

Draft Regulations laid before Parliament under section 87(8) of the Environment Act 1995, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2020 No.

ENVIRONMENTAL PROTECTION, ENGLAND

**The Air Quality (Domestic Solid Fuels Standards) (England)
Regulations 2020**

Made - - - - - *******

Coming into force in accordance with regulation 1(2)

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SCHEDULE 1 — Form of logo

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The Secretary of State makes these Regulations in exercise of the powers conferred by section 87(1)(a) and (b), (2)(c), (e), (i), (j), (m), (n), (o) and (5) of, and paragraph 5 of Schedule 11 to, the Environment Act 1995(a) (“the 1995 Act”).

The Secretary of State makes these Regulations having determined that it is necessary in order to meet obligations placed upon the UK under the EU Treaties and international agreements relating to air quality(b).

In accordance with section 87(7)(c) of the 1995 Act, the Secretary of State has consulted the Environment Agency(d), such bodies or persons appearing to the Secretary of State to be representative of the interests of local government and of industry as the Secretary of State

(a) 1995 c. 25 (“the 1995 Act”); subsection (1) was amended by S.I. 2011/1043.

(b) In particular Directive 2016/2284/EU of the European Parliament and the Council relating to national emission ceilings for certain atmospheric pollutants (OJ No L 344, 17.12.2016, p 1) and the United Nations Economic Commission for Europe 1979 Convention on Long-Range Transboundary Air Pollution and its 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone, which was revised in 2012.

(c) As amended by S.I. 2013/755.

(d) The Environment Agency was established by section 1 of the 1995 Act.

considers appropriate, and such other bodies or persons as the Secretary of State considers appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament pursuant to section 87(8) of the 1995 Act.

PART 1

Introduction

Citation, commencement and application

1.—(1) These Regulations may be cited as the Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020.

(2) These Regulations come into force—

- (a) for the purposes of making appointments under regulation 5 or 11 (approved bodies), on the day after the day on which they are made;
- (b) for all other purposes, on 1st May 2021.

(3) These Regulations apply in relation to England only.

Interpretation

2.—(1) In these Regulations—

“domestic premises” means premises which are used wholly or mainly as a private dwelling, including boats designed or adapted for use solely as a place of permanent habitation;

“relevant solid fuel” means—

- (a) a relevant unit of wood within the meaning of Part 2;
- (b) a relevant amount of wood within the meaning of Part 3;
- (c) a manufactured solid fuel within the meaning of Part 4;
- (d) bituminous coal within the meaning of Part 5.

(2) In these Regulations—

(a) a person supplies a relevant solid fuel if the person supplies such a fuel by way of sale from or by means of—

- (i) any retail premises, whether movable or immovable;
- (ii) a retail website or similar online sales facility;
- (iii) a telephone service; or
- (iv) any other place or method of sale,

and for these purposes the supply is to be taken to have occurred at the point of sale, or if later, on the dispatch of the fuel;

(b) a person who supplies a relevant solid fuel is a supplier.

PART 2

Supply of wood in units less than two cubic metres

Interpretation: Part 2

3. In this Part—

“approved wood certification body” means a person appointed by the Secretary of State under regulation 5;

“prohibited level”, in respect of a relevant unit of wood, means a moisture content of more than 20%;

“relevant unit of wood” means wood that is supplied—

- (a) for the purposes of combustion in domestic premises in England;
- (b) in a unit, whether comprising one piece of wood or more, the volume of which is less than two cubic metres.

Prohibition on the supply of a relevant unit of wood

4.—(1) A person must not supply a relevant unit of wood if the wood is not authorised wood.

(2) A person must not supply a relevant unit of wood if, after the issue of a certificate under regulation 5(5) in relation to the wood, there is reason to believe that the moisture content of the wood amounts to the prohibited level.

(3) A person must not supply a relevant unit of wood that is not accompanied, whether on its packaging or otherwise, with—

- (a) the relevant information; and
- (b) the logo shown in Schedule 1.

(4) A person who contravenes any of the prohibitions in paragraphs (1) to (3) commits an offence and is liable on summary conviction to a fine.

(5) In this regulation—

“authorised wood” means wood in respect of which a certificate has been issued by an approved wood certification body in accordance with regulation 5(5);

“relevant information” means—

- (a) the name of the person who obtained the certificate from the approved wood certification body in respect of the relevant unit of wood in question; and
- (b) the number of the certificate issued by the approved wood certification body under regulation 5(5).

Appointment and functions of an approved wood certification body

5.—(1) The Secretary of State must appoint at least one person to be an approved wood certification body for the purposes of this Part.

(2) A person who intends to supply a relevant unit of wood must, where that person is the first person in the chain of supply in respect of such wood, apply to an approved wood certification body for a certificate under this regulation.

(3) The application must be accompanied by a sample of the wood.

(4) On an application under this regulation the approved wood certification body must test the sample in accordance with the standard in paragraph (8).

(5) If the result of the test under paragraph (4) determines that the wood has a moisture content of less than the prohibited level, the approved wood certification body must issue a certificate recording this to the applicant.

(6) A person to whom a certificate is issued under paragraph (5)—

- (a) may use the logo shown in Schedule 1 when supplying a relevant unit of wood to which the sample relates;
- (b) must use best endeavours to ensure that, when supplying a relevant unit of wood to which the sample submitted under paragraph (3) relates, the wood to be supplied has the same characteristics as the sample.

(7) A person who fails to comply with paragraph (6)(b) commits an offence and is liable on summary conviction to a fine.

(8) The standard(a) is either—

(a) ISO 18134-1; or

(b) ISO 18134-2,

as referred to in the firewood fuel specification BS EN ISO 17225-5.

Exemption for small foresters

6.—(1) In its application to a supplier who is a small forester, regulation 4 has effect only after the end of 12 months beginning with 1st May 2021.

(2) A person is a small forester for the purposes of this regulation if, during the period of one year ending with 30th April 2021 the person supplied less than 600 cubic metres of wood.

(3) In this regulation, “supplied” is to be construed in accordance with regulation 2(2).

PART 3

Supply of wood in units of two cubic metres or more

Interpretation: Part 3

7. In this Part, “relevant amount of wood” means an amount of wood to be supplied—

(a) for the purposes of combustion in domestic premises in England;

(b) in a unit, whether comprising one piece of wood or more, the volume of which is two cubic metres or more.

Prohibition on the supply of a relevant amount of wood without a notice

8.—(1) A person must not supply a relevant amount of wood unless the wood is accompanied by a notice comprising the words specified in Schedule 2.

(2) A person who contravenes the prohibition in paragraph (1) commits an offence and is liable on summary conviction to a fine.

PART 4

Supply of manufactured solid fuels

Interpretation: Part 4

9.—(1) In this Part—

“approved manufactured solid fuel certification body” means a person authorised by the Secretary of State under regulation 11(1);

“authorised fuel” means a manufactured solid fuel in relation to which a certificate has been issued in accordance with regulation 11(5);

“exempt fuel” means any of the following—

(a) coffee logs;

(a) The standards are available for purchase from <https://www.iso.org/home.html>, or <https://shop.bsigroup.com> (as the case may be) and are available for inspection the offices of the Department for Environment, Food and Rural Affairs, 2 Marsham Street, London SW1P 4DF.

- (b) olive logs;
- (c) wine logs; or
- (d) fuels where the majority of the fuel comprises—
 - (i) wheat husks;
 - (ii) straw;
 - (iii) miscanthus;
 - (iv) bamboo; or
 - (v) compressed food waste;

“manufactured solid fuel” means a fuel manufactured from coal, wood, plant-derived materials, waxes or petroleum products with other ingredients, for the purposes of combustion in domestic premises in England, but does not include an exempt fuel;

“relevant information” means—

- (a) the name of the person who obtained the certificate from the approved manufactured solid fuel certification body in respect of the manufactured solid fuel in question;
- (b) the number of the certificate provided by the approved manufactured solid fuel certification body under regulation 11.

Prohibition on the supply of certain manufactured solid fuels

10.—(1) A person must not supply a manufactured solid fuel that is not an authorised fuel.

(2) A person must not supply a manufactured solid fuel that is not listed on the list maintained by the Secretary of State under regulation 12.

(3) A person must not supply a manufactured solid fuel that is not accompanied, whether on its packaging or otherwise, with—

- (a) the relevant information; and
- (b) the logo shown in Schedule 1.

(4) A person who contravenes any of the prohibitions in paragraphs (1) to (3) commits an offence and is liable on summary conviction to a fine.

Appointment and functions of an approved manufactured solid fuel certification body

11.—(1) The Secretary of State must appoint at least one person to be an approved manufactured solid fuel certification body for the purposes of this Part.

(2) A manufacturer of a manufactured solid fuel who intends to supply such a fuel in England must apply to an approved manufactured solid fuel certification body for a certificate under this regulation.

(3) The application must be accompanied by results from a person (“the analyst”) who has purported to determine whether the fuel in question does not have the prohibited characteristics.

(4) On an application under this regulation the approved manufactured solid fuel certification body must determine whether the analyst met the standards in paragraph (7) when conducting the determination under paragraph (3).

(5) If the approved manufactured solid fuel certification body considers that the analyst met the standards in paragraph (7), the body must issue a certificate recording this to the manufacturer.

(6) A manufacturer issued with a certificate under paragraph (5) may use the logo shown in Schedule 1 when supplying a manufactured solid fuel.

(7) The standards(a) are—

(a) The standards are available for purchase from <https://www.iso.org/home.html>, or <https://shop.bsigroup.com> (as the case may be) and are available for inspection at the offices of the Department for Environment, Food and Rural Affairs, 2 Marsham Street, London SW1P 4DF

(a) in respect of sulphur content, either—

(i) BS1016 – 106.5: 1996; or

(ii) ISO 157:1996; and

(b) in respect of smoke emissions, BS3841.

(8) Where immediately before 1st May 2021 a fuel is listed on the list maintained by the Secretary of State for the purposes of Part 3 of the Clean Air Act 1993(a), that fuel is to be treated as if it were an authorised fuel for the purposes of this Part, only for so long as it remains on that list, and a manufacturer supplying such a fuel is entitled to use the logo shown in Schedule 1 when supplying it for as long as it remains on that list.

(9) In this regulation, “prohibited characteristics” in respect of a manufactured solid fuel means—

(a) a sulphur content of 2% or more calculated on an ash-free dry basis; and

(b) the emission of smoke at a rate of five grams or more an hour.

List of manufactured solid fuels specified by the Secretary of State

12.—(1) The Secretary of State must publish and maintain a list of authorised fuels for the purposes of this Part.

(2) The list must be published in such manner as the Secretary of State considers appropriate.

PART 5

Coal

Interpretation: Part 5

13. In this Part—

“bituminous coal” means coal falling within CN Code 2701 12(b) placed on the market for the purposes of combustion in domestic premises;

“exempt coal” means any bituminous coal extracted in accordance with the Dean Forest (Mines) Act 1838(c) or the Dean Forest Act 1861(d);

“loose coal” means bituminous coal supplied for the purposes of combustion in domestic premises sold otherwise than in a securely closed container;

“pre-packed” means packaged in a securely closed container intended for supply.

Prohibition on the supply of bituminous coal

14.—(1) A person must not supply bituminous coal that is pre-packed, unless the coal is exempt coal.

(2) A person must not supply loose coal directly to a consumer, unless the coal is exempt coal.

(3) A person guilty of an offence under paragraph (1) or (2) is liable on summary conviction to a fine.

(a) 1993 c 11; section 20(5ZA) to (5ZC) was inserted by section 15(2) of the Deregulation Act 2015 (c. 20).

(b) Information relating to Combined Nomenclature (CN) is available at https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/what-is-common-customs-tariff/combined-nomenclature_en as that information applies on the day that these Regulations come into force, and is also available for inspection from the offices of the Department for Environment, Food and Rural Affairs, 2 Marsham Street, London SW1P 4DF.

(c) 1838 c. 43 (1 and 2 Vict).

(d) 1861 c. 40 (24 and 25 Vict).

Transitional provision

15. Nothing in this Part applies for the 24-month period beginning with 1st May 2021 in respect of the supply of loose coal directly to a consumer by a person who on that day is a member of the Approved Coal Merchant Scheme(a).

PART 6

Enforcement

Enforcement body

16.—(1) These Regulations are to be enforced by the relevant local authority.

(2) In this Part “the relevant local authority” is—

- (a) in the case of a relevant solid fuel supplied at a place in England where such a fuel is sold, for the purpose of enabling the goods to be taken away, the local authority with responsibility for the area in which the fuel is sold;
- (b) in the case of a relevant solid fuel dispatched from a place in England, in the course of the delivery of such a fuel to a person in England, the local authority with responsibility for the area from which the fuel is dispatched;
- (c) in the case of a relevant solid fuel dispatched from a place outside England, in the course of the delivery of such a fuel to a person in England, the local authority with responsibility for the area for to which the fuel is to be delivered.

(3) In this regulation—

“local authority” means—

- (a) the Common Council for the City of London;
- (b) a London Borough Council;
- (c) the Council of the Isles of Scilly;
- (d) a county council;
- (e) a district council for an area in which there is no county council.

(4) A local authority may appoint an officer to discharge its enforcement functions under these Regulations.

Powers of enforcement

17.—(1) An officer of a relevant local authority may, for the purposes of enforcing these Regulations—

- (a) enter a supplier’s premises at any reasonable time;
- (b) inspect a supplier’s goods;
- (c) make test purchases of a supplier’s goods;
- (d) require a supplier to produce documents or to provide information;
- (e) question a supplier or officers or employees of a supplier.

(2) An officer of a relevant local authority may only exercise the powers in paragraph (1)(d) or (e) if they reasonably believe that an offence under these Regulations has been committed.

(a) Details of the Approved Coal Merchant Scheme may be obtained from the Approved Coal Merchant Scheme, 95 High Street, Clay Cross, Derbyshire, S45 9DZ and are available for inspection from the offices of the Department for Environment, Food and Rural Affairs, 2 Marsham Street, London SW1P 4DF.

(3) An officer of a relevant local authority officer seeking to exercise a power under paragraph (1) must produce evidence of their identity and authority if requested by a person who is, or appears to be—

- (a) the supplier, or an officer or employee of the supplier;
- (b) the owner or occupier of any premises in which the officer seeks to exercise the power concerned.

(4) Any person who intentionally obstructs an officer of a relevant local authority in the exercise of a power under this regulation is guilty of an offence and liable on summary conviction to a fine.

(5) Nothing in paragraph (1) compels—

- (a) any disclosure of information which is prohibited by or under the data protection legislation, but where that prohibition arises because the information is in a form which allows for the identification of an individual, the person authorised by the local authority may require that information to be put in a form which does not allow for the identification of that individual;
- (b) the supplying or production of a document which, in England and Wales, the person would be entitled to withhold production of in relation to an order for discovery in an action in the County Court or the High Court on the grounds of legal professional privilege.

(6) In this regulation—

- (a) “the data protection legislation” has the same meaning as in the Data Protection Act 2018(a) (see section 3 of that Act);
- (b) “premises” means premises other than those used wholly or mainly as a private dwelling.

Fixed penalties

18.—(1) An officer of a relevant local authority who has reason to believe that a person has committed an offence under these Regulations may issue that person a penalty notice in respect of the offence.

(2) A penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty in accordance with this Part.

Contents of a penalty notice

19.—(1) A penalty notice must—

- (a) state the alleged offence; and
- (b) give such particulars of the circumstances alleged to constitute it as are necessary for giving reasonable information about it.

(2) A penalty notice must also state—

- (a) the name and address of the relevant local authority on whose behalf the officer of the authority was acting when the notice was given;
- (b) the amount of the penalty and the period for its payment;
- (c) the consequences of not paying the penalty before the end of the period mentioned in paragraph (b);
- (d) the relevant local authority to whom, and the address at which, payment may be made;
- (e) by what method payment may be made;
- (f) the relevant local authority to whom, and the address at which, any representations relating to the notice may be made.

(a) 2018 c. 12.

- (3) A penalty notice must also—
- (a) inform the person to whom it is issued of that person’s right to be tried for the alleged offence; and
 - (b) explain how that right may be exercised.

Amount of penalty and period for payment

20.—(1) The penalty is £300 in respect of the offence in respect of which the penalty notice was issued.

(2) The period for payment of the penalty is the period of 28 days beginning with the day on which the notice is issued.

(3) An unpaid fixed penalty may be enforced by a local authority as a fine, a civil debt or as if it were a sum payable under a county court order.

Effect of notice and payment

21.—(1) Proceedings for the offence in respect of which a penalty notice is given may not be brought before the end of the period for payment of the penalty mentioned in regulation 20(2).

(2) Paragraph (1) does not apply if the person to whom the notice is given asks in accordance with regulation 22 to be tried for the alleged offence.

(3) If the penalty is paid in accordance with the penalty notice before the end of the period mentioned in regulation 20(2), no proceedings for the offence may be brought, and regulation 22 does not apply.

(4) If proceedings have been brought pursuant to a request under regulation 22, but then the penalty is paid as mentioned in paragraph 20(1), those proceedings may not be continued.

Trial

22.—(1) If the person to whom a penalty notice has been given asks to be tried for the alleged offence, or fails to pay a penalty before the end of the period for payment mentioned in regulation 19(2), proceedings may be brought against that person.

(2) Any request to be tried must be made—

- (a) by notice given to the relevant local authority before the end of the period for payment of the penalty;
- (b) in the manner specified in the penalty notice.

Withdrawal of notices

23.—(1) This regulation applies if a relevant local authority considers that a penalty notice which an authorised officer acting on its behalf has given to a person (“P”) ought not to have been given.

(2) The relevant local authority may give a notice to P withdrawing the penalty notice.

(3) If it does so—

- (a) it must repay any amount which has been paid by way of penalty in pursuance of the penalty notice; and
- (b) no proceedings may be brought or continued against P for the offence in question.

Recovery by local authority of the reasonable costs of enforcing these Regulations

24. A local authority may recover the expenses reasonably incurred by it in enforcing these Regulations from a person in respect of whom it has taken any action under these Regulations.

PART 7

Review

Review

25.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before the end of the period of five years beginning with the day after the day on which they are made.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015^(a) requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Address
Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

^(a) 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12).

SCHEDULE 1

Regulations 4, 5, 10, 11

Form of logo



SCHEDULE 2

Regulation 8

Form of words in respect of wood sold in volumes of two cubic metres or more

This wood is not suitable for burning until it has been dried. You should not burn wood until it has a moisture content of 20% or less.

Wet wood contains moisture which creates smoke and harmful particulates when burnt. As well as being harmful to your health and the environment, this can damage your stove and chimney and is an inefficient way to heat your home. Dry it in a sunny, well-aired space for at least two years, keeping rain off in the winter.

Radial cracks and bark that comes off easily suggests wood that is ready for burning. Test the wood when you think it is ready for burning, ideally with a moisture meter. First calibrate the meter and then measure a freshly split surface to get the best reading.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 87 of the Environment Act 1995 (c. 25). They make provision restricting the sale of certain solid fuels, and provide for the enforcement of breaches of these Regulations by a local authority.

Part 1 of the Regulations provides that they come into force, for the purpose of appointing a certification body under either regulation 5 or 11, on the day after they are made, and for all other purposes on 1st May 2021.

Part 2 of the Regulations relates to the supply of wood in amounts of under two cubic metres. It is an offence to supply such wood unless it has been certified, under regulation 5 of that Part, and unless it is accompanied by the information specified in regulation 4. The penalty for an offence committed under Part 2 is a fine. However, under regulation 6, nothing in Part 2 of the Regulations applies to a small forester (as defined in regulation 6(2)) for a year following the coming into force of the offences in the Regulations.

Part 3 of the Regulations relates to the supply of wood in amounts of two cubic metres or more. It is an offence punishable by a fine to supply such an amount of wood without the accompanying words specified in Schedule 2.

Part 4 of the Regulations makes provision in respect of the supply of manufactured solid fuels. A person must not supply a manufactured solid fuel that is not an authorised fuel within the meaning of that Part, or supply a manufactured solid that is not on the list maintained by the Secretary of State under regulation 12. Regulation 11 provides for the appointment by the Secretary of State of an approved manufactured solid fuel certification body. It also deems a fuel that is on the list under Part 3 of the Clean Air Act 1993 (c. 11) immediately before the coming into force of these Regulations to be an authorised fuel (but only for as long as that fuel remains on the list).

Part 5 makes provision relating to the supply of bituminous coal. It is an offence to supply pre-bagged and loose bituminous coal. However, an Approved Coal Merchant will not commit the offence of selling loose bituminous coal to a consumer where the coal is sold directly to a consumer during the two-year period ending with 30th April 2023.

Part 6 makes provision for the enforcement of the Regulations by a local authority.

Part 7 provides for review of the operation of the Regulations for the purpose of the Small Business, Enterprise and Employment Act 2015 (c. 26).

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department for Environment, Food and Rural Affairs, 2 Marsham Street, London SW1P 4DF, and is published with an Explanatory Memorandum alongside these Regulations on <https://legislation.gov.uk>.

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