

Department for Environment, Food and Rural Affairs

Consultation on the UK implementation of the EU Timber Regulation

27 December 2012

Contents

Background.....	1
Relevant documents	1
The EU Timber Regulation	2
Scope of this consultation	2
Enforcement in the UK.....	3
Level of enforcement	3
Powers of enforcement	4
Offences	5
Penalties	6
Defences.....	6
Impacts on UK business	7
Questions.....	8
Annex A	9

Background

The EU Timber Regulation (EUTR) will apply across the EU from 3 March 2013. It will prohibit the placing of illegally harvested timber or timber products on the EU market for the first time and will oblige those who do place timber or timber products on the EU market for the first time to exercise “due diligence” to ensure those products derive from legally harvested sources.

The EUTR (Regulation (EU) No 995/2010 of the European Parliament and of the Council) was agreed on 20 October 2010 and published in the Official Journal of the EU on 12 November 2010. A Delegated Regulation (Commission Delegated Regulation (EU) No 363/2012) on the procedures for recognising Monitoring Organisations was agreed on 23 February 2012, and an Implementing Regulation (Commission Implementing Regulation (EU) No 607/2012) setting out detailed rules on the due diligence system and checks on Monitoring Organisations was agreed on 6 July 2012.

The EU Commission is expected to bring forward guidance on the interpretation of certain aspects of the EUTR shortly.

Along with other EU Member States, the UK is required to take measures to implement the EUTR and the related Delegated and Implementing Regulations in UK law. It is proposed to do this by means of a UK-wide statutory instrument made under the powers conferred by the European Communities Act 1972, “The Timber and Timber Products (Placing on the Market) Regulations 2013”.

This consultation seeks views on the elements contained in the UK statutory instrument and our proposals for enforcement of the EUTR in the UK.

Relevant documents

In addition to this consultation paper the following documents are relevant:

UK draft Statutory Instrument

UK Regulatory Impact Assessment

EU Timber Regulation

EU Implementing Regulation

EU Delegated Regulation

EU guidance document (draft)

The EU Timber Regulation

There are two main elements to the EUTR:

- A prohibition on placing on the EU market “for the first time” timber or timber products from illegally harvested sources
- A requirement for those placing timber or timber products on the market (“operators”) to exercise “due diligence”.

In addition those trading in timber and timber products covered by the EUTR (“traders” – i.e. those who trade the products further down the supply chain once they have been placed on the EU market for the first time) are required to maintain records of who they purchased products from and any other trader they have sold them on to (but not including the final private consumer). Operators must also retain records concerning their supply and risk mitigation procedures.

“Due diligence” is considered to consist of three elements:

- Information gathering: concerning the supply of timber, including the species, country (and if relevant, region) of harvest, quantity and relevant documents indicating legality of harvest.
- Risk Assessment: taking account of prevalence of illegal harvesting in the country/region of origin, or of that particular species of timber, and assurances of compliance with applicable legislation.
- Risk Mitigation: the measures taken to reduce any identified risk to a point where it can be considered to be “negligible”.

Scope of this consultation

The principal elements of the new rules are set down in the EUTR and the related Delegated and Implementing Regulations, including:

- the products covered;
- the requirement for each Member State to appoint a “Competent Authority” to enforce the regulation, and the minimum level of obligations in this regard;
- the role of Monitoring Organisations to assist in the operation of due diligence, and the system for recognising them;
- the main elements of a due diligence system; and
- the obligations on operators in terms of both placing on the market and traceability.

A list of the products covered by the EUTR is set out in the annex to that Regulation, defined according to the relevant Custom Codes. A copy of the list is at Annex A of this document, for ease of reference. The EUTR applies equally to timber and timber products produced inside and outside of the EU.

Under the EUTR organisations may be accredited by the European Commission as “**Monitoring Organisations**” to provide due diligence systems which operators may use to help them comply with the new rules. The role of Monitoring Organisations is outside the scope of this consultation.

This consultation covers those elements of the new rules which fall to the national governments of EU Member States to implement; these comprise the enforcement regime and related powers and the penalties which can be imposed.

Enforcement in the UK

Ministers have decided that the body charged with enforcing the EUTR in the UK should be the National Measurement Office (NMO).

Level of enforcement

The Government is committed to using criminal sanctions to tackle the trade in illegally harvested timber and timber products.

The EUTR and the related Delegated and Implementing Regulations place certain obligations upon Member States for the enforcement of the regulation. These include:

- designating one or more competent authority;
- carrying out checks on Monitoring Organisations at least once every two years;
- carrying out checks on operators “in accordance with a periodically reviewed plan following a risk-based approach”;
- setting penalties which are “effective, proportionate and dissuasive” and taking all measures necessary to ensure they are implemented.

Furthermore, Competent Authorities may carry out checks on operators when they are “in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning compliance by an operator”.

In resourcing the NMO to carry out the enforcement of the EUTR we need to take a view on the level of enforcement we wish to see.

The options for enforcement are:

“Full enforcement” of the obligations set out under the EUTR, as set out above

An “Added Value” approach which would add random spot-checking, and increased support to industry on compliance

A Maximum Enforcement regime which would be a pro-active, industry wide approach to compliance and enforcement.

In view of UK policy on not “gold-plating” EU regulations, and in recognition of the work the UK has already carried out at the EU level to strengthen the enforcement provisions in the EUTR, we propose to resource the NMO to carry out the Full enforcement of the obligations, as set out above. We will keep the level of enforcement under review, in the light of the operation of the Regulation in its first two years.

Powers of enforcement

We propose to give inspectors authorised by the NMO powers to enter and inspect non-domestic premises, to take samples, to inspect and copy records and to seize and dispose of timber or timber products.

Powers of entry: We propose conferring powers, consistent with Ministry of Justice guidance, to allow an inspector to enter non-domestic premises to enforce the EUTR. In most cases a period of reasonable notice will be given, but the draft statutory instrument sets out limited circumstances in which an inspector may enter without giving notice. An inspector may be accompanied by others if considered necessary to his enquiries.

Powers of inspection: We propose powers to allow an inspector to examine:

- Timber or timber products
- Documents and records
- Plant, machinery and equipment
- Containers

and to be able to require any person to give assistance in these inspections including providing documents, records, or other information.

Seizure of timber: We propose powers to allow an inspector to seize timber which they reasonably believe to be illegally harvested and to either remove it or prevent its movement. A person who has timber seized may appeal against a seizure notice to the enforcement body. The enforcement body may then apply to the magistrates’ court for the seizure notice to be confirmed.”

If timber is seized, and there is no successful appeal against the seizure, we propose that the enforcement authority may (or may instruct the person in possession of the timber to), either:

- Destroy the timber; or
- Donate, sell or otherwise dispose of the timber.

We have considered a number of options for the disposal of seized timber. Our view is that, given the variety of possible, species and products it is important to provide some flexibility for the disposal of timber. However, we would expect timber to be disposed of in the most cost-effective, and environmentally sustainable manner, and in line with the overall objectives of the EUTR.

Unless a court directs otherwise, we propose to ensure that any costs relating to the seizure, storage, testing and disposal of timber can be recovered, by the NMO, from the person placing the timber on the market (or a person who through failing to keep adequate records makes it impossible to trace that person).

Remedial Notices: We propose powers for an inspector to serve remedial notices on organisations or individuals who the inspector has reasonable grounds for believing are failing to comply with the EUTR's due diligence requirements. Appeals against remedial notices will be possible to a Magistrates Court.¹

Offences

A person will be guilty of a criminal offence if they fail to comply with the provisions of the EUTR relating to the placing of illegally harvested timber on the EU market and the exercising of due diligence, or offences under the UK Regulations relating to the obstruction of inspectors carrying out their enforcement duties or the failure to comply with a remedial notice by any such inspector. These offences and the resulting penalties are set out in more detail below.

A company, partnership or unincorporated association will also be liable to prosecution for offences under the UK Regulations. Individuals who perform managerial functions (such as officers and partners) may also be prosecuted for such offences committed by a company. A fine imposed on a partnership or unincorporated association is to be paid from the funds of the partnership or association.

¹ In Scotland appeals will be made to the Sheriff.

Penalties

The EUTR requires Member States to lay down penalties which are “effective, proportionate and dissuasive”.

The penalties proposed in the UK Regulations, therefore, are as follows:

An Operator who:

- places illegally harvested timber on the EU market;
- fails to apply due diligence when placing timber on the EU market;
- fails to maintain a due diligence system;
- obstructs an inspector; or
- fails to act on a remedial notice.

will be liable for:

- a term of imprisonment of up to two years and/or an unlimited fine if convicted in a Crown Court; or
- a term of imprisonment of up to three months and/or a fine up to the maximum level of £5,000 for each offence if convicted in a Magistrates Court.

Furthermore:

- An Operator who fails to maintain adequate records for the purposes of the Regulation or any Trader who fails to comply with the requirements for traceability (in both cases maintained adequate records of transactions for 5 years), and
- Any person who discloses information received from the Competent Authority, without permission;

will be subject to a fine up to the maximum level of £5,000 for each offence if convicted in a Magistrates Court

Defences

It is proposed that a person shall have a defence against the offence of placing illegally harvested timber on the market or of failing to exercise due diligence if they can prove that they made proper use of a due diligence system which complies with the requirements of the EUTR (which could be either their own due diligence system or one maintained by a Monitoring Organisation). Where a person seeking to rely on this defence claims to have relied on information supplied by another person, they must show that it was reasonable in

all the circumstances for them to have relied on that information. In that case or if it is claimed that the offence was committed as a result of the act or default of another person, that other person must be clearly identified by a notice served on the person bringing the proceedings at least a week before the hearing.

Impacts on UK business

We have produced a Regulatory Impact Assessment on the likely impacts on UK business. Our assessment is that, though a large number of companies, including SMEs, are engaged in the timber and timber products industries the majority will be classed as “traders” for the purposes of the EUTR. A smaller number will be “operators”, as those “first placing” timber or timber products on the EU market. Of those who import timber into the UK, a large percentage will be importing from within the EU and therefore will not be “placing” on the market “for the first time”.

For many firms, especially large enterprises, their current practices probably meet the majority of the requirements of the EUTR as the UK has a reputation for good supply chain management and high levels of legality assurance. For some a degree of additional work will be necessary, especially around risk assessment and risk mitigation. We expect this to be in many cases a short-term business impact, as adjustments are made to information requirements and supply chain management; this is especially the case because the EUTR looks at the supply of products, over time, rather than being a shipment based system.

In a minority of cases further work will be needed and in some cases changes will need to be made to supply chains. It is the aim of the EUTR that good practice and high standards of legality assurance will be driven back down the supply chain in cases where insufficient attention is currently paid to issues of legality.

The implementation of EUTR in the UK [which deals with the legality of timber and timber products] will be introduced during the same year as the EU Construction Products Regulation, which is focused on the functional performance of construction products, introducing a mandatory CE² marking and information provision for many timber products used in construction. The proposed NMO enforcement regime for the EUTR in the UK will operate separately from the construction products market surveillance carried out by Local Authority Trading Standards. Government will work with NMO and Trading Standards to ensure the operation of these do not impose unnecessary burdens on UK businesses. We would welcome any views on this approach.

² A mandatory conformity marking for products placed on the EU market.

Questions

You are invited to comment on any aspects of the proposals for implementing the EU Timber Regulation in the UK. We would particularly welcome views on the following questions:

Enforcement:

Are you content with our proposed approach to enforcement in the UK?

Are you content with our proposals on the seizure of timber, including proposals for disposing of illegally harvested timber and for recovery of costs?

Penalties:

Do you consider the penalties proposed to be adequate, insufficient or excessive? Do you think they meet the requirement to provide penalties which are effective, proportionate and dissuasive?

Impacts:

Do you agree with our assessment of the likely impacts on UK business?

Are you able to quantify the impact on your business, in terms of both staff time and costs (please specify whether you consider yourself to be an operator or a trader under these regulations and, if possible, which sector you work in)?

If you work in the construction sector, and use timber or timber products, do you foresee significant overlaps with the forthcoming “Construction Products Regulation”? If so, what level of coordination in the enforcement of the two regulations would you wish to see?

Guidance:

Are you content that the information contained in the draft UK Regulations, this consultation document and the EU Commission’s [draft] guidance gives you sufficient information on the operation of the EUTR and your obligations in terms of due diligence?

What further guidance would you find useful, or which areas currently covered by guidance would you like to see more information or clarity on?

Annex A

Timber and timber products as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 (1), to which this Regulation applies

- 4401 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms
- 4403 Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared
- 4406 Railway or tramway sleepers (cross-ties) of wood
- 4407 Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm
- 4408 Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm
- 4409 Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed
- 4410 Particle board, oriented strand board (OSB) and similar board (for example, waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances
- 4411 Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances
- 4412 Plywood, veneered panels and similar laminated wood
- 4413 00 00 Densified wood, in blocks, plates, strips or profile shapes
- 4414 00 Wooden frames for paintings, photographs, mirrors or similar objects
- 4415 Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood (Not packing material used exclusively as packing material to support, protect or carry another product placed on the market.)

— 4416 00 00 Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves

— 4418 Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes

— Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products

— 9403 30, 9403 40, 9403 50 00, 9403 60 and 9403 90 30 Wooden furniture

— **9406 00 20 Prefabricated buildings**

© Crown copyright 2012

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk

This document/publication is also available on our website at:

www.defra.gov.uk/consult

Any enquiries regarding this document/publication should be sent to us at:

Gideon.winward@defra.gsi.gov.uk