

*Draft Regulations laid before Parliament under paragraph 23(2) of Schedule 9 to the Building Safety Act 2022, for approval by resolution of each House of Parliament.*

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STATUTORY INSTRUMENTS

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**2022 No.**

**BUILDING AND BUILDINGS**

**CONSTRUCTION**

**MARKET STANDARDS**

**The Construction Products Regulations 2022**

*Made* - - - - **\*\*\***

*Coming into force* - - *in accordance with regulation 1*

The Secretary of State, in exercise of the powers conferred by paragraphs 1(1), 2, 6(b), 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, and 22 of Schedule 9 to the Building Safety Act 2022(a), makes the following Regulations.

The Secretary of State is satisfied that the conditions in paragraph 10(2) of Schedule 9 to the Building Safety Act 2022 are met and in accordance with paragraph 10(3) of that Schedule the Secretary of State has consulted such persons as the Secretary of State considers appropriate before including products on the list of safety-critical products.

In accordance with paragraph 23(2) of Schedule 9 to the Building Safety Act 2022 a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

**PART 1**

**Introductory provisions**

**Citation and commencement**

**1.** These Regulations may be cited as the Construction Products Regulations 2022 and come into force 21 days after the day on which they are made.

## Extent

2.—(1) Except as provided in paragraphs (2) and (3), these Regulations extend to England and Wales, Scotland and Northern Ireland.

(2) Part 6 extends to Northern Ireland only.

(3) Part 7 extends to England and Wales and Scotland only.

## General interpretation

3. In these Regulations—

“the 2011 Regulation (NI)” means Regulation (EU) No. 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC(a);

“approved body” means a body approved in accordance with regulation 27;

“approved body requirements” means the requirements set out in Schedule 3;

“authorised representative” means a person who is appointed in accordance with regulation 4;

“AVCP” means the assessment and verification of constancy of performance;

“basic requirements for construction works” means the requirements set out in Schedule 2;

“construction product” means any product or kit which is placed on the market for permanent incorporation in any construction works;

“construction works” means the process of constructing a building, structure or any civil engineering projects, including infrastructure such as roads, bridges and tunnels and any structure resulting from that process;

“Declaration of Performance (SC)” means a declaration required to be drawn up in accordance with regulation 25;

“distributor” means any person in the supply chain, other than the manufacturer, the manufacturer’s authorised representative or the importer, who makes a construction product available on the market;

“economic operator” means a manufacturer, an authorised representative, an importer, a distributor or a fulfilment service provider;

“enforcement authority” has the meaning given to it in regulation 35;

“factory production control” has the meaning given to it in regulation 16;

“fulfilment service provider” means a person who—

(a) is established in the United Kingdom;

(b) offers, in the course of a commercial activity, at least two of the following services in relation to a construction product—

(i) warehousing;

(ii) packaging;

(iii) addressing and dispatching;

(c) does not have any property right in the construction product; and

(d) is not solely any of the following—

(i) a postal service provider;

(ii) a parcel delivery provider; or

(ii) a freight transport service provider;

“importer” means a person who—

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(a) OJ L 88, 04.04.2011, p5.

(a) is established in the United Kingdom; and

(b) places a construction product from a country outside of the United Kingdom on the market;

“kit” means two or more separate components that must be put together before they are incorporated into the construction works;

“life cycle” means the consecutive and interlinked stages of a construction product’s life, from raw material acquisition or generation from natural resources to final disposal;

“make available on the market” means any supply of a construction product for distribution or use on the market in the United Kingdom in the course of a commercial activity, whether in return for payment or free of charge, and related expressions are to be construed accordingly;

“manufacturer” means a person who—

(a) manufactures a construction product or has a construction product designed or manufactured; and

(b) markets a construction product under their name or trademark;

“place on the market” means the first making available of a construction product on the market in the United Kingdom, and related expressions are to be construed accordingly;

“RAMS” means the Regulation No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products relating to the marketing of products(a);

“safety-critical product” means a construction product—

(a) the performance of which has an effect on the performance of the construction works with respect to the basic requirements for construction works; and

(b) which is listed in column A of Table A set out in Schedule 1;

“safety-critical property” means a safety-critical property set out in a safety-critical standard, determined in accordance with regulation 16;

“safety-critical standard” means a standard which is—

(a) prepared in accordance with regulation 16; and

(b) listed in column B of Table A set out in Schedule 1;

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

“technical documentation (SC)” means the documentation describing all relevant elements related to the AVCP system required for the safety-critical product set out in the applicable safety-critical standard;

“UK marking” means the marking set out in Annex 2 of RAMS;

“UK national accreditation body” means the body appointed by the Secretary of State in accordance with Article 4 of RAMS;

“unique identification code” means a code consisting of numbers or letters or a combination of numbers and letters, determined by the manufacturer in order to be able to identify the manufacturer’s construction product.

### **Authorised representative**

4.—(1) A manufacturer may, by written mandate, appoint a person established in the United Kingdom to undertake specific tasks on the manufacturer’s behalf.

(2) The authorised representative must perform the tasks specified in the mandate.

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(a) EUR 2008/765, as amended by S.I. 2019/696.

(3) A manufacturer who has appointed an authorised representative to undertake on the manufacturer's behalf a task under these Regulations remains responsible for the proper performance of that task.

(4) An authorised representative must comply with all the obligations imposed on the manufacturer by these Regulations which relate to the tasks that the authorised representative is appointed by the manufacturer to undertake and accordingly—

- (a) as far as those obligations are concerned, a reference in these Regulations to the manufacturer (except in this regulation) is to be taken as including a reference to the authorised representative; and
- (b) if the authorised representative contravenes or fails to comply with any of those obligations, an enforcement authority may commence proceedings against that authorised representative as though the authorised representative were the manufacturer.

## PART 2

### General safety requirement

#### CHAPTER 1

##### Interpretation and application

#### **Interpretation for this Part**

##### **5. In this Part—**

“customer information” means—

- (a) information that describes the construction product in sufficient detail for end-users to determine whether the product is suitable for the reasonably foreseeable uses to which they may put it;
- (b) safety information and information about installation and disposal of the construction product; and
- (c) instructions for use;

“general safety requirement” means the requirement set out in regulation 8;

“normal or reasonably foreseeable conditions of use” include—

- (a) an intended use of the construction product in accordance with the information provided in the instructions for use;
- (b) use that is not an intended use in accordance with the information provided in the instructions for use but which may—
  - (i) result from normal or reasonably foreseeable conditions of use;
  - (ii) be considered to be a reasonably foreseeable use because advertising or marketing material in relation to the product implies that it is;
- (c) installation and maintenance;
- (d) reasonably foreseeable circumstances in which the construction product might come under stress (for example, a fire);
- (e) storage, transportation and packaging;

“technical documentation” means—

- (a) information describing the construction product, including its characteristics and composition;
- (b) the risk assessment referred to in regulation 10; and

- (c) any other information that the manufacturer considers relevant with regard to compliance with the general safety requirement.

### **Safe product**

6.—(1) For the purposes of this Part, a “safe product” is a construction product which, under normal or reasonably foreseeable conditions of use, taking into account the matters specified in paragraph (2)—

- (a) does not present any risk to the health or safety of persons; or
- (b) if it does, the risk is as low as it can be compatibly with using the product.

(2) In determining whether a product is a safe product, the following must be taken into account—

- (a) the characteristics of the product, including its composition, packaging, instructions for assembly and instructions for installation and maintenance;
- (b) the effect of the product on other products, where it is reasonably foreseeable that it will be used with other products;
- (c) the product’s life cycle and duration;
- (d) the presentation of the product, any advertising or marketing in relation to the product, the labelling, any warnings, and customer information; and
- (e) the categories of persons at risk who may handle, use or be exposed to the product.

### **Application**

7.—(1) Where a construction product is subject to specific safety requirements imposed by an enactment other than these Regulations or the 2011 Regulation, this Part only applies to the aspects and risks or categories of risk not covered by those requirements.

(2) Paragraph (1) means that the definition of “safe product” in regulation 6 and the provisions of regulations 8 to 15—

- (a) do not apply in relation to a construction product which is subject to such specific safety requirements in so far as risks or categories of risk are covered by those specific safety requirements; and
- (b) the remainder of these Regulations apply except where there are specific provisions governing the aspects in those other enactments.

(3) This Part does not apply to any construction product that is placed or is to be placed only on the market in Northern Ireland to which there is an NI Protocol obligation that requires that the product is able to be placed on the market in Northern Ireland.

(4) In this Regulation “NI Protocol obligation” means an obligation created or arising by or under the Northern Ireland Protocol, whether or not an obligation to which section 7A(2) of the European Union (Withdrawal) Act 2018(a) applies.

## **CHAPTER 2**

### **Obligations of economic operators**

#### **General safety requirement**

8. An economic operator must not make a construction product available on the market unless it is a safe product.

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(a) 2018 c. 16; section 7A was inserted by section 5 of the European Union (Withdrawal Agreement) Act 2020 (c.1).

## **Requirement for an economic operator to be based in the United Kingdom**

9.—(1) A construction product may only be placed on the market where there is an economic operator established in the United Kingdom who is able to—

- (a) provide an enforcement authority with a copy of the technical documentation for that construction product;
- (b) co-operate and provide information to an enforcement authority, in accordance with a request made under regulation 42.

(2) The economic operator referred to in paragraph (1) must, as soon as reasonably practicable, inform the Secretary of State where they have reason to believe the construction product is not in conformity with the general safety requirement.

## **Obligations on manufacturers**

10.—(1) In order to comply with the general safety requirement a manufacturer must—

- (a) before a construction product is placed on the market—
  - (i) carry out a risk assessment of the construction product that covers the matters referred to in paragraph (2) or have such an assessment carried out;
  - (ii) design and construct the construction product taking into account that risk assessment, in particular taking into account the ways in which any identified risks may be reduced or eliminated;
  - (iii) draw up the technical documentation in a readily accessible format and in easily understandable English;
  - (iv) ensure that the construction product is accompanied by customer information in easily understandable English;
  - (v) label the construction product in accordance with paragraph (3);
- (b) supply the technical documentation—
  - (i) to other economic operators within a reasonable period upon their request; and
  - (ii) to an enforcement authority in accordance with a request made under regulation 42;
- (c) retain the technical documentation for a period of 10 years beginning on the day on which the construction product was made available on the market by the manufacturer;
- (d) where appropriate, having regard to the risks to the health and safety of persons presented by a construction product—
  - (i) undertake sample testing of the construction product;
  - (ii) investigate and keep a register of complaints concerning the safety of the construction product; and
  - (iii) keep other economic operators and the relevant enforcement authority informed of the results of any such testing or investigation where the construction product presents a risk or may present a risk.

(2) The risk assessment referred to in paragraph (1) must—

- (a) identify all normal or reasonably foreseeable conditions of use of the construction product;
- (b) identify all risks that exists if the construction product is used in accordance with any normal or reasonably foreseeable conditions of use, taking into account, amongst other things, any hazards or harm that have been caused in the past by the construction product or by construction products that have properties that are the same as or similar to those it has;
- (c) identify ways in which the risks referred to in sub-paragraph (b) may be reduced or eliminated.

(3) The following information must be either affixed to the construction product or, where that is not possible, to a label affixed to the construction product or to the packaging of the construction product—

- (a) the manufacturer's name, registered trade name or registered trademark;
- (b) the manufacturer's address; and
- (c) the unique identification code of the construction product.

(4) Where a manufacturer has reason to believe that a construction product that the manufacturer placed on the market is not in conformity with the general safety requirement, the manufacturer must immediately take the corrective measures necessary to—

- (a) bring the construction product into conformity with the general safety requirement;
- (b) withdraw the product; or
- (c) recall the product.

### **Obligations of importers**

**11.—**(1) In order to comply with the general safety requirement, an importer must—

- (a) before placing a construction product on the market—
  - (i) ensure that the manufacturer has complied with the manufacturer's obligations under regulation 10(1)(a);
  - (ii) label the construction product in accordance with paragraph (2);
- (b) supply the technical documentation—
  - (i) to any distributor to whom the importer has made the product available within a reasonable period upon request; and
  - (ii) to an enforcement authority in accordance with a request made under regulation 42;
- (c) supply the customer information when making the construction product available on the market;
- (d) to the extent it is reasonable to do so, taking into account the risks posed by the product that the importer has placed on the market—
  - (i) undertake sample testing of the construction product;
  - (ii) investigate and keep a register of complaints concerning the safety of the construction product; and
  - (iii) keep other economic operators and the relevant enforcement authority informed of the results of any testing or investigation under this regulation where the construction product presents a risk or may present a risk.

(2) The name, registered trade name or registered trademark and the address of the importer must be affixed to the construction product, or where that is not possible, to a label affixed to the construction product or to the packaging of the construction product.

(3) Where an importer has reason to believe that a construction product that the importer has placed on the market is in not conformity with the general safety requirement, the importer must immediately take the corrective measures necessary to—

- (a) bring the construction product into conformity with the general safety requirement;
- (b) withdraw the product; or
- (c) recall the product.

### **Obligation of distributors**

**12.—**(1) In order to comply with the general safety requirement, a distributor must—

- (a) before making a construction product available on the market, take all reasonable care to ensure the manufacturer and importer have complied with their obligations under regulation 10 or 11;
- (b) when making a construction product available on the market, supply the customer information with the construction product.

(2) Where a distributor has reason to believe that a construction product that the distributor has made available on the market is in not conformity with the general safety requirement, the distributor must immediately take the corrective measures necessary to—

- (a) bring the construction product into conformity with the general safety requirement;
- (b) withdraw the product; or
- (c) recall the product.

### **Obligations of authorised representatives and fulfilment service providers**

13.—(1) Paragraph (2) applies where—

- (a) there is no manufacturer, importer or distributor established in the United Kingdom; and
- (b) the written mandate of the manufacturer’s authorised representative specifies that the authorised representative may undertake the tasks set out in regulation 9.

(2) Where this paragraph applies, the name, registered trade name or registered trademark and the address of the authorised representative must be indicated on a document accompanying the construction product or on its packaging.

(3) Paragraph (4) applies where there is no other economic operator established in the United Kingdom.

(4) Where this paragraph applies, a fulfilment service provider that handles a construction product must indicate their name, registered trade name or registered trademark and their address on a document accompanying the construction product or on its packaging.

### **Cases in which obligations of manufacturers apply to importers or distributors**

14. An importer or distributor is to be considered a manufacturer for the purposes of this Part, and is subject to the obligations set out in regulation 10, where that importer or distributor—

- (a) places a construction product on the market under their own name, registered trade name or registered trademark; or
- (b) modifies a construction product already made available on the market in such a way that it may affect the product’s conformity with the general safety requirement.

### **Co-operation obligation of all economic operators**

15. An economic operator must co-operate with an enforcement authority on any action taken to reduce or eliminate any risk posed by a construction product made available on the market or (in the case of a fulfilment service provider) handled by the economic operator.



## PART 3

### Safety-critical construction products

#### CHAPTER 1

##### Safety-critical standard

###### **Safety-critical standard**

**16.**—(1) The Secretary of State may, after consultation with such persons as the Secretary of State considers appropriate, request that the British Standards Institution draw up a safety-critical standard for a safety-critical product.

(2) The safety-critical standard referred to in paragraph (1)—

(a) must set out—

- (i) the intended uses of the safety-critical product for the purposes of the safety-critical standard;
- (ii) the properties of the safety-critical product, which are to be considered as safety-critical properties, determined in accordance with paragraph (3);
- (iii) the required performance of the safety-critical product in relation to each safety-critical property; and
- (iv) the AVCP system required;

(b) may set out—

- (i) other properties of the safety-critical product, determined in accordance with paragraph (3);
- (ii) where relevant, the required performance of the safety-critical product in relation to those other properties; and
- (iii) where relevant, the AVCP system required.

(3) The safety-critical and other properties of the safety-critical product must be determined by reference to the basic requirements for construction works relevant to the safety-critical product.

(4) The required performance of the safety-critical product may be expressed—

- (a) by reference to a level, range, threshold level or product type; or
- (b) by description.

(5) The AVCP system—

(a) must include provision as to—

- (i) required factory production control;
- (ii) assessment of the performance of the safety-critical product, carried out on the basis of testing (including sampling), calculation, tabulated values or descriptive documentation of the product;

(b) may include provision as to—

- (i) testing of samples taken at the manufacturing plant in accordance with a prescribed test plan;
- (ii) initial inspection of the manufacturing plant and of factory production control;
- (iii) continuing surveillance, assessment and evaluation of factory production control;
- (iv) testing to ensure that series production maintains the required performance of products in the series, in relation to each safety-critical property;
- (v) ensuring that the AVCP system fully tests the safety and constancy of performance of the construction product;

- (vi) the involvement of an approved body in the testing or certification of any of the matters listed in this sub-paragraph or sub-paragraph (a).
- (6) Where paragraph (7) is met, the Secretary of State may include—
  - (a) the safety-critical product in column A of Table A; and
  - (b) the reference to the safety-critical standard in column B of Table A; and
  - (c) the date from which the safety-critical standard applies, in column C of Table A.
- (7) This paragraph is met where the Secretary of State considers, after consultation with such persons as the Secretary of State considers appropriate, that the safety-critical standard—
  - (a) satisfies the requirements of paragraphs (2) to (5); and
  - (b) sufficiently mitigates the risk of failure of the safety-critical product, when used in line with its intended uses, causing death or serious injury to any person.
- (8) In this regulation—
  - “factory production control” means the documented, permanent and internal control of production in a factory;
  - “level” means the result of the performance of a safety-critical product in relation to a safety-critical or other property expressed as a numerical value;
  - “prescribed” means prescribed by the safety-critical standard;
  - “product type” means the set of representative performance levels or classes of a safety-critical product, in relation to its safety-critical or other properties, produced using a given combination of raw materials or other elements in a specific process;
  - “range” means a range of levels, delimited by a minimum and a maximum value, of performance of a safety-critical product;
  - “threshold level” means a minimum or maximum performance level of a safety-critical or other property of a safety-critical product.

## CHAPTER 2

### Obligations of economic operators

#### **Requirement for an economic operator to be based in the United Kingdom**

17.—(1) A safety-critical product may only be placed on the market where there is an economic operator established in the United Kingdom who is able to—

- (a) provide an enforcement authority with a copy of the Declaration of Performance (SC);
- (b) co-operate and provide information to an enforcement authority, in accordance with a request made under regulation 42.

(2) The economic operator referred to in paragraph (1) must, as soon as reasonably practicable, inform the Secretary of State where they have reason to believe the safety-critical product is not in conformity with the Declaration of Performance (SC).

#### **Obligations of manufacturers**

18.—(1) Before placing a safety-critical product on the market, a manufacturer must—

- (a) apply the AVCP system set out in the safety-critical standard that applies to the safety-critical product;
- (b) ensure that the safety-critical product meets the required performance for each safety-critical property set out in the safety-critical standard that applies to it;
- (c) draw up the technical documentation (SC);
- (d) draw up the Declaration of Performance (SC) in accordance with regulation 25;

- (e) mark the safety-critical product in accordance with regulation 19;
  - (f) ensure that the safety-critical product is accompanied by instructions and safety information in easily understandable English;
  - (g) ensure that procedures are in place to ensure that series production maintains compliance with the Declaration of Performance (SC);
  - (h) ensure that, where relevant, the Declaration of Performance (SC) is accompanied by the information required by Article 31 or Article 32 of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals<sup>(a)</sup>.
- (2) In complying with the obligation in paragraph (1)(g) the manufacturer must take into account—
- (a) any change in design or materials used in the safety-critical product;
  - (b) any change to the safety-critical standard by reference to which the Declaration of Performance (SC) was drawn up.
- (3) A manufacturer may only draw up a Declaration of Performance (SC) where the requirements of the safety-critical standard that applies to the safety-critical product have been met.
- (4) The Declaration of Performance (SC) must accompany the safety-critical product when the manufacturer places the safety-critical product on the market.
- (5) A manufacturer must not place a safety-critical product on the market if—
- (a) the requirements of the safety-critical standard that applies to it have not been complied with; or
  - (b) the safety-critical product is not in conformity with the Declaration of Performance (SC).
- (6) After placing a safety-critical product on the market, a manufacturer must—
- (a) where appropriate, having regard to the risks to the health and safety of persons presented by a safety-critical product, carry out sample testing of safety-critical products that the manufacturer has placed on the market;
  - (b) investigate complaints about the safety-critical product;
  - (c) inform other economic operators in the supply chain of the complaint referred to in sub-paragraph (b);
  - (d) keep and maintain a register for a period of 10 years beginning on the date on which the complaint referred to in sub-paragraph (b) was made of—
    - (i) the complaint; and
    - (ii) any action taken in relation to the complaint;
  - (e) provide information to an enforcement authority, in accordance with a request made under regulation 42;
  - (f) co-operate with an enforcement authority on any action taken to reduce or eliminate any risk posed by a safety-critical product placed on the market by the manufacturer;
  - (g) retain the technical documentation (SC) and Declaration of Performance (SC) for a period of 10 years, beginning on the day on which the manufacturer placed the safety-critical product on the market.
- (7) Where a manufacturer has reason to believe that a safety-critical product that the manufacturer has placed on the market is not in conformity with the Declaration of Performance (SC), the manufacturer must immediately take the corrective measures necessary to—
- (a) bring the safety-critical product into conformity with the Declaration of Performance (SC);
  - (b) withdraw the safety-critical product; or

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(a) EUR 1907/2006, as amended by S.I. 2019/758.

(c) recall the safety-critical product.

(8) Where a manufacturer has reason to believe that a safety-critical product that the manufacturer has placed on the market presents a risk to the health or safety of persons, the safety of property or other aspects of public interest protection, the manufacturer must immediately inform the Secretary of State of the risk, giving details, in particular of—

- (a) where relevant, the respect in which the safety-critical product is not in conformity with the Declaration of Performance (SC);
- (b) any risks identified; and
- (c) any corrective measures taken by the manufacturer.

### **Requirements for marking safety-critical product**

**19.**—(1) A manufacturer may only mark a safety-critical product in accordance with paragraph (2) where the requirements of the safety-critical standard that applies to it have been met.

(2) A manufacturer must affix the UK marking to a safety-critical product, or where that is not possible, to a label affixed to the safety-critical product or to the packaging of the safety-critical product.

(3) Article 30 of RAMS applies to the affixing of the UK marking under this regulation.

### **Obligations of importers**

**20.**—(1) Before placing a safety-critical product on the market, an importer must ensure that—

- (a) the safety-critical product meets the required performance for each safety-critical property set out in the safety-critical standard that applies to it;
- (b) the manufacturer—
  - (i) has drawn up the Declaration of Performance (SC) in accordance with regulation 25;
  - (ii) has drawn up the technical documentation (SC);
  - (iii) has affixed the UK marking in accordance with regulation 19;
- (c) the safety-critical product is accompanied by—
  - (i) the Declaration of Performance (SC);
  - (ii) where relevant, the information required by Article 31 or Article 32 of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals; and
  - (iii) instructions and safety information in easily understandable English;

(2) An importer must not place a safety-critical product on the market if—

- (a) the requirements of the safety-critical standard that applies to it have not been complied with; or
- (b) the safety-critical product is not in conformity with the Declaration of Performance (SC).

(3) An importer must ensure that the conditions under which any safety-critical product for which the importer has responsibility is stored or transported do not jeopardise the product's conformity with—

- (a) the declared performance as set out in the Declaration of Performance (SC); or
- (b) any other applicable requirements of this Part.

(4) After placing a safety-critical product on the market, an importer must—

- (a) where appropriate, having regard to the risks to the health and safety of persons presented by a safety-critical product, carry out sample testing of safety-critical products that the importer has placed on the market;
- (b) investigate complaints about the safety-critical product;

- (c) inform other economic operators in the supply chain of the complaint referred to in sub-paragraph (b);
- (d) keep and maintain a register for a period of 10 years, beginning on the date on which the complaint referred to in sub-paragraph (b) was made, of—
  - (i) the complaint; and
  - (ii) any action taken in relation to the complaint;
- (e) provide information to an enforcement authority, in accordance with a request made under regulation 42;
- (f) co-operate with an enforcement authority on any action taken to eliminate any risk posed by a safety-critical product placed on the market by the importer;
- (g) retain the technical documentation (SC) and Declaration of Performance (SC) for a period of 10 years, beginning on the day on which the importer placed the safety-critical product on the market.

(5) Where an importer has reason to believe that a safety-critical product that the importer has placed on the market is not in conformity with the Declaration of Performance (SC), the importer must immediately take the corrective measures necessary to—

- (a) bring the safety-critical product into conformity with the Declaration of Performance (SC);
- (b) withdraw the safety-critical product; or
- (c) recall the safety-critical product.

(6) Where the importer has reason to believe that a safety-critical product that an importer has placed on the market presents a risk to the health or safety of persons, the safety of property or other aspects of public interest protection, the importer must immediately inform the Secretary of State of the risk, giving details, in particular of—

- (a) the respect in which the safety-critical product is not in conformity with the Declaration of Performance (SC);
- (b) any risks identified; and
- (c) any corrective measures taken by the importer.

### **Obligations of distributors**

21.—(1) When making a safety-critical product available on the market, a distributor must—

- (a) act with all reasonable care to ensure that the safety-critical product meets the required performance for each safety-critical property set out in the safety-critical standard that applies to it;
- (b) ensure that the UK marking is affixed to the safety-critical product;
- (c) ensure that the safety-critical product is accompanied by—
  - (i) the Declaration of Performance (SC);
  - (ii) where relevant, the information required by Article 31 or Article 32 of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals;
  - (iii) instructions and safety information in easily understandable English.

(2) A distributor must not make a safety-critical product available on the market where the distributor has reason to believe that—

- (a) the requirements of the safety-critical standard that applies to the safety-critical product have not been complied with; or
- (b) the safety-critical product is not in conformity with the Declaration of Performance (SC).

(3) A distributor must ensure that the conditions under which any safety-critical product for which the distributor has responsibility is stored or transported do not jeopardise the product's conformity with—

- (a) the declared performance as set out in the Declaration of Performance (SC); or
- (b) any other applicable requirements of this Part.

(4) After making a safety-critical product available on the market, a distributor must—

- (a) provide information to an enforcement authority, in accordance with a request made under regulation 42;
- (b) co-operate with an enforcement authority on any action taken to eliminate any risk posed by a safety-critical product made available on the market by the distributor.

(5) Where a distributor has reason to believe that a safety-critical product that the distributor has made available on the market is not in conformity with the Declaration of Performance (SC), the distributor must immediately make sure that the necessary corrective measures are taken to—

- (a) bring the safety-critical product into conformity with the Declaration of Performance (SC);
- (b) withdraw the safety-critical product; or
- (c) recall the safety-critical product.

(6) Where a safety-critical product that a distributor has made available on the market presents a risk to the health or safety of persons, the safety of property or other aspect of public interest protection, the distributor must immediately inform the Secretary of State of the risk, giving details, in particular of—

- (a) the respect in which the safety-critical product is not in conformity with the Declaration of Performance (SC);
- (b) any risks identified; and
- (c) any corrective measures taken by the distributor.

### **Obligations of authorised representatives**

**22.**—(1) The requirements in regulation 18(1) must not form part of the authorised representative's mandate.

(2) The authorised representative's mandate must allow the authorised representative to perform the following obligations of the manufacturer, on the manufacturer's behalf—

- (a) provide information to an enforcement authority in accordance with regulation 18(6)(e);
- (b) co-operate with an enforcement authority in accordance with regulation 18(6)(f); and
- (c) retain the technical documentation (SC) and Declaration of Performance (SC) in accordance with regulation 18(6)(g).

(3) Paragraph (4) applies where—

- (a) there is no manufacturer, importer or distributor established in the United Kingdom in respect of the safety-critical product; and
- (b) the written mandate of the manufacturer's authorised representative specifies that the authorised representative may undertake the tasks set out in regulation 17.

(4) Where this paragraph applies, the name, registered trade name or registered trademark and the address of the authorised representative must be indicated on a document accompanying the safety-critical product or on its packaging.

### **Obligations of fulfilment service providers**

**23.**—(1) A fulfilment service provider must ensure that the conditions under which any safety-critical product which the fulfilment service provider handles is stored or transported do not jeopardise the product's conformity with—

- (a) the declared performance as set out in the Declaration of Performance (SC); or
- (b) any other applicable requirements of this Part.

(2) Where there is no other economic operator established in the United Kingdom in respect of a safety-critical product, in relation to a safety critical product that a fulfilment service provider handles, a fulfilment service provider must—

- (a) indicate their name, registered trade name or registered trademark and their address and contact details on a document accompanying the product or on its packaging;
- (b) verify that a Declaration of Performance (SC) has been drawn up;
- (c) provide information to an enforcement authority, in accordance with a request made under regulation 42; and
- (d) co-operate with an enforcement authority on any action taken to eliminate any risk posed by the safety-critical product.

(3) A fulfilment service provider must, as soon as reasonably practicable, inform the Secretary of State if it has reason to believe that a safety-critical product that it handles presents a risk to the health and safety of persons, the safety of property or other aspects of public interest protection.

### **Cases in which obligations of manufacturers apply to importers or distributors**

**24.** An importer or distributor is to be considered a manufacturer for the purposes of these Regulations, and is subject to the obligations set out in regulation 18, where that importer or distributor—

- (a) places a safety-critical product on the market under their own name, registered trade name or registered trademark; or
- (b) modifies a safety-critical product already on the market in such a way that it may affect the product's conformity with the Declaration of Performance (SC).

### **Declaration of Performance (SC)**

**25.—**(1) The Declaration of Performance (SC) must take the form set out in Schedule 4.

(2) The Declaration of Performance (SC) must include—

- (a) the name, address, registered trade name or registered trademark of the manufacturer;
- (b) the name and address of any authorised representative of the manufacturer;
- (c) the unique identification code of the safety-critical product for which the Declaration of Performance (SC) has been drawn up;
- (d) the intended uses of the safety-critical product, in accordance with the safety-critical standard which applies to the product;
- (e) the safety-critical properties of the safety-critical product;
- (f) any other properties of the safety-critical product, as set out in the safety-critical standard which applies to the product, in relation to which the manufacturer is declaring performance;
- (g) the performance of the safety-critical product in relation to each of the safety-critical properties;
- (h) where relevant, the performance of the safety-critical product in relation to the other properties covered by the safety-critical standard that applies to the product;
- (i) the reference number and the date of issue of the safety-critical standard that applies to the safety-critical product;
- (j) the name and identification number of the approved body, where an approved body is involved in the AVCP system;

- (k) a statement by the manufacturer that the manufacturer takes responsibility for the conformity of the safety-critical product with the performance declared in the Declaration of Performance (SC).
- (3) The Declaration of Performance (SC) must be in English.

### **Supply and retention of Declaration of Performance (SC)**

**26.**—(1) The obligations in regulations 18(4) and 21(1)(c)(i) may be met by compliance with paragraph (2) or (3).

(2) Where a batch of the same product is supplied to a single user, it may be accompanied by a single copy of the Declaration of Performance (SC).

(3) The Declaration of Performance (SC) may be retained or supplied—

- (a) in paper or electronic form; or
- (b) via a website, provided that it remains available on the website for at least 10 years from the date on which the safety-critical product was placed on the market.

## CHAPTER 3

### Approved Bodies

#### **Approved bodies**

**27.**—(1) An approved body is a body approved by the Secretary of State in accordance with this regulation to undertake activities in an AVCP system.

(2) The Secretary of State may only approve a body where the Secretary of State is satisfied that the following conditions are met—

- (a) the body has applied to the Secretary of State and that application is accompanied by—
  - (i) a description of the activities in the AVCP system as set out in any safety-critical standard that the body intends to carry out; and
  - (ii) either—
    - (aa) an accreditation certificate; or
    - (bb) the documentary evidence necessary for the Secretary of State to verify, recognise and regularly monitor the approved body's compliance with the approved body requirements; and
- (b) the body meets the approved body requirements.

(3) When deciding whether to approve a body that meets the conditions in paragraph (2), the Secretary of State may—

- (a) have regard to any other matter which appears to the Secretary of State to be relevant; and
- (b) set conditions that the approved body must meet.

(4) Paragraph (1) has effect subject to regulation 29 (restriction, suspension or withdrawal of approval).

(5) For the purposes of this regulation “accreditation certificate” means a certificate issued by the UK national accreditation body, attesting that the approved body meets the approved body requirements.

#### **Monitoring of approved bodies**

**28.** The Secretary of State must monitor each approved body with a view to verifying that the body—



- (a) continues to meet the approved body requirements;
- (b) continues to meet any condition set by the Secretary of State under regulation 27(3)(b);
- (c) carries out its functions in accordance with the AVCP system for which it has been approved to carry out activities.

### **Restriction, suspension or withdrawal of approval**

29.—(1) Where the Secretary of State determines that an approved body no longer meets the approved body requirements, the Secretary of State must restrict, suspend or withdraw the body's status as an approved body under regulation 27.

(2) Where the Secretary of State determines that an approved body no longer meets a condition referred to in regulation 27(3)(b), the Secretary of State may restrict, suspend or withdraw the body's status as an approved body under regulation 27.

(3) In determining what action is required under paragraph (1) or (2), the Secretary of State must have regard to the seriousness of the non-compliance.

(4) Before taking action under paragraph (1) or (2), the Secretary of State must—

- (a) give notice in writing to the approved body of the proposed action and the reason for it;
- (b) give the approved body an opportunity to make representations to the Secretary of State regarding the proposed action, within a reasonable period from the date of the notice; and
- (c) consider any representations made by the approved body.

(5) Where the Secretary of State has taken action in respect of an approved body under paragraph (1) or (2), or where an approved body has ceased its activity, the approved body must, at the request of the Secretary of State—

- (a) transfer its files relating to the activities it has undertaken as an approved body to another approved body or to the Secretary of State; or
- (b) keep its files relating to the activities it has undertaken as an approved body available for enforcement authorities for a period of 10 years from the date on which they were created.

### **Subsidiaries and contractors**

30.—(1) An approved body may sub-contract specific activities or use a subsidiary to carry out such activities provided—

- (a) the approved body is satisfied that the sub-contractor or subsidiary meets the approved body requirements;
- (b) the approved body has informed the Secretary of State that it is satisfied that the sub-contractor or subsidiary meets those requirements;
- (c) the economic operator for whom the activities are to be carried out has consented to the activities being carried out by that person.

(2) The approved body which sub-contracts specific activities or uses a subsidiary to carry out such activities remains responsible for the proper performance of those activities (irrespective of where the sub-contractor or subsidiary is established).

(3) Where an approved body sub-contracts, or uses a subsidiary to carry out a specific activity, the approved body must, for a period of 10 years beginning on the day on which the activity is first carried out, keep available for inspection by the Secretary of State all relevant documentation concerning—

- (a) the assessment of the qualifications of the sub-contractor or subsidiary; and
- (b) the activity carried out by the sub-contractor or subsidiary.

(4) In this regulation “subsidiary” has the meaning given to it in section 1159 of the Companies Act 2006(a).

### **Register of approved bodies**

**31.**—(1) The Secretary of State must—

- (a) assign an approved body identification number to each approved body; and
- (b) compile and maintain a register of—
  - (i) approved bodies;
  - (ii) their approved body identification numbers;
  - (iii) the activities for which they have been approved; and
  - (iv) any restrictions on those activities.

(2) The register referred to in paragraph (1) must be made publicly available.

### **UK national accreditation body**

**32.** The Secretary of State may authorise the UK national accreditation body to carry out the following activities on behalf of the Secretary of State—

- (a) assessing whether a body meets the approved body requirements;
- (b) monitoring approved bodies in accordance with regulation 28;
- (c) compiling and maintaining the register of approved bodies, in accordance with regulation 31.

## **PART 4**

### **Claims in respect of construction products**

#### **False or misleading claims about performance**

**33.**—(1) An economic operator must not make a claim, representation or commercial communication that falls within paragraph (2).

(2) A claim, representation or commercial communication falls within this paragraph if it—

- (a) relates to a construction product that the economic operator makes available on the market;
- (b) relates to the effect the performance of the construction product has, or is likely to have, on a construction works with respect to any of the basic requirements for construction works; and
- (c) the economic operator knows, or is reckless as to whether, the claim, representation or commercial communication is false or misleading.

(3) For the purposes of this regulation a claim, representation or commercial communication which omits anything that is relevant to the construction product’s effect on a construction works with respect to any of the basic requirements for construction works is to be treated as being misleading.

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(a) 2006 c. 46.

## PART 5 Enforcement

### CHAPTER 1 Introductory provisions

#### Interpretation for this Part

34.—(1) In this Part—

“the CP Regulations” means—

- (a) these Regulations;
- (b) the 2011 Regulation; and
- (c) (except in relation to regulations 36 to 40) the 2011 Regulation (NI);

“Declaration of Performance” means—

- (a) a Declaration of Performance (SC);
- (b) a Declaration of Performance drawn up in accordance with Articles 4 and 6 of the 2011 Regulation; or
- (c) a Declaration of Performance drawn up in accordance with Articles 4 and 6 of the 2011 Regulation (NI);

“goods” includes any construction product and does not include any document;

“local weights and measures authority” means a local weights and measures authority within the meaning set out in section 69 of the Weights and Measures Act 1985(a);

“occupier” in relation to premises, means any person an enforcement authority or an officer of an enforcement authority reasonably suspects to be the occupier of the premises;

“officer of an enforcement authority” means a person duly authorised by an enforcement authority to exercise the powers in this Part;

“premises” includes any construction site, stall or vehicle;

“risk” means—

- (d) a risk to the health and safety of persons, the safety of property or other aspects of public interest protection; and
- (e) where a Declaration of Performance has been drawn up in relation to a construction product, a risk in relation to the fulfilment of the basic requirements for construction works.

(2) A reference to a construction product being “in conformity” means—

- (a) that the construction product is in conformity with—
  - (i) any requirement applicable to that product under Part 2 of these Regulations (general safety requirement); and
  - (ii) any Declaration of Performance drawn up in relation to that product; and
- (b) that each economic operator has complied or is complying in relation to the construction product with any obligation or prohibition imposed on them under any of the CP Regulations;

and related expressions are to be construed accordingly.

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(a) 1985 c.72; section 69 was amended by the Statute Law (Repeals) Act 1989 (c.43), Schedule 1, the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 144 and the Local Government (Wales) Act 1994 (c.19), Schedule 16 paragraph 75.

## CHAPTER 2

### Enforcement authorities

#### **Enforcement authority**

**35.**—(1) For the purposes of the CP Regulations, each of the bodies referred to in paragraphs (2) to (5) is an “enforcement authority”.

(2) In Great Britain—

- (a) within its area, a local weights and measures authority must enforce the CP Regulations;
- (b) outside of its area, a local weights and measures authority may enforce the CP Regulations.

(3) In Northern Ireland—

- (a) within its area, the district council must enforce the CP Regulations;
- (b) outside of its area, a district council may enforce the CP Regulations.

(4) The Secretary of State may enforce the CP Regulations.

(5) A person appointed by the Secretary of State may enforce the CP Regulations.

#### **Exercise of enforcement powers**

**36.** When enforcing the CP Regulations, an enforcement authority must exercise its powers in a manner which is consistent with—

- (a) regulation 37 (evaluation of construction products presenting a risk);
- (b) regulation 38 (enforcement action in respect of construction products which are in not conformity);
- (c) regulation 39 (enforcement action in respect of construction products which are in conformity but present a risk);
- (d) regulation 40 (restrictive measures).

#### **Evaluation of construction products presenting a risk**

**37.**—(1) Where an enforcement authority that has a duty to enforce the CP Regulations under regulation 35(2)(a) or (3)(a) has sufficient reason to believe that a construction product presents a risk, the enforcement authority must carry out an evaluation in relation to the construction product to determine whether the product is in conformity.

(2) Where an enforcement authority that has a power to enforce the CP Regulations under regulation 35(2)(b), (3)(b), (4) or (5) has sufficient reason to believe that a construction product presents a risk, the enforcement authority may carry out an evaluation in relation to the construction product to determine whether the product is in conformity.

#### **Enforcement action in respect of construction products that are not in conformity**

**38.**—(1) Paragraph (2) applies where in the course of the evaluation referred to in regulation 37 an enforcement authority finds that the product is not in conformity.

(2) When this paragraph applies, an enforcement authority must, without delay, require a relevant economic operator to—

- (a) take appropriate corrective measures to bring the construction product into conformity, within a prescribed period;

- (b) recall the construction product within a prescribed period; or
  - (c) prohibit or restrict the use of the construction product.
- (3) Where the enforcement authority is not the Secretary of State it must notify the Secretary of State immediately of—
- (a) the results of the evaluation; and
  - (b) the actions which it has required the economic operator to take.
- (4) Where the economic operator referred in paragraph (2) does not take action required by the enforcement authority within the prescribed period, the enforcement authority must take all appropriate steps to—
- (a) prohibit or restrict the construction product being made available on the market;
  - (b) recall the construction product; or
  - (c) prohibit or restrict the use of the construction product.
- (5) Where the enforcement authority is not the Secretary of State and it takes measures under paragraph (4), it must notify the Secretary of State of those measures without delay.
- (6) In this regulation, “prescribed period” means a period which is—
- (a) prescribed by the enforcement authority; and
  - (b) reasonable and commensurate with the nature of the risk presented by the construction product;

**Enforcement action in respect of construction products that are in conformity but present a risk**

**39.**—(1) Paragraph (2) applies where in the course of the evaluation referred to in regulation 37 an enforcement authority finds that the construction product is in conformity but nevertheless presents a risk.

(2) When this paragraph applies, an enforcement authority must require a relevant economic operator to take appropriate corrective measures to—

- (a) ensure that the construction product concerned, when made available, no longer presents a risk;
- (b) recall the construction product within a prescribed period; or
- (c) prohibit or restrict the use of the construction product.

(3) Where the enforcement authority is not the Secretary of State it must notify the Secretary of State immediately of—

- (a) the results of the evaluation; and
- (b) the actions which it has required the economic operator to take.

(4) Where the economic operator referred in paragraph (2) does not take the action required by the enforcement authority within the prescribed period, the enforcement authority must take all appropriate steps to—

- (a) prohibit or restrict the construction product being made available on the market;
- (b) recall the construction product; or
- (c) prohibit or restrict the use of the construction product.

(5) Where the enforcement authority is not the Secretary of State and it takes measures under paragraph (4), it must notify the Secretary of State of those measures without delay.

(6) In this regulation “prescribed period” has the meaning given to it in regulation 38(6).

## **Restrictive measures**

**40.**—(1) Any measure taken by an enforcement authority under regulations 39 or 40 to prohibit or restrict or recall a construction product must—

- (a) be proportionate to the risk or non-conformity identified;
- (b) state the exact grounds on which it is based;

(2) Before taking any measures referred to in paragraph (1), an enforcement authority must—

- (a) inform the relevant economic operator of—
  - (i) the measure to be taken;
  - (ii) the legal remedies available to the economic operator; and
  - (iii) the time-limits to which the remedies referred to in paragraph (ii) are subject; and
- (b) subject to paragraph (3), give the relevant economic operator the opportunity to make representations within a period of not less than 10 days.

(3) Paragraph (2)(b) does not apply where such consultation is not possible because of the urgency of the measure to be taken, justified on grounds of health or safety, or other public interest.

(4) Where paragraph (3) applies—

- (a) the relevant economic operator must be given the opportunity to make representations as soon as reasonably practicable; and
- (b) any measure must be reviewed as soon as practicable after the economic operator makes representations.

(5) Any measure referred to in paragraph (1) must be withdrawn or amended as soon as reasonably practicable where the economic operator demonstrates that they have taken effective action.

## **CHAPTER 3**

### **Enforcement powers**

#### **Power to require identification of other economic operators**

**41.**—(1) An enforcement authority may require an economic operator (“E”) to identify to the authority within such period as the authority may specify—

- (a) any other economic operator who has supplied E with a construction product during the relevant period; and
- (b) any other economic operator to whom E has supplied a construction product during the relevant period.

(2) The relevant period is—

- (a) for the purposes of paragraph (1)(a), 10 years beginning on the day on which E was supplied with the construction product;
- (b) for the purposes of paragraph (1)(b), 10 years beginning on the day on which E supplied the construction product.

#### **Power to require provision of information and co-operation**

**42.**—(1) An enforcement authority may, within such period as the authority may specify, require an economic operator to provide the authority with all the information and documentation necessary to demonstrate that a construction product is in conformity.

(2) The information referred to in paragraph (1)—

- (a) may be provided electronically;
  - (b) must be in easily understandable English.
- (3) An economic operator must, at the request of an enforcement authority, co-operate with that authority on any action taken to—
- (a) evaluate the construction product in accordance with regulation 37;
  - (b) eliminate any risk posed by the construction product that the economic operator has made available on the market or (in the case of a fulfilment service provider) handled.
- (4) An enforcement authority may, when investigating or monitoring compliance with the CP Regulations, require any person—
- (a) to produce any record or provide any information or documentation that the enforcement authority considers necessary for the investigation;
  - (b) to assist the enforcement authority to exercise the powers conferred on the enforcement authority or an officer of the enforcement authority under this regulation, to the extent that it is within that person's responsibilities or control to provide such assistance;
  - (c) where the enforcement authority reasonably believes the person is able to provide information relevant to the investigation, to—
    - (i) meet an officer of the enforcement authority at a time and place specified by the enforcement authority;
    - (ii) answer any questions that the officer of the enforcement authority considers relevant to the investigation; and
    - (iii) sign a declaration of truth regarding the answers provided.
- (5) Subject to paragraph (6) no other person is permitted to be present at a meeting under paragraph (4)(c)(i).
- (6) Another person may be present at a meeting under paragraph (4)(c)(i) where—
- (a) the person who is required to provide information under paragraph (4)(c) has nominated another person to be present; and
  - (b) the officer of the enforcement authority allows other persons to be present.
- (7) In any criminal investigation against the person required to produce a record or supply information or documentation under paragraph (4)—
- (a) no evidence relating to the information or documentation may be adduced by or on behalf of the prosecution; and
  - (b) no question relating to the information may be asked by or on behalf of the prosecution.
- (8) Paragraph (4) does not require a person to provide any information or produce any documents which the person would be entitled to refuse to provide or produce—
- (a) in proceedings in the High Court on the grounds of legal professional privilege; or
  - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications—
    - (i) between a professional legal advisor and the advisor's client; or
    - (ii) made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.

### **Exercise of powers in regulations 45 to this Chapter**

43. An enforcement authority may exercise a power—
- (a) in regulations 44 to 51 for the purposes of ascertaining compliance—
    - (i) with the CP Regulations; or
    - (ii) an undertaking given in accordance with regulation 75;
  - (b) in regulation 51 (power to require production of documents)—

- (i) where the enforcement authority reasonably suspects a breach of the CP Regulations, unless the power is being exercised in relation to a document that the economic operator is required to keep by virtue of a provision under the CP Regulations;
  - (ii) where the enforcement authority reasonably suspects a breach of an undertaking given in accordance with regulation 74;
  - (iii) to ascertain whether the documents may be required as evidence in any proceedings under the CP Regulations; or
  - (iv) to ascertain whether an economic operator is complying with any provision of the CP Regulations that requires that economic operator to keep a document;
- (c) in regulation 53 (power to seize and detain goods or documents required as evidence), in relation to goods which an officer of the enforcement authority reasonably suspects—
- (i) may disclose (by means of testing or otherwise) that a construction product is not in conformity;
  - (ii) are liable to forfeiture under regulation 67 or 68; or
  - (iii) may be required as evidence in proceedings in respect of any proceedings for any breach of the CP Regulations;
- (d) in regulation 53, in relation to documents which an officer of the enforcement authority reasonably suspects may be required as evidence—
- (i) in proceedings in respect of a product which is not in conformity; or
  - (ii) in other proceedings under the CP Regulations.

**Power to purchase goods**

- 44.—**(1) An officer of an enforcement authority may—
- (a) make a purchase of goods; or
  - (b) enter into an agreement to secure the provision of goods.
- (2) For the purposes of exercising the power in paragraph (1), an officer may—
- (a) at any reasonable time, enter premises to which the public has access (whether or not the public has access at that time); and
  - (b) inspect any goods on the premises which the public may inspect.
- (3) The power of entry in paragraph (2) may be exercised without first giving notice or obtaining a warrant.

**Power to observe the carrying on of business etc.**

- 45.—**(1) An officer of an enforcement authority may enter premises to which the public has access in order to observe the carrying on of a business on those premises.
- (2) The power in paragraph (1) may be exercised at any reasonable time (whether or not the public has access at that time).
- (3) The power of entry in paragraph (1) may be exercised without first giving notice or obtaining a warrant.

**Power to enter premises without warrant**

- 46.—**(1) An officer of an enforcement authority may enter premises at any reasonable time.
- (2) Paragraph (1) does not authorise the entry into premises used wholly or mainly as a dwelling.
- (3) In the case of a routine inspection, the power of entry in paragraph (1) may only be exercised if a notice has been given to the occupier of the premises in accordance with the requirements in paragraph (4), unless paragraph (5) applies.



- (4) The requirements referred to in paragraph (3) are that—
- (a) the notice is in writing and is given by an officer of the enforcement authority;
  - (b) the notice sets out why the entry is necessary and indicates the nature of the offence under regulation 78 (obstruction); and
  - (c) there are at least two working days between the date of receipt of the notice and the date of entry.
- (5) A notice need not be given if the occupier has waived the requirement to give notice.
- (6) In this regulation “routine inspection” means an exercise of the power in paragraph (1) except where—
- (a) the power is exercised where an officer of the enforcement authority reasonably suspects there is a breach of the CP Regulations;
  - (b) the officer reasonably considers that to give notice in accordance with paragraph (3) would defeat the purpose of the entry; or
  - (c) it is not reasonably practicable in all the circumstances to give notice in accordance with paragraph (3), in particular because the officer reasonably suspects that there is an imminent risk to public health or safety.
- (7) If an officer of an enforcement authority enters premises under paragraph (1) otherwise than in the course of a routine inspection, and finds one or more occupiers on the premises, the officer must provide to that occupier or (if there is more than one) to at least one of them a document that—
- (a) sets out why the entry is necessary; and
  - (b) indicates the nature of the offence under regulation 78 (obstruction).
- (8) If an officer of an enforcement authority enters premises under paragraph (1) and finds one or more occupiers on the premises, the officer must produce evidence of the officer’s identity and authority to that occupier or to that occupier (or if there is more than one) to at least one of them.
- (9) An officer need not comply with paragraph (7) or (8) if it is not reasonably practicable to do so.
- (10) Proceedings resulting from the exercise of the power under paragraph (1) are not invalid merely because of a failure to comply with paragraph (7) or (8).
- (11) An officer entering premises under paragraph (1) may be accompanied by such persons, and may take onto the premises such equipment, as the officer thinks necessary.
- (12) In this regulation—
- “give”, in relation to the giving of a notice to an occupier of premises, includes delivering or leaving it at the premises or sending it there by post;
- “working day” means a day other than—
- (a) Saturday or Sunday;
  - (b) Christmas Day or Good Friday; or
  - (c) A day which is a bank holiday under the Banking and Financial Dealings Act 1971(a) in the part of the United Kingdom in which the premises are situated.

#### **Power to enter premises with warrant**

47.—(1) A justice of the peace may issue a warrant authorising an officer of an enforcement authority to enter premises if satisfied, on written information on oath, that there are reasonable grounds for believing —

- (a) condition A or B is met; and
- (b) condition C, D or E is met.

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(a) 1971 c.80.

- (2) Condition A is that, on the premises there are—
- (a) construction products which an officer of the enforcement authority has power to inspect under regulation 51 (power to inspect products); or
  - (b) documents which an officer of the enforcement authority could require a person to produce under regulation 53 (power to seize and detain goods or documents required as evidence).
- (3) Condition B is that, on the premises there has been or is about to be a breach of the CP Regulations.
- (4) Condition C is that—
- (a) access to the premises has been or is likely to be refused; and
  - (b) notice of the enforcement authority’s intention to apply for a warrant under this regulation has been given to the occupier of the premises.
- (5) Condition D is that it is likely that goods or documents on the premises would be concealed or interfered with if notice of entry on the premises were given to the occupier of the premises.
- (6) Condition E is that—
- (a) the premises are unoccupied; or
  - (b) the occupier of the premises is absent, and it might defeat the purpose of the entry to wait for the occupier’s return.
- (7) In the application of this regulation to Scotland, the reference in paragraph (1)—
- (a) to a justice of the peace is to be read as a reference to the sheriff; and
  - (b) to information on oath is to be read as a reference to evidence on oath.
- (8) In the application of this regulation to Northern Ireland, the reference in paragraph (1)—
- (a) to a justice of the peace is to be read as a reference to a lay magistrate; and
  - (b) to written information is to be read as a reference to a written complaint.

### **Entry to premises under warrant**

**48.**—(1) A warrant under regulation 47 authorises an officer of an enforcement authority to enter the premises at any reasonable time, using reasonable force if necessary.

(2) A warrant under regulation 47 ceases to have effect at the end of the period of one month beginning with the day it is issued.

(3) An officer entering premises under a warrant under regulation 47 may be accompanied by such persons, and may take onto the premises such equipment, as the officer thinks necessary.

(4) If the premises are occupied when the officer enters them, the officer must produce the warrant for inspection to an occupier of the premises.

(5) Paragraph (6) applies if the premises are unoccupied or the occupier is temporarily absent.

(6) On leaving the premises the officer must—

- (a) leave a notice on the premises stating that the premises have been entered under a warrant under regulation 47; and
- (b) leave the premises as effectively secured against trespassers as the officer found them.

### **Application of regulations 50 to 53**

**49.** Regulations 50 to 53 apply if an officer of an enforcement authority has entered any premises under regulation 46 or under a warrant under regulation 47.

### **Power to require assistance from persons on premises**

**50.** The officer may require any person on the premises to provide such assistance or information as the officer reasonably considers necessary.

### **Power to inspect products etc.**

**51.**—(1) The officer may inspect any construction product on the premises.

(2) The officer may examine any procedure (including any arrangements for carrying out a test) connected with the production of a construction product.

### **Power to require the production of documents**

**52.**—(1) The officer may, at any reasonable time—

- (a) require the occupier of the premises to produce any documents to which the occupier has access relating to any business or commercial activity undertaken on the premises;
- (b) take copies of, or of any entry in, any such document.

(2) The power in paragraph (1)—

- (a) is available whether or not—
  - (i) the purpose for which the documents are required relates to the occupier or some other person; or
  - (ii) the proceedings referred to under regulation 43(c)(iii) could be taken against any person;
- (b) includes power to require the person to give an explanation of the documents;
- (c) in cases where a document required to be produced under paragraph (1) contains information recorded electronically, includes power to require the production of a copy of the document in a form in which it can easily be taken away and in which it is visible and legible.

(3) This regulation does not permit an officer to require a person to produce any document which the person would be entitled to refuse to produce—

- (a) in proceedings in the High Court on the grounds of legal professional privilege; or
- (b) in proceedings in the Court of Session on the grounds of confidentiality of communications—
  - (i) between a professional legal advisor and the advisor's client; or
  - (ii) made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.

### **Power to seize and detain goods or documents required as evidence**

**53.**—(1) The officer may seize and detain documents.

(2) The officer may seize and detain goods.

(3) Subject to paragraph (5), the powers in paragraph (1) and (2) include a power to require a person with the authority to do so to—

- (a) break open any container; or
- (b) access any electronic device in which information may be stored or from which it may be accessed.

(4) Where a requirement under paragraph (3) has not been complied with, the officer may, for the purposes of exercising a power under paragraph (1) or (2)—

- (a) break open the container; or
- (b) access the electronic device.

(5) Paragraph (3) applies if and to the extent that the exercise of the power is reasonably necessary for the purposes for which the power may be exercised.

(6) An officer seizing or detaining goods or documents under this regulation from premises which are occupied must produce evidence of the officer's identity and authority to an occupier of the premises before seizing them.

- (7) The officer need not comply with paragraph (6) if it is not reasonably practicable to do so.
- (8) An officer seizing goods or documents under this paragraph must take reasonable steps to—
- (a) inform the person from whom they are seized that they have been seized; and
  - (b) provide that person with a written record of what has been seized.
- (9) In determining steps to be taken under paragraph (8) an officer exercising a power under this regulation must have regard to any relevant provision made about the seizure of property made by—
- (a) a code of practice under section 66 of the Police and Criminal Evidence Act 1984(a), in respect of goods seized in England or Wales;
  - (b) a code of practice under Article 65 of the Police and Criminal Evidence Act (Northern Ireland) Order 1989(b), in respect of goods seized in Northern Ireland.
- (10) Goods or documents seized under this regulation, except where the goods are seized for the purposes of regulation 66 or 67 (forfeiture) may not be detained—
- (a) for a period of more than 3 months beginning with the day on which they were seized; or
  - (b) where the goods are reasonably required to be detained for a longer period by the enforcement authority for a purpose for which they were seized, for longer than they are required for that purpose.
- (11) This regulation does not permit an officer to seize from a person any document which the person would be entitled to refuse to produce—
- (a) in proceedings in the High Court on the grounds of legal professional privilege; or
  - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications—
    - (i) between a professional legal advisor and the advisor’s client; or
    - (ii) made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.
- (12) In this regulation “container” means anything in which goods or documents may be stored.

## CHAPTER 4

### Notices and forfeiture

#### **Exercise of powers in this Chapter**

- 54.**—(1) An enforcement authority may serve a notice—
- (a) in accordance with regulation 55 (information notices), 56 (compliance notices), 58 (withdrawal notices) or 59 (recall notices) where the enforcement authority reasonably suspects—
    - (i) a construction product is not in conformity;
    - (ii) a construction product presents a risk; or
    - (iii) there is non-compliance with an undertaking given in accordance with regulation 75;
  - (b) in accordance with regulation 57 (improvement notice) where the enforcement authority—
    - (i) reasonably suspects that that one construction product that the economic operator has made available on the market is not in conformity or presents a risk; and
    - (ii) reasonably suspects that other construction products that the economic operator makes available on the market are not in conformity or present a risk;

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(a) 1984 c.60.  
 (b) S.I. 1989/1341 (NI 12).

- (c) in accordance with regulation 60 (notices to mark) where the enforcement authority has reasonable grounds for believing that a construction product could present a risk in certain conditions;
- (d) in accordance with regulation 61 (notices to warn) where the enforcement authority has reasonable grounds for believing that a construction product could present a risk for certain persons.

(2) An enforcement authority which is not the Secretary of State must immediately inform the Secretary of State of any notice served under this Chapter.

### **Information notice**

**55.**—(1) An enforcement authority or an officer of an enforcement authority may serve a notice to a person requiring the person to provide the enforcement authority with—

- (a) information specified in the notice; or
- (b) such samples of a construction product as specified in the notice.

(2) A notice under paragraph (1) must be in writing and specify the purpose for which the information or sample is required.

(3) The notice may specify—

- (a) the period within which and the manner in which the person to whom it is given must comply with it;
- (b) the form in which information must be provided.

(4) The notice may require—

- (a) the provision of records as are specified in the notice, including the provision of any such records which are stored in any electronic form;
- (b) the person who is required to provide the records to permit an officer of the enforcement authority to take copies of the records;
- (c) the creation of documents, or documents of a description, specified in the notice; and
- (d) the provision of those documents to the enforcement authority or an officer of the enforcement authority.

(5) A requirement to provide information, records or create a document is a requirement to do so in a visible and legible form.

(6) A notice under this regulation does not require a person to provide any information or create any document which the person would be entitled to refuse to provide or produce—

- (a) in proceedings in the High Court on the grounds of legal professional privilege; or
- (b) in proceedings in the Court of Session on the grounds of confidentiality of communications—
  - (i) between a professional legal advisor and the advisor's client; or
  - (ii) made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.

(7) In any criminal investigation against the person required to produce a record or supply information or create any document under this regulation—

- (a) no evidence relating to the information may be adduced by or on behalf of the prosecution; and
- (b) no question relating to the information may be asked by or on behalf of the prosecution.

### **Compliance notice**

**56.**—(1) An enforcement authority or an officer of an enforcement authority may serve a notice on a relevant economic operator requiring that economic operator to—

- (a) end any non-compliance within such period as may be specified in the notice; or

- (b) provide evidence, within such period as may be specified in the notice, demonstrating to the satisfaction of the enforcement authority that the non-compliance has not in fact occurred.
- (2) A notice under paragraph (1) must be in writing.
- (3) A notice under paragraph (1) may include directions as to the measure to be taken by the economic operator to secure compliance, including different ways of securing compliance.
- (4) Subject to paragraph (5), an enforcement authority may revoke or vary a notice served under paragraph (1) by serving a notification on the economic operator.
- (5) An enforcement authority may not vary a notice served under paragraph (1) so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.
- (6) In this regulation “non-compliance” means that the construction product—
  - (a) is not in conformity; or
  - (b) presents a risk.

### **Improvement notice**

- 57.—**(1) An enforcement authority or an officer of an enforcement authority may serve a notice on a relevant economic operator requiring that economic operator to—
- (a) undertake measures as directed by the enforcement authority within such period as may be specified in the notice; or
  - (b) provide evidence, within such period as may be specified in the notice, demonstrating to the satisfaction of the enforcement authority that—
    - (i) the non-compliance has not in fact occurred;
    - (ii) the non-compliance does not affect other construction products made available by the economic operator; or
    - (iii) the measures proposed are ineffective in addressing the non-compliance or the other matters specified in the notice, or that there are other measures that would be more effective.
- (2) A notice under paragraph (1) must—
- (a) be in writing;
  - (b) specify the suspected non-compliance;
  - (c) specify why the enforcement authority believes that the non-compliance may affect other construction products that the economic operator makes available on the market;
  - (d) specify the measures proposed; and
  - (e) specify that the economic operator may make representations within a period specified in the notice.
- (3) A notice under paragraph (1) may—
- (a) include different periods for different measures;
  - (b) require the economic operator to keep the enforcement authority informed at specific intervals of the progress being made towards doing what the economic operator is required to do.
- (4) Where an economic operator provides evidence under paragraph (1)(b)(iii), the economic operator must also propose alternative measures for addressing the non-compliance or other matters specified in the notice.
- (5) Where the enforcement authority agrees that the measures proposed by the economic operator under paragraph (4) meet the enforcement authority’s concerns, the enforcement authority may vary the notice served under paragraph (1).

(6) Where paragraph (5) does not apply, subject to paragraph (7), an enforcement authority may revoke or vary a notice served under paragraph (1) by serving a notification on the economic operator.

(7) An enforcement authority may not vary a notice served under paragraph (1) so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

(8) In this regulation “non-compliance” means that the construction product—

- (a) is not in conformity; or
- (b) presents a risk.

### **Withdrawal notice**

**58.**—(1) An enforcement authority or an officer of an enforcement authority may serve a notice on an economic operator under this regulation where a construction product has been made available on the market.

(2) A notice under paragraph (1) must be in writing and specify the reasons for which it is being served.

(3) A notice under paragraph (1) must prohibit the economic operator from making the construction product available on the market without the consent of the enforcement authority.

(4) A notice under paragraph (1) may require the relevant economic operator—

- (a) to take action to alert end-users to any risk presented by the construction product; or
- (b) keep the enforcement authority informed of the whereabouts of any construction product referred to in the notice.

(5) A consent given by the enforcement authority referred to in paragraph (3) may impose such conditions on the making available on the market as the enforcement authority considers appropriate.

(6) Subject to paragraph (7), an enforcement authority may revoke or vary a notice under paragraph (1) by serving a notification on the economic operator.

(7) An enforcement authority may not vary a notice served under paragraph (1) so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

(8) A notice served under paragraph (1) has effect throughout the United Kingdom.

### **Recall notice**

**59.**—(1) An enforcement authority or an officer of an enforcement authority may serve a notice on an economic operator under this regulation where a construction product has been made available on the market.

(2) A notice under paragraph (1) must be in writing and specify the reasons for which it is being served.

(3) A notice under paragraph (1) must require the relevant economic operator to use reasonable endeavours to organise—

- (a) the dismantling and safe disposal of the construction product (whether or not incorporated into construction works); or
- (b) the return of the construction product from end-users to the relevant economic operator or any other person specified in the notice.

(4) A notice under paragraph (1) may—

- (a) require the recall to be effected in accordance with a code of practice;
- (b) require the relevant economic operator to—
  - (i) contact end-users in order to inform them of the recall, to the extent that it is practicable to do so;

- (ii) publish a notice in such form and such manner as is likely to bring to the attention of end-users any risk the construction product presents and the fact of the recall; or
  - (iii) make arrangements for the collection or return of the construction product from end-users or its disposal;
  - (iv) keep the enforcement authority informed of the whereabouts of any construction product referred to in the notice;
- (c) impose such additional requirements on the relevant economic operator as are reasonable and practicable with a view to achieving the dismantling and safe disposal of the construction product.
- (5) In determining the requirements under paragraph (4)(c), the enforcement authority must take into consideration the need to encourage distributors and end-users to contribute to their implementation.
- (6) A notice may only be issued under paragraph (1) if—
- (a) other action which an enforcement authority may require under this Part would not suffice to address the non-compliance;
  - (b) the action undertaken by the economic operator in fulfilment of the requirements of the CP Regulations is unsatisfactory or insufficient to address the non-compliance;
  - (c) the enforcement authority has given not less than 10 days' notice to the relevant economic operator of its intention to serve such a notice; and
  - (d) the enforcement authority has taken into consideration any advice obtained under paragraph (7).
- (7) A relevant economic operator which has received notice under paragraph (6)(c) may at any time prior to the service of the notice under paragraph (1) require the authority to seek the advice of such person as the Institute determines on the question of—
- (a) whether there is non-compliance; and
  - (b) if so, whether the issuing of a notice under paragraph (1) is a proportionate response to the non-compliance.
- (8) Paragraph (6)(b) to (d) do not apply where the enforcement authority considers that the construction product presents a serious risk requiring urgent action.
- (9) Where the relevant economic operator requires the enforcement authority to seek advice under paragraph (7), the economic operator is responsible for the fees, costs and expenses of the Institute and of the person appointed by the Institute to advise the enforcement authority.
- (10) In this regulation—
- “the Institute” means the charitable organisation with registered number 803725 and known as the Chartered Institute of Arbitrators;
- “non-compliance” means that the construction product—
- (a) is not in conformity; or
  - (b) presents a risk.

### **Notice to mark**

- 60.—**(1) An enforcement authority or an officer of an enforcement authority may serve a notice on a person under this regulation, requiring that person to—
- (a) ensure that a construction product or its packaging is marked in accordance with the requirements specified in the notice, with warnings as to the risk it may present;
  - (b) make the making available on the market of the construction product subject to prior conditions as specified in the notice so as to ensure the product reduces the risk identified.
- (2) The requirement referred to in paragraph (1)(a) must ensure that the product is marked with a warning that is suitable, legible and in easily understandable English.



(3) The requirements in paragraph (1)(a) or (b) must be met at the expense of the person on whom the notice is served.

#### **Notice to warn**

**61.**—(1) An enforcement authority or an officer of an enforcement authority may serve a notice on a person under this regulation, requiring that person to—

- (a) ensure, to the extent it is practicable to do so, that any person who could be subject to any risk identified by the enforcement authority, is given sufficient warning of the risks—
  - (i) as soon as reasonably practicable; and
  - (ii) in the manner specified in the notice;
- (b) publish a warning of the risks in such a manner likely to bring to those risks to the attention of any such person; or
- (c) ensure that the product carries a warning of the risks in a form specified in the notice.

(2) Any warning issued by virtue of a notice under paragraph (1) must be suitable, legible and in easily understandable English, taking into consideration the persons who may be subject to the risk identified.

(3) The requirements in paragraph (1) must be met at the expense of the person on whom the notice is served.

#### **Notice of testing goods**

**62.**—(1) Paragraph (3) applies where goods purchased by or on behalf an officer of an enforcement authority under regulation 44 are submitted to a test and as a result—

- (a) proceedings are brought for an offence under regulation 77;
- (b) an application for forfeiture is made under regulation 67 or 68; or
- (c) a notice is served by the enforcement authority under regulation 58 (withdrawal notice) or 59 (recall notice).

(2) Paragraph (3) also applies where goods seized by an officer of an enforcement authority under regulation 53 are submitted to a test.

(3) The enforcement authority must serve a notice informing the relevant person—

- (a) of the results of the test; and
- (b) that the relevant person may have the goods tested if it is reasonably practicable to do so.

(4) In paragraph (3) “relevant person” means—

- (a) in a case within paragraph (1)(a), a person who is party to the proceedings;
- (b) in a case within paragraph (1)(b) or (2), a person with an interest in the goods;
- (c) in a case of paragraph (1)(c), a person named in the notice.

#### **Costs recovery notice**

**63.**—(1) Where paragraph (2) applies, an enforcement authority may serve a notice on an economic operator requiring that economic operator to pay the costs incurred by the enforcement authority up to the time of the imposition of a notice under this regulation.

(2) This paragraph applies where—

- (a) a notice has been served on the economic operator under regulation 55 to 62;
- (b) an enforcement authority—
  - (i) has submitted a construction product made available on the market by an economic operator to testing; and
  - (ii) the enforcement authority reasonably suspects that the construction product is not in conformity; or

- (c) goods or documents have been seized and detained under regulation 53.
- (3) For the purposes of paragraph (1), costs include in particular—
  - (a) investigation costs;
  - (b) administration costs;
  - (c) costs of obtaining expert advice (including legal advice); and
  - (d) storage costs.
- (4) A notice under paragraph (1) must—
  - (a) be in writing;
  - (b) specify how payment must be made;
  - (c) specify the amount required to be paid and the period in which payment must be made;
  - (d) specify the grounds for serving the notice; and
  - (e) specify the consequences of failure to comply with the notice in the specified period.
- (5) The economic operator on whom the notice is served may require the regulator to provide a breakdown of the amount.
- (6) The economic operator required to pay costs is not liable to pay any costs shown by that economic operator to have been unnecessarily incurred.
- (7) The period specified under paragraph (4)(c) must not be less than 28 days.

#### **Enforcement of notices under regulations 55 to 63**

- 64.**—(1) If a person on whom a notice is served under any of regulations 55 to 63 fails to comply with the notice, the enforcement authority or an officer of the enforcement authority may make an application under this regulation to the court.
- (2) An enforcement authority or its officer making an application under paragraph (1) must serve—
- (a) a copy of the application on the person on whom a notice was served under regulation 55 to 63;
  - (b) a notice to that person giving them the opportunity to appear at the hearing of the application to make representations as to why the application should not be made.
- (3) A person on whom notice is served under paragraph (2) and any person claiming to be the owner of, or otherwise have an interest in, the goods or documents to which the application relates is entitled—
- (a) to appear at the hearing of the application; and
  - (b) to make representations.
- (4) If it appears to the court that the person on whom notice was served under regulation 55 to 63 has failed to comply with the notice, it may make an order under this regulation.
- (5) An order under this regulation is an order requiring the person to do anything that the court thinks it is reasonable for the person to do, for any of the purposes for which the notice was given, to ensure that the notice is complied with.
- (6) An order under this regulation may require the person to meet the costs or expenses of the application.
- (7) If the person is a company, partnership or unincorporated association, the court acting under paragraph (4) may require an official who is responsible for the failure to meet the costs or expenses of the application.
- (8) In this regulation—
- “the court” means—
- (a) the High Court;
  - (b) in relation to England and Wales, the county court;

- (c) in relation to Northern Ireland, a county court;
- (d) the Court of Session; or
- (e) the sheriff;

“official” means—

- (a) in the case of a company, a director, manager, secretary of other similar officer;
- (b) in the case of a limited liability partnership, a member;
- (c) in the case of a partnership other than a limited liability partnership, a partner; and
- (d) in the case of an unincorporated association, a person who is concerned in the management or control of its affairs.

### **Action by enforcement authority**

**65.**—(1) An enforcement authority may itself take action which an economic operator could have been required to take by a notice served under this Chapter where the conditions for serving such a notice are met and either—

- (a) the enforcement authority has been unable to identify any economic operator on whom to serve such a notice ; or
- (b) the economic operator on whom such a notice has been served has failed to comply with it.

(2) If the enforcement authority has taken action under paragraph (1) following the failure of an economic operator to comply with a notice, the authority may recover from that person as a civil debt any costs or expenses reasonably incurred by the enforcement authority in taking the action.

(3) A civil debt recoverable under paragraph (2) may be recovered summarily—

- (a) in England and Wales by way of a complaint pursuant to section 58 of the Magistrates’ Court Act 1980(a);
- (b) in Northern Ireland in proceedings under Article 62 of the Magistrates’ Court (Northern Ireland) Order 1981.

### **Appeals against notices**

**66.**—(1) An application for an order to vary or set aside the terms of a notice served may be made—

- (a) by the economic operator or any other person on whom the notice has been served; and
- (b) in the case of a notice other than a recall notice served in accordance with regulation 59, by a person having an interest in the construction product in respect of which the notice has been served.

(2) An application must be made before the end of the period of 21 days beginning on the day on which the notice was served.

(3) The appropriate court may only make an order setting aside a notice served under this Chapter if satisfied—

- (a) in relation to a notice under regulation 63 (costs recovery notice), that the costs claimed have not been incurred or are unreasonable;
- (b) in all other cases, that the requirements of the CP Regulations have been complied with in respect of the construction product to which the notice relates.

(4) On an application to vary the terms of a notice served under Chapter 4, the appropriate court may vary the terms of the notice as it considers appropriate.

(5) In this regulation—

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(a) 1980 c.43; section 58 was amended by the Crime and Courts Act 2013 (c.22), s. 17(6) Schedule 10 paragraph 39 and 40.

- (a) the “appropriate court” means—
  - (i) in England and Wales or Northern Ireland—
    - (aa) where proceedings are in process in relation to a construction product for an offence under regulation 77, the court in which such proceedings have been brought;
    - (bb) in any other case, a magistrates’ court;
  - (ii) in Scotland the sheriffdom in which the person making the appeal resides or, as the case may be, has a registered or principal office.
- (b) “notice” means—
  - (i) a compliance notice served in accordance with regulation 56;
  - (ii) an improvement notice served in accordance with regulation 57;
  - (iii) a withdrawal notice served in accordance with regulation 58;
  - (iv) a recall notice served in accordance with regulation 59;
  - (v) a notice to warn served in accordance with regulation 61; and
  - (vi) a costs recovery notice under regulation 63.

(6) A person aggrieved by an order made by a magistrates’ court in England and Wales or Northern Ireland pursuant to an application under this regulation, 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.

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

**67.—**(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 product on the grounds that the construction product is not in conformity.

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

- (a) where proceedings have been brought in a magistrates’ court for an offence under regulation 77, to that court;
- (b) where an application with respect to a construction product has been made to a court under regulation 64, to that court;
- (c) in any other case, by way of complaint to the magistrates’ court.

(3) On application under this regulation, the court may only make an order for the forfeiture of the construction product if it is satisfied the construction product is not in conformity.

(4) An enforcement authority making an application under paragraph (1) must serve—

- (a) a copy of the application on any person appearing to it to be the owner of, or otherwise have an interest in, the product to which the application relates; and
- (b) notice giving that person the opportunity to appear at the hearing of the application to make representations as to why the product should not be forfeited.

(5) A person on whom notice is served under paragraph (4)(b) and any person claiming to be the owner of, or otherwise have an interest in, the product to which the application relates is entitled—

- (a) to appear at the hearing of the application; and
- (b) make representations as to why the product should not be forfeited.

(6) The court must not make an order for the forfeiture of a product—

- (a) if any person on whom notice is served under paragraph (4)(b) does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under paragraph (4)(b) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(7) Subject to paragraph (8), where a construction product is forfeited it must be destroyed in accordance with such directions as the court may give.

(8) On making an order for the forfeiture of a construction product a court may, if it considers it appropriate to do so, direct that the product is delivered up to such a person as the court may specify, instead of being destroyed, on the condition that the person—

- (a) does not supply the product to any person otherwise than as set out in paragraph (9); and
- (b) where the court considers appropriate, pay costs for the proceedings for an order for forfeiture.

(9) The supply which may be permitted under this paragraph is—

- (a) supply to a person who carries on a business of buying products of the same description as the product concerned, provided that—
  - (i) the person repairs or reconditions the product; and
  - (ii) after such repair or recondition the product is in conformity; or
- (b) supply to a person for scrap.

(10) In paragraph (9) “supply to a person for scrap” means supply for the value of the materials included in the product, rather than for the value of the product itself.

### **Forfeiture: Scotland**

**68.**—(1) In Scotland a sheriff may make an order for the forfeiture of a construction product on the grounds that the construction product is not in conformity—

- (a) on an application by a procurator-fiscal made in the manner specified in section 310 of the Criminal Procedure (Scotland) Act 1975(a); or
- (b) where a person is convicted of any offence under regulation 77.

(2) On application under this regulation, the court may only make an order if the sheriff is satisfied the construction product is not in conformity.

(3) The procurator-fiscal making an application under paragraph (1)(a) must serve—

- (a) a copy of the application on any person appearing to it to be the owner of, or otherwise have an interest in, the product to which the application relates; and
- (b) notice giving that person the opportunity to appear at the hearing of the application to make representations as to why the product should not be forfeited.

(4) Service under paragraph (3) must be carried out and may be proved in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1975.

(5) A person on whom notice is served under paragraph (3) and any person claiming to be the owner of, or otherwise have an interest in, the product to which the application relates is entitled—

- (a) to appear at the hearing of the application; and
- (b) show cause why the product should not be forfeited.

(6) The sheriff must not make an order for the forfeiture of a product—

- (a) if any person on whom notice is served under paragraph (3) does not appear, unless service of the notice on that person is proved; or
- (b) if not notice under paragraph (3) has been served, unless the sheriff is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(7) Subject to paragraph (8), where a product is forfeited it must be destroyed in accordance with such directions as the court may give.

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(a) 1975 c.21; section 310 was amended by section 83(2) of, and paragraph 53 of Schedule 7 to, the Criminal Justice (Scotland) Act 1980 (c.62).

(8) The sheriff may direct that the product be released to such persons as the sheriff may specify, on condition that the person does not supply the product to any other person otherwise than as set out in regulation 67(9).

#### **Access to seized goods and documents**

**69.**—(1) This regulation applies where any goods or documents seized by an officer of an enforcement authority under this Part is detained by the enforcement authority.

(2) If a request for permission to be granted access to those goods or documents is made to the enforcement authority by a relevant person, the enforcement authority must allow that person access to them under the supervision of an officer of the authority.

(3) If a request for a photograph or copy of those goods or documents is made to the enforcement authority by a relevant person, the enforcement authority must—

- (a) allow that person access to them under the supervision of an officer of the authority for the purpose of photographing or copying it; or
- (b) photograph or copy them, or cause it to be photographed or copied.

(4) Where anything is photographed or copied under paragraph (3)(b), the photograph or copy must be supplied to the person who made the request within a reasonable time from the making of the request.

(5) This regulation does not require access to be granted to, or a photograph or copy to be supplied of, anything if the enforcement authority has reasonable grounds for believing that to do so would prejudice the investigation for the purposes for which it was seized.

(6) An enforcement authority may recover the reasonable costs of complying with a request under this paragraph from the person by whom or on whose behalf it was made.

(7) In this regulation “relevant person” means—

- (a) a person who had custody or control of the goods or documents immediately before they were seized; and
- (b) includes a representative of such a person.

#### **Appeals against detention of goods and documents**

**70.**—(1) This regulation applies where goods or documents are being detained as a result of the exercise of a power in this Chapter.

(2) A person with an interest in the goods or documents may apply for an order requiring them to be released to that or another person.

(3) An application under this regulation may be made in England and Wales or Northern Ireland to—

- (a) any magistrates’ court in which proceedings have been brought for an offence as the result of the investigation in the course of which the goods or documents were seized;
- (b) any magistrates’ court in which proceedings have been brought for the forfeiture of the goods under regulation 67;
- (c) in any other case, by way of complaint to a magistrates’ court.

(4) An application under this regulation may be made in Scotland by summary application to the sheriff.

(5) On application under this regulation, the court or sheriff may make an order requiring the goods or documents to be released only if satisfied that condition A or B is met.

(6) Condition A is that—

- (a) no proceedings have been brought—
  - (i) for an offence as the result of the investigation in the course of which the goods or documents were seized; or

- (ii) for the forfeiture of the goods; and
  - (b) the period of 6 months beginning with the date the goods or documents were seized has expired.
- (7) Condition B is that—
- (a) proceedings of a kind mentioned in paragraph (6)(a) have been brought; and
  - (b) those proceedings have concluded without the goods being forfeited.
- (8) A person aggrieved by an order made under this regulation by a magistrates' court or by the decision of a magistrates' court not to make such an order may appeal against the order or decision—
- (a) in England and Wales, to the Crown Court;
  - (b) in Northern Ireland, to a county court.
- (9) An order made under this regulation by a magistrates' court may contain such provision as the court thinks appropriate for delaying its coming into force pending the making and determination of any appeal.
- (10) In paragraph (9) "appeal" includes an application under section 111 of the Magistrates' Court Act 1980<sup>(a)</sup> or Article 146 of the Magistrates' Court (Northern Ireland) Order 1981<sup>(b)</sup> (statement of case).

## Compensation

- 71.—(1) This regulation applies where an officer of an enforcement authority—
- (a) has seized or detained goods under regulation 53;
  - (b) has served a notice under regulation 58 (withdrawal notice) or 59 (recall notice).
- (2) Where paragraph (3) applies, the enforcement authority must pay compensation to any person with an interest in the goods in respect of any loss or damage caused by the seizure and detention, withdrawal or recall.
- (3) This paragraph applies where—
- (a) goods have been seized or detained under regulation 53;
  - (b) the goods that have been seized and detained have not disclosed any non-conformity; and
  - (c) the power to seize and detain the goods was not exercised as a result of any neglect or default of the person seeking the compensation.
- (4) Where paragraph (5) applies, the enforcement authority must pay compensation to any person having an interest in the construction product for any loss or damage suffered by reason of the notice.
- (5) This paragraph applies where—
- (a) a notice has been served under regulation 58 (withdrawal notice) or 59 (recall notice);
  - (b) the construction product in respect of which the notice was served neither—
    - (i) presents a risk; nor
    - (ii) contravenes any requirement of the CP Regulations; and
  - (c) the notice was not served because of the neglect or default by a relevant economic operator.
- (6) Any dispute about the right to or amount of any compensation payable under this regulation is to be determined—
- (a) in England and Wales or Northern Ireland, by arbitration; or

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(a) 1980 c.43.

(b) S.I. 1981/1675 (NI 26).

- (b) in Scotland, by a single arbitrator appointed by the parties or, if there is no agreement between the parties as to that appointment, by the sheriff.

## CHAPTER 5

### Civil monetary penalties and undertakings

#### **Power to impose monetary penalties**

**72.—**(1) An enforcement authority may impose a monetary penalty on an economic operator where the enforcement authority is satisfied, on the balance of probabilities, that an economic operator has breached any of the provisions set out in regulation 77(2).

(2) The amount of the penalty is to be such amount as the enforcement authority may determine.

(3) Any monetary penalty under this section is recoverable by the enforcement authority as a civil debt.

(4) Any monetary penalty received by an economic operator by virtue of this regulation must be paid into the Consolidated Fund.

(5) Where a monetary penalty is imposed under this regulation, no proceeding may be brought under regulation 77 (offences) for the same breach.

#### **Monetary penalties: procedure**

**73.—**(1) Before imposing a monetary penalty on an economic operator under regulation 72, an enforcement authority must give notice to the economic operator of its intention to do so (“notice of intention”).

(2) The notice of intention must—

- (a) be in writing;
- (b) specify the grounds for imposing the penalty;
- (c) specify the amount of the penalty;
- (d) specify that the economic operator may make representations; and
- (e) specify the period in which representations must be made.

(3) The specified period in which representation may be made must not be less than 28 days.

(4) Before deciding whether to impose a penalty, the enforcement authority must consider any representations made by the economic operator within the specified period.

(5) If after the period in which representations must be made has lapsed (having considered any representations), the enforcement authority decides to impose a penalty, the enforcement authority—

- (a) may vary the amount of the penalty; and
- (b) must give notice in accordance with paragraph (7).

(6) An enforcement authority may not vary the penalty to impose a penalty greater than the amount specified in the notice of intention.

(7) The notice referred to in paragraph (5) must—

- (a) inform the economic operator of its decision;
- (b) specify the amount of the penalty;
- (c) specify that the economic operator is entitled to appeal the decision (on any grounds) to the First Tier Tribunal; and
- (d) specify the period in which the decision may be appealed.

(8) An enforcement authority which is not the Secretary of State must immediately inform the Secretary of State of any notice served under this regulation.



## **Monetary penalties: guidance and publications**

74.—(1) The Secretary of State must issue guidance as to—

- (a) the circumstances in which the Secretary of State considers it appropriate to impose a monetary penalty under regulation 72; and
- (b) how the amount of a penalty will be determined.

(2) The Secretary of State must, at such intervals as the Secretary of State considers appropriate, publish reports about the imposition of penalties under regulation 72.

(3) A report under paragraph (2) must specify the cases in which a monetary penalty has been imposed, unless the penalty has been overturned on appeal.

## **Undertakings**

75.—(1) Where any enforcement authority considers there has been or is likely to be non-compliance with any obligation under the CP Regulations, it may accept from the economic operator concerned with that non-compliance an undertaking that they will—

- (a) end the non-compliance;
- (b) take steps to prevent the non-compliance from occurring; or
- (c) remedy the effect of the non-compliance.

(2) The undertaking referred to in paragraph (1) may include a payment of a sum of money to benefit any person affected by the non-compliance.

(3) Subject to paragraph (4), the enforcement authority must not commence any proceedings under these Regulations or take any other enforcement action with respect to the non-compliance when it has accepted an undertaking under paragraph (1) in respect of that non-compliance.

(4) Paragraph (3) does not prevent the enforcement authority from taking action where the enforcement authority reasonably suspects the economic operator is not complying with the undertaking.

## **CHAPTER 6**

### **Information sharing**

#### **Power to disclose information**

76.—(1) Except as provided in paragraph (2), disclosure of information under this regulation does not breach—

- (a) any obligation of confidence owed by the person making the disclosure; or
- (b) any other restriction on the disclosure of information (however imposed).

(2) This regulation does not authorise a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, the powers to disclose information under this regulation must be taken into account).

(3) A relevant person may disclose information held in connection with any of their relevant functions to an enforcement authority for the purposes of a construction product function.

(4) An enforcement authority may disclose information held in connection with any of their construction product functions to a relevant person for the purposes of a relevant function of that person.

(5) An enforcement authority may disclose to a constable information held by it in connection with any of their construction product functions.

(6) A constable to whom information is disclosed in pursuance of paragraph (5) must not use the information for a purpose other than—

- (a) a purpose relating to the prevention, detection, investigation or prosecution of an offence (whether or not under the CP Regulations);
- (b) a purpose of the police relating to public health or public safety;
- (c) a purpose relating to national security.

(7) In this regulation—

“building function” means—

- (a) in relation to the HSE or a local authority, a function of either of them under, [or under an instrument made under,] the Building Safety Act 2022 or the Building Act 1984(a);
- (b) in relation to the HSE, any function under the Health and Safety at Work etc Act 1974(b) so far as it relates to a function within paragraph (a);

“construction product function” means a function of an enforcement authority under any of the CP Regulations;

“fire and rescue authority” means—

- (a) a fire and rescue authority, within the meaning of Part 1 of the Fire and Rescue Services Act 2004(c);
- (b) the Scottish Fire and Rescue Service, within the meaning of section 1A of the Fire (Scotland) Act 2005(d);
- (c) the Northern Ireland Fire and Rescue Board within the meaning of article 2 of the Fire and Rescue Services (Northern Ireland) Order 2006(e);

“FSO authorised person” means a person authorised as mentioned in article 25(1)(e) of the Regulatory Reform (Fire Safety) Order 2005(f);

“HSE” means the Health and Safety Executive(g);

“metrology legislation” means any legislation listed in paragraph 1 of Schedule 5;

“product safety legislation” means any legislation listed in paragraph 2 of Schedule 5;

“relevant function” means—

- (a) in relation to the Competition and Markets Authority(h) a function under any of the following—
  - (i) Part 8 of the Enterprise Act 2002(i);
  - (ii) the Business Protection from Misleading Marketing Regulations 2008(j);
- (b) in relation to an enforcement authority—
  - (i) any construction product function; or
  - (ii) any function under any of the following—
    - (aa) any product safety or metrology legislation;
    - (bb) the Business Protection from Misleading Marketing Regulations 2008;
- (c) in relation to a fire and rescue authority, a function under any of the following—
  - (i) the Fire and Rescue Services Act 2004;
  - (ii) the Regulatory Reform (Fire Safety) Order 2005;

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(a) 1984 c. 55, amended the Sustainable and Secure Buildings Act 2004 (c. 22), the Climate Change and Sustainable Energy Act 2006 (c. 19), the Housing and Regeneration Act 2008 (c. 17), the Building Safety Act 2022 and by S.I. 1985/1065, S.I. 1996/1905, S.I. 2001/3335, S.I. 2005/1541.

(b) 1974 c. 37.

(c) 2004 c. 21.

(d) 2005 asp 5 amended by the Police and Fire Reform (Scotland) Act 2012 (asp 8).

(e) S.I. 2006/1254.

(f) S.I. 2005/1541.

(g) Established under section 10 of the Health and Safety at Work etc. Act 1974.

(h) Established under section 25 of the Enterprise and Regulatory Reform Act 2013 (c. 24).

(i) 2002 c. 40, as amended by the Enterprise and Regulatory Reform Act 2013 and the Consumer Rights Act 2015 (c.15).

(j) S.I. 2008/1276, as amended by S.I. 2013/783, S.I. 2013/2701 and S.I. 2014/549.

- (iii) the Fire (Scotland) Act 2005;
- (iv) the Fire and Rescue Services (Northern Ireland) Order 2006;
- (v) section 13 of the Building Safety Act 2022;
- (d) in relation to an FSO authorised person any function under—
  - (i) the Regulatory Reform (Fire Safety) Order 2005; or
  - (ii) section 14 of the Building Safety Act 2022;
- (e) in relation to a local authority—
  - (i) any building function; or
  - (ii) any function under any of the following—
    - (aa) Part 3 of the Environmental Protection Act 1990<sup>(a)</sup>;
    - (bb) Parts 1 to 4 of the Housing Act 2004<sup>(b)</sup>;
- (f) in relation to the HSE—
  - (i) any building function;
  - (ii) any function under any product safety legislation;
- (g) in relation to the Department of Enterprise, Trade and Investment in Northern Ireland, any function under the Business Protection from Misleading Marketing Regulations 2008;
- (h) in relation to the Commissioners for Her Majesty’s Revenue and Customs, a function in relation to imported goods;

“relevant person” means—

- (a) the Competition and Markets Authority;
- (b) the Department of Enterprise, Trade and Investment in Northern Ireland;
- (c) an enforcement authority;
- (d) a fire and rescue authority;
- (e) an FSO authorised person;
- (f) the HSE;
- (g) a local authority;
- (h) the Commissioners for Her Majesty’s Revenue and Customs.

(8) In this regulation references to a “relevant person” include a person authorised by a relevant person to undertake a relevant function on their behalf (including officers of a relevant person or inspectors appointed by a relevant person).

## CHAPTER 7

### Offences

#### Offences for breach of the CP Regulations

77.—(1) It is an offence if a person breaches any of the provisions set out in paragraph (2).

(2) The provisions referred to in paragraph (1) are—

- (a) Articles 4, 6, 7, 8, 11, 13, 14 and 15 of the 2011 Regulation;
- (b) Articles 4, 6, 7, 8, 11, 13, 14 and 15 of the 2011 Regulation (NI);

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(a) 1990 c.43 amended by the Noise and Statutory Nuisance Act 1993 (c.40) and the Environment Act 1995 (c.25).

(b) 2004 c.34 amended by the Housing and Planning Act 2016 (c.22).

- (c) regulations 8, 10, 11 to 13, 15, 18 to 23, 25, 26, 29(5) and 33 of these Regulations.

### **Offence of obstruction**

- 78.**—(1) A person commits an offence if the person—
- (a) intentionally obstructs an enforcement authority or an officer of an enforcement authority who is exercising or seeking to exercise a power under Chapter 3 to 5 of this Part;
  - (b) intentionally fails to comply with a requirement properly imposed by an enforcement authority or an officer of an enforcement authority under Chapter 3 to 5 of this Part; or
  - (c) without reasonable cause, fails to give an enforcement authority or an officer of any enforcement authority any other assistance or information which the enforcement authority or its officer reasonably requires of the person for a purpose for which the enforcement authority or officer may exercise a power under Chapters 3 to 5 of this Part.
- (2) A person commits an offence if, in giving information of a kind referred to in paragraph (1)(c), the person—
- (a) makes a statement which the person knows is false or misleading in a material respect; or
  - (b) recklessly makes a statement which is false or misleading in a material respect.
- (3) Nothing in this regulation requires a person to answer any question or give any information if to do so might incriminate that person.

### **Offence of purporting to be an officer**

**79.** A person who is not an officer of an enforcement authority commits an offence if the person purports to act as such under Chapters 3 to 5 of this Part.

### **Penalties for offences**

- 80.** A person guilty of an offence under regulations 77 to 79 is liable—
- (a) on summary conviction—
    - (i) in England and Wales, to a fine or imprisonment for a term not exceeding 6 months or to both;
    - (ii) in Northern Ireland or Scotland, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding 6 months or to both;
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years.

### **Defence of due diligence**

**81.**—(1) In proceedings for an offence under regulation 77, it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under paragraph (1) which involves a third party allegation unless P has—

- (a) served notice in accordance with paragraph (3); or
  - (b) obtained the leave of the court.
- (3) The notice referred to in paragraph (2) must—
- (a) give any information in P’s possession which identifies or assists in identifying the person who—
    - (i) committed the act or default; or
    - (ii) supplied the information on which P relied; and
  - (b) be served on the person bringing the proceedings not less than 7 clear days before—
    - (i) in England, Wales and Northern Ireland, the hearing of the proceedings;

(ii) in Scotland, the trial diet.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied on the information, having regard in particular to—

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

(5) In this regulation, “third party allegation” means an allegation that the commission of the offence was due to—

- (a) the act or default of another person; or
- (b) reliance on information supplied by another person.

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

**82.**—(1) Where the commission of an offence under regulation 77 is due to anything which another person did or failed to do in the course of a business, that other person is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person.

(2) Where a body corporate commits an offence, a relevant person is also guilty of the offence where the offence was committed by the body corporate—

- (a) with the consent of the relevant person; or
- (b) as a result of the negligence of the relevant person.

(3) In paragraph (2), “relevant person” means—

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b) in relation to a body corporate managed by its members, a member of that body corporate performing managerial functions;
- (c) in relation to a Scottish partnership, a partner;
- (d) a person purporting to act as a person described in sub-paragraph (a), (b) or (c).

### **Time limit for prosecution of offences**

**83.**—(1) In England and Wales an information relating to an offence under regulation 77 that is triable by a magistrates’ court may be so tried if it is laid within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(2) In Scotland—

- (a) summary proceedings for an offence may be commenced before the end of 12 months after the date on which evidence sufficient in the Lord Advocate’s opinion to justify the proceedings came to the Lord Advocate’s knowledge; and
- (b) section 136(3) of the Criminal Procedure (Scotland) Act 1995<sup>(a)</sup> applies for the purpose of this paragraph as it applies for the purpose of that section.

(3) In Northern Ireland summary proceedings for an offence under regulation 77 may be instituted within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the knowledge of the prosecutor.

(4) No proceedings may be brought more than 3 years after the commission of the offence.

(5) For the purpose of this regulation a certificate of the prosecutor (on in Scotland, the Lord Advocate, as to the date on which the evidence referred to in paragraph (1), (2) or (3) came to light is conclusive evidence.

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(a) 1995 c.46.

## **Service of documents**

**84.**—(1) Any document required or authorised by these Regulations to be served on a person may be served by—

- (a) delivering it to that person in person;
- (b) leaving it at that person’s proper address;
- (c) sending it by post or electronic means to that person’s proper address.

(2) In the case of a body corporate, a document may be served on a director of that body.

(3) In the case of a partnership, a document may be served on a partner or a person having control or management of the partnership business.

(4) For the purposes of this regulation, “proper address” means—

- (a) in the case of a body corporate or its director—
  - (i) the registered or principal office of that body; or
  - (ii) the email address of the secretary or clerk of that body;
- (b) in the case of a partnership, a partner or a person having control or management of the partnership business—
  - (i) the principal office of the partnership; or
  - (ii) the email address of a partner or person having that control or management;
- (c) in any other case, a person’s last known address, which may be an email address.

(5) If a person to be served with a document has specified an address in the United Kingdom (other than that person’s proper address) at which that person or someone on that person’s behalf will accept service, that address must also be treated as that person’s proper address.

(6) In this regulation “partnership” includes a Scottish partnership.

## **Recovery of expenses of enforcement**

**85.**—(1) This regulation applies where a person commits an offence under regulation 77, 78 or 79.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person to reimburse the enforcement authority for any expenditure which the enforcement authority has incurred in investigating the offence.

# **PART 6**

## **Provision in respect to Northern Ireland**

### **Construction products regulated under the 2011 Regulation (NI)**

**86.**—(1) Where a manufacturer has drawn up a Declaration of Performance and affixed a CE marking to a construction product, in accordance with the 2011 Regulation (NI), notwithstanding the provisions in Parts 2 and 3 of these Regulations, that construction product may be made available in Northern Ireland where paragraph (2) applies.

(2) This paragraph applies where—

- (a) the intended uses of the construction product correspond exactly to the intended uses as set out in a safety-critical standard for the construction product;
- (b) the declared performance of the construction product corresponds exactly to the required performance of the safety-critical properties as set out in a safety-critical standard for the construction product.

## PART 7

### Qualifying Northern Ireland goods

**87.**—(1) Where paragraph (2) applies, notwithstanding the provisions of Part 2 and 3 of these Regulations, a construction product may be made available on the market of Great Britain.

(2) This paragraph applies where—

- (a) the provisions of regulation 86 are satisfied;
- (b) the construction product is qualifying Northern Ireland goods; and
- (c) an economic operator established in the United Kingdom has complied or is able to comply with the requirements of paragraph (3).

(3) The requirements referred to in paragraph (2) are that the economic operator—

- (a) before placing the construction product on the market of Great Britain, has affixed their name, registered trade name or trademark and address on the construction product, or where that is not possible, on a label attached to the construction product; and
- (b) is able to provide the enforcement authority with a copy of the Declaration of Performance drawn up by the manufacturer in accordance with Articles 4 and 6 of the 2011 Regulation (NI).

(4) In this regulation “qualifying Northern Ireland goods” has the meaning given to it in regulations made under section 8C(6) of the European Union (Withdrawal) Act 2018(a).

## PART 7

### Consequential and transitional provisions

#### [Consequential amendments]

**88.**—(1) The Construction Products Regulations 2013(b) are revoked.

(2) Chapter 8 of the 2011 Regulation is revoked.

(3) Part 3 of Schedule 3 to the Construction Products (Amendment etc.) (EU Exit) Regulations 2020 is revoked(c).

#### [Transitional provision]

**89.** Notwithstanding the provisions of these Regulations, any construction product that was placed on the market before the day on which these Regulations come into force may continue to be made available on the market after these Regulations come into force.

Signatory text

Address

*Name*  
Parliamentary Under Secretary of State

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(a) 2018 c.16, section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) and was amended by section 55(3) of the United Kingdom Internal Market Act 2020 (c. 27).

(b) S.I. 2013/1387.

(c) S.I. 2020/1359.

**SCHEDULE 1**  
**Safety-critical list**

Regulation 3

**Table A**

<i>Column A</i>	<i>Column B</i>	<i>Column C</i>
<i>Safety-critical product</i>	<i>Safety-critical standard</i>	<i>Date of application</i>
Aluminium composite material cladding panels	EN1234ABC	10 <sup>th</sup> February 2023
Internal fire door set	EN4321XYZ	10 <sup>th</sup> February 2023

**SCHEDULE 2**  
**Basic requirements for construction works**

Regulation 3

**Introductory provision**

1. Subject to normal maintenance, construction works must satisfy these basic requirements for construction works for an economically reasonable working life.

**Fitness for intended use**

2. Construction works as a whole and in their separate parts must be fit for their intended use, taking into account in particular the health and safety of persons involved, throughout the life cycle of the works.

**Mechanical resistance and stability**

3. The construction works must be designed and built in such a way that the loadings that are liable to act on them during their constructions 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 construction 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**

4. The construction works must be designed and built in such a way that in the event of an outbreak of fire—

- (a) the load-bearing capacity of the construction can be assumed for a specific period of time;
- (b) the generation and spread of fire and smoke within the construction works are limited;
- (c) the spread of fire to neighbouring construction works is limited;



- (d) occupants can leave the construction works or be rescued by other means;
- (e) the safety of rescue teams is taken into consideration.

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

5. The construction works must be designed and built in such a way that they will, throughout their life cycle, not be a threat to the hygiene or health and safety of workers, occupants or neighbours, nor have an exceedingly high impact, over their entire life cycle, on the environmental quality or on the climate during their construction, use and demolition, in particular as a result of any of the following—

- (a) the giving-off of toxic gas;
- (b) the emissions of dangerous substances, volatile organic compounds (VOC), greenhouse gases or dangerous particles into indoor or outdoor air;
- (c) the emission of dangerous radiation;
- (d) the release of dangerous substances into ground water, marine waters, surface waters or soil;
- (e) the release of dangerous substances into drinking water or substances which have an otherwise negative impact on drinking water;
- (f) faulty discharge of waste water, emission of flue gases or faulty disposal of solid or liquid waste;
- (g) dampness in parts of the construction works or on surfaces within the construction works.

### **Safety and accessibility in use**

6. The construction works must be designed and built in such a way that they do not present unacceptable risks of accidents or damage in service or in operation such as slipping, falling, collision, burns, electrocution, injury from explosion and burglaries.

7. In particular, construction works must be designed and built taking into consideration accessibility and use for disabled persons.

### **Protection against noise**

8. The construction works must be designed and built in such a way that noise perceived by the occupants or people nearby is kept 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**

9. The construction works and their heating, cooling, lighting and ventilation installations must be designed and built in such a way that the amount of energy they require in use is as low as possible, when account is taken of the occupants and of the climatic conditions of the location.

10. Construction works must also be energy-efficient, using as little energy as possible during their construction and dismantling.

### **Sustainable use of natural resources**

11. The construction works must be designed, built and demolished in such a way that the use of natural resources is sustainable and in particular ensure the following—

- (a) reuse or recyclability of the construction works, their materials and parts after demolition;
- (b) durability of the construction works;
- (c) use of environmentally compatible raw and secondary materials in the construction works.

## Approved body requirements

**Approved body requirements**

1. An approved body must meet the requirements set out in paragraphs 2 to 5.
- 2.—(1) An approved body—
  - (a) must be established in the United Kingdom and must have legal personality;
  - (b) must be independent from the organisation and the construction product it assesses;
  - (c) must be capable of carrying out all the tasks required in the activities for which it has been approved;
  - (d) must ensure that its top-level management and the personnel responsible for the activities for which it has been approved—
    - (i) do not become directly involved in the design, manufacture or construction, marketing, installation, use or maintenance of the construction products it assesses;
    - (ii) do not represent the parties engaged in the activities set out in paragraph (i);
    - (iii) do not engage in any activity that may conflict with their independence of judgement and integrity related to the activities for which the body has been approved;
    - (iv) do not engage in any consultancy services in relation to the activities for which the body has been approved;
    - (v) carry out the activities for which the body has been approved with the highest degree of professional integrity and requisite technical competence;
    - (vi) are free from all pressures and inducements, particularly financial, which may influence their judgement or the results of their assessment or verification activities.
  - (e) must ensure that the activities of its subsidiaries or sub-contractors do not affect the confidentiality, objectivity or impartiality of its assessment or verification activities;
  - (f) must ensure that at all times and for each activity for which it has been approved the approved body must have at its disposal—
    - (i) the necessary personnel with technical knowledge and sufficient and appropriate experience to perform the activity;
    - (ii) the necessary description of procedures according to which the assessment of performance is carried out;
    - (iii) the ability to reproduce these procedures;
    - (iv) appropriate policies and procedures in place in order to distinguish between the activities for which it has been approved and other activities it undertakes;
    - (v) the necessary procedures to perform its activities which take due account of—
      - (aa) the size and structure of an undertaking and the sector in which it operates;
      - (bb) the degree of complexity of the relevant product technology; and
      - (cc) the mass or serial nature of the production process;
    - (vi) the means necessary to perform the technical and administrative tasks connected with the activities for which it is approved in an appropriate manner; and
    - (vii) access to all necessary equipment or facilities.
- (2) The personnel responsible for carrying out the activities in relation to which the body has been approved, must have—
  - (a) sound technical and vocational training covering all the activities for which the approved body has been approved;

- (b) satisfactory knowledge of the requirements of the assessments and verifications they carry out and adequate authority to carry out such operations;
  - (c) appropriate knowledge and understanding of the applicable safety-critical standard and of the relevant provisions of these Regulations;
  - (d) the ability required to draw up the certificates, records and reports to demonstrate that the assessments and the verifications have been carried out.
- (3) The impartiality of the approved body, its top-level management and assessment personnel must be guaranteed.
- (4) The remuneration of the approved body's top-level management and assessment personnel must not depend on the number of assessments carried out or on the results of such assessments.
- (5) An approved body must have adequate liability insurance in respect of its activities.
- (6) The personnel of the approved body must be bound to observe professional secrecy with regard to all information gained in carrying out the activities for which it has been approved and all property rights must be protected.
- (7) An approved body must participate in, or ensure that its assessment personnel is informed of, the relevant standardisation activities and the activities of any approved body coordination group established under these Regulations and must apply as general guidance the administrative decisions and documents produced as a work result of that group.
- 3.—**(1) Approved bodies must carry out the activities for which they have been approved in accordance with the operational requirements set out in sub-paragraphs (2) to (9).
- (2) Approved bodies must carry out the activities for which they have been approved in accordance with the AVCP system set out in the relevant safety-critical standard.
- (3) Assessments and verifications of constancy of performance must be carried out—
- (a) with transparency as regards the manufacturer; and
  - (b) in a proportionate manner, avoiding an unnecessary burden for economic operators.
- (4) The approved bodies must perform their activities taking due account of—
- (a) the size and structure of the undertaking;
  - (b) the sector in which the undertaking operates; and
  - (c) the degree of complexity of the product technology in question and the mass or serial nature of the production process.
- (5) In complying with sub-paragraph (3), the approved bodies must nevertheless respect the degree of rigour required for the product by these Regulations and the part played by the product for the fulfilment of all basic requirements for construction works.
- (6) Where, in the course of the initial inspection of the manufacturing plant and of factory production control, an approved body finds that the manufacturer has not ensured the constancy of performance of the manufactured product, it must require the manufacturer to take appropriate corrective measures and must not issue a certificate.
- (7) Where, in the course of the monitoring activity aiming at the verification of the constancy of performance of the manufactured product, an approved body finds that a construction product no longer has the same performance to that of the product-type, it must require the manufacturer to take appropriate corrective measures and must suspend or withdraw its certificate if necessary.
- (8) Where corrective measures are not taken or do not have the required effect, the approved body must restrict, suspend or withdraw any certificates, as appropriate.
- (9) An approved body must make provision for a manufacturer to be able to make an appeal against any action taken under sub-paragraph (8).
- 4.** Approved bodies must inform the Secretary of State of any of the following—
- (a) any refusal, restriction, suspension or withdrawal of certificates;
  - (b) any circumstances affecting the scope of, and conditions for, approval;

- (c) any request for information on assessment or verification of constancy of performance activities carried out which they have received from an enforcement authority other than the Secretary of State;
- (d) on request, third party tasks in accordance with the systems of assessment and verification of constancy of performance carried out within the scope of their approval and any other activity performed, including cross-border activities and subcontracting.

5. Approved bodies must provide the other bodies approved under these Regulations carrying out similar third party tasks in accordance with the systems of assessment and verification of constancy of performance and for construction products covered by the same safety-critical standard with relevant information on issues relating to negative and, on request, positive results from these assessments or verifications.

**SCHEDULE 4**

Regulation 25

**Declaration of Performance (SC)**

**Form \*\*\***

**Declaration of performance for safety-critical products**

DECLARATION OF PERFORMANCE (SC) No.  
.....

1. Unique identification code of the product: .....  
.....

3. Intended use(s) of the product, in accordance with the applicable safety-critical standard:  
.....

4. Name, registered trade name or registered trademark and address of the manufacturer:  
.....  
.....  
.....

5. Where applicable, name and contact address of the authorised representative:  
.....  
.....  
.....

6. System(s) of assessment and verification of constancy of performance of the product:  
.....  
.....  
.....

7. In case of the declaration of performance concerning a construction product on the inventory list:  
.....  
..... (name and identification number of the Approved body, if relevant)  
performed .....under system

.....(description of the third party tasks carried out to assess and verify constancy of performance) and issued  
 .....  
 ..... (certificate of constancy of performance, certificate of conformity of the factory production control, test / calculation reports – as relevant)

8. Declared performance – notes to table.

- a) Column 1 must contain the safety critical properties for the intended use or uses indicated in point 3.
- b) For each safety-critical property listed in column 1, column 2 must contain the declared performance, expressed by level or class, or in a description, related to the corresponding safety-critical property.
- c) For each safety critical property listed in column 1, column 3 must contain dated reference of the corresponding standard.

<i>Safety-critical property</i>	<i>Performance</i>	<i>Relevant standard</i>

9. The performance of the product identified in points 1 and 2 is in conformity with the declared performance in point 8. This declaration of performance is issued under the sole responsibility of the manufacturer identified in point 4.

Signed for and on behalf of the manufacturer by:

.....  
 ..... (name and function)

.....  
 ..... (place and date of issue).

Signature:

## SCHEDULE 5

Regulation 76

### Metrology and product safety legislation

#### **Metrology legislation**

1. For the purposes of regulation 75 (information sharing), “metrology legislation” means—
  - (a) the Weights and Measures Act 1985(a);
  - (b) the Measuring Container Bottles (EEC Requirements) Regulations 1977(b);
  - (c) the Weights and Measures (Intoxicating Liquor) Order 1988(c);
  - (d) the Weights and Measures (Packaged Goods) Regulations 2006(d);
  - (e) the Non-automatic Weighing Instruments Regulations 2016(e);
  - (f) the Measuring Instruments Regulations 2016(f).

#### **Product safety legislation**

2. For the purposes of regulation 75 (information sharing), “product safety legislation” means—

- 
- (a) 1985 c.72.
  - (b) S.I. 1977/932.
  - (c) S.I. 1988/2039.
  - (d) S.I. 2006/659.
  - (e) S.I. 2016/1152.
  - (f) S.I. 2016/1153.

- (a) the Lifting Operations and Lifting Equipment Regulations 1998(a);
- (b) the Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001(b);
- (c) the General Product Safety Regulations 2005(c);
- (d) the Offshore Installations (Safety Case) Regulations 2005(d);
- (e) the Supply of Machinery (Safety) Regulations 2008(e);
- (f) the Aerosol Dispensers Regulations 2009(f);
- (g) the Toys (Safety) Regulations 2011(g);
- (h) the Cosmetic Products Enforcement Regulations 2013(h);
- (i) the Explosives Regulations 2014(i);
- (j) the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015(j);
- (k) the Pyrotechnic Articles (Safety) Regulations 2015(k);
- (l) the Electromagnetic Compatibility Regulations 2016(l);
- (m) the Simple Pressure Vessels (Safety) Regulations 2016(m);
- (n) the Lifts Regulations 2016(n);
- (o) the Electrical Equipment (Safety) Regulations 2016(o);
- (p) the Pressure Equipment (Safety) Regulations 2016(p);
- (q) the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 2016(q);
- (r) the Recreational Craft Regulations 2017(r);
- (s) the Radio Equipment Regulations 2017(s);
- (t) the Personal Protective Equipment (Enforcement) Regulations 2018(t);
- (u) the Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018(u).

#### **EXPLANATORY NOTE**

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

These Regulations provide for the regulation of construction products on the market in the United Kingdom.

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- (a) S.I. 1998/2307.
  - (b) S.I. 2001/1701.
  - (c) S.I. 2005/1803.
  - (d) S.I. 2005/3117.
  - (e) S.I. 2008/1597.
  - (f) S.I. 2009/2824.
  - (g) S.I. 2011/1881.
  - (h) S.I. 2013/1478.
  - (i) S.I. 2014/1638.
  - (j) S.I. 2015/398.
  - (k) S.I. 2015/1553.
  - (l) S.I. 2016/1091.
  - (m) S.I. 2016/1092.
  - (n) S.I. 2016/1093.
  - (o) S.I. 2016/1101.
  - (p) S.I. 2016/1105.
  - (q) S.I. 2016/1107.
  - (r) S.I. 2017/737.
  - (s) S.I. 2017/1206.
  - (t) S.I. 2018/390.
  - (u) S.I. 2018/389.

These Regulations regulate the safety of construction products being placed on the market in the United Kingdom. Part 2 sets out a general safety requirement, which all construction products must meet. Part 2 sets out obligations on economic operators (manufacturers, their authorised representatives, importers, distributors and fulfilment service providers) to ensure that the general safety requirement is met.

Part 3 sets out provisions with respect to safety-critical products, which are products that may risk death or serious injury to any person. Safety-critical products must meet any safety-critical standards that apply to them, and Part 3 sets out how safety-critical standards may be developed and by whom (the British Standards Institution) as well as setting out the obligations on economic operators with regard to safety-critical products.

Part 4 sets out a requirement that economic operators must not make false or misleading claims about construction products that they make available on the market.

Part 5 deals with enforcement and sets out who the enforcement authorities are for these Regulations but also for other legislation that regulates construction products. That other legislation is the EU Construction Products Regulation (2011/305) (“the EU Regulation”) which applies in Northern Ireland under the Protocol on Ireland / Northern Ireland in the withdrawal agreement (“the Protocol”). There is also a retained EU law version of the EU Regulation that applies in Great Britain (England and Wales and Scotland). Part 5 provides powers to enforcement authorities (defined as the Secretary of State, and anyone appointed by the Secretary of State, and Trading Standards) to investigate and prosecute as well as providing powers to take civil action (including variably monetary penalties and undertakings) for breach of any of these pieces of legislation. There is also provision to allow enforcement authorities and other persons to share relevant information with each other.

Part 6 extends to Northern Ireland only and makes clear that nothing in these Regulations prevents a lawfully CE marked construction product being able to be placed on the market in Northern Ireland. This is to meet the United Kingdom’s obligations under the Protocol.

Part 7 extends to Great Britain only and makes provision for qualifying Northern Ireland goods to be able to be placed on the market in Great Britain.

A full impact assessment of the assessment that these Regulations will have on the costs of business, the voluntary sector and the public sector is available from [the Ministry of Housing, Communities and Local Government, Fry Building, 2 Marsham Street, London SW1P 4DF] and is also published with the Explanatory Memorandum alongside these Regulations on [[www.legislation.gov.uk](http://www.legislation.gov.uk).]