

Construction Products (Amendment etc) (EU Exit) Regulations 2020

Schedule 3, paragraph 11

PROHIBITION NOTICE
NORTHERN IRELAND
(PN1 NI)

23 December 2021

To: Kingspan Insulation Limited (“you”)

Of: Pembridge, Leominster, Herefordshire HR6 9LA

This Notice is served under paragraph 11 of Schedule 3 to the Construction Products (Amendment etc) (EU Exit) Regulations 2020 (S.I.2020/1359) (“CPR”).

The Secretary of State has enforcement functions for Northern Ireland in respect of the EU Construction Products Regulation No 305/2011 (which lays down harmonised conditions for the marketing of construction products) under paragraph 2 of Schedule 3 to the CPR. The Secretary of State’s enforcement functions under the CPR are performed by officials of the Office for Product Safety and Standards (“OPSS”).

This Notice will take effect immediately. This Notice has effect throughout Northern Ireland.

Please note that a notification of a notice to warn (NTW1 NI) has been sent separately.

PART A - Description of Product

All Kooltherm K15 (“K15”) products manufactured between 24 August 2021 and 11 September 2021 (the “quarantined K15 product”). The quarantined K15 product is covered by the Declaration of Performance dated 2 August 2021, Reference Number 1002.CPR.2013.K15.007 (the “Declaration of Performance”) (attached at Annex 1).

PART B - Grounds for Service

Background

The Declaration of Performance provides a single declared performance criteria under reaction to fire, which is a C-s2,d0 classification. This classification therefore covers the entire range of K15 thicknesses. Standard BS EN 15715:2009 states that the thickness giving the worst test result shall be determined for the declaration, and if the worst test result is not known minimum and maximum thicknesses shall be fire tested. However, based on the evidence set out below, there are reasonable grounds for suspecting that classification C-s2,d0 in the Declaration of Performance is not representative of the worst reaction to fire performance of the K15 thickness range:

- On 25 October 2021 you wrote to Birmingham Trading Standards identifying a misdescription of K15 100mm thickness. As identified in your letter, the claimed reaction to fire of K15 is stated as C-s2,d0 in the Declaration of Performance, however, when tested to the appropriate standard (BS EN 13501-1), the 100mm thickness was found only to achieve a D-s1,d0 classification. You wrote that the affected batch of K15 had been quarantined.
- OPSS tested the affected batch of K15 100mm thickness and our tests confirmed the sample as having a D-s1,d0 classification.
- On 26 November 2021, a formal request for information was served on you.
- On 13 December 2021, in response to our request for information, you clarified that 17 batches had been quarantined, not just one original batch as indicated in your first letter to Birmingham Trading Standards.

Breach of CPR, Schedule 3, paragraph 3

This Notice is served on you because the Secretary of State has reasonable grounds for suspecting that you have committed an offence under paragraph 3(1)(a) of Schedule 3 to the CPR.

In accordance with Article 4 of EU Regulation 305/2011, the manufacturer has an obligation to draw up a declaration of performance for a construction product covered by a designated standard or conforming to a UK Technical Assessment which has been issued for it when such a product is placed on the market. By drawing up the declaration of performance, the manufacturer assumes responsibility for the conformity of the construction product with such declared performance. In the absence of objective indications to the contrary, the declaration of performance drawn up by the manufacturer shall be presumed to be accurate and reliable (Article 4(3) of EU Regulation 305/2011).

An offence is committed under CPR, Schedule 3, paragraph 3(1)(a) where there is a failure to supply with the product a relevant declaration of performance for the product drawn up and supplied in accordance with Articles 4, 6 and 7 of EU Regulation 305/2011.

For the reasons set out above, the C-s2,d0 classification in the Declaration of Performance is incorrect. The information provided to OPSS and our own tests confirm that the Declaration of Performance should have a D-s1,d0 classification as this is the worst reaction to fire performance of the K15 thickness range. The Declaration of Performance therefore has not been drawn up in accordance with Article 4 of EU Regulation 305/2011, as the quarantined K15 product does not conform with the declared performance and the Declaration of Performance is not accurate or reliable.

PART C - Action Required

Except with the consent of the Secretary of State, you are prohibited from supplying the quarantined K15 product on the market in Northern Ireland. The prohibition on supply includes exposing and possessing the products for supply.

Any consent given by the Secretary of State pursuant to this Notice will be conditional on provision to OPSS of a copy of an accurate declaration of performance in relation to the products subject to this Notice.

In addition, to the extent that any quarantined K15 product has been made available on the market, you must use your reasonable endeavours to organise and implement the return of the quarantined K15 product from the market, where it has not been incorporated in a permanent manner in construction works or parts thereof.

At a minimum, this will include:

- Contacting any person to whom you have supplied the quarantined K15 product or who you believe has been supplied with the product to advise them of the requirements of this Notice so that they can take the appropriate steps to cooperate with the recall;
- Contacting those in the supply chain, distributors and final customers (including those that are on your Traceability System) who have purchased the quarantined K15 product to advise them of the requirements of this Notice so that they can take the appropriate steps to cooperate with the recall;
- Making arrangements for the collection or return of the affected product; and
- Completing the above actions in a timely manner without significant inconvenience to those involved.

You are further required to keep the Secretary of State informed of the whereabouts of any products which have been returned, products quarantined and held in stock and where possible any products which have yet to be returned.

Part D - Consequences of Non-compliance

It is an offence to contravene or to fail to comply with a requirement imposed by this Notice. A person guilty of an offence is liable on summary conviction, to a fine not exceeding level 5 or to imprisonment not exceeding three months, or to both.

You may also wish to seek legal advice on the consequences of non-compliance.

Part E - Representations

You may make representations at any time in relation to this Notice by emailing OPSS for the purpose of establishing that the grounds on which this Notice is drafted are not met. Your email should be sent to opss.enquiries@beis.gov.uk with the following in the subject line of the email: 'Representations: prohibition notice'.

The procedural provisions of Schedule 3, paragraphs 11-12 of the CPR shall apply.

Part F - Publication

You are advised that in the interests of transparency OPSS publishes details on our website of enforcement actions taken. Details that we publish in relation to a notice will identify where OPSS has subsequently determined that the requirements of the notice have been met.

Should you have any queries or concerns, please email opss.enquiries@beis.gov.uk with the following in the subject line of the email: 'Representations: publication of enforcement action'.

This Notice will remain in effect until revoked by the Secretary of State.

Signed:

A handwritten signature in black ink, appearing to be 'Duncan Johnson', written in a cursive style.

Duncan Johnson
Deputy Director, OPSS

for and on behalf of the Secretary of State for Levelling Up, Housing and Communities

Annex 1 – Declaration of Performance



Declaration of Performance

Kooltherm® K15

1002.CPR.2013.K15.007

Unique identification code of the product-type: **Kooltherm® K15**
 Intended use/es: **Thermal insulation for buildings**
 Manufacturer: **Kingspan Insulation Ltd, Bree Industrial Estate, Castleblayney, Co Monaghan, Ireland A75 X966**
 System/s of AVCP: **System 3**
 Designated technical specification: **BS-EN 13166:2012+A2:2016**
 Notified body(ies) : **KIWA BDA (NB 1640), AFITI (NB 1168)**

Essential characteristics		Performance	
Thermal resistance	Thermal resistance R_D ((m ² .K)/W)	d _N 25mm	1.10
		d _N 30mm	1.35
		d _N 40mm	1.80
		d _N 50mm	2.35
		d _N 60mm	2.85
		d _N 70mm	3.30
		d _N 80mm	3.80
		d _N 90mm	4.25
		d _N 100mm	4.75
		d _N 120mm	5.70
		d _N 130mm	6.15
		d _N 140mm	6.65
		d _N 150mm	7.10
	Thermal conductivity λ_D (W/(m.K))	d _N 25-44mm	0.022
		d _N 45-150mm	0.021
	Thickness tolerance	T1	
Reaction to fire	Reaction to fire	C-s2,d0	
Durability of reaction to fire against heat, weathering, ageing / degradation	Durability Characteristics	NPD	
Durability of thermal resistance against heat, weathering, ageing/ degradation	Durability Characteristics	NPD	
	Dimensional stability under specified temperature and humidity condition	DS(70,90)	
		DS(-20,-)	



Declaration of Performance

	Thermal conductivity λ_D (W/(m.K))	d_N 25-44mm 0.022 d_N 45-150mm 0.021
	Determination of the aged values of thermal resistance and thermal conductivity	RD and λ_D
Compressive strength	Compressive stress or compressive strength	CS(Y)100
Tensile / Flexural strength	Tensile strength perpendicular to faces	NPD
Durability of compressive strength against ageing / degradation	Compressive creep	NPD
Water permeability	Short term water absorption	NPD
	Long term water absorption	NPD
	Closed cell content	CV
Water vapour permeability	Water vapour transmission	NPD
	Closed cell content	NPD
Continuous Glowing Combustion	Glowing Combustion	NPD
Release of dangerous substances to the indoor environment	Release of dangerous substances	NPD
NPD: No Performance Determined		

The performance of the product identified above is in conformity with the set of declared performances. This declaration of performance is issued, in accordance with Regulation (EU) No 305/2011, under the sole responsibility of the manufacturer identified above.

Signed for and on behalf of the manufacturer by:

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Ralph Mannion
Managing Director, Ireland
Date signed: 2nd August 2021
Issue Number: 007