

SCHEDULE 3

Construction products enforcement rules – Northern Ireland

PART 2

REQUIREMENTS RELATING TO CONSTRUCTION PRODUCTS

CHAPTER 3

Prohibition notices and notices to warn

Prohibition notices: further provisions

12.—(1) If representations in writing about a prohibition notice served under paragraph 11 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 sub-paragraph.

(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 11(5)(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 11(5)(a) are not the case; and
- (b) call and examine witnesses in connection with the representations.

(5) 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, sub-paragraphs (6) to (8) shall apply instead of sub-paragraphs (1) to (4).

(6) 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 11(5)(a) are not the case.

Status: This is the original version (as it was originally made).

(7) The time specified in a notification served for the purposes of sub-paragraph (6)(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 sub-paragraph (2)(b).

(8) A person on whom a notification has been served for the purposes of sub-paragraph (6)(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 11(5)(a) are not the case; and
- (b) call and examine witnesses in connection with the representations.

(9) 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 sub-paragraph (6)(a);
- (b) any oral representations made under sub-paragraph (4) or (8); and
- (c) any statement made by witnesses in connection with the oral representations,

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

(10) It shall be the duty of the Secretary of State to consider any report made under sub-paragraph (9) and, after considering the report, to inform the recipient of the decision with respect to the prohibition notice to which the report relates.

(11) This paragraph and paragraph 11 are without prejudice to the operation of—

- (a) Article 21(4) (restrictive measures: withdrawal of measures after effective action) of the RAMS Regulation in the case of a prohibition notice based on the ground in paragraph 16(6)(a);
- (b) Article 57(2), second sentence (Union safeguard procedure: national measure considered unjustified) of the EU Construction Products Regulation in the case of a prohibition notice based on the ground in paragraph 16(6)(b); 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 EU Construction Products Regulation in the case of a prohibition notice based on the ground in paragraph 16(6)(c).

(12) Where in a notification served on any person under this paragraph 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 sub-paragraphs (4) and (8) shall have effect accordingly.

(13) For the purposes of this paragraph 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, to consider those representations or statements has died or appears to the Secretary of State to be otherwise unable to act.

(14) In this paragraph—

- “the appointed person”, in relation to a prohibition notice means the person for the time being appointed under this paragraph 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.