
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Construction Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/465) (“the 2019 Regulations”) before they come into force, and also make additional standalone provision in relation to Northern Ireland. Broadly the amendments in this instrument restrict the amendments in the 2019 Regulations so instead of having effect in relation to the United Kingdom they have effect in relation to Great Britain only. Schedule 2 amends the Construction Products Regulations 2013 (S.I. 2013/1387) so that the enforcement rules in those Regulations apply only in relation to the construction products regime in Great Britain (and not the whole of the United Kingdom). Schedule 3 sets out enforcement rules in relation to the construction products regime in Northern Ireland.

Regulation 3 and Schedule 1 make amendments to Schedule 1 to the 2019 Regulations. Schedule 1 to the 2019 Regulations amends 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 as it had effect immediately before IP completion day to correct deficiencies. The amendments in Schedule 1 to this instrument provide for the amendments in Schedule 1 to the 2019 Regulations to have effect in relation to Great Britain only (in Northern Ireland existing EU law, not retained EU law will continue to apply).

Regulation 3 and Schedule 2 make amendments to Schedule 2 to the 2019 Regulations. Schedule 2 to the 2019 Regulations amends the Construction Products Regulations 2013 to make consequential corrections on the UK exiting the European Union. The amendments in Schedule 2 to this instrument amend Schedule 2 to the 2019 Regulations so the Construction Products Regulations have effect in relation to Great Britain only (the enforcement rules which will apply in respect of Northern Ireland are set out in Schedule 3 to this instrument (see below)).

Regulation 4 makes provision to implement the Ireland/Northern Ireland Protocol to the Withdrawal Agreement. In particular, it provides a number of glosses to 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 as it has effect in EU law as amended from time to time, including providing for an accompanying product marking ie the UK(NI) indication.

Regulation 5 and Schedule 3 make provision for the enforcement of the EU law construction products regime in respect of Northern Ireland. Schedule 3 makes provision in respect of Northern Ireland which is akin to the provisions of the Construction Products Regulations 2013 (S.I. 2013/1387), with provisions not relevant to Northern Ireland being removed. The effect of the Schedule is to maintain the status quo from IP completion day and to implement the Ireland/Northern Ireland Protocol to the EU Withdrawal Agreement as it applies to construction products. The Ireland/Northern Ireland Protocol provides in certain cases for use of product marking ie the UK(NI) indication. Consequently, paragraphs 3, 4 and 5 of Schedule 3 provide for new offences in relation to affixing etc of the UK(NI) indication on construction products. Paragraphs 6 and 7 (suspension notices) make provision for the service of notices by an enforcement authority suspending the supply of construction products on grounds of the commission of an offence under paragraphs 3, 4 or 5, or on grounds relating to breach of certain provisions of 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 as it has effect in EU law as amended from time to time, and for appeals against suspension notices. Offences are provided for in respect of

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breach of notices. Paragraph 9 makes provision for forfeiture of construction products on grounds similar to those for the service of suspension notices. Paragraph 10 requires enforcement authorities to send certain details in relation to suspension notices to the Secretary of State.

Paragraphs 11 to 14 of Schedule 3 make provision for the service of notices by the Secretary of State prohibiting the supply of construction products, and requiring the issue of warnings in relation to construction products, on grounds of the commission of an offence under paragraphs 3 or 4, or on the grounds set out in paragraph 16. Offences are provided for in respect of breach of notices. Provision is also made for the procedure by which representations may be made against the grounds for service of a prohibition notice, and for notice to be given in advance of service of a notice to warn, and for a procedure for representations to be made against the service of the notice.

Paragraph 15 of Schedule 3 provides a power for the Secretary of State to require information to be provided to assist in deciding whether to serve prohibition notices and notices to warn, with an offence for non-compliance or provision of false information. Paragraph 17 enables district councils in Northern Ireland, amongst other things, to carry out market surveillance in their areas. Paragraph 18 of Schedule 3 empowers them to investigate and prosecute in relation to offences anywhere in Northern Ireland. Paragraphs 19 and 20 govern powers of entry, search and seizure in connection with failures to comply with the requirements of the EU Construction Products Regulation and offences under Part 2 of the Schedule. Paragraph 21 provides offences for obstructing, or giving false information to, an officer of an enforcement authority. Paragraph 22 covers appeals against detention of products. Paragraph 23 deals with compensation in certain circumstances in relation to seizure or detention of products and paragraph 24 provides for recovery of expenses, for example from a person who is convicted. Paragraph 25 provides an offence for disclosure of information obtained. Paragraphs 26 and 27 provide for a due diligence defence in certain cases and for other persons whose acts or default caused the principal offender to commit the offence to also be guilty of an offence. Paragraph 28 covers service of documents and paragraph 29 sets out the long stop date for commencing proceedings for an offence under paragraph 3(1) or (4). Paragraph 30 contains transitional provisions in relation to enforcement action which was started before the end of IP completion day under the Construction Products Regulations 2013.

An impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sector is foreseen.

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