



STATUTORY INSTRUMENTS.

S.I. No. 316 of 2014



EUROPEAN UNION (TIMBER AND TIMBER PRODUCTS) (PLACING
ON THE MARKET) REGULATIONS 2014

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EUROPEAN UNION (TIMBER AND TIMBER PRODUCTS) (PLACING ON THE MARKET) REGULATIONS 2014

I, SIMON COVENEY, Minister for Agriculture, Food and the Marine, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010¹, Commission Implementing Regulation (EU) No. 607/2012 of 6 July 2012², and Commission Delegated Regulation (EU) No. 363/2012 of 23 February 2012³, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Timber and Timber Products) (Placing on the Market) Regulations 2014.

Interpretation

2. (1) In these Regulations—

“authorised officer” means—

- (a) a member of the Garda Síochána,
- (b) an officer of Revenue Commissioners,
- (c) a person appointed under Regulation 5, or
- (d) a person appointed to be an authorised officer under section 11(4) of the Forestry Act 1946 (No. 13 of 1946);

“Delegated Timber Regulations” means Commission Delegated Regulation (EU) No. 363/2012 of 23 February 2012;

“Implementing Timber Regulations” means Commission Implementing Regulation (EU) No. 607/2012 of 6 July 2012;

“Minister” means Minister for Agriculture, Food and the Marine;

“premises” includes a plant, establishment, building, dwelling or offshore installation (within the meaning of the Safety, Health and Welfare (Offshore Installations) Act 1987 (No. 18 of 1987) (whether temporary or permanent) on or under land or in water;

¹OJ No. L295, 12.11.2010, p.23

²OJ No. L177, 7.7.2012, p.16

³OJ No. L115, 27.4.2012, p.12

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 11th July, 2014.

“record” includes a memorandum, book, plan, map, drawing, diagram, pictorial or graphic work or other document, a photograph, film or recording (whether of sound or images or both), any form in which data (within the meaning of the Data Protection Acts 1988 and 2003) are held, any other form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically and anything that is a part or a copy, in any form, of any of the foregoing or is a combination of 2 or more of the foregoing;

“Timber Regulations” means Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010;

“vehicle” includes a railway wagon or trailer, designed for use or used with a vehicle, or container designed or used for carriage on a vehicle, whether either is attached to or detached from a vehicle;

“vessel” includes a boat, ship, hovercraft or aircraft.

(2) A word or expression which is used in these Regulations and is also used in the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations, has, unless the context otherwise requires, the same meaning in these Regulations, as it has in the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations, as the case may be.

Competent authority

3. The Minister is designated as the competent authority in the State responsible for the application of the Timber Regulations, the Implementing Timber Regulations and Delegated Timber Regulations.

Offence — operator or trader failing to comply with Timber Regulations, etc

4. (1) An operator who fails to comply with Article 4 of the Timber Regulations or Article 3 or 5 of the Implementing Timber Regulations commits an offence.

(2) A person who commits an offence under paragraph (1) is liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €250,000, or to imprisonment for a term not exceeding 12 months, or both.

(3) In proceedings for an offence under paragraph (1), it is a defence for a person to show that they made proper use of the due diligence system.

(4) A trader who fails to comply with Article 5 of the Timber Regulations commits an offence.

(5) A person who commits an offence under paragraph (4) is liable on summary conviction to a class A fine.

Appointment of authorised officer

5. (1) The Minister may, appoint in writing, such persons or classes of persons as he or she considers appropriate to be authorised officers for the exercise of all or any of the functions conferred on an authorised officer under these Regulations, specified in the appointment.

(2) The Minister may terminate the appointment of an authorised officer appointed by him or her, whether or not the appointment was for a fixed period or specified purpose.

(3) An appointment as an authorised officer ceases—

- (a) if it is terminated in accordance with paragraph (2),
- (b) if it is for a fixed period, on the expiration of that period,
- (c) if it is for a specified purpose, on the completion of that purpose, or
- (d) if the person appointed is an officer of the Minister upon the person ceasing to be such an officer or class of person.

(4) Nothing in paragraph (3) is to be construed so as to prevent the Minister from re-appointing as an authorised officer a person to whom paragraph (3) relates.

(5) An authorised officer appointed under this Regulation shall be furnished with a warrant of his or her appointment and, when exercising a function conferred on him or her as an authorised officer, the officer shall, if requested by a person affected, produce the warrant, or other evidence (including an identity document relating to the officer under section 17 of the Animal Remedies Act 1993) that he or she is such an officer, for inspection.

Functions of authorised officer

6. (1) For the purposes of ensuring compliance with these Regulations, the Timber Regulations, the Delegated Timber Regulations and the Implementing Timber Regulations, an authorised officer may—

- (a) enter and inspect, at all reasonable times, any premises, land, vehicle, vessel or container, if he or she is carrying out checks under the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations or where he or she has reasonable grounds for believing that—
 - (i) timber or a timber product or other thing to which these Regulations, the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations relate is, may be or has been present,
 - (ii) a record relating to a timber or a timber product or other thing to which these Regulations, the Timber Regulations, the Delegated

Timber Regulations or the Implementing Timber Regulations relate is, may be or has been present, or

- (iii) equipment, machinery, or other thing used in connection with timber or a timber product or other thing to which these Regulations, the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations relate is, may be or has been present,
 - (b) examine equipment, machinery, a container, a vehicle, a vessel or other thing used in connection with timber or a timber product or other thing to which these Regulations, the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations relate and require the operator, person in charge or control of such to refrain from moving it,
 - (c) require the name and address of the owner, operator or person in possession or control of equipment, machinery, a container, a vehicle, a vessel or other thing used in connection with timber or a timber product or other thing to which these Regulations, the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations relate, place of departure, journey or destination,
 - (d) require the owner, person in possession or control of any premises, equipment, machinery, a container, a vehicle, a vessel or other thing used in connection with timber or a timber product or other thing to which these Regulations, the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations relate to, produce to the officer such records (and in the case of a record stored in non-legible form, produce to him or her a copy in a legible form) that are in the person's possession or procurement, or under the person's control, as the officer may reasonably require,
 - (e) inspect and take copies of any record (including a legible reproduction of one stored in non-legible form), or a record, document or extracts from the record or document that the officer finds or is produced to him or her during an inspection,
 - (f) take photographs, video recordings or other electronic recordings,
 - (g) take, without making a payment, samples from timber or a timber product or other thing to which these Regulations, the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations relate, or any article, substance or liquid as he or she may reasonably require and carry out or cause to be carried out on the samples such tests, analyses, examinations or inspections as he or she considers necessary or expedient and mark or otherwise identify it.
- (2) An authorised officer may require a person to give information regarding the ownership and identity of equipment, machinery, a container, a vehicle, a

vessel or other thing used in connection with timber or a timber product or other thing to which these Regulations, the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations relate as is in the person's knowledge or procurement.

(3) Where an authorised officer has reasonable grounds for believing that an offence is being or has been committed under these Regulations, the officer may, in addition to the powers exercisable by him or her under paragraph (1)—

- (a) search any premises or land,
- (b) search the equipment, machinery, container, vehicle, vessel or other thing used in connection with timber or a timber product or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate,
- (c) require a person in charge or control of the equipment, machinery, container, vehicle, vessel or other thing used in connection with timber or a timber product or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate to—
 - (i) refrain from moving it, or move it to a location where it may be searched, and
 - (ii) give information regarding its ownership, place of departure, journey or destination,
- (d) seize and detain, for as long as is necessary, timber or timber product, record, document or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate, mark or otherwise identify it,
- (e) detain any equipment, machinery, container, vehicle or vessel for such reasonable period necessary for the purposes of permitting an inspection or a search under these Regulations, the Timber Regulations or the Implementing Timber Regulations relate either at the place where it was first detained or require it to be moved to such other location as the authorised officer requires,
- (f) remove any equipment, machinery, container, vehicle, vessel or other thing used in connection with timber or timber product or a record, document related to timber or timber product and detain them for such reasonable period necessary for the purpose of his or her functions under these Regulations.

(4) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling unless he or she has obtained a search warrant under Regulation 7 other than where he or she has reasonable grounds for believing that before a search warrant could be sought in relation to the dwelling under

Regulation 7, any evidence of an offence referred to in paragraph (3) is being or is likely to be disposed of or destroyed.

(5) An authorised officer, when exercising a function under this Regulation, may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the function.

(6) An authorised officer may use reasonable force, if necessary, to exercise his or her functions under these Regulations.

(7) Where, in the course of exercising a function under these Regulations, an authorised officer finds or comes into possession of anything that the officer has reasonable grounds for believing to be evidence of an offence or suspected offence under these Regulations, the officer may seize and retain it for use in evidence in proceedings for an offence under these Regulations.

(8) Nothing in section 17 of the Industrial and Provident Societies Act 1893 prevents an authorised officer from exercising a function conferred on him or her by these Regulations.

(9) A member of the Garda Síochána may stop a vehicle or vessel, for the purposes of these Regulations and may require it to be moved for inspection to such place as he or she directs.

(10) A person who has—

- (a) timber or a timber product record, document or other thing to which these Regulations, the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations relate, or
- (b) equipment, machinery, a container, a vehicle, a vessel or other thing used in connection with timber or a timber product or other thing to which these Regulations, the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations relate,

in his or her possession or under his or her control, or information or a record relating to any of them, shall give such—

- (i) assistance to an authorised officer, or person who accompanies the officer, and
- (ii) information to an authorised officer,

on request being made, in that behalf by the officer, as the officer may reasonably require for the exercise of his or her functions under these Regulations.

(11) The owner or person in charge of any premises used in connection with timber or a timber product or other thing to which these Regulations, the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations relate shall, if required by an authorised officer, where it is

practicable and possible, provide suitable equipment or facilities or a suitable part of the plant or establishment for the officer to carry out his or her functions under these Regulations.

(12) An authorised officer may require a person to give to the officer such information as is in the person's power or procurement or as regards any premises specified by the officer including—

- (a) whether or not the premises is used, either partly or wholly, for or in connection with timber or a timber product or other thing to which these Regulations, the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations relate,
- (b) the name of the owner, occupier or person who is in charge of the premises, and
- (c) whether or not the premises is let and, if let, the name and address of the person to whom, and the period of time for which, it is let.

Search warrant

7. (1) If a judge of the District Court is satisfied by information on the sworn information of an authorised officer that there are reasonable grounds for believing that—

- (a) evidence of or relating to the commission or intended commission of an offence under these Regulations or the timber or a timber product or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate, on any premises,
- (b) there is or was timber or a timber product record, document or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate, or equipment or other thing made, used or adapted for use (including manufacture or transport) in connection with timber or a timber product on a premises, or
- (c) a record related to a thing to which subparagraph (a) or (b) relates is or may be on the premises,

then the judge may issue a search warrant.

(2) A search warrant under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers or other persons as the named authorised officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter the premises named in the warrant and to exercise all or any of the functions conferred on an authorised officer under these Regulations.

Obstruction and false statements

8. (1) A person who—

- (a) obstructs, interferes with or impedes an authorised officer, or any person who accompanies an authorised officer, in the course of exercising a function conferred on the officer under these Regulations,
- (b) fails or refuses, without reasonable cause, to comply with a requirement, of an authorised officer under Regulation 6,
- (c) fails, without reasonable cause, to give assistance or requested information to an authorised officer in accordance with these Regulations, the Timber Regulations, the Delegated Timber Regulations or the Implementing Timber Regulations, or
- (d) in purporting to give information to an authorised officer for the exercise of the officer's functions under these Regulations—
 - (i) makes a statement that he or she knows to be false in a material particular or recklessly makes a statement which is false, in a material particular, or
 - (ii) intentionally fails to disclose a material particular,

commits an offence and is liable on summary conviction to a class A fine.

(2) A statement or admission made by a person pursuant to a requirement under Regulation 6(10)(ii) is not admissible in evidence in proceedings brought against the person for an offence (other than an offence under this Regulation for failing to give information or false information) under these Regulations.

Compliance notice

9. (1) Where an authorised officer is of the opinion that a contravention of these Regulations, the Timber Regulations or the Implementing Timber Regulations may have taken place, may be taking place, the officer may serve a notice (“compliance notice”) stating that opinion on the person—

- (a) who appears to be the owner, occupier, or person in charge of the premises, vehicle, vessel or container, or
- (b) in possession or control of a timber or timber product or other thing to which the notice relates.

(2) A compliance notice shall—

- (a) require the person to whom it is served to take such action as specified in the notice,
- (b) inform the person to whom it is served that he or she may appeal the notice in the District Court under Regulation 10, and
- (c) state that if the person to whom it is served fails to comply with the notice, he or she commits an offence and is liable to a penalty set out in paragraph (9).

(3) A compliance notice may—

- (a) require that timber or timber product or other thing to which these Regulations, Timber Regulations or the Implementing Timber Regulations relate be detained, disposed of or destroyed in a manner and at a place (if any) specified in the notice,
- (b) prohibit or regulate any activity specified in the notice, including prohibiting or restricting entry onto the premises, vehicle, vessel or container specified in the notice,
- (c) require that the owner, or person in charge of any premises, vehicle, vessel or container dispose of a product or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate in a manner specified in the notice,
- (d) prohibit the transport or further transport of timber or timber product or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate, either absolutely or unless such conditions as may be specified in the notice are complied with,
- (e) require a person to return timber or timber product or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate, to the place of departure by a route which in the opinion of the authorised officer is the most direct or prudent,
- (f) require that such alterations or additions be made to any timber, timber product, premises, vehicle, vessel, container, machinery or equipment as may be specified in the notice, or
- (g) require a person to undertake a specified type or level of sampling and analysis for a specified period.

(4) A person to whom a compliance notice is served shall comply with it until the notice expires, is withdrawn under paragraph (6) or is annulled under Regulation 10, and not cause or permit another person to contravene the terms of the notice.

(5) A compliance notice may specify a time limit within which it is to be complied with.

(6) A compliance notice may be modified or withdrawn in a further notice and the earlier notice has effect subject to the modification or withdrawal.

(7) A compliance notice may require the owner, operator or person in charge of any premises, timber, timber product, vehicle, vessel, machinery, container, equipment or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate, to choose between two or more of the requirements specified in the notice.

(8) A compliance notice shall include an address for service of an appeal under Regulation 10.

(9) A person on whom a compliance notice is served who fails to comply with, or causes or permits another person to contravene the notice commits an offence and is liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €25,000, or to imprisonment for a term not exceeding 12 months, or both.

Appeal against compliance notice

10. (1) A person to whom a compliance notice is served may, within 7 days from the date of service of the notice, appeal the notice to the judge of the District Court having jurisdiction in the District Court district—

(a) where timber or a timber product, premises, vehicle, machinery, container, equipment, vessel or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate, which is the subject of the notice, is situated, or

(b) where the person bringing the appeal ordinarily resides or carries on business,

on the grounds that the notice is unreasonable having regard to these Regulations, the Timber Regulations or the Implementing Timber Regulations.

(2) Notice of an appeal shall contain a statement on the grounds upon which it is alleged that the notice or any of the terms of the notice are unreasonable and shall be served on the authorised officer who served the compliance notice at the address included on the notice in accordance with Regulation 9(8) not later than 48 hours prior to the hearing of the appeal.

(3) A person bringing an appeal shall lodge a copy of the notice or appeal with the District Court Clerk concerned not later than 48 hours prior to the hearing of the appeal.

(4) On the hearing of an appeal a judge of the District Court may confirm, modify or annul a notice.

(5) A person, including a person on whom a compliance notice has been served, shall not—

(a) pending the determination of an appeal, deal with timber or a timber product, premises, vehicle, vessel, container, machinery, equipment or other thing to which the notice relates, other than in accordance with the terms of the compliance notice, or

(b) if the notice is confirmed or modified on appeal, deal with timber or timber product or other thing to which these Regulations, the Timber

Regulations or the Implementing Timber Regulations relate, any premises, vehicle, vessel, equipment, container, machinery or other thing to which the notice relates other than in accordance with the terms of the compliance notice as confirmed or modified.

(6) In this Regulation “appeal” means an appeal under paragraph (1).

Seizure and detention for non-compliance with a compliance notice

11. (1) Without prejudice to an appeal under Regulation 10, if—

- (a) a person in control of timber or a timber product or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate or a premises, vessel, vehicle, equipment, container, machinery or other thing used in connection with timber or a timber product fails to comply with the terms of a compliance notice within the time specified,
- (b) an authorised officer has reasonable grounds for believing that the terms of a compliance notice will not be complied with,
- (c) a compliance notice has been confirmed with or without modification under Regulation 10(4) and the notice has not been complied with, or
- (d) an authorised officer has reasonable grounds for believing that the terms of a compliance notice which has been confirmed with or without modification under Regulation 10(4) will not be complied with,

an authorised officer may at any time seize the timber or timber product or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate, vessel, vehicle, equipment, container, machinery or other thing used in connection with timber or a timber product.

(2) If timber or a timber product or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate, vessel, vehicle, equipment, container, machinery or other thing used in connection with a product is seized in accordance with paragraph (1), an authorised officer may—

- (a) sell, destroy or dispose of the timber or timber product or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate or cause it to be sold, destroyed or be disposed of, or
- (b) take such other measures in relation to the timber or timber product or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate or a vessel, vehicle, equipment, container, machinery or other thing used in connection with timber or timber product as the authorised officer considers appropriate in the circumstances.

(3) Any profits arising out of the sale, destruction or disposal of timber or a timber product or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate in accordance with paragraph (2) shall be paid to the owner of the timber, timber product or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate less any expenses incurred in connection with the seizure, sale, destruction or disposal.

(4) The costs (including ancillary costs) of a measure taken under this Regulation are recoverable by the Minister—

- (a) as a simple contract debt in a court of competent jurisdiction from the person who was the owner of the timber or timber product or other thing to which these Regulations, the Timber Regulations or the Implementing Timber Regulations relate or means of transport at the time the measure was carried out, or
- (b) by deducting the costs from any sum due to the Minister to a person on whom a notice has been served.

(5) The costs of any action required by a compliance notice shall be borne by the owner of a premises, vehicle, vessel, container, timber, timber product to which the notice relates.

Fixed payment notice

12. (1) Where an officer of the Minister, authorised by the Minister in that behalf, has reasonable grounds for suspecting that a person is committing or has committed an offence under Regulation 4(4), he or she may serve a notice in writing (“fixed payment notice”) on that person stating that—

- (a) the person is alleged to have committed the offence,
- (b) the person may during the period of 28 days beginning on the date of the notice make to the Minister, at the address specified in the notice, a payment of €250 accompanied by the notice,
- (c) the person is not obliged to make the payment, and
- (d) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) Where a fixed payment notice is served under paragraph (1)—

- (a) the person to whom the notice applies may, during the period specified in the notice, make to the Minister, at the address specified in the notice the payment specified in the notice accompanied by the notice,

- (b) the Minister may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In proceedings for an offence under these Regulations, the onus of proving that a payment in accordance with a fixed payment notice has been made lies on the person on whom the fixed payment notice was served.

(4) In proceedings for an offence referred to in paragraph (1) it is a defence for the accused to show that he or she has made a payment in accordance with this Regulation pursuant to a fixed payment notice issued in respect of that offence.

Summary proceedings

13. An offence under Regulations may be prosecuted summarily by the Minister.

Offence by body corporate

14. (1) If an offence under these Regulations is committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence is committed, is a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished as if guilty of the first-mentioned offence.

(2) If the affairs of a body corporate or unincorporated body are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with functions of management as if the member is a director or manager of the body corporate.



GIVEN under my Official Seal,
3 July 2014.

SIMON COVENEY,
Minister for Agriculture, Food and the Marine.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation.)

These Regulations give effect to the EU Timber Regulation (Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010, Commission Implementing Regulation (EU) No. 607/2012 of 6 July 2012, and Commission Delegated Regulation (EU) No. 363/2012 of 23 February 2012 and are aimed at ensuring that all appropriate timber and timber products placed on the market in the EU are from legally harvested sources.

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