

SCHEDULE 1

Amendments to the 2011 Regulation

PART 9

Amendments to Chapter 8

Insertion of new Article 59A

61. After Article 59, insert—

“Article 59A

Formal non-compliance in relation to the EU Construction Products Regulation

1. Without prejudice to Article 56, where a market surveillance authority considers an economic operator is seeking to rely on provisions in Article 16A, 16B or 16C in order to comply with the requirements of this Regulation and makes one of the following findings, it must require the relevant economic operator to put an end to the non-compliance concerned:

- (a) the CE marking has not been affixed in accordance with Article 8(2) of the EU Construction Products Regulation;
- (b) the CE marking has been affixed in breach of Article 8 or 9 of the EU Construction Products Regulation;
- (c) the declaration of performance has not been drawn up in accordance with Articles 4 and 6 of the EU Construction Products Regulation and Article 7 of this Regulation (as modified by Article 16A);
- (d) the technical documentation referred to in the second subparagraph of Article 11(1) of the EU Construction Products Regulation is either not available or not complete.

2. Where the non-compliance referred to in paragraph 1 continues, the market surveillance authority must take all appropriate measures to restrict or prohibit the making available on the market of the construction product or ensure that it is recalled or withdrawn from the market.

Article 59B

Other non-compliance in relation to the EU Construction Products Regulation

1. Paragraph 2 applies where an economic operator:

- (a) relies on provisions in Article 16A, 16B or 16C in order to comply with this Regulation when making a product available on the market; and
- (b) after the product is made available on the market:
 - (i) the manufacturer is required, or becomes aware that another person is required, under the EU Construction Products Regulation to take corrective measures in relation to products on the market of the EU, or to withdraw or recall products from that market, and, if the United Kingdom had remained a member State, this requirement would have extended to the product in question; or

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- (ii) a certificate in relation to the product is suspended or withdrawn, or restricted to the extent that it is no longer valid for that product, under Article 52(4) or (5) of the EU Construction Products Regulation.
2. Where this paragraph applies:
- (a) the product referred to in paragraph 1(a) is no longer considered to be compliant with this Regulation;
 - (b) the manufacturer must inform a market surveillance authority and any importer or distributor of the product of the action referred to in paragraph 1(b)(i) or 1(b)(ii) which is required, or has been taken, under the EU Construction Products Regulation;
 - (c) the manufacturer and any importer or distributor of the product must take any action required under Article 11(7), Article 13(7) or Article 14(4) respectively;
 - (d) a market surveillance authority may require the manufacturer or any importer or distributor of the product to take corrective measures to bring the product into conformity with this Regulation or to withdraw or recall it from the market.”.