

EXPLANATORY MEMORANDUM TO
THE TIMBER AND TIMBER PRODUCTS (PLACING ON THE MARKET)
REGULATIONS 2013

2013 No. 233

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This statutory instrument enforces the EU Timber Regulations which prohibit the placing of illegally harvested timber and timber products on the EU market and require those first placing timber and timber products on the EU market to exercise due diligence, using a risk-based approach to ensure that they do not place illegally harvested timber or timber products on the EU market. Those who trade in timber and timber products after they have been placed on the EU market are required to keep specific information to enable such products to be traced.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument enforces:

(1) 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

(2) 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”).

It also designates the Secretary of State as the competent authority for the above Regulations 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.

In this memorandum, these three EU Regulations are collectively referred to as “the EU Timber Regulations”.

4.2. This instrument follows the Forest Law Enforcement, Governance and Trade Regulations 2012 (S.I. 2012/178) which enforce:

(1) Council Regulation (EC) No 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (“the FLEGT Regulation”); and

(2) Commission Regulation (EC) No 1024/2008 laying down detailed measures for the implementation of the FLEGT Regulation.

These two EU Regulations (the “FLEGT Regulations”) make it illegal to import timber and timber products from partner countries, with which the EU has signed a Voluntary Partnership Agreement (VPA), without a valid Forest Law Enforcement, Governance and Trade (“FLEGT”) licence. Timber and timber products that are placed on the EU market in respect of which there is a valid FLEGT licence are considered to have been legally harvested for the purposes of the EU Timber Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Forest Law Enforcement Governance and Trade (FLEGT) Action Plan is an EU-led initiative aimed at tackling illegal logging by ensuring that imports of timber into the EU are from legal sources. It is the foundation of the European Union's efforts to support improvements to forest governance around the world, in particular in developing nations. The adoption of the FLEGT Action Plan has resulted in new EU legislation: the FLEGT Regulations and the EU Timber Regulations.

7.2 Illegal logging is one major driver of global deforestation, which constitutes annual losses of forest areas the size of England and has significant negative impacts. A study by The Economics of Ecosystems and Biodiversity (TEEB) estimated the value of the ecosystem services lost as a result of deforestation at \$2tr-\$4.5tr each year. These losses are felt both locally, by the rural poor in developing countries, and globally, through the link to climate change and loss of biodiversity. Further, illegal logging results in revenue losses to governments and legitimate businesses.

7.3 The EU Timber Regulations aim to eliminate the demand for illegally harvested timber and timber products in the EU by prohibiting the placing of illegally harvested

timber on the EU market, and by requiring those placing timber on the EU market to undertake risk management of their supply chain (due diligence) to minimise the risk of illegally harvested timber entering the EU market. The intended consequence is that the need for increased accountability and evidence regarding legality will be driven back up supply chains to the sources of harvested timber, ultimately reducing demand for illegally harvested timber. The desired outcome is that a reduction in unsustainable illegal logging practices will reduce global deforestation and its associated negative impacts.

7.4 In its Coalition programme for government, the Government committed to making the import or possession of illegal timber a criminal offence. The Timber and Timber Products (Placing on the Market) Regulations 2013 provide for new criminal offences for: placing illegally harvested timber or timber products on the EU market; failure to exercise due diligence when placing timber or timber products on the EU market, and failure to maintain and regularly evaluate the due diligence system used. The maximum penalty for these offences is two years' imprisonment and an unlimited fine. Further offences provided for are: failure by those placing timber or timber products on the market or those trading in such products to keep and make available specified information; failure to comply with a formal notice to improve issued by the enforcement body, and the obstruction of inspectors. The maximum penalty for these offences is a fine of up to level five on the standard scale (currently £5000). Related enforcement powers of entry, inspection, and seizure of illegally harvested timber are also provided for in the Regulations.

7.5 The National Measurement Office (NMO), an Executive Agency of the Department for Business, Innovation and Skills, has been designated the authority responsible for enforcing the Timber Regulation and the Implementing Regulation in the UK. The NMO was selected for the role because of its experience in enforcing similar legislation affecting industry.

8. Consultation outcome

8.1 A public consultation ran from 27 December 2012 to 4 February 2013, for a period of five weeks. The relatively short consultation period was considered appropriate due to the extensive stakeholder engagement during the development of the UK Regulations. Stakeholders were contacted directly when the consultation opened and were also invited to a stakeholder meeting to ask questions and air views on the consultation.

8.2 The consultation sought views on four main elements of the proposed approach to implementing the EU Timber Regulations: the enforcement approach; the proposed penalties; the impact on business and others; and the availability of guidance.

8.3 Defra received thirteen responses from businesses, trade organisations, non-governmental organisations, and individuals. Responses were broadly supportive of the approach to enforcement and of the penalties proposed. A number of issues and requests for clarification were raised, to which a Government response was provided. As a result of the consultation, the statutory instrument was changed to bring clarity to the timeframe

in which prosecutions can commence. Input from the Ministry of Justice and Governments of Scotland and Northern Ireland during the consultation period led to changes in the penalties and clarification of the drafting of the instrument as it relates to Scotland.

9. Guidance

9.1 The central point of expertise for timber procurement (CPET) www.cpet.org.uk/eutr; the National Measurement Office www.bis.gov.uk/nmo/enforcement/EU-Timber-Regulation; and the European Commission ec.europa.eu/environment/forests/timber_regulation.htm are sources of information and guidance for those affected by the EU Timber Regulations.

10. Impact

10.1 An estimated four to five thousand UK businesses dealing in timber will be affected by the EU Timber Regulations. Of these, it is estimated that less than one thousand place timber or timber products on the EU market for the first time. It is considered that the majority of these businesses, particularly large operators, already have sophisticated due diligence systems in place that will require minimal adjustment to comply with the EU Timber Regulations. For those businesses that do not have due diligence systems in place, a one-off set-up cost, followed by ongoing administration costs, will be required. The overall cost to UK businesses is estimated as £0.4m in the first year, decreasing to £0.2m in subsequent years. Future efficiency savings in administration and the introduction of FLEGT licensed timber are expected to lead to a reduction in ongoing costs over time.

10.2 The impact on the public sector is the cost to Government in funding the National Measurement Office to enforce the Timber Regulation and the Implementing Regulation through: provision of support to businesses to achieve compliance, regular and spot-check inspections, evidence gathering and legal action. Additional costs will include training inspectors and dealing with seized timber.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 There are no exemptions for small firms. It is not possible to exempt small firms because the EU legislation does not exempt them.

12. Monitoring & review

12.1 This instrument must be reviewed by the Department for Environment, Food and

Rural Affairs within a period of five years.

12.2 Evaluation and monitoring of the EU Timber Regulations will also be undertaken at the European level, and the UK will endeavour to provide input.

13. Contact

Stephen Lowe at the Department for Environment, Food and Rural Affairs, Tel: 020 7238 3202 or email: Stephen.Lowe@defra.gsi.gov.uk, can answer any queries regarding the instrument.