

## SCHEDULE 1

Regulations 7(1)(b), 11(1)(b) and 12(1)(b)

Grounds for service of notices in relation to the 2008 Regulation and the 2011 Regulation

1. There are grounds for the service of a suspension notice under regulation 7(1)(b), a prohibition notice under regulation 11(1)(b) or a notice to warn under regulation 12(1)(b), as the case may be, where one or more of the following paragraphs of this Schedule applies in relation to the construction products concerned.

2. This paragraph applies where the service of such a notice is appropriate because there has been a failure to comply with any requirement under any of the following provisions of the 2011 Regulation—

- (a) Article 11(2) (duty of manufacturer of construction product to keep technical documentation and declaration of performance for 10 years, or such period as amended, after the product is placed on the market);
- (b) Article 11(8) (duty of manufacturer of construction product to provide information and documentation to demonstrate conformity with declaration of performance and compliance with other applicable requirements of the 2011 Regulation of the product to the competent national authority, and to cooperate with that authority on action to eliminate risks posed by the product);
- (c) Article 12(2) (duty of manufacturer's authorised representative to keep technical documentation and declaration of performance available for the period referred to in Article 11(2), to provide information and documentation to demonstrate conformity with declaration of performance and compliance with other applicable requirements of the 2011 Regulation of the product to the competent national authority, and to cooperate with that authority on action to eliminate risks posed by the product);
- (d) Article 13(8) (duty of importer of construction product to keep technical documentation and declaration of performance available for the period referred to in Article 11(2));
- (e) Article 13(9) (duty of importer of construction product to provide information and documentation to demonstrate conformity with declaration of performance and compliance with other applicable requirements of the 2011 Regulation of the product to the competent national authority, and to cooperate with that authority on action to eliminate risks posed by the product);
- (f) Article 14(5) (duty of distributor who of construction product to provide information and documentation to demonstrate conformity with declaration of performance and compliance with other applicable requirements of the 2011 Regulation of the product to the competent national authority, and to cooperate with that authority on action to eliminate risks posed by the product); or
- (g) insofar as it imposes duties in relation to Article 11(2) and (8), Article 15 (duties of importer and distributor to comply with Article 11 as if a manufacturer where the importer or distributor places a construction product on the market under its own name or trademark, or modifies a product already on the market in such a way that conformity with the declaration of performance may be affected).

3. This paragraph applies where Article 20 (products presenting a serious risk) of the 2008 Regulation is applicable to the products.

4. This paragraph applies where Article 29(1) (control of products entering the Community market (national measures): serious risk) of the 2008 Regulation is applicable to the products.

5. This paragraph applies where the service of such a notice is appropriate in accordance with Article 29(2) (control of products entering the Community market (national measures): product not complying with Community harmonisation legislation) of the 2008 Regulation.

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6. This paragraph applies where the service of such a notice is appropriate in accordance with—
  - (a) the second sub-paragraph of Article 56(1) (procedure to deal at national level with construction products presenting a risk) of the 2011 Regulation;
  - (b) Article 56(4) or (8) of the 2011 Regulation; or
  - (c) Article 58(1) (complying construction products which nevertheless present a risk to health and safety) of the 2011 Regulation.
7. This paragraph applies where the product must be withdrawn from the market as a non-compliant construction product by virtue of Article 57(2) (Union safeguard procedures) of the 2011 Regulation.
8. This paragraph applies where the service of such a notice is appropriate in accordance with Article 59(2) (formal non-compliance) of the 2011 Regulation, without prejudice to paragraph 2.

## SCHEDULE 2

Regulation 7(6)

### PART 1

#### Suspension notices

1. A suspension notice served by an enforcement authority in respect of any construction products must—
  - (a) describe the products in a manner sufficient to identify them;
  - (b) set out the reasons why the authority considers the grounds described in regulation 7(1) to be made out;
  - (c) specify any requirement under regulation 7(2) to keep the authority informed of the whereabouts of any of the products;
  - (d) where the construction products are to be recalled, state the terms of the recall;
  - (e) specify the day on which the notice is to come into force, and the duration of the notice; and
  - (f) state that, and set out the manner in which, the person on whom the notice is served may appeal against the notice under Part 2 of this Schedule.
2. A notice that is based on the ground in paragraph 6(a) of Schedule 1 must, in order to allow the enforcement authority to comply with Article 21 of the 2008 Regulation, state that it shall not have effect until the end of the period of ten days beginning on the day after it is served, but this requirement does not apply if the circumstances leading to the issue of the notice are such that paragraph (3) of that Article permits a measure to be taken without a period of consultation.
3. Where an enforcement authority serves a suspension notice in respect of any construction products, the authority shall be liable to pay compensation to any person having an interest in the products in respect of any loss or damage caused by reason of the service of the notice if—
  - (a) no offence under regulation 4, 5 or 6 has been committed in relation to the products;
  - (b) none of the grounds for service of a suspension notice in Schedule 1 has been made out in relation to the products; and
  - (c) the exercise of the power is not attributable to any neglect or default by that person.
4. Any disputed question as to the right to, or the amount of, any compensation payable under paragraph 3 shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

## PART 2

### Appeals against suspension notices

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

6. An application under this Part of this Schedule may be made—

- (a) to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland—
  - (i) for an offence in relation to the products under any provision of Part 2 of these Regulations, or
  - (ii) for the forfeiture of the products under regulation 8;
- (b) where no such proceedings have been brought, by way of complaint to a magistrates' court; or
- (c) in Scotland, by summary application to the sheriff.

7. On an application under this Part of this Schedule to a magistrates' court in England and Wales or Northern Ireland the court may make an order setting aside the suspension notice only if the court is satisfied that—

- (a) no offence under regulation 4, 5 or 6 has been committed in relation to the products;
- (b) none of the grounds for service of a suspension notice in Schedule 1 has been made out in relation to the products; and
- (c) no procedures are pending in relation to the products involving other Member States or the Commission under Article 56 (procedure to deal at national level with construction products presenting a risk), 57 (Union safeguard procedure) or 58 (complying construction products which nevertheless present a risk to health and safety) of the 2011 Regulation.

8. On an application under this Part of this Schedule to the sheriff, the sheriff may make an order setting aside the suspension notice only if satisfied that at the date of making the order—

- (a) proceedings—
  - (i) for an offence in relation to the products under regulation 4, 5 or 6, or
  - (ii) for the forfeiture of the products under regulation 9,have not been brought or, having been brought, have been concluded;
- (b) none of the grounds for service of a suspension notice in Schedule 1 has been made out in relation to the products; and
- (c) no procedures are pending in relation to the products involving other Member States or the Commission under Article 56 (procedure to deal at national level with construction products presenting a risk), 57 (Union safeguard procedure) or 58 (complying construction products which nevertheless present a risk to health and safety) of the 2011 Regulation.

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

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, to the county court,

and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980<sup>MI</sup> (statement of

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case) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>M2</sup> (cases stated by magistrates' courts)).

#### Marginal Citations

**M1** 1980 c.43.

**M2** S.I. 1981/1675 (N.I. 26).

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

**11.** This Part of this Schedule is without prejudice to the operation of—

- (a) Article 21(4) (restrictive measures: withdrawal of measures after effective action) of the 2008 Regulation in respect of paragraph 6(a) of Schedule 1;
- (b) Article 57(2), second sentence (Union safeguard procedure: national measure considered unjustified) of the 2011 Regulation in respect of paragraph 6(b) of Schedule 1; and
- (c) Article 58(4) (complying construction products which nevertheless present a risk to health and safety: evaluation of national measures by the Commission) of the 2011 Regulation in respect of paragraph 6(c) of Schedule 1.

## SCHEDULE 3

Regulation 11(4)

### Prohibition notices

**1.** A prohibition notice in respect of any construction products must—

- (a) state that the Secretary of State considers that one or more of the grounds for the service of a prohibition notice in regulation 11(1) is made out in relation to the products, and specify which are the grounds in question;
- (b) set out the reasons why the Secretary of State considers those grounds to be made out;
- (c) where the construction products are to be recalled, state the terms of the recall;
- (d) specify the day on which the notice is to come into force; and
- (e) state that the person on whom it is served may at any time make representations in writing to the Secretary of State for the purpose of establishing that the matters stated in accordance with sub-paragraph (a) are not the case.

**2.** A notice that is based on the ground in paragraph 6(a) of Schedule 1 must, in order to allow the Secretary of State to comply with Article 21 of the 2008 Regulation, state that it shall not have effect until the end of the period of ten days beginning on the day after it is served, but this requirement does not apply if the circumstances leading to the issue of the notice are such that paragraph (3) of that Article permits a measure to be taken without a period of consultation.

**3.—(1)** If representations in writing about a prohibition notice are made by the recipient to the Secretary of State, it shall be the duty of the Secretary of State to consider whether to revoke the notice and—

- (a) if the Secretary of State decides to revoke it, to do so;

- (b) in any other case, to appoint a person to consider those representations, any further representations made (whether in writing or orally) by the recipient about the notice and the statements of any witnesses examined under this Schedule.
- (2) Where the Secretary of State has appointed a person to consider representations about a prohibition notice, it must serve a notification on the recipient which—
- (a) states that the recipient may make oral representations to the appointed person for the purpose of establishing that the matters stated in accordance with paragraph 1(a) are not the case; and
  - (b) specifies the place and time at which the oral representations may be made.
- (3) The time specified in a notification served under sub-paragraph (2) must not be before the end of the period of twenty-one days beginning with the day on which the notification is served, unless the recipient otherwise agrees.
- (4) A person on whom a notification has been served under sub-paragraph (2) or that person's representative may, at the place and time specified in the notification—
- (a) make oral representations to the appointed person for the purpose of establishing that the matters stated in accordance with paragraph 1(a) are not the case; and
  - (b) call and examine witnesses in connection with the representations.
- 4.—**(1) Where representations in writing about a prohibition notice are made by the recipient to the Secretary of State at any time after a person has been appointed to consider representations about that notice, then, whether or not the appointed person has made a report to the Secretary of State, the following provisions of this paragraph shall apply instead of paragraph 3.
- (2) The Secretary of State must, before the end of the period of one month beginning with the day on which it receives the representations, serve a notification on the recipient which states—
- (a) that the Secretary of State has decided to revoke the notice, has decided to vary it or, as the case may be, has decided neither to revoke nor vary it; or
  - (b) that, a person having been appointed to consider representations about the notice, the recipient may, at a place and time specified in the notification, make oral representations to the appointed person for the purpose of establishing that the matters stated in accordance with paragraph 1(a) are not the case.
- (3) The time specified in a notification served for the purposes of sub-paragraph (2)(b) must not be before the end of the period of twenty-one days beginning with the day on which the notification is served, unless the recipient otherwise agrees or the time is the time already specified for the purposes of paragraph 3(2)(b).
- (4) A person on whom a notification has been served for the purposes of sub-paragraph (2)(b) or that person's representative may, at the place and time specified in the notification—
- (a) make oral representations to the appointed person for the purpose of establishing that the matters stated in accordance with paragraph 1(a) are not the case; and
  - (b) call and examine witnesses in connection with the representations.
- 5.—**(1) Where a person is appointed to consider representations about a prohibition notice, it shall be the duty of that person to consider—
- (a) any written representations made by the recipient about the notice, other than those in respect of which a notification is served under paragraph 4(2)(a);
  - (b) any oral representations made under paragraph 3(4) or 4(4); and
  - (c) any statement made by witnesses in connection with the oral representations,

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

(2) It shall be the duty of the Secretary of State to consider any report made under sub-paragraph (1) and, after considering the report, to inform the recipient of the decision with respect to the prohibition notice to which the report relates.

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

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

(3) The service of a notification under sub-paragraph (1) shall be sufficient to satisfy the requirement of paragraph 5(2) that the recipient must be informed of the decision of the Secretary of State.

**7.** This Schedule is without prejudice to the operation of—

- (a) Article 21(4) (restrictive measures: withdrawal of measures after effective action) of the 2008 Regulation in the case of a prohibition notice based on the ground in paragraph 6(a) of Schedule 1;
- (b) Article 57(2), second sentence (Union safeguard procedure: national measure considered unjustified) of the 2011 Regulation in the case of a prohibition notice based on the ground in paragraph 6(b) of Schedule 1; and
- (c) Article 58(4) (complying construction products which nevertheless present a risk to health and safety: evaluation of national measures by the Commission) of the 2011 Regulation in the case of a prohibition notice based on the ground in paragraph 6(c) of Schedule 1.

**8.—**(1) Where in a notification served on any person under this Schedule the Secretary of State has appointed a time for the making of oral representations or the examination of witnesses, it may, by giving that person such notification as the Secretary of State considers appropriate, change the time to a later time or appoint further times at which further representations may be made or the examination of witnesses may be continued; and paragraphs 3(4) and 4(4) shall have effect accordingly.

(2) For the purposes of this Schedule the Secretary of State may appoint a person (instead of the appointed person) to consider any representations or statements, if the person originally appointed, or last appointed under this sub-paragraph, to consider those representations or statements has died or appears to the Secretary of State to be otherwise unable to act.

**9.** In this Schedule—

“the appointed person”, in relation to a prohibition notice means the person for the time being appointed under this Schedule to consider representations about the notice;

“notification” means notification in writing; and

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

## SCHEDULE 4

Regulation 12(2)

### Notices to warn

1.—(1) If the Secretary of State proposes to serve a notice to warn on any person in respect of any construction products, the Secretary of State, must, before service of the notice, serve on that person a notification which—

- (a) contains a draft of the proposed notice;
- (b) states that the Secretary of State proposes to serve a notice in the form of the draft on that person;
- (c) states that in respect of the products described in the draft the Secretary of State considers that one or more of the grounds for the service of a notice to warn in regulation 12(1) is made out in relation to the products, and specify which are the grounds in question;
- (d) sets out the reasons why the Secretary of State considers the matters described in sub-paragraph (c) to be the case;
- (e) states that the person may make representations to the Secretary of State for the purpose of establishing that the matters stated in accordance with sub-paragraph (a) are not the case if, before the end of the period the fourteen days beginning with the day on which the notification is served, the person informs the Secretary of State —
  - (i) that the person intends to make representations, and
  - (ii) whether the representations will be made only in writing or both in writing and orally.

(2) Where the Secretary of State has served a notification containing a draft of a proposed notice to warn on any person, it must not serve a notice to warn on that person in respect of the products to which the proposed notice relates unless—

- (a) the period of fourteen days beginning with the day on which the notification was served expires without the Secretary of State being informed as mentioned in sub-paragraph (1) (e);
- (b) the period of twenty-eight days beginning with that day expires without any written representations being made by that person to the Secretary of State about the proposed notice; or
- (c) the Secretary of State has considered a report about the proposed notice by a person appointed under paragraph 2(1).

2.—(1) Where a person on whom a notification containing a draft of a proposed notice to warn has been served—

- (a) informs the Secretary of State as mentioned in paragraph 1(1)(e) before the end of the period of fourteen days beginning with the day on which the notification was served; and
- (b) makes written representations to the Secretary of State about the proposed notice before the end of the period of twenty-eight days beginning with that day,

the Secretary of State must appoint a person to consider those representations, any further representations made by that person about the draft notice and the statements of any witnesses examined under this Schedule.

(2) Where—

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

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

the Secretary of State must inform the person intending to make the representations of the place and time at which oral representations may be made to the appointed person.

(3) Where a person on whom a notification containing a draft of a proposed notice to warn has been served is informed of a time for the purposes of sub-paragraph (2), that time must not be—

- (a) before the end of the period of twenty-eight days beginning with the day on which the notification was served; or
- (b) before the end of the period of seven days beginning with the day on which that person is informed of the time.

(4) A person who has been informed of a place and time for the purposes of sub-paragraph (2) or the person's representative may, at that place and time—

- (a) make oral representations to the appointed person for the purpose of establishing that the matters stated in accordance with paragraph 1(1)(c) are not the case; and
- (b) call and examine witnesses in connection with the representations.

**3.—(1)** Where a person is appointed to consider representations about a proposed notice to warn, it shall be the duty of that person to consider—

- (a) any written representations made by the person on whom it is proposed to serve the notice; and
- (b) in a case where a place and time has been appointed under paragraph 2(2) for oral representations to be made by that person or that person's representative, any representations so made and any statements made by witnesses in connection with those representations,

and, after considering those matters, to make a report (including recommendations) to the Secretary of State about the matters so considered and the proposal to serve the notice.

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

(3) If at any time after serving a notification on a person under paragraph 1 the Secretary of State decides not to serve on that person either the proposed notice to warn or that notice with modifications, the Secretary of State must inform that person of the decision; and nothing done for the purposes of any of the preceding provisions of this Schedule before that person was so informed shall—

- (a) entitle the Secretary of State subsequently to serve the proposed notice or that notice with modifications; or
- (b) require the Secretary of State, or any person appointed to consider representations about the proposed notice, subsequently to do anything in respect of, or in consequence of, any such representations.

(4) Where a notification containing a draft of a proposed notice to warn is served on a person in respect of any products, a notice to warn served on that person in consequence of a decision made under sub-paragraph (2) must either be in the form of the draft or must be less onerous than the draft.

**4.** The Secretary of State may revoke a notice to warn by serving on the person on whom the notice was served a notification stating that the notice is revoked.

**5.** This Schedule is without prejudice to the operation of—



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- (a) Article 21(4) (restrictive measures: withdrawal of measures after effective action) of the 2008 Regulation in the case of a notice to warn based on the ground in paragraph 6(a) of Schedule 1;
- (b) Article 57(2), second sentence (Union safeguard procedure: national measure considered unjustified) of the 2011 Regulation in the case of a notice to warn based on the ground in paragraph 6(b) of Schedule 1; and
- (c) Article 58(4) (complying construction products which nevertheless present a risk to health and safety: evaluation of national measures by the Commission) of the 2011 Regulation in the case of a notice to warn based on the ground in paragraph 6(c) of Schedule 1.

6.—(1) Where in a notification served on any person under this Schedule the Secretary of State has appointed a time for the making of oral representations or the examination of witnesses, it may, by giving that person such notification as the Secretary of State considers appropriate, change the time to a later time or appoint further times at which further representations may be made or the examination of witnesses may be continued; and paragraph 2(4) shall have effect accordingly.

(2) For the purposes of this Schedule the Secretary of State may appoint a person (instead of the appointed person) to consider any representations or statements, if the person originally appointed, or last appointed under this sub-paragraph, to consider those representations or statements has died or appears to the Secretary of State to be otherwise unable to act.

7. In this Schedule—

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

“notification” means notification in writing.

## SCHEDULE 5

Regulation 28(2)

### Amendments to statutory instruments

#### *Provision and Use of Work Equipment Regulations 1998*

1. In Schedule 1 to the Provision and Use of Work Equipment Regulations 1998<sup>M3</sup> omit the entry for the Construction Products Regulations 1991.

#### **Marginal Citations**

**M3** [S.I. 1998/2306](#). There are amendments, but none is relevant.

#### *Water Supply (Water Fittings) Regulations 1999*

2. In the Water Supply (Water Fittings) Regulations 1999<sup>M4</sup>—

(a) in regulation 1(2) omit the definitions “the Directive”, “European technical approval” and “harmonized standard”; and

(b) in regulation 4—

(i) in paragraph (2)—

(aa) in sub-paragraph (a) for “the Directive” substitute “ Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down

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harmonised conditions for the marketing of construction products and repealing Council Directive [89/106/EEC](#)<sup>M5</sup>”, and

(bb) omit sub-paragraph (b); and

(ii) in paragraph (6)(a) for “European technical approval” substitute “ European Technical Assessment within the meaning of the Regulation mentioned in paragraph (2)(a) ”.

**Marginal Citations**

**M4** [S.I. 1999/1148](#), as amended by [S.I. 2011/1043](#).

**M5** OJ No L 88, 4.4.2011, p.5.

*Water Supply (Water Quality) Regulations 2000*

**3.** In regulation 31 of the Water Supply (Water Quality) Regulations 2000 <sup>M6</sup>—

(a) in paragraph (1) omit the definitions “the Directive”, “European technical approval” and “harmonised standard”; and

(b) in paragraph (3)—

(i) for “the Directive” substitute “ Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive [89/106/EEC](#) ”, and

(ii) omit sub-paragraph (a).

**Marginal Citations**

**M6** [S.I. 2000/3184](#), as amended by [S.I. 2007/2734](#). There are other amendments, but none is relevant.

*Water Supply (Water Quality (Scotland)) Regulations 2001*

**4.** In regulation 27 of the Water Supply (Water Quality) (Scotland) Regulations 2001 <sup>M7</sup>—

(a) in paragraph (1) omit the definitions “the Directive”, “European technical approval” and “harmonized standard”; and

(b) in paragraph (3)—

(i) for “the Directive” substitute “ Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive [89/106/EEC](#) ”, and

(ii) omit sub-paragraph (a).

**Marginal Citations**

**M7** [S.S.I. 2001/207](#), as amended by [S.I. 2011/1043](#).

*Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006*

**5.** In the Schedule to the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 <sup>M8</sup> omit the entry for the Construction Products Regulations 1991.

**Marginal Citations**

**M8** [S.I. 2006/2183](#), as amended by [S.I. 2008/2165](#). There is another amendment, but it is not relevant.

*Water Supply (Water Quality) Regulations 2000 (Amendment) Regulations 2007*

6. Omit regulation 2(21)(a)(i) and (ii) of the Water Supply (Water Quality) Regulations 2000 (Amendment) Regulations 2007 <sup>M9</sup>.

**Marginal Citations**

**M9** [S.I. 2007/2734](#).

*Water Supply (Water Quality) Regulations 2010*

7. In regulation 31 of the Water Supply (Water Quality) Regulations 2010 <sup>M10</sup>—
- (a) in paragraph (1) omit the definitions “the Directive”, “European technical approval” and “harmonized standard”; and
  - (b) in paragraph (3)—
    - (i) for “the Directive” substitute “ Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive [89/106/EEC](#) ”, and
    - (ii) omit sub-paragraph (a).

**Marginal Citations**

**M10** [S.I. 2010/994](#) (W. 99).

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