

Construction Products Regulations 2013

Regulation 11

PROHIBITION NOTICE (PN2)

23 December 2021

To: Kingspan Insulation Limited (“you”)

Of: Pembridge, Leominster, Herefordshire HR6 9LA

This Notice is served under regulation 11(1) of the Construction Products Regulations 2013 (S.I.2013/1387) (“CPR”).

The Secretary of State has enforcement functions for England, Wales and Scotland in respect of the EU Construction Products Regulation No 305/2011 (which lays down harmonised conditions for the marketing of construction products) under Regulation 3 of 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 England, Wales and Scotland.

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

PART A - Description of Product

All Kooltherm K15 (the “unquarantined K15 product”) products manufactured between 1 August 2021 and 18 October 2021 but excluding those manufactured between 24 August 2021 and 11 September 2021. The unquarantined 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 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 8 December 2021, OPSS tested a 50mm thickness of the unquarantined K15 product supplied under the same Declaration of Performance. Our tests confirmed the 50mm thickness as having a D-s1,d0 classification. Our investigations indicate no concerns with the repeatability of the test.
- 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.

You have claimed that the misdescription you identified in the Declaration of Performance arose from an issue involving two days' worth of production by a supplier and was therefore limited to the 17 batches you quarantined. However, based on the evidence you have supplied and the test we conducted on 8 December 2021, we are not satisfied that the misdescription does not also affect the unquarantined K15 product.

Breach of Regulation 4 CPR

This Notice is served on you because the Secretary of State has reasonable grounds for suspecting that you have committed an offence under Regulation 4(1)(a) of 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 Regulation 4(1)(a) of the CPR where there is a failure to supply with the product a 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. We are concerned that a lack of conformance with the Declaration of Performance affects the unquarantined K15 product and you have not provided evidence to satisfy us that that is not the case.

We therefore have reasonable grounds for suspecting that the unquarantined K15 product does not conform with the declared performance and the Declaration of Performance is not accurate or reliable, meaning that the Declaration of Performance has not been drawn up in accordance with Article 4 of EU Regulation 305/2011.

PART C - Action Required

Except with the consent of the Secretary of State, you are prohibited from supplying the unquarantined K15 product on the market in England, Wales and Scotland. 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, you must use your reasonable endeavours to organise and implement the return of the unquarantined 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 unquarantined 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 unquarantined 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 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 resistance | Thermal conductivity λ_D (W/(m.K)) | d_N 25-44mm | 0.022 |
| | | d_N 45-150mm | 0.021 |
| Thermal resistance | 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