

2012 No. 1102

CONSUMER PROTECTION

**The Textile Products (Labelling and Fibre Composition)
Regulations 2012**

| | |
|-------------------------------|------------------------|
| <i>Made</i> - - - - | <i>17th April 2012</i> |
| <i>Laid before Parliament</i> | <i>18th April 2012</i> |
| <i>Coming into force</i> - - | <i>8th May 2012</i> |

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to consumer protection^(a).

These Regulations make provision for a purpose mentioned in section 2(2) of that Act and it appears to the Secretary of State that it is expedient for any reference to Annex I and Annexes III to IX to Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27th September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council^(b) to be construed as a reference to those Annexes as amended from time to time.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by paragraph 1A of Schedule 2 to that Act^(c).

Citation and commencement

1. These Regulations may be cited as the Textile Products (Labelling and Fibre Composition) Regulations 2012 and they come into force on 8th May 2012.

Revocation and transitional provision

- 2.—(1) The Regulations in Schedule 1 are revoked.
- (2) An offence will not be committed under regulation 5 in respect of a product which—
- (a) was placed on the market in the United Kingdom before 8th May 2012,
 - (b) continues to be made available on the market in the United Kingdom until 9th November 2014, and
 - (c) complies with the Regulations listed in Schedule 1.

(a) S.I. 1993/2661.

(b) OJ No L272, 18.10.2011, p.1.

(c) 1972 c.68. section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

Interpretation

3.—(1) In these Regulations—

“business” includes a trade, craft or profession;

“enforcement authority” means a local weights and measures authority in Great Britain (within the meaning of section 69 of the Weights and Measures Act 1985^(a)) and the Department of Enterprise, Trade and Investment in Northern Ireland;

“EU Regulation” means Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27th September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council ^(b) and a reference in these Regulations to Annex I and Annexes III to IX to that EU Regulation is to be construed as a reference to those Annexes as amended from time to time.

“product” means any textile product (defined in Article 3(1)(a) of the EU Regulation) and includes the products listed in Article 2(2) of the EU Regulation.

(2) Any expression used both in these Regulations and in the EU Regulation has the meaning that it bears in the EU Regulation.

Market surveillance of the EU Regulation

4.—(1) An enforcement authority is a market surveillance authority for the purposes of the EU Regulation.

(2) The market surveillance checks to be carried out by a market surveillance authority, referred to in Article 18 of the EU Regulation, are to be carried out in accordance with Articles 19 and 20 and Annexes VII, VIII and IX to the EU Regulation.

Offence

5.—(1) A person who makes a product available on the market in the United Kingdom in breach of one or more of the provisions of the EU Regulation described in Schedule 2, is guilty of an offence.

(2) Paragraph 1 does not apply to—

- (a) persons described in Article 2(3) of the EU Regulation (persons working in their homes, to whom products are contracted out or independent firms that carry out work from materials supplied without property being transferred for consideration),
- (b) persons described in Article 2(4) of the EU Regulation (self employed tailors making up customised products).

Penalty for offences

6. A person guilty of an offence under regulation 5 is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

Time limit for prosecutions

7.—(1) No proceedings for an offence under these Regulations are to be commenced after—

- (a) the end of the period of three years beginning with the date of the commission of the offence; or

(a) 1985 c.72 section 69 was amended by paragraph 75 of Schedule 16 to the Local Government (Wales) Act 1994 (c.19) and by paragraph 144 of Schedule 13 of the Local Government etc (Scotland) Act 1994 (c.39).

(b) OJ No L272, 18.10.2011, p.1.

- (b) the end of the period of one year beginning with the date of discovery of the offence by the prosecutor,

whichever is earlier.

(2) For the purpose of paragraph 1(b), a certificate signed by or on behalf of the prosecutor and stating the date on which the offence was discovered by the prosecutor is to be conclusive evidence of that fact and a certificate stating that matter and purporting to be so signed is to be treated as so signed unless the contrary is proved.

(3) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980(a) (limitation of time), an information relating to an offence under these Regulations which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time before the end of the period of twelve months beginning with the date of the commission of the offence.

(4) Notwithstanding anything in section 136 of the Criminal Procedure (Scotland) Act 1995(b) (time limit for certain offences) summary proceedings in Scotland for an offence under these Regulations may be commenced at any time before the end of the period of twelve months beginning with the date of the commission of the offence.

(5) For the purposes of paragraph (4) section 136(3) of the Criminal Procedure (Scotland) Act 1995 shall apply as it applies for the purposes of that subsection.

(6) Notwithstanding anything in Article 19(1) of the Magistrates' Courts (Northern Ireland) Order 1981(c) (time within which complaint charging offence must be made to give jurisdiction), a complaint charging an offence under these Regulations which is triable by a magistrates court in Northern Ireland may be so tried if it is made at any time before the end of the period of twelve months beginning with the date of the commission of the offence.

Offences committed by bodies of persons

8.—(1) Where 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 of the body, or
- (b) to be attributable to any neglect on his part,

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

(2) In paragraph (1) a reference to an officer of a body corporate includes a reference to—

- (a) a director, manager, secretary or other similar officer; and
- (b) a person purporting to act as a director, manager, secretary or other similar officer.

(3) Where an offence under these Regulations committed by a Scottish partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on his part,

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

(4) In paragraph (3) a reference to a partner includes a person purporting to act as a partner.

Offence due to fault of another person

9.—(1) This regulation applies where a person "X"—

- (a) commits an offence under regulation 5, or
- (b) would have committed an offence under that regulation but for the defence under regulation 10,

(a) 1980 c 43.

(b) 1995 c 46.

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

and the commission of the offence, or of what would have been an offence but for X being able to rely on a defence under regulation 10, is due to the act or default of some other person “Y”.

(2) Where this regulation applies Y is guilty of the offence, subject to regulation 10.

(3) Y may be charged with and convicted of the offence by virtue of paragraph (2) whether or not proceedings are taken against X.

Due diligence defence

10.—(1) In any proceedings against a person for an offence under regulation 5 it is a defence for that person to prove—

- (a) that the commission of the offence was due to—
 - (i) a mistake;
 - (ii) reliance on information supplied to him by another person;
 - (iii) the act or default of another person;
 - (iv) an accident; or
 - (v) another cause beyond his control; and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(2) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of the matters referred to in paragraph (ii) or (iii) of paragraph (1)(a) without leave of the court unless—

- (a) he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was in his possession; and
- (b) the notice is served on the prosecutor at least seven clear days before the date of the hearing.

Duty to enforce

11.—(1) It shall be the duty of every enforcement authority to enforce the EU Regulation or these Regulations.

(2) Where the enforcement authority is a local weights and measures authority the duty to enforce applies to the enforcement of the EU Regulation or these Regulations within the authority’s area.

(3) Where the enforcement authority is the Department of Enterprise, Trade and Investment in Northern Ireland the duty to enforce applies to the enforcement of the EU Regulation or these Regulations within Northern Ireland.

(4) Nothing in this regulation authorises any enforcement authority to bring proceedings in Scotland for an offence.

Power to make test purchases

12. An enforcement authority may or may authorise any of its officers on its behalf to—

- (a) make a purchase of a product, or
- (b) enter into an agreement to secure the provision of a product,

for the purposes of determining whether the EU Regulation or these Regulations are being complied with.

Power of entry and investigation, etc

13.—(1) A duly authorised officer of an enforcement authority may at all reasonable hours and on giving reasonable notice, exercise the following powers—

- (a) for the purposes of ascertaining whether a breach of the EU Regulation or these Regulations has been committed, the officer may inspect any products and enter any premises other than premises used wholly or mainly as a private dwelling house;
- (b) if the officer has reasonable cause to suspect that a breach of the EU Regulation or these Regulations has been committed, he may, for the purpose of ascertaining whether it has been committed, require any person carrying on a business to produce any documents relating to the business and may take copies of, or of any entry in, any such document;
- (c) if the officer has reasonable cause to suspect that a breach of the EU Regulation or these Regulations has been committed, he may seize and detain any products for the purpose of ascertaining, by testing or otherwise, whether the breach has been committed; and
- (d) the officer may seize and detain products or documents which he has reason to believe may be required as evidence in proceedings for a breach of the EU Regulation or these Regulations.

(2) If and to the extent that it is reasonably necessary to secure that the provisions of the EU Regulation or these Regulations are observed, the officer may for the purpose of exercising his powers under paragraphs (1)(c) and (d) to seize products or documents—

- (a) require any person having authority to do so to break open any container or open any vending machine; and
- (b) himself open or break open any such container or open any vending machine where a requirement made under subparagraph (a) in relation to the container or vending machine has not been complied with.

(3) An officer seizing any products or documents in exercise of his powers under this regulation shall—

- (a) inform the person from whom they are seized, and
- (b) where products are seized from a vending machine, inform—
 - (i) the person whose name and address are stated on the machine as being the proprietor's; or
 - (ii) if there is no such name and address stated on the machine, the occupier of the premises on which the machine stands or to which it is affixed,

that the products or documents have been so seized.

(4) In this regulation “document” includes information recorded in any form.

(5) The reference in paragraph 1(b) to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.

(6) An officer seeking to exercise a power under this regulation must produce evidence of his identity and authority to a person (if there is one) who appears to the officer to be the occupier of the premises.

(7) Where an officer seizes products or documents in exercise of a power under this regulation, they may not be detained—

- (a) for longer than 3 months; or
- (b) where the products or documents are reasonably required by the enforcement authority in connection with the enforcement of the EU Regulation or these Regulations, for longer than they are so required.

(8) An officer entering any premises under this regulation may take with him such other persons and such equipment as may appear to him to be necessary.

(9) Nothing in this regulation or regulation 15 gives any power to an officer of an enforcement authority—

- (a) to require any person to produce, or
- (b) to seize from another person,

any document which the other person would be entitled to refuse to produce in proceedings in the High Court on the grounds of legal professional privilege or (in Scotland) in proceedings in the Court of Session on the grounds of confidentiality of communications.

(10) In paragraph (9) “communications” means—

- (a) communications between a professional legal adviser and his client; or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purpose of those proceedings.

(11) If any person who is not an officer of an enforcement authority purports to act as such under this regulation or under regulation 15 he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Notice

14.—(1) The requirement to give reasonable notice under regulation 13(1) shall not apply—

- (a) where the requirement has been waived by the person carrying on the business;
- (b) in an emergency; or
- (c) where giving notice would defeat the object of the entry.

(2) A notice under regulation 13(1) may be given to a person by—

- (a) delivering it to the person;
- (b) leaving it at or sending it by post to the person’s proper address; or
- (c) sending it by electronic means to an address which that person has specified in accordance with paragraph (4)(a).

(3) For the purposes of this regulation the proper address of any person to whom a notice is given is—

- (a) if the person has given an address, that address; and
- (b) if no address has been given—
 - (i) in the case of a body corporate, the registered or principal office of that body;
 - (ii) in any case, the person’s last known address at the time the notice is being given.

(4) If the notice is transmitted electronically, it is to be treated as given if—

- (a) the person to whom the notice is to be given has provided an address suitable for that purpose; and
- (b) the notice is sent to the address provided.

Power to enter premises with a warrant

15.—(1) If a justice of the peace, by any written information on oath is satisfied—

- (a) that there are reasonable grounds for believing that Condition A or B is met, and
- (b) that Condition C, D or E is met,

the justice may by warrant under the hand of the justice authorise an officer of an enforcement authority to enter the premises at all reasonable times, if necessary by force.

(2) Condition A is that there are on any premises products or documents which a duly authorised officer of the enforcement authority has power under regulation 13(1) to inspect and that their inspection is likely to disclose evidence of a breach of the EU Regulation or these Regulations.

(3) Condition B is that a breach of the EU Regulation or these Regulations has been, is being or is about to be committed on any premises.

(4) Condition C is that the admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under the regulation has been given to the occupier.

(5) Condition D is that an application for admission, or the giving of a notice of intention to apply for a warrant, would defeat the object of the entry.

(6) Condition E is that the premises are unoccupied or that the occupier is absent and it might defeat the object of the entry to await his return.

(7) A warrant under paragraph (1)—

- (a) ceases to have effect at the end of the period of one month beginning on the day it is issued;
- (b) must be produced for inspection to the person (if there is one) who appears to the officer to be the occupier of the premises.

(8) An officer entering any premises under this regulation may take with him such other persons and such equipment as may appear to him to be necessary.

(9) On leaving any premises which an officer is authorised to enter by warrant under this regulation the officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as they were found by the officer.

(10) In its application to Scotland, this regulation has effect as if—

- (a) the references in paragraph (1) to a justice of the peace included references to a sheriff; and
- (b) the reference in paragraph (1) to information on oath were a reference to evidence on oath.

(11) In its application to Northern Ireland, this regulation has effect as if the references in paragraph (1) to a justice of the peace were references to a lay magistrate.

Obstruction of authorised officers

16.—(1) Any person who—

- (a) intentionally obstructs an officer of an enforcement authority acting in pursuance of the EU Regulation or these Regulations,
- (b) intentionally fails to comply with any requirement properly made of him by such an officer under regulation 13, or
- (c) without reasonable cause fails to give such an officer any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under the EU Regulation or these Regulations,

is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(2) Any person who, in giving any information which is required of him under paragraph (1)(c), makes any statement which he knows to be false in a material particular is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

(3) Nothing in this regulation is to be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

Notice of test and intended proceedings

17.—(1) Where products purchased by an officer pursuant to regulation 12 are submitted to a test and the test leads to the institution of any proceedings for a breach of the EU Regulation or these Regulations the officer shall inform—

- (a) the person from whom the products were purchased, or
- (b) where the products were sold through a vending machine, the person mentioned in regulation 13 (3) (b),

of the result of the test.

(2) Where products seized by an officer pursuant to regulation 13 are submitted to a test then the officer must inform the persons mentioned in regulation 13 (3) of the result of the test.

(3) Where, as a result of the test, any proceedings in respect of a breach of the EU Regulation or these Regulations are taken against any person, the officer must allow that person to have the products tested on that person's behalf if it is reasonably practicable to do so.

Compensation

18.—(1) Where an officer of an enforcement authority seizes and detains products in exercise of any powers under regulation 13, the enforcement authority is liable to pay compensation to any person having an interest in the products in respect of any loss or damage caused by reason of the exercise of the powers if—

- (a) there has been no breach of the EU Regulation or these Regulations in relation to the products, and
- (b) the exercise of that power is not attributable to any neglect or default by that person.

(2) Any disputed question as to the right to or the amount of any compensation payable under this regulation shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

Crown

19.—(1) The powers conferred by regulations 13 and 15 are not exercisable in relation to premises occupied by the Crown.

(2) The Crown is not criminally liable as a result of any provision of these Regulations.

(3) Paragraph (2) does not affect the application of any provision of these Regulations in relation to a person in the public service of the Crown.

Review

20.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of regulations 1 to 19,
- (b) set out the conclusions of the review in a report, and
- (c) lay the report before Parliament.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to the rules on penalties applicable to infringements of the provisions of the EU Regulation and the measures taken to implement them in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the rules on penalties applicable to infringements of the provisions of the EU Regulation established by those regulations and the measures taken to implement them,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether these objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

- (a) the period of five years beginning with the day on which regulations 1 to 19 come into force, and
- (b) subject to paragraph 5, each successive period of five years.

(5) If a report under this regulation is laid before Parliament before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is laid.

SCHEDULE 1

Regulation 2(1)

Revocations

| <i>Title</i> | <i>Reference</i> |
|--|------------------|
| The Textile Products (Indications of Fibre Content) Regulations 1986 | S.I. 1986/26 |
| The Textile Products (Indications of Fibre Content) (Amendment) Regulations 1988 | S.I. 1988/1350 |
| The Textile Products (Indications of Fibre Content) (Amendment) Regulations 1994 | S.I. 1994/450 |
| Textile Products (Indications of Fibre Content) (Amendment) Regulations 1998 | S.I. 1998/1169 |
| Textile Products (Indications of Fibre Content) (Amendment) Regulations 2005 | S.I. 2005/1401 |
| The Textile Products (Indications of Fibre Content) (Amendment) Regulations 2008 | S.I. 2008/6 |
| The Textile Products (Determination of Composition) Regulations 2008 Regulations 2008 | S.I. 2008/15 |
| The Textile Products (Indications of Fibre Content) (Amendment) (No 2) Regulations 2009 | S.I. 2009/1034 |

SCHEDULE 2

Regulation 5(1)

Provisions of EU Regulation

| <i>Provision of EU Regulation</i> | <i>Description</i> |
|-----------------------------------|---|
| 1. Article 4 | Products shall only be made available on the market provided that they are labelled, marked or accompanied with commercial documents complying with the EU Regulation |
| 2. Article 5 | Only textile fibre names listed in Annex I to the EU Regulation shall be used for the description of fibre compositions on labels and markings |
| 3. Article 7 | Provisions relating to the use of the terms “100%”, “pure” or “all” |
| 4. Article 8 | Provisions relating to the labelling or marking of fleece wool or virgin wool products in accordance with the names set out in Annex III |
| 5. Article 9 | Provisions relating to labelling or marking of multi fibre products |
| 6. Article 11 | Provisions for the labelling of multi component products |
| 7. Article 12 | Provisions for the labelling of products containing non textile parts of animal origin |
| 8. Article 13 | Provisions for the labelling and marking of products listed in Annex IV to the EU Regulation |
| 9. Article 14 | Provisions on labelling and marking of fibre composition whenever products are made available on the market and provisions for types of labels and commercial documents supplementing or replacing labels |
| 10. Article 15 (1) to (4) | Obligations to ensure the accuracy of label or marking and information contained therein when placing a product on the market and making a product available on the market |
| 12. Article 16 | Provisions on legibility etc of textile fibre names and fibre composition descriptions |
| 13. Article 17 | Derogations from the provisions in Articles 11, 14, 15 and 16. Annex V to the EU Regulation setting out the products for which labelling or marking is not mandatory. Annex VI to the EU Regulation describes the products for which inclusive labelling is sufficient. |

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the enforcement provisions including the sanctions that will apply to Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27th September 2011 on textile fibres and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council (“the EU Regulation”) (OJ No L272, 18.10.2011, p.1.). The EU Regulation comes into force on 8th May 2012.

Regulation 2(1) revokes the existing Regulations on the labelling of textile products, listed in Schedule 1. The revoked Regulations had implemented the three Directives repealed by the EU Regulation. Regulation 2(2) sets out a transitional provision. There will be no offence under these Regulations in respect of textile products which were placed on the market in the United Kingdom before 8th May 2012, which continue to be made available on the market in the United Kingdom until 9th November 2012, if those products complied with the now revoked Regulations listed in Schedule 1.

Regulation 3 sets out the relevant definitions including the definition of the EU Regulation. This definition contains an ambulatory reference, so that references in these Regulations to the Annexes to the EU Regulation are references to those Annexes as amended from time to time.

Regulation 4 provides that local weights and measures authorities and the Department of Enterprise, Trade and Investment in Northern Ireland (also “the enforcement authorities” under these Regulations), are market surveillance authorities for the purposes of carrying out market surveillance checks on fibre composition and labelling under the EU Regulation. Those market surveillance checks are to be carried out in accordance with Articles 19 and 20 and Annexes VII, VIII and IX to the EU Regulation.

Regulation 5 makes it an offence for a person to make a relevant textile product available on the market in the United Kingdom, in breach of the provisions of the EU Regulation and regulation 6 sets out the penalties that apply. The offence will not apply to the persons referred to in Regulation 5(2).

Regulations 7 to 10 contain provisions related to the offence, including a due diligence defence in regulation 10.

Regulations 11 to 18 set out the investigation powers available to the enforcement authorities and penalties for non compliance (regulation 16).

Whilst the EU Regulation does apply to the Crown, Regulation 19 disapplies the criminal offences and investigation powers as far as concerns the Crown. Those powers and criminal offences do however apply to persons in the public service of the Crown.

Regulation 20 requires the Secretary of State to review the operation and effect of these Regulations and lay a report before Parliament within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or amended. A further instrument would be needed to revoke the Regulations or to amend them.

The Department for Business Innovation and Skills intends to maintain up to date information on the amendments to the Annexes to the EU Regulation as they are made and come into force by publishing these on the BIS website (www.bis.gov.uk).

An impact assessment of the effect that the instrument will have on the costs to business and the voluntary sector is available from the BIS website (www.bis.gov.uk). It is also annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. A copy has also been placed in the Libraries of both Houses of Parliament.

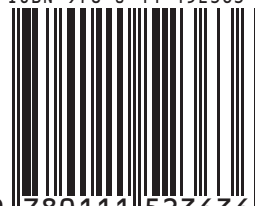
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