



TIMBER AND TIMBER PRODUCTS (PLACING ON THE MARKET) REGULATIONS 2019

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European Communities (Isle of Man) Act 1973

TIMBER AND TIMBER PRODUCTS (PLACING ON THE MARKET) REGULATIONS 2019

Laid before Tynwald: 19 March 2019
Coming into Operation: 27 March 2019

The Council of Ministers makes the following Regulations under sections 2B and 2C of the European Communities (Isle of Man) Act 1973.

1 Title

These Regulations are the Timber and Timber Products (Placing on the Market) Regulations 2019.

2 Commencement

These Regulations come into operation on 27 March 2019¹.

3 Interpretation

(1) In these Regulations —

“**body corporate**” includes a limited liability partnership;

“**Department**” means the Department of Environment, Food and Agriculture;

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

“**the Implementing Regulation**” means Commission Implementing Regulation (EU) No 607/2012 (as it has effect in the Island) 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;

“**inspector**” has the meaning given by regulation 5;

¹ Section 2B(9) of the European Communities (Isle of Man) Act 1973 specifies that regulations shall be laid before Tynwald and if Tynwald at the sitting before which such instrument is so laid or at the next following sitting resolves that the instrument shall be annulled, the regulations shall thereupon cease to have effect.

“**notice of remedial actions**” means a notice served in accordance with regulation 13;

“**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 11(2);

“**timber**” means timber and timber products;

“**the Timber Regulation**” means Regulation (EU) No 995/2010 of the European Parliament and of the Council (as it has effect in the Island) 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; and

“**unincorporated association**” does not include a partnership.

(2) 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.

(3) Reference to EU instruments in these Regulations are to be construed as references to those instruments as amended from time to time.

4 **Competent authority**

The Department 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; and
- (c) the Implementing Regulation.

5 **Inspectors**

The Department 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

6 **Offences**

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);
- (f) Regulation 12 (obstruction of an inspector); or
- (g) a notice of remedial actions.

7 Due diligence defence

- (1) In proceedings for an offence under regulation 6(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 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 not less than seven clear days before the hearing of the proceedings;
- (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.

8 Offences by bodies corporate, partnerships and unincorporated associations

- (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 charged under —
 - (i) section 16 (offences by bodies corporate) of the Criminal Justice Act 2001; or
 - (ii) section 32 (corporations) of the Summary Jurisdiction Act 1989.
- (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

9 Powers of entry

- (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 6; or
 - (d) in an emergency.
- (3) An inspector must, if requested, produce evidence of appointment.
- (4) Paragraph (1) does not affect any right of entry conferred by a warrant issued in accordance with paragraph (5).
- (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 such other persons as the inspector considers necessary; 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.

10 Powers of inspection

- (1) An inspector who has entered premises in exercise of a power under regulation 9 (powers of entry) 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.

11 Powers of seizure

- (1) An inspector may seize and remove any timber where the inspector has reasonable grounds for believing that an offence under regulation 6(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 Department at the address specified in the seizure notice, setting out the grounds in full.
- (6) If the Department 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 Department 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 Department or the person on whom the inspector served the seizure notice.
- (7) If one of the conditions in paragraph (8) is met, the Department 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 Department does not receive a notification of an appeal in accordance with paragraph (5).
- (9) The procedure in a court of summary jurisdiction under this regulation is by way of complaint, and the Summary Jurisdiction Act 1989 applies to the proceedings.

12 Obstruction of an inspector

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 9(11);
 - (ii) a notice under regulation 11(4) or 11(7)(c); or
 - (iii) an order under regulation 11(6)(b).

13 Notice of remedial actions

An inspector who has reasonable grounds for believing that any person has committed an offence under regulation 6(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.

14 Appeals against notice of remedial actions

- (1) A person aggrieved by a notice of remedial actions may appeal to a court of summary jurisdiction.
- (2) The procedure on an appeal to a court of summary jurisdiction under paragraph (1) is by way of complaint, and the Summary Jurisdiction Act 1989 applies to the proceedings.
- (3) 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.
- (4) A notice of remedial actions must state —
 - (a) the right of appeal to a court of summary jurisdiction; and
 - (b) the period within which such an appeal may be brought.
- (5) A court may suspend a notice of remedial actions pending an appeal.
- (6) On an appeal against a notice of remedial actions, the court may either cancel the notice or confirm it, with or without modification.

15 Penalties

- (1) A person guilty of an offence under regulation 6 is liable —
 - (a) on summary conviction to a fine not exceeding level 5 on the standard scale 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) Notwithstanding section 75 (limitation of time) of the Summary Jurisdiction Act 1989 the Court of General Gaol Delivery may try on information in respect of an offence under regulation 6 if the relevant condition in paragraph (3) is met.
- (3) The condition is that the information is laid/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 Attorney General, whichever is earlier.
- (4) For the purposes of this regulation —
 - (a) a certificate signed by or on behalf of the Attorney General and stating the date on which the Attorney General 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.

16 Recovery of expenses of enforcement

- (1) This regulation applies where a court convicts a person of an offence under regulation 6.
- (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 Department for any expenditure which the Department or any inspector has reasonably incurred in investigating the offence, including expenditure incurred in the exercise of any power conferred by regulation 9, 10 or 11.

PART 4 – MISCELLANEOUS PROVISIONS**17 Restrictions on enforcement powers**

These Regulations do not –

- (a) require 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
- (b) authorise a person to take possession of any document which is in the possession of a person who would be so entitled.

18 Service of notices

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

MADE 28 FEBRUARY 2019

W GREENHOW
Chief Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations enforce the Island’s EU obligations in respect of —

- (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 4 provides for the designation of the Department 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 5 provides for the authorisation of inspectors by the Department.

Part 2 deals with offences under the Regulations. Regulation 6 sets out the offences; regulation 7 provides for a due diligence defence in relation to two of the offences; and regulation 8 deals with offences by businesses.

Part 3 deals with enforcement. Regulations 9, 10 and 11 confer entry, inspection and seizure powers on inspectors; regulation 12 prohibits the obstruction of an inspector; regulation 13 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 14 provides for appeals against such notices; regulation 15 provides for penalties for offences under the Regulations; and regulation 16 confers a power on the court to order the reimbursement of the Department and inspectors’ investigation costs by any person who is convicted following such investigation.

Regulation 17 makes provision in respect of documents which are the subject of legal professional privilege. Regulation 18 provides for the manner in which notices must be served under regulations 7, 9 and 11.