

2013 No.

ENVIRONMENT

**The Timber and Timber Products (Placing on the Market)
Regulations 2013**

<i>Made</i> - - - -	*** 2013
<i>Laid before Parliament</i>	*** 2013
<i>Coming into force</i> - -	3rd March 2013

The Secretary of State, who is designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the environment(b), makes these Regulations in exercise of the powers in section 2(2) of and paragraph 1A of Schedule 2 to that Act(c).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for any reference in these Regulations to Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market(d) be construed as a reference to that instrument as the Annex to it is amended from time to time.

PART 1

Introduction

Title, commencement and interpretation

1.—(1) These Regulations may be cited as the Timber and Timber Products (Placing on the Market) Regulations 2013.

(2) They come into force on 3rd March 2013.

(3) In these Regulations—

“the European Regulations” means—

(a) the Timber Regulation;

(a) 1972, c. 68.

(b) S.I. 2008/301.

(c) Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a), and the European Union (Amendment) Act 2008 (c. 7), Part 1 of the Schedule. Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28, and amended by the European Union (Amendment) Act 2008, Part 1 of the Schedule, and S.I. 2007/1388, article 3 and Schedule 1, paragraph 1.

(d) OJ No L 295, 12.11.2010, p. 23.

(b) Commission Delegated Regulation (EU) No 363/2012 on the procedural rules for the recognition and withdrawal of recognition of monitoring organisations as provided for in the Timber Regulation(a); and

(c) the Implementing Regulation;

“the Implementing Regulation” means Commission Implementing Regulation (EU) No 607/2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organisations as provided for in the Timber Regulation(b);

“notice of remedial actions” means a notice served in accordance with regulation 13;

“premises” includes any vehicle, vessel, aircraft, hovercraft, tent or movable structure;

“timber” means timber and timber products; and

“the Timber Regulation” means Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market.

(4) Terms used in these Regulations that are also used in the European Regulations have the meaning they bear in the European Regulations.

Competent authority

2. The Secretary of State is the competent authority for the purposes of the European Regulations.

Enforcement

3. It shall be the duty of the Secretary of State to enforce these Regulations.

Inspectors

4. The Secretary of State may authorise a person in writing to carry out inspections for the purposes of the European Regulations, and such a person is in these Regulations referred to as an “inspector”.

PART 2

Offences

Offences

5. A person is guilty of an offence if the person fails to comply with—

- (a) Article 4(1), (2) or (3) of the Timber Regulation;
- (b) Article 5 of the Timber Regulation;
- (c) Article 5(1) of the Implementing Regulation;
- (d) regulation 12; or
- (e) a notice of remedial actions.

Defence

6.—(1) Subject to the following provisions of this regulation, in proceedings for an offence for a failure to comply with Article 4(1) or (2) of the Timber Regulation, a person who is shown to have made proper use of a due diligence system shall have a defence.

(a) OJ No L 115, 27.4.2012, p.12.

(b) OJ No L 177, 7.7.2012, p. 16.

(2) Where, in any proceedings against a person for such an offence, the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) reliance on information given by another,

such a defence shall not, without leave of the court, be relied on unless, not later than seven clear days before the hearing of the proceedings [(or, in Scotland, the trial diet)], that person has served a notice in accordance with paragraph (3) on the person bringing the proceedings.

(3) A notice under this regulation shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time it is served.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of that person's reliance on information supplied by another, unless it is shown that it was reasonable in all the circumstances for that person to have relied on the information, having regard in particular to—

- (a) the steps which that person took and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) whether that person had any reason to disbelieve the information.

Offences by bodies corporate, partnerships and unincorporated associations

7.—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or unincorporated association (other than a partnership) may be brought against the partnership or association in the name of the partnership or association.

(2) For the purposes of proceedings alleged to have been committed by a partnership or unincorporated association (other than a partnership)—

- (a) rules of court relating to the service of documents have effect as if the partnership or association were a body corporate, and
- (b) the following provisions apply as they apply in relation to a body corporate—
 - (i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980,
 - (ii) [section 70 of the Criminal Procedure (Scotland) Act 1995, and]
 - (iii) [section 18 of the Criminal Justice Act (Northern Ireland) 1945 and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981.]

(3) A fine imposed on a partnership or unincorporated association (other than a partnership) on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership or association.

(4) If an offence under these Regulations committed by a body corporate, partnership or unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of a relevant person, or
- (b) to be attributable to the negligence of a relevant person,
that person, as well as the body corporate, partnership or association is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In paragraph (4), "relevant person" means—

- (a) in relation to a body corporate, a director, manager, secretary or other similar officer of the body or, if the affairs of the body are managed by its members, a member of the body who performs managerial functions;
- (b) in relation to a partnership, a partner;
- (c) in relation to an unincorporated association (other than a partnership), an officer of the association or a member of its governing body;
- (d) a person purporting to act as a person described in sub-paragraph (a), (b) or (c).

PART 3

Enforcement

Powers of entry

- 8.**—(1) An inspector may, on giving reasonable notice, enter premises at any reasonable hour, except premises used wholly or mainly as a private dwelling house, for the purpose of enforcing the European Regulations.
- (2) The requirement to give notice does not apply—
- (a) where reasonable efforts to agree an appointment have failed;
 - (b) where an inspector reasonably believes that giving notice would defeat the object of the entry;
 - (c) where an inspector has a reasonable suspicion of a breach of the European Regulations; or
 - (d) in an emergency.
- (3) An inspector must, if requested to do so, produce a duly authenticated authorisation document.
- (4) Paragraph (1) does not affect any right of entry conferred by a warrant issued in accordance with paragraph (7).
- (5) Paragraph (7) applies where a justice of the peace is satisfied, on sworn information in writing, that—
- (a) there are reasonable grounds for an inspector to enter premises for the purpose of enforcing the European Regulations; and
 - (b) one of the conditions in paragraph (6) is met.
- (6) The conditions are that—
- (a) entry to the premises has been refused, or is likely to be refused without a warrant, and notice of the intention to apply for a warrant has been given to the occupier;
 - (b) asking for admission to the premises, or giving such a notice, would defeat the object of the entry;
 - (c) entry is required urgently; or
 - (d) the premises are unoccupied or the occupier is temporarily absent.
- (7) Where this paragraph applies, a justice of the peace may by signed warrant permit an inspector to enter the premises in question, if necessary by reasonable force.
- (8) But the power in paragraph (7) does not extend to premises used wholly or mainly as a private dwelling house.
- (9) A warrant is valid for three months.
- (10) An inspector entering premises under this regulation may—
- (a) be accompanied by—
 - (i) such other persons as the inspector considers necessary,
 - (ii) any representative of the European Commission; and
 - (b) bring on to the premises such equipment as the inspector considers necessary.
- (11) An inspector entering any premises which are unoccupied or from which the occupier is temporarily absent must leave them as effectively secured against unauthorised entry as they were before entry.
- (12) An inspector may require a vehicle that the inspector has reasonable grounds to believe is transporting timber to stop to allow the inspector to exercise the powers conferred by these Regulations.
- (13) [In this regulation—

- (a) in Scotland, a reference to a justice of the peace includes a sheriff, and the reference to sworn information in writing is a reference to evidence on oath; and
- (b) in Northern Ireland, a reference to a justice of the peace is a reference to a lay magistrate, and the reference to sworn information in writing is a reference to a sworn complaint in writing.]

Powers of inspection etc

9.—(1) An inspector who has entered premises in exercise of a power under regulation 8 may exercise the following further powers for the purpose of enforcing the European Regulations—

- (a) inspect the premises and any of the following items found on the premises—
 - (i) plant, machinery or equipment,
 - (ii) containers,
 - (iii) timber;
- (b) inspect and copy documents, records or other information, in whatever form they are held, and remove them to enable them to be copied;
- (c) require the production of, and inspect and check the data on, and operation of, any computer and any associated apparatus used in connection with such documents, records or other information, and require computer records to be produced in a form in which they may be easily accessed and taken away by the inspector;
- (d) take samples of any timber;
- (e) carry out any examination, investigation or test; and
- (f) take photographs, measurements or recordings.

(2) An inspector may require any person to provide as may be necessary for the purpose of enforcing the European Regulations any—

- (a) assistance;
- (b) timber, goods, or products; and
- (c) documents, records or other information.

Seizure notices

10.—(1) An inspector who is, by virtue of regulation 8, lawfully on any premises may seize any timber where such inspector has reasonable grounds for believing that such timber has been placed on the market in contravention of Article 4(1) of the Timber Regulation.

(2) An inspector must follow the procedures set out in this regulation when seizing any such timber under these Regulations.

(3) The inspector must serve on the person in possession of the seized timber a notice (referred to in these Regulations as a “seizure notice”)—

- (a) giving the grounds for seizing the timber; and
- (b) informing that person of the rights under this regulation to appeal against the seizure, and the address for service of the appeal.

(4) An inspector who is not able to remove immediately the timber seized may mark it in any way, and serve a notice on the person in possession of it identifying it, and prohibiting its removal from the premises until it is collected by an inspector, or other arrangements are made with the inspector.

(5) The person on whom the seizure notice was served or the owner of the seized timber may, within 28 days of service of the seizure notice, notify any appeal against the seizure to the Secretary of State at the address specified in the seizure notice, setting out the grounds in full.

(6) If the Secretary of State does not receive a notification of an appeal in accordance with paragraph (5), the Secretary of State may—

- (a) destroy the timber;
- (b) donate, sell or otherwise dispose of the timber; or
- (c) serve a further notice on the person on whom the seizure notice was served requiring that person to destroy or otherwise dispose of the timber in the manner and within the period specified in the further notice.

(7) If the Secretary of State receives a notification of an appeal in accordance with paragraph (5), then, unless the timber seized is being held for the purposes of a criminal investigation, the Secretary of State must either withdraw the seizure notice and return the timber if previously removed or take proceedings for an order for—

- (a) the confirmation of the seizure notice; and
- (b) the destruction or donation, sale or other disposal of the timber by the Secretary of State or the person on whom the seizure notice was served.

(8) The procedure in a magistrates' court under this regulation is by way of complaint, and the Magistrates' Courts Act 1980 applies to the proceedings.

(9) [In proceedings in a magistrates' court in Northern Ireland under this regulation, the Magistrates' Courts (Northern Ireland) Order 1981 applies.]

(10) [The procedure before the sheriff is by summary application.]

Seized timber: recovery of costs

11.—(1) Paragraph (2) applies where, for the purpose of enforcing the European Regulations, an inspector has seized timber and served a seizure notice in respect of it in accordance with regulation 10.

(2) Where this paragraph applies and unless a claim is made to a court and the court directs otherwise, all costs relating to the seizure, holding, testing and subsequent disposal of the timber in question (including costs of removal, transport, storage and donation, sale or destruction) are recoverable by the Secretary of State as a debt from—

- (a) the person who placed the timber on the market in contravention of Article 4(1) of the Timber Regulation, or
- (b) if the Secretary of State is unable to identify that person due to the failure of another person to comply with Article 5 of the Timber Regulation, such other person.

Obstruction of inspectors

12. Where an inspector exercises a power under these Regulations, no person may—

- (a) intentionally obstruct the inspector;
- (b) without reasonable excuse, fail to give to the inspector any information or assistance that the inspector may reasonably require;
- (c) knowingly give false or misleading information to the inspector;
- (d) without reasonable excuse, fail to produce a record or document when reasonably required to do so by the inspector; or
- (e) without reasonable excuse, fail to comply with—
 - (i) a requirement to stop under regulation 8(12), or
 - (ii) a notice under paragraph (4) or (6)(c), or order under paragraph (7)(b), of regulation 10.

Notices of remedial actions

13. An inspector who has reasonable grounds for believing that any person is failing to comply with Article 4(2) or (3) of the Timber Regulation may serve a notice on the person that—

- (a) states the inspector's grounds for believing this;
- (b) specifies the matters that constitute the failure to comply;
- (c) specifies the measures that, in the inspector's opinion, the person must take in order to secure compliance; and
- (d) requires the person to take those measures, or measures at least equivalent to them, within the period (being not less than 14 days) specified in the notice.

Appeals against notices of remedial actions

- 14.**—(1) A person aggrieved by a notice of remedial actions may appeal to a magistrates' court [or, in Scotland, to the sheriff].
- (2) The procedure on an appeal to a magistrates' court under paragraph (1) is by way of complaint, and the Magistrates' Courts Act 1980 applies to the proceedings.
- (3) [An appeal to the sheriff under paragraph (1) is by summary application.]
- (4) The period within which an appeal may be brought is 28 days or the period specified in the notice of remedial actions, whichever ends earlier.
- (5) A notice of remedial actions must state—
- (a) the right of appeal to a magistrates' court or to the sheriff; and
 - (b) the period within which such an appeal may be brought.
- (6) A court may suspend a notice of remedial actions pending an appeal.
- (7) On an appeal against a notice of remedial actions, the court may either cancel the notice or confirm it, with or without modification.

Penalties

- 15.**—(1) A person guilty of an offence under paragraph (a), (d) or (e) of regulation 5 is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding three months, or to both; or
 - (b) on conviction on indictment, to a fine or to a term of imprisonment not exceeding two years, or to both.
- (2) A person guilty of an offence under paragraph (b) or (c) of regulation 5 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) Proceedings for an offence under these Regulations may be commenced within twelve months from the date on which the prosecutor first knows of evidence sufficient, in the prosecutor's opinion, to justify proceedings.
- (4) For the purposes of this regulation—
- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which the prosecutor first knew of evidence sufficient to justify the proceedings is conclusive evidence of that fact; and
 - (b) a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.
- (5) [In relation to proceedings in Scotland, subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (date of commencement of proceedings) applies for the purposes of this regulation as it applies for the purposes of that section.]
- (6) [In proceedings in a magistrates' court in Northern Ireland relating to a notice of remedial actions under regulation 13, the Magistrates' Courts (Northern Ireland) Order 1981 applies.]

Recovery of expenses of enforcement

16.—(1) This regulation applies where a court convicts a person of an offence under regulation 5.

(2) The court may (in addition of any other order it may make as to costs or expenses) order the person convicted to reimburse the Secretary of State for any expenditure which the Secretary of State or any inspector has reasonably incurred in investigating the offence, including expenditure incurred in the exercise of powers conferred by regulations 8, 9 and 10.

PART 4

Miscellaneous provisions

Restrictions on enforcement powers and use of certain evidence under them

17. Nothing in these Regulations shall be taken as—

- (a) requiring a person to produce any document which that person would be entitled to refuse to produce in any proceedings in any court on the grounds that it is the subject of legal professional privilege [or, in Scotland, that it contains a confidential communication made by or to an advocate or solicitor in that capacity]; or
- (b) authorising a person to take possession of any document which is in the possession of a person who would be so entitled.

Review

18.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the European Regulations are enforced in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.

(4) The first report under this regulation must be published before the end of the period of five years beginning with 3rd March 2013.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Date

Name
Minister of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in the United Kingdom, enforce Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market (“**the Timber Regulation**”), Commission Delegated Regulation (EU) No 363/2012 on the procedural rules for the recognition and withdrawal of recognition of monitoring organisations as provided for in the Timber Regulation and Commission Implementing Regulation (EU) No 607/2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organisations as provided for in the Timber Regulation.

Regulations 2, 3 and 4 provide for the designation of the Secretary of State as the competent authority and for enforcement and authorisation of inspectors by the Secretary of State.

Regulation 5 sets out all the offences under the Regulations, regulation 6, a defence in relation to two of the offences and regulation 7, provisions for offences by businesses.

Regulations 8, 9 and 10 confer enforcement powers on inspectors. Regulation 11 provides for the circumstances in which the Secretary of State may recover as a debt costs relating to and following the seizure of timber.

Regulation 12 prohibits the obstruction of an inspector in the ways listed.

Regulation 13 confers powers on an inspector to serve a notice of remedial actions to be taken by a person whom the inspector reasonably believes is not complying with the specified due diligence obligations in the Timber Regulation. Regulation 14 provides for appeals against any such notices.

Regulation 15 provides for penalties for offences under the Regulations.

Regulation 16 confers a power on the court to order the reimbursement of the Secretary of State and inspectors’ investigation costs by any person who is prosecuted following such investigation.

Regulation 17 makes provision in respect of documents which are the subject of legal professional privilege or its equivalent in Scotland.

Regulation 18 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and every five years after that.

A full impact assessment of the effect that this instrument will have on the costs of business is available from www.ialibrary.bis.gov.uk and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.