there has been a contravention of any provision of Part II; or

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(11) 1979 c. 2.

- (ii) that such a contravention 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 his return,

the justice may by warrant under his 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 regulation 17 or a warrant under paragraph (2) above may take with him such other persons and such equipment as may appear to him necessary.

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

(5) If any person who is not an officer of an enforcement authority purports to act as such under regulation 17 of this regulation he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Where any construction products seized by an officer under regulation 17 are submitted to a test, the officer shall inform the persons mentioned in paragraph (1) above 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 II or for the forfeiture of the products under regulation 12 or 13, 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 shall 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.

(7) In the application of this regulation to Scotland, the reference in paragraph (2) above to a justice of the peace shall include a reference to a sheriff and the references to written information on oath shall be construed as references to evidence on oath.

(8) In the application of this regulation to Northern Ireland, the references in paragraph (2) above to any information on oath shall be construed as references to any complaint on oath.

### **Power of customs officer to detain products**

**19.—**(1) A customs officer may, for the purpose of facilitating the exercise by an enforcement authority or officer of such an authority of any functions conferred on the authority or officer by these Regulations, seize any imported construction products and detain them for not more than two working days.

(2) Anything seized and detained under this regulation shall be dealt with during the period of its detention in such manner as the Commissioners of Customs and Excise may direct.

(3) In paragraph (1) above the reference to two working days is a reference to a period of forty-eight hours calculated from the time when the products in question are seized but disregarding so much of any period as falls on a Saturday or Sunday or on Christmas Day, Good Friday or a day

which is a bank holiday under the Banking and Financial Dealings Act 1971(12) in the part of the United Kingdom where the products are seized.

(4) In this regulation and regulation 20 “customs officer” means any officer within the meaning of the Customs and Excise Management Act 1979.

### **Obstruction of authorised officer**

**20.**—(1) Any person who—

- (a) intentionally obstructs any officer of an enforcement authority who is acting in pursuance of any provision of these Regulations or any customs officer who is so acting; or
- (b) intentionally fails to comply with any requirement made of him by any officer of an enforcement authority under any provision of these Regulations; or
- (c) without reasonable cause fails to give any officer of an enforcement authority who is so acting any other assistance or information which the officer may reasonably require of him for the purposes of the exercise of the officer’s functions under any provision of these Regulations,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person shall be guilty of an offence if, in giving any information which is required of him by virtue of paragraph (1)(c) above—

- (a) he makes any statement which he knows is false in a material particular; or
  - (b) he recklessly makes a statement which is false in a material particular.
- (3) A person guilty of an offence under paragraph (2) above 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**

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

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

- (a) to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland—
  - (i) for an offence in relation to the products under any provision of Part II; or
  - (ii) for the forfeiture of the products under regulation 12;
- (b) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or
- (c) in Scotland, by summary application to the sheriff.

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

- (a) that proceedings—
  - (i) for an offence in relation to the products under any provision of Part II; or
  - (ii) for the forfeiture of the products under regulation 12 or 13,

have not been brought or, having been brought, have been concluded without the products being forfeited; and

- (b) where no such proceedings 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 regulation by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, 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 section 111 of the Magistrates' Courts Act 1980<sup>(13)</sup> or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(14)</sup> (statement of case)).

(5) In Scotland, any person aggrieved by an order made under this regulation by the sheriff, or by a decision of the sheriff not to make such an order, may appeal against that order or decision on a point of law to the sheriff principal and, notwithstanding the generality of powers available to the sheriff at common law, any order so made by the sheriff may contain such provision as appears to him to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

### **Compensation for seizure and detention**

**22.**—(1) Where an officer of an enforcement authority exercises any power under regulation 17 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) there has been no contravention in relation to the products of any provision of regulation 5, 6, 7 or 8; and
- (b) 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 regulation shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

(3) In England and Wales section 31 of the Arbitration Act 1950<sup>(15)</sup> and, in Northern Ireland, section 28 of the Arbitration Act (Northern Ireland) 1937<sup>(16)</sup>, shall have effect for the purposes of an arbitration under paragraph (2) as if it were an arbitration under any other Act within the meaning of those sections.

### **Recovery of expenses of enforcement**

**23.**—(1) This regulation shall apply where a court—

- (a) convicts a person of an offence in relation to any construction products of any provision of Part II; or
- (b) make an order under regulation 12 or 13 for the forfeiture of any construction products.

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<sup>(13)</sup> 1980 c. 43.

<sup>(14)</sup> S.I. 1981/1675 (N.I. 26).

<sup>(15)</sup> 1950 c. 27.

<sup>(16)</sup> 1937 c. 8 (N.I.).

(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 IV

### MISCELLANEOUS AND SUPPLEMENTAL

#### **Power of Commissioners of Customs and Excise to disclose information**

**24.**—(1) If they think it appropriate to do so for the purpose of facilitating the exercise by any person to whom paragraph (2) below applies of any functions conferred on that person by these Regulations, the Commissioners of Customs and Excise may authorise the disclosure to that person of any information obtained for the purposes of the exercise by the Commissioners of their functions in relation to imported construction products.

(2) This paragraph applies to an enforcement authority and to any officer of an enforcement authority.

(3) A disclosure of information made to any person under paragraph (1) above shall be made in such manner as may be directed by the Commissioners of Customs and Excise and may be made through such persons acting on behalf of that person as may be so directed.

(4) Information may be disclosed to a person under paragraph (1) above whether or not the disclosure of the information has been requested by or on behalf of that person.

#### **Restrictions on the disclosure of information**

**25.**—(1) Subject to the following provisions of this regulation, a person shall be guilty of an offence if he discloses any information—

- (a) which was obtained by him in consequence of its being given to any person in compliance with any requirement imposed by these Regulations;
- (b) which consists in a secret manufacturing process or a trade secret and was obtained by him in consequence of the inclusion of the information—
  - (i) in written or oral representations made for the purpose of Part I or Part II of Schedule 4; or
  - (ii) in a statement of a witness in connection with any such oral representations;
- (c) which was obtained by him in consequence of the exercise by the Secretary of State of the power conferred on him by regulation 14;
- (d) which was obtained by him in consequence of the exercise by any person or any power conferred by Part III; or
- (e) which was disclosed to or through him under regulation 24.

(2) Paragraph (1) above shall not apply to a disclosure of information if the information is publicised information or the disclosure is made—

- (a) for the purpose of facilitating the exercise of a relevant person's functions under these Regulations;



- (b) for the purpose of facilitating the exercise of a relevant person's enforcement or regulatory functions under any enactment or subordinate legislation (whether passed or made before or after the making of these Regulations);
  - (c) for the purposes of compliance with a Community obligation; or
  - (d) in connection with the investigation of any criminal offence or for the purposes of any civil or criminal proceedings.
- (3) In paragraph (2)(b) above the reference to a person's functions shall include a reference to any function of making, amending or revoking any regulations or order.
- (4) A person guilty of an offence under this regulation 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.
- (5) In this regulation—
- “publicised information” means any information which has been disclosed in any civil or criminal proceedings or is or has been required to be contained in a warning published in pursuance of a notice to warn; and
- “relevant person” means any of the following, that is to say—
- (a) a Minister of the Crown, Government department or Northern Ireland department;
  - (b) any weights and measures authority or any district council in Northern Ireland;
  - (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 regulation, in proceedings against a person for an offence to which this regulation applies it shall be a defence for that person to show that he 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 paragraph (1) above 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, he has served a notice under paragraph (3) below on the person bringing the proceedings.

(3) A notice under this paragraph shall 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 he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) above by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

(5) This regulation applies to an offence under regulation 5(3), 8(1), 9(4) or 10(6).

### **Liability of persons other than principal offender**

27.—(1) Where the commission by any person of an offence to which regulation 26 applies is due to an act or default committed by some other person in the course of any business of his, the other 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 these Regulations (including where it is so guilty by virtue of paragraph (1) above) 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, he, 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, paragraph (2) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) In Scotland, where a partnership is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1) above) 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, a partner in the partnership, he, as well as the partnership, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

### **Service of documents etc.**

28.—(1) Any document required or authorised by virtue of these Regulations to be served on a person may be so served—

- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
- (b) if the person is a body corporate, by serving it in accordance with sub-paragraph (a) above on the secretary or clerk of that body; or
- (c) if the person is a partnership, by serving it in accordance with that subparagraph on a partner or on a person having control or management of the partnership business.

(2) For the purposes of paragraph (1) above, and for the purpose of section 7 of the Interpretation Act 1978(17) (which relates to the service of documents by post) in its application to that paragraph, the proper address of any person on whom a document is to be served by virtue of these Regulations shall be his last known address except that—

- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate;
- (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership;

and 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.

### **Savings for certain privileges**

29.—(1) Nothing in these Regulations shall be taken as requiring any person to produce any records if he would be entitled to refuse to produce those records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, that they

contain a confidential communication made by or to an advocate or solicitor in that capacity, or as authorising any person to take possession of any records which are in the possession of a person who would be so entitled.

(2) Nothing in these Regulations shall be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person's spouse.

#### **Duties of enforcement authorities**

**30.** Every authority and council on whom a duty is imposed by virtue of regulation 15 shall give immediate notice to the Secretary of State of any suspension notice served by it in respect of, or any application made by it for an order for forfeiture of, any construction products or any other thing done in respect of any such products for the purposes of or in connection with regulations 10 to 13.

#### **Commencement of proceedings**

**31.** In England, Wales and Northern Ireland a magistrates' court may try an information (in the case of England and Wales) or a complaint (in the case of Northern Ireland) in respect of an offence committed under regulation 5(3) or 8(1) if (in the case of England and Wales) the information is laid or (in the case of Northern Ireland) the complaint is made within twelve months from the time when the offence is committed, and in Scotland summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.

#### **Rules of public and certain private bodies**

**32.** It shall be unlawful for any public body, or any private body acting as a public undertaking or acting as a public body on the basis of a monopoly position, to make, impose or enforce, or purport to make, impose or enforce any rules or conditions relating to matters covered by the essential requirements which have the effect of impeding the use for the purpose for which they are intended of construction products which satisfy the requirement in regulation 3.

#### **Health and safety at work**

**33.—(1)** In any proceedings against a person for an offence under any of the relevant statutory provisions (as defined in section 53(1) of the Health and Safety at Work etc. Act 1974<sup>(18)</sup> or Article 2(2) of the Health and Safety at Work (Northern Ireland) Order 1987<sup>(19)</sup>) which impose requirements with respect to any matter it shall be a defence for that person to show that the requirements of these Regulations were satisfied in relation to that matter.

(2) Where an improvement notice or a prohibition notice has been served on any person pursuant to section 21 or, as the case may be, section 22 of the Health and Safety at Work etc. Act 1974<sup>(20)</sup> (or pursuant to Article 23 or, as the case may be, Article 24 of the Health and Safety at Work (Northern Ireland) Order 1987<sup>(21)</sup>), if the person upon whom the notice was served appeals to an industrial tribunal pursuant to section 24 of the said Act (or Article 26 of the said Order) and shows that the notice relates to any matter in respect of which the requirements of these Regulations are satisfied, the tribunal shall cancel the notice.

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<sup>(18)</sup> 1974 c. 37.

<sup>(19)</sup> S.I. 1978/1039 (N.I. 9).

<sup>(20)</sup> Section 22 was amended by the Consumer Protection Act 1987 (c. 43), section 36 and Schedule 3, paragraph 2.

<sup>(21)</sup> Relevant amending instruments are S.I. 1984/1159 (N.I. 9) and 1987/2049 (N.I. 20).

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15th July 1991

*Michael Heseltine*  
One of Her Majesty's Principal Secretaries of  
State

SCHEDULE 1

Regulation 2(1)

FORM OF EC MARK TO BE PLACED ON OR TO ACCOMPANY PRODUCTS



SCHEDULE 2

Regulation 2(1)

ANNEX I OF COUNCIL DIRECTIVE OF 21st DECEMBER 1988 ON THE APPROXIMATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES RELATING TO CONSTRUCTION PRODUCTS  
ESSENTIAL REQUIREMENTS

The products must be suitable for construction works which (as a whole and in their separate parts) are fit for their intended use, account being taken of economy, and in this connection satisfy the following essential requirements where the works are subject to regulations containing such requirements. Such requirements must, subject to normal maintenance, be satisfied for an economically reasonable working life. The requirements generally concern actions which are foreseeable.

**Mechanical resistance and stability**

1. The construction works must be designed and built in such a way that the loadings that are liable to act on it during its construction and use will not lead to any of the following:
  - (a) collapse of the whole or part of the work;
  - (b) major deformations to an inadmissible degree;
  - (c) damage to other parts of the works or to fittings or installed equipment as a result of major deformation of the load-bearing construction;
  - (d) damage by an event to an extent disproportionate to the original cause.

**Safety in case of fire**

2. The construction works must be designed and built in such a way that in the event of an outbreak of fire:
  - the load-bearing capacity of the construction can be assumed for a specific period of time,

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the generation and spread of fire and smoke within the works are limited,  
the spread of fire to neighbouring construction works is limited,  
occupants can leave the works or be rescued by other means,  
the safety of rescue teams is taken into consideration.

### **Hygiene, health and the environment**

3. The construction work must be designed and built in such a way that it will not be a threat to the hygiene or health of the occupants or neighbours, in particular as a result of any of the following:  
the giving-off of toxic gas,  
the presence of dangerous particles or gases in the air,  
the emission of dangerous radiation,  
pollution or poisoning of the water or soil,  
faulty elimination of waste water, smoke, solid or liquid wastes,  
the presence of damp in parts of the works or on surfaces within the works.

### **Safety in use**

4. The construction work must be designed and built in such a way that it does not present unacceptable risks of accidents in service or in operation such as slipping, falling, collision, burns, electrocution, injury from explosion.

### **Protection against noise**

5. The construction works must be designed and built in such a way that noise perceived by the occupants or people nearby is kept down to a level that will not threaten their health and will allow them to sleep, rest and work in satisfactory conditions.

### **Energy economy and heat retention**

6. The construction works and its heating, cooling and ventilation installations must be designed and built in such a way that the amount of energy required in use shall be low, having regard to the climatic conditions of the location and the occupants.

## SCHEDULE 3

Regulation 2(1)

### ATTESTATION OF CONFORMITY WITH RELEVANT TECHNICAL SPECIFICATIONS

1. An EC certificate of conformity may be issued for a system of production control and surveillance or for a product itself. 2. An EC certificate of conformity may be issued by a certification body on the basis of one or more of—

- (a) (tasks for the manufacture)
  - (i) factory production control;
  - (ii) further testing of samples taken at the place of manufacture by the manufacturer in accordance with a prescribed test plan;
- (b) (tasks for the approved body)
  - (iii) initial type-testing of the product;

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- (iv) initial inspection of factory and of factory production control;
- (v) continuous surveillance, assessment and approval of factory production control;
- (vi) possibly, audit-testing of samples taken at the factory, on the market or on the construction site.

3. The EC certificate of conformity shall be presented in the official language or languages of the member State in which the product is to be used and shall contain in particular:

- the name and address of the certification body;
- the name and address of the manufacturer or his agent established in the Community;
- a description of the product (type, identification, use etc.);
- the provisions to which the product conforms;
- any particular conditions applicable to the use of the product;
- the certificate's number;
- the conditions and period of validity of the certificate, where applicable;
- the name of, and position held by, the person empowered to sign the certificate.

4. An EC declaration of conformity for a product may be made by the manufacturer, or his agent established in the Community, on the basis of such one of the following possibilities as is indicated in the relevant technical specification or in the publication of that specification:

**First possibility:**

- (a) (tasks for the manufacturer)
  - (i) initial type-testing of the product;
  - (ii) factory production control;
  - (iii) possibly, testing of samples taken at the factory in accordance with a prescribed test plan;
- (b) (tasks for the approved body)
  - (iv) certification of factory production control on the basis of—
    - initial inspection of place of manufacture and of factory production control,
    - possibly, continuous surveillance, assessment and approval of factory production control.

**Second possibility:**

- (i) initial type-testing of the product by an approved laboratory;
- (ii) factory production control.

**Third possibility:**

- (i) initial type-testing of the product by the manufacturer;
- (ii) factory production control.

5. An EC declaration of conformity shall be presented in the official language or languages of the member State in which the product is to be used and shall contain in particular:

- the name and address of the manufacturer or his agent established in the Community;
- a description of the product (type, identification, use, etc.);
- the provision to which the product conforms;
- any particular conditions applicable to the use of the product;
- the name and address of the approved body, where applicable;

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the name of, and position held by, the person empowered to sign the declaration on behalf of the manufacturer or of his authorised representative.

6. In the case of individual (and non-series) production, a declaration of conformity in accordance with paragraph 4, third possibility, shall be the appropriate attestation procedure unless the relevant technical specifications provide otherwise.

## SCHEDULE 4

Regulation 9

### PROHIBITION NOTICES AND NOTICES TO WARN

#### PART I

##### PROHIBITION NOTICES

1. A prohibition notice in respect of any construction products shall—
  - (a) state that the Secretary of State considers that the products do not satisfy the relevant requirement in regulation 3;
  - (b) set out the reasons why the Secretary of State considers that the products do not satisfy that requirement;
  - (c) specify the day on which the notice is to come into force; and
  - (d) state that the supplier may at any time make representations in writing to the Secretary of State for the purpose of establishing that the products satisfy the relevant requirement in regulation 3.
  
- 2.—(1) If representations in writing about a prohibition notice are made by the supplier 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 he 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 supplier about the notice and the statements of any witnesses examined under this Part of this Schedule.
- (2) Where the Secretary of State has appointed a person to consider representations about a prohibition notice, he shall serve a notification on the supplier which—
  - (a) states that the supplier may make oral representations to the appointed person for the purpose of establishing that the products to which the notice relates satisfy the relevant requirement in regulation 3; 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) above shall not be before the end of the period of twenty-one days beginning with the day on which the notification is served, unless the supplier otherwise agrees.
- (4) A person on whom a notification has been served under sub-paragraph (2) above or his 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 products in question satisfy the relevant requirement in regulation 3; and
  - (b) call and examine witnesses in connection with the representations.



3.—(1) Where representations in writing about a prohibition notice are made by the supplier to the Secretary of State at any time after a person has been appointed to consider representations about that notice, then, whether or not the appointed person has made a report to the Secretary of State, the following provisions of this paragraph shall apply instead of paragraph 2 above.

(2) The Secretary of State shall, before the end of the period of one month beginning with the day on which he receives the representations, serve a notification on the supplier 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 supplier may, at a place and time specified in the notification, make oral representations to the appointed person for the purpose of establishing that the products to which the notice relates satisfy the relevant requirement in regulation 3.

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

(4) A person on whom a notification has been served for the purposes of sub-paragraph (2)(b) above or his 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 products in question satisfy the relevant requirement in regulation 3; and
- (b) call and examine witnesses in connection with the representations.

4.—(1) Where a person is appointed to consider representations about a prohibition notice, it shall be his duty to consider—

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

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

(2) It shall be the duty of the Secretary of State to consider any report made to him under subparagraph (1) above and, after considering the report, to inform the supplier of his decision with respect to the prohibition notice to which the report relates.

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

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

(3) The service of a notification under sub-paragraph (1) above shall be sufficient to satisfy the requirement of paragraph 4(2) above that the supplier shall be informed of the Secretary of State's decision.

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## PART II

### NOTICES TO WARN

6.—(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, before he serves the notice, shall 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 the Secretary of State considers that the products described in the draft do not satisfy the relevant requirement in regulation 3;
- (d) sets out the reasons why the Secretary of State considers that the products do not satisfy that requirement; and
- (e) states that that person may make representations to the Secretary of State for the purpose of establishing that the products do satisfy the requirement if, before the end of the period the fourteen days beginning with the day on which the notification is served, he informs the Secretary of State—
  - (i) of his intention 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, he shall 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) above;
- (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 7(1) below.

7.—(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 6(1)(e) above 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 shall 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 Part of this Schedule.

(2) Where—

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

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- (b) the person whose representations are to be considered has informed the Secretary of State for the purposes of paragraph 6(1)(e) above that the representations he intends to make will include oral representations,

the Secretary of State shall 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) above, that time shall 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) above or his representative may, at that place and time—

- (a) make oral representations to the appointed person for the purpose of establishing that the products to which the proposed notice relates satisfy the relevant requirement in regulation 3; and
- (b) call and examine witnesses in connection with the representations.

**8.—(1)** Where a person is appointed to consider representations about a proposed notice to warn, it shall be his duty 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 7(2) above for oral representations to be made by that person or his 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 considered by him and the proposal to serve the notice.

(2) It shall be the duty of the Secretary of State to consider any report made to him under subparagraph (1) above and, after considering the report, to inform the person on whom it was proposed that a notice to warn should be served of his decision with respect to the proposal.

(3) If at any time after serving a notification on a person under paragraph 6 above 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 shall inform that person of the decision; and nothing done for the purposes of any of the preceding provisions of this Part 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 him in consequence of a decision made under sub-paragraph (2) above shall either be in the form of the draft or shall be less onerous than the draft.

**9.** 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.

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## PART III

### GENERAL

**10.**—(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, he may, by giving that person such notification as the Secretary of State considers appropriate, change the time to a later time or appoint further times at which further representations may be made or the examination of witnesses may be continued; and paragraphs 2(4), 3(4) and 7(4) above 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.

**11.** In this Schedule—

“the appointed person”, in relation to a prohibition notice or a proposal to serve a notice to warn, means the person for the time being appointed under this Schedule to consider representations about the notice or, as the case may be, about the proposed notice;

“notification” means a notification in writing;

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

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Council Directive [89/106/EEC](#) on the approximation of laws, regulations and administrative provisions of the member States relating to construction products “the Directive”. The Directive is based on the Council resolution of 7th May 1985 on a new approach to technical harmonisation and standards (OJNo. C136, 4.6.85, p. 1).

Regulation 3(1) requires construction products, except “minor part products” (this and other expressions are defined in regulation 2), to have such characteristics that the works in which they are incorporated can, if properly designed and built, satisfy essential requirements insofar as those requirements apply to the works. The essential requirements, which are expressed in terms of general objectives in Schedule 2, will be given concrete form in interpretive documents published in the Official Journal of the European Communities. The interpretative documents will in turn lead to the formulation of harmonised standards for construction products; these standards will be transposed into “relevant national standards”.

Regulation 4 provides that in the case of a construction product which bears the EC mark denoting conformity with the relevant technical specifications applicable to that product there shall be a presumption that the product satisfies the relevant requirement in regulation 3.

The EC mark may be affixed to a construction product which is not a minor part product by the manufacturer or his agent in the United Kingdom if the criteria set out in regulation 5(1) are satisfied. Those criteria involve the attestation, by means of an EC certificate or declaration of conformity,

that the product complies with a relevant technical specification. The EC mark is to be accompanied by the information described in regulation 5(2). In the case of products bearing the EC mark, regulation 6 requires certain people to keep available and produce the EC certificate or declaration of conformity or a copy of it. Regulation 7 requires the supplier of a product which is not so marked to provide information about the product.

Regulation 5(3) makes it an offence to make an EC declaration of conformity in respect of, or to affix the EC mark to, a construction product otherwise than in accordance with the Regulations. Where the EC mark has been affixed otherwise than in accordance with the Directive, it is also an offence to supply a construction product on the first occasion when it is supplied in the Community.

In the case of minor part products the Regulations require that they shall have been, and declared to have been, manufactured in accordance with the acknowledged rule of technology (regulation 3(3)).

Regulation 8 makes it an offence to supply a construction product which does not satisfy the requirement in regulation 3.

Regulations 9 to 14, which are similar in form to sections 13 to 18 of the Consumer Protection Act 1987 (c. 43) “the 1987 Act”, enable action to be taken to remove from the market construction products which do not satisfy the requirements of the Regulations. The Secretary of State may serve a notice prohibiting a person from supplying a product (a prohibition notice), requiring him to publish a warning about products supplied (a notice to warn), or requiring him to provide information to enable the Secretary of State to decide whether to exercise these powers. Failure to comply with such a notice is an offence. Enforcement authorities may apply to the court for an order that products be forfeited.

Parts III and IV are similar to Parts IV and V of the 1987 Act. Regulations 16 to 18 confer powers on officers of enforcement authorities to make test purchases, search premises and examine, seize and detain products and records, and regulation 19 permits a customs officer to seize and detain imported products. Regulation 20 creates offences of obstructing an officer with enforcement powers, failing to comply with any requirement made under the Regulations by such an officer, failing to provide information and making false statements to such an officer. Regulation 21 confers a right of appeal against the detention of a product and regulation 22 provides for compensation to be payable in certain circumstances in respect of loss or damage resulting from the seizure and detention of products. Regulation 23 provides that where a court convicts a person of an offence under Part II or makes an order for forfeiture of any products it may order the person concerned to reimburse the enforcement authority’s expenses of seizing and detaining or forfeiting the products.

Regulation 24 permits the Commissioners of Customs and Excise to disclose information relating to imported products to enforcement authorities and their officers. Regulation 25 imposes restrictions on the disclosure of information obtained in the exercise of the powers conferred by the Regulations. Regulation 26 applies a defence of due diligence to certain offences under the Regulations. Regulation 27 provides for the liability of persons whose act or default leads to the commission of an offence by others. Regulations 28 to 31 contain miscellaneous provisions relating to the service of documents, savings for certain privileges, notifications to the Secretary of State and the commencement of proceedings for certain offences.

Regulation 32 provides that it is unlawful for public and certain other bodies to make, impose or enforce any rules or conditions relating to matters covered by the essential requirements which would have the effect of restricting the supply or use of products, which satisfy the relevant requirement in regulation 3.

Regulation 33 makes provision in respect of certain cases where there may be an overlap between the Regulations and the health and safety at work legislation.