

Construction Products Regulations 2013

Regulation 11

PROHIBITION NOTICE (PN3)

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 (NTW2) has been sent separately.

PART A - Description of Product

All Kooltherm K15 products manufactured from 18 October 2021 (the “new K15 product”) 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

On 13 December 2021, in response to the OPSS request for information, you explained that you recently implemented a change to your production process resulting in the new K15 product. You stated that all Kooltherm K15 products placed on the market after 18 October 2021 include a new facer called W443 (the “facer”). Instead of issuing a new declaration of performance for the new K15 product, you relied on the Declaration of Performance dated 2 August 2021 for an older version of the K15 product.

OPSS considers that:

- the addition of the facer significantly changed the properties of Kooltherm K15 such that the product, as placed on the market from 18 October 2021, was a new product;
- this necessitated a reassessment of the compliance of the modified product with the requirements of EU Regulation 305/2011 (which lays down harmonised conditions for

the marketing of construction products) at the time the change was made; and

- you should have issued a new declaration of performance based on this reassessment.

Further, it is our view that a new declaration of performance should have been issued for the new K15 product when it was placed on the market which should have indicated the system of assessment and verification of constancy of performance (“AVCP”) as being System 1, instead of AVCP System 3 which is indicated in the Declaration of Performance dated 2 August 2021.

According to standard BS EN 13166:2012+A2:2016 (Table ZA.2), AVCP System 1 is required for new products/materials for which a clearly identifiable stage in the production process results in an improvement of the reaction to fire classification. An improvement includes the addition of a fire retardant. Based on the evidence set out below, AVCP System 1 should have been used to assess the new K15 product, instead of AVCP System 3:

- In the data sheet supplied by you on the 13 December 2021 (attached at Annex 2) for the Lamtec W443 used in the new K15 product from 18 October 2021 the adhesive in the facer is described as “Flame Retardant”. The previous versions of K15 used Lamtec W439, which the data sheet supplied by you on the 13 December 2021 (see Annex 2) indicates used “Flame Resistant” adhesive.
- The facer has allegedly improved the reaction to fire of the new K15 product. As noted in your response, it “has had an immediate, positive affect on the average FIGRA 0.4 result, demonstrating an improved performance” and an “improved reaction to fire”.
- The facer has also allegedly resulted in an improved fire reaction classification. As noted in your response, “all tests to date of the new K15 product have resulted in a B or very comfortably a C classification”.

Based on the above, it is clear that you should have issued a new declaration of performance and used AVCP System 1 to assess the new K15 product.

Breach of Regulation 4 of the 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(1) 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. 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, there has been a failure to comply with Regulation 4 (1)(a) of the CPR, namely:

- The inclusion of a new facer modified the Kooltherm K15 product such that it is a new product. You were required to issue a new declaration of performance in respect of this new K15 product. As you did not, there is a failure to supply a declaration of performance for the product.
- Further or in the alternative, the information provided to OPSS confirms that you should have used AVCP System 1 (not AVCP System 3) to assess the new K15 product because the facer used is flame retardant. This is an objective indication that the Declaration of Performance dated 2 August 2021, which indicates AVCP System 3 was used, is not accurate or reliable. The Declaration of Performance dated 2 August 2021 therefore was not 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 new K15 product listed in the Declaration of Performance 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 the following:

- Confirmation of the implementation of AVCP System 1 for the new K15 product;
- A copy of an accurate declaration of performance in relation to the products subject to this Notice; and
- A copy of the notification to your conformity assessment body that you have changed your product.

In addition, you must use your reasonable endeavours to organise and implement the return of the new 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 new 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 new 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:



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:

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

Annex 2 – Kingspan Data Sheet

W439 4X4

PERFORATED COATED FOIL / 4x4 / GLASSMAT

FACING COMPOSITION	DESCRIPTION	VALUES (ENGLISH)	VALUES (METRIC)
Coated Foil	Aluminum	0.001 inch	25.4 micron
Adhesive	Flame Resistant		
Reinforcing	Bi-directional Fiberglass	4 / inch (MD) 4 / inch (XD)	16 / 100 mm (MD) 16 / 100 mm (XD)
Mat	Fiberglass	27 lbs / 3000 ft ²	44 g / m ²

PHYSICAL PROPERTIES	TEST METHOD	VALUES (ENGLISH)	VALUES (METRIC)
Basis Weight	Scale	35 lbs / 1000 ft ²	171 g / m ²
Permeance (WVTR)	ASTM E96 Procedure A	>10 perm (grains/hrft ² in Hg)	>574 ng / N's
Bursting Strength	ASTM D774	75 psi	5.3 kg / cm ²
Caliper / Thickness	Micrometer	0.018 inch	457 micron
Accelerated Aging	30 Days @ 95% RH, 120°F (49°C)	No Corrosion No Delamination	No Corrosion No Delamination
Low Temperature Resistance	ASTM D1790 -40°F (-40°C)	Remains Flexible No Delamination	Remains Flexible No Delamination
High Temperature Resistance	4 hours @ 240°F (116°C)	Remains Flexible No Delamination	Remains Flexible No Delamination
Water Immersion	24 hours @ 73°F (23°C)	No Delamination	No Delamination
Emissivity	ASTM E408	0.16	0.16

FIRE TESTING	TEST METHOD	VALUES
	ASTM E84	
	Foil Side	
Flame Spread		0
Smoke Developed		5

Physical Properties are nominal based upon statistical averages. Mullen based on non-perforated material, Weight / Thickness +/- 10%

"LAMTEC" AND "WMP" ARE REGISTERED TRADEMARKS OF LAMTEC CORPORATION

5010 River Road Mount Bethel, Pennsylvania 18343-5610 U.S.A.

Phone: (570) 897-8200 Fax: (570) 897-6081 Web: www.lamtec.com

W443 4X4

(T-3644 PERFORATED)
COATED FOIL / 4x4 / GLASSMAT

AGREED SPECIFICATION

FACING COMPOSITION	DESCRIPTION	VALUES (ENGLISH)	VALUES (METRIC)
Coated Foil	Aluminum	0.001 Inch	25.4 micron
Adhesive	Flame Retardant		
Reinforcing	Bi-directional Fiberglass	4 / Inch (MD) 4 / Inch (XD)	16 / 100 mm (MD) 16 / 100 mm (XD)
Mat	Fiberglass	27 lbs / 3000 ft ²	44 g / m ²

PHYSICAL PROPERTIES	TEST METHOD	VALUES (ENGLISH)	VALUES (METRIC)
Basis Weight	Scale	34 lbs / 1000 ft ²	166 g / m ²
Permeance (WVTR)	ASTM E96 Procedure A	> 10 perm (grains/hr-ft ² -in Hg)	> 574 ng / Ns
Bursting Strength	ASTM D774	50 psi	3.5 kg / cm ²
Calliper / Thickness	Micrometer	0.018 Inch	457 micron
Accelerated Aging	30 Days @ 95% RH, 120°F (49°C)	No Corrosion No Delamination	No Corrosion No Delamination
Low Temperature Resistance	ASTM D1790 -40°F (-40°C)	Remains Flexible No Delamination	Remains Flexible No Delamination
High Temperature Resistance	4 hours @ 240°F (116°C)	Remains Flexible No Delamination	Remains Flexible No Delamination

FIRE TESTING	ASTM E84 Foil Side
Flame Spread	0
Smoke Developed	5

Physical Properties based upon statistical averages, Weight / Thickness +/- 10%

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