

2013 No. 233

ENVIRONMENTAL PROTECTION

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

<i>Made</i> - - - -	<i>6th February 2013</i>
<i>Laid before Parliament</i>	<i>8th February 2013</i>
<i>Coming into force</i> - -	<i>3rd March 2013</i>

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 conferred by 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) to 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—

“body corporate” includes a limited liability partnership;

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;

(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.

“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(a);

“inspector” has the meaning given by regulation 3;

“notice of remedial actions” means a notice served in accordance with regulation 11;

“officer”, in relation to a body corporate, means any director, secretary or other similar officer of the body corporate;

“partnership” does not include a limited liability partnership;

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

“seizure notice” means a notice served under regulation 9(2);

“timber” means timber and timber products;

“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 as the Annex to it is amended from time to time;

“unincorporated association” does not include a partnership.

(4) Terms used in these Regulations that are also used in the Timber Regulation or the Implementing Regulation have the meaning they bear in those Regulations.

Competent authority

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

- (a) the Timber Regulation;
- (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(b); and
- (c) the Implementing Regulation.

Inspectors

3. The Secretary of State may authorise in writing a person (an “inspector”) to carry out inspections for the purposes of enforcing the Timber Regulation and the Implementing Regulation.

PART 2

Offences

Offences

4. It is an offence to fail to comply with—

- (a) Article 4(1) of the Timber Regulation (prohibition on placing illegally harvested timber on the market);
- (b) Article 4(2) of the Timber Regulation (obligation to exercise due diligence);
- (c) Article 4(3) of the Timber Regulation (obligation to maintain and evaluate due diligence system);
- (d) Article 5 of the Timber Regulation (traceability obligation);
- (e) Article 5(1) of the Implementing Regulation (record-keeping obligation);

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

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

- (f) regulation 10 (obstruction of an inspector); or
- (g) a notice of remedial actions.

Due diligence defence

5.—(1) In proceedings for an offence under regulation 4(a) or (b), it is a defence for a person (“A”) to show that A made proper use of a due diligence system.

(2) A may not, without leave of the court, rely on the defence if it involves an allegation that the commission of the offence was due—

- (a) to the act or default of another (“B”), or
- (b) to reliance on information supplied by B,

unless A has served a notice on the person bringing the proceedings in accordance with paragraph (3).

(3) For the purposes of paragraph (2), the notice must be served—

- (a) in England, Wales or Northern Ireland, not less than seven clear days before the hearing of the proceedings;
- (b) in Scotland, in summary proceedings, not less than seven clear days before the trial diet and, in proceedings on indictment, at or before the first diet.

(4) The notice must give the information in A’s possession which identifies or assists in identifying B.

(5) A may not rely on the defence by reason of reliance on information supplied by B unless A shows that it was reasonable in all the circumstances to have relied on the information, having regard in particular—

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

Offences by bodies corporate, partnerships and unincorporated associations

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

(2) For the purposes of such proceedings—

- (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(a) (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates’ Courts Act 1980(b) (corporations), and

(a) 1925 c. 86. Subsections (1), (2) and (5) were repealed by the Magistrates’ Courts Act 1952 (c. 55), section 132 and Schedule 6; subsection (3) was amended by the Courts Act 1971 (c. 23), section 56(1) and Schedule 8, Part 2, paragraph 19; subsection (4) was amended by the Courts Act 2003 (c. 39), section 109(1) and (3), Schedule 8, paragraph 71, and Schedule 10.

(b) 1980 c. 43. Paragraph 2(a) of Schedule 3 was amended by the Criminal Procedure and Investigations Act 1996 (c. 25), section 47, Schedule 1, paragraph 13, and was repealed by the Criminal Justice Act 2003 (c. 44), sections 41 and 332, Schedule 3, Part 2, paragraph 51(1) and (13)(a), and Schedule 37, Part 4 (partly commenced by S.I. 2012/1320 and S.I. 2012/2574 and with full effect from a date to be appointed); paragraph 5 was repealed by the Criminal Justice Act 1991 (c. 53) sections 25(2) and 101(2) and Schedule 13; paragraph 6 was repealed by the Criminal Justice Act 2003, section 41, Schedule 3, Part 2, paragraph 51(1) and (13)(b) (partly commenced by S.I. 2012/1320 and S.I. 2012/2574 and with full effect from a date to be appointed).

- (ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945^(a) (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981^(b) (corporations).

(3) A fine imposed on a partnership or association 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 is proved—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to the negligence of an officer,

that officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) If an offence under these Regulations committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to the negligence of a partner,

that partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) If an offence under these Regulations committed by an unincorporated association is proved—

- (a) to have been committed with the consent or connivance of an officer of the association or member of its governing body, or
- (b) to be attributable to the negligence of that officer or member,

that officer or member, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) In paragraphs (4), (5) and (6), any reference to an officer, partner or member, as the case may be, includes any person purporting to act in such capacity.

PART 3

Enforcement

Powers of entry

7.—(1) An inspector may, on serving 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 Timber Regulation and the Implementing Regulation.

(2) The requirement to serve notice does not apply—

- (a) where reasonable efforts to agree an appointment have failed;
- (b) where an inspector reasonably believes that serving a notice would defeat the object of the entry;
- (c) where an inspector has a reasonable suspicion that an offence has been committed under regulation 4; or
- (d) in an emergency.

(3) An inspector must, if requested, 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 (5).

(a) 1945 c. 15 (N.I.). Section 18 was amended by the Magistrates Courts Act 1964 (c. 21) and by the Justice (Northern Ireland) Act 2002 (c. 26), Schedule 12.

(b) S.I. 1981/1675 (N.I. 26).

(5) A justice of the peace may by signed warrant permit an inspector to enter premises, if necessary by reasonable force, if the justice, on sworn information in writing, is satisfied that—

- (a) there are reasonable grounds for an inspector to enter those premises for the purpose of enforcing the Timber Regulation and the Implementing Regulation; 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 served on the occupier;
- (b) asking for admission to the premises, or serving 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) But the power in paragraph (5) does not extend to premises used wholly or mainly as a private dwelling house.

(8) A warrant is valid for three months.

(9) 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.

(10) 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.

(11) An inspector may require a vehicle, vessel, aircraft or hovercraft 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.

(12) In this regulation—

- (a) in Scotland, a reference to a justice of the peace means 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

8.—(1) An inspector who has entered premises in exercise of a power under regulation 7 may—

- (a) inspect the premises and any of the following items found on the premises—
 - (i) plant, machinery or equipment,
 - (ii) containers,
 - (iii) timber;
- (b) search the premises;
- (c) have access to, inspect and copy documents, records or other information, in whatever form they are held, and remove them to enable them to be copied;
- (d) 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;
- (e) take samples of any timber;

- (f) carry out any examination, investigation or test; and
- (g) take photographs, measurements or recordings.

(2) An inspector may require any person to provide as may be necessary for the purpose of enforcing the Timber Regulation and the Implementing Regulation any—

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

Powers of seizure

9.—(1) An inspector may seize and remove any timber where the inspector has reasonable grounds for believing that an offence under regulation 4(a) has been committed.

(2) If the inspector is able to identify the person in possession of the seized timber, the inspector must serve on that person a notice (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 serving notice of an appeal under paragraph (5).

(3) If the inspector is unable to identify a person in possession but is able to identify the owner of the seized timber, the inspector must serve the seizure notice on the owner.

(4) An inspector who is unable immediately to remove the seized timber may mark it in any way, and serve a notice on the person on whom the inspector served the seizure notice 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 inspector served the seizure notice may, within 28 days of service of the seizure notice, serve notice of an 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 receives a notice of an appeal in accordance with paragraph (5), then, unless the seized timber is being held for the purposes of a criminal investigation, the Secretary of State must—

- (a) withdraw the seizure notice and return the timber, if previously removed, to the place from which it was removed or such other place as is reasonable in the circumstances; or
- (b) take proceedings for a court order for—
 - (i) the confirmation of the seizure notice; and
 - (ii) the destruction or donation, sale or other disposal of the timber by the Secretary of State or the person on whom the inspector served the seizure notice.

(7) If one of the conditions in paragraph (8) is met, 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 (if any) on whom the inspector served the seizure notice requiring that person to destroy or otherwise dispose of the timber in the manner and within the period specified in the further notice.

(8) The conditions are that—

- (a) the inspector is unable to identify any person in possession or the owner of the seized timber within 28 days of seizing the timber; or
- (b) the Secretary of State does not receive a notification of an appeal in accordance with paragraph (5).

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

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

(11) In Scotland proceedings are by summary application before a sheriff.

Obstruction of an inspector

10. 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 7(11), or
 - (ii) a notice under paragraph (4) or (7)(c), or order under paragraph (6)(b), of regulation 9.

Notice of remedial actions

11. An inspector who has reasonable grounds for believing that any person has committed an offence under regulation 4(b) or (c) may serve a notice (a "notice of remedial actions") on the person that—

- (a) states the inspector's grounds for believing this;
- (b) specifies the matters that constitute the alleged offence;
- (c) specifies the measures that, in the inspector's opinion, the person must take in order to secure compliance with Article 4(2) (obligation to exercise due diligence) or Article 4(3) (obligation to maintain and evaluate due diligence system) of the Timber Regulation; 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 notice of remedial actions

12.—(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

13.—(1) A person guilty of an offence under paragraph (a), (b) or (c) of regulation 4 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;
- (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 (d), (e), (f) or (g) of regulation 4 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) For the purposes of paragraph (1), the reference to the statutory maximum in relation to a conviction in Scotland shall be read as meaning £5,000.

(4) Notwithstanding section 127 of the Magistrates' Courts Act 1980 (limitation of time) or article 19 of the Magistrates' Courts (Northern Ireland) Order 1981 (time within which complaint charging offence must be made to give jurisdiction), in England, Wales and Northern Ireland a magistrates' courts may—

- (a) in the case of England and Wales, try an information, or
- (b) in the case of Northern Ireland, try a complaint

in respect of an offence under regulation 4 if the relevant condition in paragraph (5) is met.

(5) The condition is that—

- (a) in the case of England and Wales, the information is laid, or
- (b) in the case of Northern Ireland, the complaint is made

within three years from the date of the offence or within one year from the discovery of the offence by the prosecutor, whichever is earlier.

(6) Notwithstanding section 136 of the Criminal Procedure (Scotland Act) 1995^(a) (time limit for certain offences), in Scotland summary proceedings for an offence under regulation 4 may be commenced within three years from the date of the offence or within one year from the discovery of the offence by the prosecutor, whichever is earlier.

(7) For the purposes of paragraph (6), section 136(3) of the Criminal Procedure (Scotland) Act 1995 shall apply as it applies for the purposes of that section.

(8) 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.

(9) In proceedings in a magistrates' court in Northern Ireland relating to a notice of remedial actions under regulation 11, the Magistrates' Courts (Northern Ireland) Order 1981 applies.

Recovery of expenses of enforcement

14.—(1) This regulation applies where a court convicts a person of an offence under regulation 4.

(2) The court may (in addition to 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 any power conferred by regulation 7, 8 or 9.

(a) 1995 c. 46.

PART 4

Miscellaneous provisions

Restrictions on enforcement powers

15. 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.

Service of notices

16.—(1) Any notice served under these Regulations must be in writing and may be amended, suspended or revoked in writing at any time.

(2) A notice may be served on a person by—

- (a) personal delivery;
- (b) leaving it at the person's proper address; or
- (c) sending it by post or by electronic means to the person's proper address.

(3) In the case of a body corporate, a notice may be served on an officer of that body.

(4) In the case of a partnership, a notice may be served on a partner or person who has control or management of the partnership business.

(5) In the case of an unincorporated association, a notice may be served on an officer of the association or member of its governing body.

(6) For the purposes of this regulation and section 7 of the Interpretation Act 1978^(a) (which relates to the service of documents by post) in its application to this regulation, "proper address" means—

- (a) in the case of a body corporate or an officer of that body—
 - (i) the registered or principal office of the body; or
 - (ii) the email address of the officer.
- (b) in the case of a partnership or a partner or person who has control or management of the partnership business—
 - (i) the principal office of the partnership; or
 - (ii) the email address of the partner or person who has that control or management.
- (c) in the case of an unincorporated association or an officer of the association or member of its governing body—
 - (i) the principal office of the association; or
 - (ii) the email address of the officer or member;
- (d) in any other case, a person's last known address, which includes an email address.

(7) For the purposes of paragraph (6), the principal office of a company registered outside the United Kingdom or of a partnership or unincorporated association carrying on business outside the United Kingdom is its principal office in the United Kingdom.

(a) 1978 c. 30.

(8) If the name or address of any occupier of premises on whom a notice is to be served under these Regulations cannot, after reasonable inquiry, be ascertained, the notice may be served by leaving it conspicuously affixed to a building or object on the premises.

Review

17.—(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 Timber Regulation and the Implementing Regulation 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.

6th February 2013

Richard Benyon
Parliamentary Under Secretary 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:

- (a) 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”); and
- (b) 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 (“the Implementing Regulation”).

Regulation 2 provides for the designation of the Secretary of State as the competent authority for the Timber Regulation, the Implementing Regulation and 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. Regulation 3 provides for the authorisation of inspectors by the Secretary of State.

Part 2 deals with offences under the Regulations. Regulation 4 sets out the offences; regulation 5 provides for a due diligence defence in relation to two of the offences; and regulation 6 deals with offences by businesses.

Part 3 deals with enforcement. Regulations 7, 8 and 9 confer entry, inspection and seizure powers on inspectors; regulation 10 prohibits the obstruction of an inspector; regulation 11 confers powers on an inspector to serve a notice of remedial actions on a person who the inspector reasonably believes is not complying with the due diligence obligations in the Timber Regulation; regulation 12 provides for appeals against such notices; regulation 13 provides for penalties for offences under the Regulations; and regulation 14 confers a power on the court to order the reimbursement of the Secretary of State and inspectors' investigation costs by any person who is convicted following such investigation.

Regulation 15 makes provision in respect of documents which are the subject of legal professional privilege or its equivalent in Scotland. Regulation 16 provides for the manner in which notices must be served under regulations 5, 7 and 9. Regulation 17 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.

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STATUTORY INSTRUMENTS

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ENVIRONMENTAL PROTECTION

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