



STATUTORY INSTRUMENTS.

S.I. No. 217 of 2023

EUROPEAN UNION (CONSTRUCTION PRODUCTS) (AMENDMENT)
REGULATIONS 2023

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S.I. No. 217 of 2023

**EUROPEAN UNION (CONSTRUCTION PRODUCTS) (AMENDMENT)
REGULATIONS 2023**

I, DARRAGH O'BRIEN, Minister for Housing, Local Government and Heritage, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011¹ and Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019², hereby make the following regulations:

PART 1

PRELIMINARY AND GENERAL

Citation

1. These Regulations may be cited as the European Union (Construction Products) (Amendment) Regulations 2023.

Definition

2. In these Regulations, “Principal Regulations” means the European Union (Construction Products) Regulations 2013 (S.I. No. 225 of 2013).

PART 2

AMENDMENTS TO PRINCIPAL REGULATIONS

Amendment to Regulation 3(1) of Principal Regulations

3. Regulation 3(1) (amended by section 134(a) of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (No. 23 of 2020)) of the Principal Regulation is amended by—

(a) inserting the following definitions:

“‘authorised representative’ means any natural or legal person established within the Union who has received a written mandate from a manufacturer to act on its behalf in relation to specified tasks with regard to the manufacturer's obligations

¹ OJ No. L 88, 04.04.2011, p. 5.

² OJ No. L 169, 25.06.2019, p. 1.

under the Construction Products Regulation, the Market Surveillance Regulation or these Regulations;

‘corrective action’ means any action taken by an economic operator to bring any non-compliance to an end where required by a market surveillance authority or on the economic operator’s own initiative;

‘distributor’ means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a construction product available on the market;

‘economic operator’ means the manufacturer, the authorised representative, the importer, the distributor, the fulfilment service provider or any other natural or legal person who is subject to obligations in relation to the manufacture of construction products, making them available on the market or putting them into service in accordance with the Construction Products Regulation, the Market Surveillance Regulation or these Regulations;

‘end user’ means any natural or legal person residing or established in the Union, to whom a construction product has been made available either as a consumer outside of any trade, business, craft or profession or as a professional end user in the course of its industrial or professional activities;

‘fulfilment service provider’ means any natural or legal person offering, in the course of commercial activity, without having ownership of the construction products involved, at least two of the following services:

- (a) warehousing;
- (b) packaging;
- (c) addressing;
- (d) dispatching;

but does not include the following services:

- (i) postal services as defined in section 6 of the Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011);
- (ii) parcel delivery services as defined in point (2) of Article 2 of Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018³;
- (iii) any other postal services or freight transport services;

³ OJ No. L 112, 02.05.2018, p. 19.

‘information society service provider’ means a provider of a service, as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015⁴;

‘making available on the market’ means any supply of a construction product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;

‘manufacturer’ means any natural or legal person who –

- (a) manufactures a construction product, or
- (b) has a construction product designed or manufactured,

and markets that product under its name or trade mark;

‘non-compliance’ means any failure to comply with a requirement of the Construction Products Regulation, the Market Surveillance Regulation or these Regulations;

‘online interface’ means any software, including a website, part of a website or an application, that is operated by or on behalf of an economic operator, and which serves to give end users access to the economic operator’s construction products;”, and

- (b) by substituting for the definition of “Market Surveillance Regulation” the following:

“ ‘Market Surveillance Regulation’ means Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019² on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011;”.

Amendment to Regulation 3(2) of Principal Regulations

4. Regulation 3(2) of the Principal Regulations is amended by substituting “A word or expression which is used in these Regulations and which is also used in the Construction Products Regulation or the Market Surveillance Regulation has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Construction Products Regulation or the Market Surveillance Regulation, as the case may be.” for “A word or expression which is used in these Regulations and which is also used in the Construction Products Regulation has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Construction Products Regulation.”.

Obligations of economic operators

5. The Principal Regulations are amended by inserting the following Regulation after Regulation 8 (revoked by Regulation 14):

⁴ OJ NO. L 241, 17.09.2015, p. 1.

“Obligations on economic operators

8A. (1) Without prejudice to the requirements of Articles 11 to 14 of the Construction Products Regulation, and Chapter II of the Market Surveillance Regulation, a person shall not make a construction product available on the market other than where there is an economic operator established in the Union, other than the distributor, who is responsible for the tasks set out in paragraph (2) in respect of that construction product.

- (2) The economic operator referred to in paragraph (1) shall perform the following tasks:
 - (a) verify that the declaration of performance and technical documentation have been drawn up in respect of the construction product concerned, keep the declaration of performance at the disposal of market surveillance authorities for the period required by the Construction Products Regulation and ensure that the technical documentation is made available to those authorities upon request;
 - (b) further to a reasoned request from a market surveillance authority, provide that authority with all information and documentation necessary to demonstrate the conformity of the construction product concerned in a language which can be easily understood by that authority;
 - (c) when having reason to believe that a construction product in question presents a risk, inform the relevant market surveillance authorities thereof;
 - (d) cooperate with market surveillance authorities, including, following a reasoned request—
 - (i) ensure that the immediate, necessary, corrective action is taken to remedy any case of non-compliance with the requirements set out in the Construction Products Regulation to the construction product in question, or
 - (ii) where it is not possible to take the immediate, necessary, corrective action referred to in clause (i), to mitigate the risks presented by that construction product—
 - (I) when required to do so by a market surveillance authority, or
 - (II) on its own initiative, where the economic operator concerned considers or has reason to believe that the construction product in question presents a risk.

- (3) The name, registered trade name or registered trade mark, and contact details, including the postal address, of the economic operator referred to in paragraph (1) shall be indicated on the product or on its packaging, the parcel or an accompanying document.”.

Market Surveillance

6. Regulation 10(1) (amended by section 134(b) of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (No. 23 of 2020)) of the Principal Regulations is amended by deleting “for the purpose of giving further effect to the provisions of Chapter III of the Market Surveillance Regulation.”.

Information sharing and cooperation with market surveillance authorities

7. The Principal Regulations are amended by inserting the following Regulation after Regulation 10:

“Information sharing and cooperation with market surveillance authorities

10A. (1) A market surveillance authority may—

- (a) share information collected during the course of its market surveillance activities, including information collected by its authorised officers in accordance with Regulation 12, and
- (b) cooperate,

with other market surveillance authorities, in accordance with this Regulation, in order to facilitate and support the effective market surveillance of construction products placed, or made available, on the market.

(2) In sharing information with other market surveillance authorities under paragraph (1), a market surveillance authority shall—

- (a) ensure that the information to be shared has been collected on construction products to which the provisions of the Construction Products Regulation apply, and
- (b) ensure that the information to be shared has been collected during the course of its market surveillance activities by one or more of the following methods:
 - (i) a desktop study;
 - (ii) an inspection at the place of manufacture, storage or distribution in the State of any construction product;
 - (iii) an inspection of any online interface;

- (iv) an inspection of any ship or other vessel, aircraft, railway wagon or other vehicle in the State, or the means of storage contained therein, for the transport of any construction product in the State;
- (v) a request, requirement, or from copies taken or taken away (including extracts therefrom), or a photograph taken, under Regulation 12(3);
- (vi) any evaluations, examinations or tests carried out under Regulation 12(4);
- (vii) a notice in writing under Regulation 14;
- (viii) by any other lawful means of obtaining information.”.

Appointment of authorised officers

8. Regulation 11(1) (amended by section 134(c) of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (No. 23 of 2020)) of the Principal Regulations is amended by deleting “giving further effect to Chapter III of”.

Powers of authorised officers

9. The Principal Regulations are amended in Regulation 12—

- (a) in paragraph (1)(a), by substituting “Regulations 5 and 8A” for “Regulations 5, 6, 7 and 8”, and
- (b) by substituting the following paragraphs for paragraph (3):
 - “(3) An authorised officer appointed by a market surveillance authority under Regulation 11 may, for the purpose of the enforcement regime, including the sharing of information, and cooperation, with other market surveillance authorities under Regulation 10A, under any provision of these Regulations—
 - (a) commence an investigation of an economic operator on his or her own initiative, including carrying out unannounced on-site inspections and physical checks of construction products in order to identify non-compliances and bring them to an end,
 - (b) require the relevant economic operator to supply the technical documentation or information referred to in—
 - (i) Articles 4, 5, 6, 7, 11, 12, 13, 14, 16, 36, 37 or 38 of the Construction Products Regulation,
 - (ii) Article 14(4)(a) of the Market Surveillance Regulation, or
 - (iii) Regulation 5 or 8A of these Regulations,

on demand or within such period of time as may be specified by the authorised officer,

- (c) require the economic operator to provide relevant information on the supply chain, on the details of the distribution network, on quantities of construction products on the market and on other construction product models that have the same technical characteristics as the construction product in question, where relevant for compliance with the applicable requirements of the Market Surveillance Regulation, the Construction Products Regulation or these Regulations, on demand or within such period of time as may be specified by the authorised officer,
- (d) take copies of, or extracts from, or take away, if considered necessary for the purposes of evaluation, examination or inspection, any records or other technical documentation or information as the authorised officer considers appropriate for the purpose of these Regulations,
- (e) require a person in charge, or an employee, of an economic operator concerned, to produce, in a legible form, information contained in files, paper or on computer, or provide relevant information required for the purpose of ascertaining the ownership of websites, on demand or within such period of time as may be specified by the authorised officer,
- (f) require a person in charge, or an employee, of an economic operator concerned, to provide such explanations as that authorised officer considers necessary in relation to technical documentation, information, records or files, on demand or within such period of time as may be specified by the authorised officer,
- (g) select and, other than where acquired under a cover identity, acquire without payment, such samples of the construction product, including under a cover identity, as that authorised officer may reasonably require and carry out, or arrange to have carried out, on such samples, there or elsewhere, such evaluations, inspections, examinations, tests or reverse engineering as that authorised officer considers necessary,
- (h) bring such persons and equipment as that authorised officer considers appropriate for the purpose of these Regulations,
- (i) take photographs of a construction product and the place of manufacture or storage of a construction product in the State, and

- (j) where no other effective means are available to eliminate a serious risk—
 - (i) to require the removal of content referring to the related construction product from an online interface or to require the explicit display of a warning to end users when they access an online interface, or
 - (ii) where a request under clause (i) has not been complied with, to require information society service providers to restrict access to the online interface, including by requesting a relevant third party to implement such measures.
- (3A) An authorised officer shall take reasonable measures to guarantee the confidentiality of the technical documentation and such other information as may be supplied to him or her under paragraph (3).”.

Service of notices

10. The Principal Regulations are amended by substituting the following Regulation for Regulation 15:

- “15. (1) Where a direction, notice, document, construction product or other matter (referred to in this Regulation as a notice) is required by these Regulations to be sent or given to a person, it shall be sent or given to the person in one of the following ways:
- (a) by delivering it to the person;
 - (b) by leaving it at the address at which the person ordinarily carries on business;
 - (c) by sending it by pre-paid registered post addressed to the person at the address at which the person ordinarily carries on business;
 - (d) if an address for the service of notices has been furnished by the person, by leaving it at, or sending it by pre-paid registered post addressed to that person at that address;
 - (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the person concerned carries on business or, if an electronic address or facsimile number address for the service of notices has been furnished by the person concerned, that electronic address or facsimile machine, but only if—
 - (i) the recipient’s facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or

- (ii) the sender's facsimile machine generates a message confirming successful delivery of the total number of pages of the notice or direction;
- and it is also given in one of the other ways mentioned in paragraphs (a) to (d).
- (2) For the purpose of this Regulation, a company within the meaning of the Companies Acts, or the Companies Act 2014, is deemed to be ordinarily resident at its registered office, and every corporate body and every unincorporated body of persons is deemed to be ordinarily resident at its principal office or place of business.”.

Offences

11. Regulation 16(1) of the Principal Regulations is amended by substituting the following subparagraph for subparagraph (g):

- “(g) to contravene in any way any provision or requirement of, or under –
 - (i) Article 4, 5, 6, 7, 8, 9, 11, 12 13, 14, 15, 16, 36, 37, 38, 56, 58 or 59 of the Construction Products Regulation,
 - (ii) Article 4, 5 or 7 of the Market Surveillance Regulation, or
 - (iii) Regulation 5, 8A, 12, 13 or 14 of these Regulations.”.

Defences

12. Regulation 17 of the Principal Regulations is amended by substituting “Regulation, Article 4 or 7 of the Market Surveillance Regulation, or Regulation 5 or 8A of these” for “Regulation or Regulations 5 and 6 of these”.

Amendment of Schedule 2 to Principal Regulations

13. The Principal Regulations are amended by substituting the schedule set out in the Schedule to these Regulations for Schedule 2.

Revocations

14. Regulations 2, 6, 7 and 8 of the Principal Regulations are revoked.

SCHEDULE*Regulation 13***“SCHEDULE 2****COMPETENT NATIONAL AUTHORITIES**

For the purpose of Articles 11(7), 11(8), 12(2), 13(7), 13(9), 14(4) and 14(5) of the Construction Products Regulation and having regard to Regulation 9 of these Regulations, the bodies set out in Column 1 have been specified as being competent national authorities in respect of the area codes set out in Column 2 and, subject to the exclusions set out in Column 4, the associated product areas set out in Column 3.

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
COMPETENT NATIONAL AUTHORITY	AREA CODE(S)	PRODUCT AREA(S)	EXCLUSIONS
Dublin City Council	1	Precast normal/ lightweight/autoclaved aerated concrete products.	
	2	Doors, windows, shutters, gates and related building hardware.	
	3	Membranes, including liquid applied and kits (for water and/or water vapour control).	
	4	Thermal insulation products. Composite insulating kits/systems.	
	5	Structural bearings. Pins for structural joints.	
	6	Chimneys, flues and specific products.	
	7	Gypsum products.	
	8	Geotextiles, geomembranes, and related products.	
	9	Curtain walling/cladding/structural sealant glazing.	
	10	Fixed fire fighting equipment (fire alarm/detection, fixed firefighting, fire and smoke control and explosion suppression product).	
	11	Sanitary appliances.	
	12	Circulation fixtures: road equipment.	
	13	Structural timber products/elements and ancillaries.	

14	Wood based panels and elements.
15	Cement, building limes and other hydraulic binders.
16	Reinforcing and prestressing steel for concrete (and ancillaries). Post tensioning kits.
17	Masonry and related products. Masonry units, mortars, and ancillaries.
18	Waste water engineering products.
19	Floorings.
20	Structural metallic products and ancillaries.
21	Internal & external wall and ceiling finishes. Internal partition kits.
22	Roof coverings, roof lights, roof windows, and ancillary products. Roof kits.
23	Road construction products.
24	Aggregates.
25	Construction adhesives.
26	Products related to concrete, mortar and grout.
27	Space heating appliances.
28	Pipes-tanks and ancillaries not in contact with water intended for human consumption.
29	Construction products in contact with water intended for human consumption.
30	Flat glass, profiled glass and glass block products.
31	Power, control and communication cables.
32	Sealants for joints.
33	Fixings.
34	Building kits, units, and prefabricated elements.
35	Fire stopping, fire sealing and fire protective products. Fire retardant products.

Geological Survey Ireland	24	Aggregates	
National Roads Authority	12	Circulation Fixtures: Road Equipment	EN 12676-1 EN 1423 EN 12352 EN 12368 EN 12899-2 EN 12899-3
	23	Road Construction Products	EN 14188-1 EN 14188-2 EN 14188-3 EN 13877-3 EN 15322 EN 14695
	24	Aggregates	EN 13139 EN 13055-1 EN 13055-2 EN 13450 EN 13383-1

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GIVEN under my Official Seal,
4 May, 2023.

DARRAGH O'BRIEN,
Minister for Housing, Local Government and Heritage.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation.)

The primary purpose of these Regulations is to give further effect, in Irish law, to

- Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (the Market Surveillance Regulation), and
- 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 (the Construction Products Regulation).

These Regulations amend the European Union (Construction Products) Regulations 2013 (S.I. No. 225 of 2013)

These Regulations only give effect to the provisions of the Market Surveillance Regulation as it relates to construction products within the scope of the Construction Products Regulation.

Regulation (EU) 2019/1020 confers on national market surveillance authorities, strengthened powers to carry out effective market surveillance to ensure that relevant products are compliant with certain EU harmonisation legislation, including Regulation (EU) No 305/2011, with a view to ensuring the free movement of compliant products within the EU.

Having regard to Regulation 9 of European Union (Construction Products) Regulations 2013 (S.I. No. 225 of 2013), Dublin City Council has also been designated as a competent national authority for the purpose of Articles 11(7), 11(8), 12(2), 13(7), 13(9), 14(4) and 14(5) of the Construction Products Regulation.

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