

# Consumer Law Bulletin

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## ENFORCEMENT

### NEW LEGISLATION

#### *The Single Common Market Organisation (Consequential Amendments) Regulations 2013*

These Regulations amend a number of Regulations consequential upon the Regulation (EU) 2013 of the European Parliament and of the Council adopted on 16 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No1037/2001 and (EC) No 1234/2007. (Regulation (EU) 2013) This repeals Council Regulation (EU) No 1234/2007 of 22 October 2007 (“Council Regulation 2007”) establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products.

The following Regulations are amended –

- (a) The Beef and Pig Carcase Classification (England) Regulations 2010 are amended to replace references to Council Regulation 2007 with Regulation (EU) 2013.
- (b) The Beef and Veal Labelling Regulations 2010 (which apply in relation to England only) are amended to replace references to Council Regulation 2007 with Regulation (EU) 2013.
- (c) The Drinking Milk (England) Regulations 2008 (which apply in England only) make provision for the enforcement of art 114(2) of Council Regulation 2007 (marketing standards for milk and milk products). The 2008 Regulations are amended to replace the reference in reg 6 (sale or delivery of milk and use of sales descriptions) to Annex XIII to Council Regulation 2007 with Pt IV of Annex VII (milk for human consumption) to Regulation (EU) 2013 (reg 4).

## ENFORCEMENT

- (d) The Eggs and Chicks (England) Regulations 2009 make provision for the enforcement of EU marketing standards relating to eggs for hatching, poultry chicks and eggs in shell for consumption.
- (e) The Food Labelling Regulations 1996 (which apply in England, Wales and Scotland) are amended to replace references to Council Regulation 2007 with Regulation (EU) 2013.
- (f) The Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (which applies in England, Wales, Scotland and Northern Ireland) is amended to replace the reference to Council Regulation 2007 in Pt 2 of the Schedule with Regulation (EU) 2013.
- (g) The Marketing of Fresh Horticultural Produce Regulations 2009 (which apply in England, Wales, Scotland and Northern Ireland) are amended to replace references to Council Regulation 2007 with Regulation (EU) 2013.
- (h) The Milk and Milk Products (Pupils in Educational Establishments) (England) Regulations 2008 are amended to replace references to Council Regulation 2007 with Regulation (EU) 2013.
- (i) The Poultrymeat (England) Regulations 2011 make provision for the enforcement of marketing standards relating to poultrymeat.
- (j) The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008 create offences of failing to comply with provisions in Council Regulation 2007 relating to marketing standards for fats and descriptions of milk and milk products.
- (k) The Weights and Measures (Intoxicating Liquor) Order 1988 (which applies in England, Wales, Scotland and Northern Ireland) is amended to replace the references to Council Regulation 2007 in Sch A1 with Regulation (EU) 2013.
- (l) The Wine Regulations 2011 (which apply in England, Wales, Scotland and Northern Ireland) are amended to replace the references to Council Regulation 2007 with Regulation (EU) 2013.

The following Regulations set out in Pt 3, which apply in Scotland only, are amended –

- (a) The Milk and Dairies (Scotland) Regulations 1990 are amended to replace the reference to Council Regulation 2007 to Regulation (EU) 2013.
- (b) The Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Regulations 2001 are amended to replace references to Council Regulation 2007 to Regulation (EU) 2013.
- (c) The Food Hygiene (Scotland) Regulations 2006 are amended to replace the reference to Council Regulation 2007 to Regulation (EU) 2013.

- (d) The Eggs and Chicks (Scotland) (No 2) Regulations 2008 make provision for the enforcement of certain provisions of Council Regulation 2007 insofar as they relate to eggs for hatching and farmyard poultry chicks and other eggs. Relevant provisions of Regulation (EU) 2013.
- (e) The Marketing of Horticultural Produce (Scotland) Regulations 2009 are amended to replace references to Council Regulation 2007 to Regulation (EU) 2013.
- (f) The Beef and Pig Carcase Classification (Scotland) Regulations 2010 are amended to replace references to Council Regulation 2007 Regulation (EU) 2013.
- (g) The Beef and Veal Labelling (Scotland) Regulations 2010 only are amended to replace references to Council Regulation 2007 to Regulation (EU) 2013.
- (h) The Drinking Milk (Scotland) Regulations 2011 make provision for the enforcement of art 114(2) of Council Regulation 2007 (marketing standards for milk and milk products).
- (i) The Poultrymeat (Scotland) Regulations 2011 make provision for the enforcement of marketing standards relating to poultrymeat.

### ***The Single Common Market Organisation (Consequential Amendments) (Wales) Regulations 2013***

These implement the above requirements for the purposes of Wales. The content of the regulations is the same as outlined above.

### **The Co-ordination of Regulatory Enforcement (Enforcement Action) (Amendment) Order 2014**

This Order amends the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 which was made under Pt 2 of the Regulatory Enforcement and Sanctions Act 2008.

The 2009 Order, made under ss 28(6) and 29(1) of the Act, specifies action that is and is not to be regarded as “enforcement action” for the purposes of Pt 2 of the Act.

Articles 2(1), (2), (3) and (6) of the present Order amend the 2009 Order by adding the following statutory enforcement actions under the Regulatory Reform (Fire Safety) Order 2005:

- an alteration notice;
- an enforcement notice;
- a prohibition notice.

These notices are to be regarded as “enforcement actions” for the purposes of Pt 2 of the Act.

## ENFORCEMENT

Article 2(5) of the present Order adds a new category of improvement notice which are those served under s 10 of the Food Safety Act 1990 as applied and modified by other legislation.

The new category contains improvement notices served under s 10 as applied and modified by reg 7 of the Fish Labelling Regulations 2013 and reg 5 of the Fish Labelling (Wales) Regulations 2013.

The category also contains improvement notices served under s 10 as applied and modified by reg 17 of the Fruit Juices and Fruit Nectars (England) Regulations 2013 and reg 17 of the Fruit Juices and Fruit Nectars (Wales) Regulations 2013. These improvement notices are now “enforcement action” for the purposes of Pt 2 of the Act.

It should be noted that improvement notices served under s 10 of the Food Safety Act where they have not been modified by other legislation are still regarded as “enforcement action” reference to s 10 of the Food Safety Act 1990 in art 2(1)(f)(i) of the 2009 Order.

Article 2(7) and (8) amends art 2(2)(b) of the 2009 Order. That provision specifies action, which is not to be regarded as enforcement action for the purposes of Pt 2 of the Act.

Article 2(7) of this Order now amends art 2(2)(b)(i) of the 2009 Order by removing the specific exclusion of the Regulatory Reform (Fire Safety) Order 2005.

Article 2(8) of this Order amends art 2(2)(b)(ii) of the 2009 Order in relation to the Licensing Act 2003. This amendment has the effect that any action taken by a local authority to enforce the listed criminal offences in the Licensing Act 2003 connected with the under-age sale of alcohol will now constitute “enforcement action” for these purposes.

Article 2(9) of this Order amends art 3 of the 2009 Order by including a notice made under s 31 of the Regulatory Reform (Fire Safety) Order 2005. This means that although the s 31 prohibition notice is an enforcement action for the purposes of the Act, it is not subject to the pre-notification requirements under s 28(1) to (4) of the Act.

## INFORMATION

### ***The power for trading standards officers to carry out unannounced inspections has been protected following LGA lobbying***

The Local Government Association (LGA), working with the Trading Standards Institute, has successfully lobbied for the Government to amend the Draft Consumer Rights Bill, to ensure councils can continue to act on intelligence and target high-risk businesses.

The LGA and Trading Standards Institute strongly argued against plans that would restrict councils’ ability to carry out unannounced inspections of a business suspected of posing a local or national risk during pre-legislative scrutiny by the Business, Innovation and Skills Committee.

The committee recommended an exemption from the requirement for advance notification of inspection visits where an officer reasonably considers it would defeat the purpose of the visit with the Government amending the Bill as a result.

## FOOD

### NEW LEGISLATION

#### ***The Infant Formula and Follow-on Formula (England) (Amendment) Regulations 2013***

These Regulations amend the Infant Formula and Follow-on Formula (England) Regulations 2007 in order to implement Commission Directive 2013/46/EU in England.

Regulation 2(3), (5) and (6) enables the use of goat's milk proteins in the manufacture of infant formula and follow-on formula.

Regulation 2(4) lowers the minimum protein levels permitted in follow-on formula manufactured from protein hydrolysates to bring it in line with infant formula.

#### ***The Infant Formula and Follow-on Formula (Scotland) (Amendment) Regulations 2013***

These implement the above requirements for the purposes of Scotland. The content of the regulations is the same as outlined above.

#### ***The Infant Formula and Follow-on Formula (Wales) (Amendment) Regulations 2013***

These implement the above requirements for the purposes of Wales. The content of the regulations is the same as outlined above.

#### ***The Food with Added Phytosterols or Phytostanols (Labelling) (Wales) (Amendment) Regulations 2014***

These Regulations make an amendment to the Food with Added Phytosterols or Phytostanols (Labelling) (Wales) Regulations 2005 in order to provide for the execution and enforcement of Commission Regulation (EC) No 608/2004 concerning the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phytostanols and/or phytostanol esters.

#### ***The Deregulation (Improvement of Enforcement Procedures) (Food Safety) (Revocation) Order (Northern Ireland) 2014***

This Order revokes the Deregulation (Improvement of Enforcement Procedures) (Food Safety) Order (Northern Ireland) 1996.

#### ***The Olive Oil (Marketing Standards) Regulations 2014***

These Regulations enforce in the United Kingdom art 78(1)(g) and (2) and Pt VIII of Annex VII to Regulation (EU) No 1308/2013 of the European

## FOOD

Parliament and of the Council on marketing standards for olive oil and Commission Regulation (EEC) No 2568/91 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis.

Part 2 sets out the powers of authorised officers.

Regulation 4 provides for the appointment of authorised officers.

Regulation 5 empowers an authorised officer to serve a compliance notice on any person who has not complied with or is not likely to comply with the EU Regulations.

Regulation 6 confers powers of entry on authorised officers for the purposes of the execution and enforcement of these Regulations and the EU Regulations.

Regulation 7 sets out the powers of authorised officers when they enter premises.

Part 3 sets out the procedures for appealing against a compliance notice.

Part 4 sets out offences and penalties.

Regulation 12 provides for a due diligence defence.

Regulation 13 for time limits for proceedings and regulations.

Regulations 14 and 15 for offences by, and proceedings against, businesses.

Part 5 contains miscellaneous provisions.

## INFORMATION

*A new scheme to help protect Scotch Whisky, and other spirits of UK origin, from fake and sub-standard competitors was launched today by Chief Secretary to the Treasury*

The Spirit Drinks Verification Scheme will help consumers in the UK and abroad identify genuine products and avoid the fakes. Under the scheme, HM Revenue and Customs (HMRC) will undertake checks on all businesses involved in the production of these spirits – everything from fermenting and distilling to bottling and labelling – and make sure that they meet strict European Union (EU) requirements. HMRC will then publish a list of verified brands, production facilities and bulk importers.

Scotch Whisky will be the first major UK spirit to be protected under the scheme, which, in time, is likely to be extended to other UK drinks with a geographical origin, such as Somerset Cider Brandy and Irish Whiskey produced in Northern Ireland.

### SAFETY

#### NEW LEGISLATION

***The Explosives (Hazard Information and Packaging for Supply) (Amendment No 2) Regulations (Northern Ireland) 2014***

The Explosives (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2009 concerns the export and import of dangerous chemicals. Regulation 3(3)(c) is amended to change the reference to Regulation (EC) 698/2008 to Regulation (EU) 649/2012.

***The Health and Safety (Miscellaneous Repeals and Revocations) Regulations 2014***

These Regulations repeal certain provisions of the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963. The Regulations also revoke seven statutory instruments. The legislation being removed is either redundant or has been replaced by more recent provisions.

#### INFORMATION

***Consultation on implementing Directive 2013/10/EU amending Directive 75/324/EEC on Aerosol Dispensers: updating labelling requirements in the Aerosol Dispensers Regulations 2009***

The Aerosol Dispensers Directive 75/324/EEC relates to the safety of aerosol dispensers. Commission Directive 2013/10/EU of 19 March 2013 amends the Aerosol Dispensers Directive to include several changes, and will be brought into effect in the UK by an amendment to the Aerosol Dispensers Regulations 2009.

This consultation seeks views on the draft Aerosol Dispensers (Amendment) Regulations 2014, which will amend the 2009 Regulations.

## WEIGHTS AND MEASURES

#### NEW LEGISLATION

***The Measuring Instruments (EEC Requirements) (Fees) (Amendment) Regulations 2014***

These Regulations amend the Measuring Instruments (EEC Requirements) (Fees) Regulations 2004, which prescribe fees to be charged in relation to certain services provided by the Secretary of State with regards to measuring instruments.

The 2004 Regulations provide for the fees payable to the Secretary of State to be made up of a number of components, one of which is a “variable fee” calculated in accordance with Sch 1 to those Regulations. One of the components of the variable fee is an hourly rate. Different hourly rates are prescribed depending on the work done and the seniority of the staff involved. These Regulations increase the hourly rate payable in respect of the

## **WEIGHTS AND MEASURES**

service provided by auditors (from £85 to £95 per hour) and in relation to the following type of work: equipment testing (from £85 to £87 per hour), type examination (from £105 to £107 per hour) and administration (from £55 to £56 per hour).

### **INFORMATION**

#### ***WELMEC Guide 10.8 – Guide for common application of MID MI-005 and OIML R117-1 (R81, R80, R139)***

This document is intended to provide guidance to all those concerned with the application of MID Annex MI-005 and/or OIML International Recommendation R117-1 “Dynamic Measuring Systems for Liquids other than Water”.

This document provides a record of the continuing work of WELMEC Working Group 10 in the area of the common application of MID MI-005 and/or OIML R117-1 itself and in addition seeks to provide information, which is specific to individual member countries.

### **ENVIRONMENT**

#### **NEW LEGISLATION**

##### ***The CRC Energy Efficiency Scheme (Allocation of Allowances for Payment) (Amendment) Regulations 2014***

These Regulations amend the CRC Energy Efficiency Scheme (Allocation of Allowances for Payment) Regulations 2013.

They correct an error and set the price of allowances issued in relation to 2014 at £12, which is the intended policy.

### **MEDICINES**

#### **NEW LEGISLATION**

##### ***HIV Testing Kits and Services Regulations 1992 (Revocation) (Wales) Regulations 2014***

The Regulations revoke the HIV Testing Kits and Services Regulations 1992 which make it an offence, subject to various exceptions, to sell or supply an HIV testing kit or component to a member of the public, to sell or supply an HIV testing kit without an accompanying warning notice, or to provide HIV testing services which are not directed by a registered medical practitioner.

In addition, the HIV Testing Kits and Services Regulations 1992 place restrictions on advertisements for such kits, components and services.

##### ***The Human Medicines (Amendment) Regulations 2014***

These Regulations amend the Human Medicines Regulations 2012 in order to implement Directive 2011/24/EU on the application of patients’ rights in



cross-border healthcare and Directive 2012/52/EU laying down measures to facilitate the recognition of medical prescriptions issued in another Member State.

These Regulations correct two provisions that were not properly consolidated in the 2012 Regulations because of an error and they also clarify a provision that was reported by the House of Lords and the House of Commons Joint Committee on Statutory Instruments (JCSI).

Regulation 3 clarifies the wording of reg 165 of the Human Medicines Regulations 2012 to make it clearer that the provision does not preclude the licensing authority from determining that a product is a medicinal product under other provisions of those regulations.

These Regulations introduce new provisions into the 2012 Regulations in order to implement art 11 of the cross-border Directive on the recognition of prescriptions issued in another Member State. In particular –

Regulation 4(a) substitutes a definition of “EEA health professional” that accords with provisions in art 3 of the cross-border Directive. It also inserts a definition of “Product subject to special medical prescription”;

Regulation 4(b) designates certain controlled drugs as products subject to a special medical prescription so that such products do not need to be dispensed under a prescription issued by a European Economic Area Member State;

Regulation 5 substitutes certain references to “controlled drugs” with references to “product subject to special medical prescription”.

These Regulations also insert a new provision into and amend two existing provisions of the 2012 Regulations in order to implement the requirements for prescriptions to contain certain information in accordance with the Annex to Directive 2012/52/EU of controlled drugs in the Misuse of Drugs Act 1971.

## **INFORMATION**

### ***Consultation: Proposal to simplify the information requirements for advertising of medicinal products to prescribers and suppliers of medicines***

European Parliament and Council Directive 2001/83/EC requires advertisements aimed at prescribers and suppliers of medicines to include “essential information compatible with the summary of product characteristics”. In UK law this has been transposed to mean “prescribing information”. Currently an abbreviated advertisement format is only permitted for small-sized advertisements in journals and similar publications. In these advertisements a website address is provided to access the relevant information. Current requirements create significant costs for the industry and Medicines and Healthcare products Regulatory Agency therefore feels changes can be made to lessen such costs.

## MEDICINES

The proposals put forward in this consultation are the result of suggestions put forward by, and informal discussions held with the over-the-counter medicines trade association, the Proprietary Association of Great Britain (PAGB) and the Association of the British Pharmaceutical Industry. The proposals include:

- Extension of the use of abbreviated advertisement format to all GSL (General Sales List) medicines.
- Extension of the use of the abbreviated advertisement format to medicines that have been on retail sale through pharmacies for a minimum defined period.
- Authorisation of a link to the full SPC (summary of product characteristics) in electronic advertisement as an alternative to the prescribing information.

## CONSUMER CREDIT AND PRICES

### NEW LEGISLATION

#### *The Consumer Credit Act 1974 (Green Deal) (Amendment) Order 2014*

This Order relates to the green deal energy efficiency scheme established by Ch 1 of Pt 1 of the Energy Act 2011. This Order applies in Great Britain and is made under s 30 of the 2011 Act.

It makes amendments to the Consumer Credit Act 1974 in consequence of the provisions of Ch 1 of Pt 1 of the 2011 Act.

This Order makes provision as to the treatment of green deal plans under the 1974 Act and, in particular, the circumstances in which a green deal plan is a consumer credit agreement and the persons who are to be treated as being the creditor and the debtor in relation to a green deal plan.

In the case of the debtor, the Order makes provision as to the sections of the 1974 Act in respect of which different categories of person are to be treated as the debtor.

#### *The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013*

This Order specifies additional activities that are to be treated as “regulated activities” for the purposes of the Financial Services and Markets Act 2000. The effect of this is that a person who carries on such an activity in the United Kingdom must be authorised under the Act to carry out the activities or an exempt person.

Part 2 of the Order specifies the new regulated activities. These are credit broking, operating an electronic system in relation to lending, debt adjusting, debt-counselling, debt-collecting, debt administration, entering into etc a

regulated credit agreement, entering into etc a regulated consumer hire agreement, providing credit information services and providing credit references.

Part 3 of the Order amends the Act in connection with the new regulated activities provided for in Pt 2. Part 3 also contains transitional provisions relating to those amendments. Part 3 also sets out requirements relating to information which certain persons who are not authorised persons who carry on credit broking must comply with.

Part 4 of the Order amends secondary legislation made under the Act.

Part 5 of the Order amends the Consumer Credit Act 1974. In particular, Pt 5 of the Order repeals the provisions of the 1974 Act which relate to the licensing of consumer credit activities under the 1974 Act.

Part 6 of the Order amends secondary legislation made under the 1974 Act.

Part 7 of the Order introduces the Schedule to the Order that makes consequential amendments to other legislation and related transitional provision.

Part 8 contains transitional provisions.

### ***The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014***

This Order makes provision in relation to the regulation of consumer credit under the Financial Services and Markets Act 2000.

Part 2 of the Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, to specify additional activities which are to be treated as “regulated activities” for the purposes of the Act, and to provide for exclusions from various regulated activities.

A person who carries on a regulated activity in the United Kingdom must be authorised under the Act to carry out the activity or an exempt person.

The Order also makes various consequential, transitional and supplemental provisions in consequence of those provisions and of provisions made by the Financial Services Act 2012, which amended the Act, the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013, and the Financial Services Act 2012 (Consumer Credit) Order 2013.

Part 3 of the Order amends primary legislation, and applies procedural provisions of the Act to various applications made under the Consumer Credit Act 1974.

Part 4 of the Order amends secondary legislation and makes certain saving and transitional provisions.

Part 5 of the Order provides for the Financial Conduct Authority to undertake a review of the Consumer Credit Act 1974, in so far as it has not been repealed by the legislation referred to above.

## CONSUMER CREDIT AND PRICES

### ***The Financial Services and Markets Act 2000 (Consumer Credit) (Designated Activities) Order 2014***

The Order specifies debt-collecting and entering into, or exercising rights under, a regulated consumer credit agreement for the purposes of s 23(1B) of the Financial Services and Markets Act 2000, except where the activity relates to an agreement under which the obligation of the borrower is secured on land. The effect of that provision is that an authorised person (within the meaning of that Act) is guilty of an offence if that person carries on such a specified activity in the United Kingdom otherwise than in accordance with permission under the Act.

### ***The Financial Services and Markets Act 2000 (Consumer Credit) (Transitional Provisions) Order 2014***

This Order makes transitional provision in relation to the transfer of the regulation of consumer credit from the Office of Fair Trading to the Financial Conduct Authority.

The Order amends the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013, above. The amendments enable a person whose Consumer Credit Act licence is subject to a suspension immediately before 1 April 2014 to obtain interim permission under the Financial Services and Markets Act 2000 where an appeal against the suspension is successful, and make transitional provision in relation to certain disciplinary and enforcement notices served by the Office of Fair Trading.

### ***The Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) (No 2) Order 2014***

This Order makes various supplemental, consequential and transitional provisions in consequence of provisions made by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 above and the Financial Services Act 2012 (Consumer Credit) Order 2013 which bring the regulation of consumer credit under the Financial Services and Markets Act 2000 and the Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014.

Article 2 amends the Financial Services and Markets Act 2000 (Exemption) Order 2001 to provide exemptions from the need to be authorised under the Act for charities that operate an electronic system for lending which facilitates loans under which the only amount paid to the lender is the amount lent, and for and persons who have rights under a regulated credit agreement or regulated consumer hire agreement (for example, special purpose vehicles who acquire such rights using the proceeds of a bond issue) provided that the agreement is administered by an authorised person.

Article 3 amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 to align the application of the restriction under the

Act on financial promotions with the requirement for authorisation under the Act to carry on a regulated activity.

Article 4 amends the Money Laundering Regulations 2007 in consequence of amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 made by the Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions).

Article 5 amends art 12 of the RAO (Regulated Activities Order) Amendment No 2 Order in implementation of art 21 of Directive 2008/48/EC on credit agreements for consumers and repealing Council Directive 87/102/EC. Article 5 also amends the Consumer Credit Act 1974 to preserve the application of s 126 of that Act (enforcement of land mortgages) to residential and buy-to-let mortgages.

Article 5 also amends the Consumer Credit Act 1974 to preserve the application of s 126 of that Act (enforcement of land mortgages) to residential and buy-to-let mortgages.

Article 6 amends the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (SI 2014/366) in consequence of art 5 and of provision made in the Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014, it also amends the commencement provisions of the 2014 Order.

Article 7 makes transitional provision in respect of complaints relating to functions of the Office of Fair Trading under the Consumer Credit Act 1974.

## **FAIR TRADING**

### **NEW LEGISLATION**

#### ***The Mobile Homes (Site Rules) (England) Regulations 2014***

These Regulations prescribe the procedure for the making, variation and deletion of site rules, prescribe the matters to which site rules may and may not relate and grant appeal rights in relation to these matters, under provisions which have been inserted into the Mobile Homes Act 1983 and the Mobile Homes Act 2013. They also make amendments to the Mobile Homes (Selling and Gifting) (England) Regulations 2013 and make consequential amendments to the Mobile Homes (Written Statement) (England) Regulations 2011.

Regulation 3 sets out the rules of service for certain documents referred to in these Regulations.

Regulation 4 prescribes the matters, which site rules may relate to, in addition to the management and conduct of the site.

Regulation 5 prescribes the matters that a site rule is of no effect in so far as it makes provision in relation to; and a list of these matters is set out in Sch 5.

Regulation 6 sets out what constitutes the prescribed procedure for making, varying and deleting site rules.

## FAIR TRADING

Regulation 7 sets out who must be consulted on a proposal to make, vary or delete a site rule.

Regulation 8 prescribes the information, which must be contained in a proposal notice issued by the site owner, and Sch 1 prescribes the form in which that information must be provided.

Regulation 9 sets out how the site owner is required to respond to the consultation and prescribes the information that must be contained in the consultation response document; and Sch 2 prescribes the form in which that information must be provided.

Regulation 10 prescribes the grounds on which a consultee may appeal to the tribunal against the site owner's decision and the time period for doing this, and reg 11 sets out how the tribunal may determine the appeal.

Regulation 12 sets out the requirements for the deposit of site rules or a deletion notice with the local authority.

Regulation 13 provides for notification of the deposit to occupiers, including the information to be provided with such notification.

Regulation 14 prescribes when a new site rule or variation or deletion of a site rule shall come into force.

Regulation 16 sets out the requirements placed on local authorities regarding the keeping of a register of site rules.

Regulation 17 prescribes the grounds on which an occupier may appeal to the tribunal in relation to a deposit with the local authority, as required by reg 12.

Regulation 18 makes consequential amendments to the Mobile Homes (Written Statement) (England) Regulations 2011 to set out that site rules now form part of the express terms of an agreement made under the Mobile Homes Act 1983.

### ***The Taking Control of Goods (Fees) Regulations 2014***

These Regulations make provision for recovery of fees and disbursements from debtors by enforcement agents in relation to the procedure for taking control of goods under Sch 12 to the Tribunals Courts and Enforcement Act 2007.

The Act provides a new statutory code for taking control of goods in order to sell them to enforce the payment of debts (replacing the process formerly known as "distress"). By s 62 of the Act, the Sch 12 procedure is available where an enactment, writ or warrant confers the power to use the procedure.

It is also available in relation to commercial rent arrears recovery under s 72 of the Act.

These Regulations apply whenever an enforcement agent uses the Sch 12 procedure including in exercise of commercial rent arrears recovery.

Regulation 2 makes general interpretative provision.

Regulations 4 to 7 concern the recovery of fees from debtors out of the proceeds. Fees are recoverable by reference to stages of the enforcement procedure as defined in reg 5 for cases where the enforcement power is derived other than from a High Court writ, and in reg 6 for High Court writs. Fees are recoverable on a fixed basis for each stage, but in certain situations an additional fee is recoverable as a percentage of the value of the sum to be recovered. The levels of fixed fees, and the relevant percentages to be applied, are provided for in the Schedule.

Where the enforcement agent and the debtor enter into a controlled goods agreement which the debtor complies with, only the first enforcement stage fee is payable. However, if the debtor does not enter into such an agreement, or does so but breaches the agreement, both the first and second enforcement stage fees are applicable.

Disbursements are also recoverable from the debtor out of the proceeds, and are addressed in regs 8, 9, and 10.

Regulations 11 and 12 make specific provision to protect debtors.

Regulation 13 provides for the order of application of the proceeds where the amount recovered is less than the amount outstanding. Any fees and expenses owed to an auctioneer, and the compliance stage fee for the enforcement agent are prioritised, with the remaining proceeds being divided pro rata between payment of the debt and payment of the remaining fees and disbursements due to the enforcement agent.

Regulation 14 requires the enforcement agent to provide the debtor and any co-owner with specified information relating to sale or disposal of the goods, and equivalent provision is also made for the situation where the debtor has paid, or seeks to pay, the amount outstanding prior to sale or disposal.

Regulations 15 and 16 make provision for disputes about a co-owner's share of proceeds, and about the amount of fees and disbursements recoverable by the enforcement agent, to be referred to the court for resolution.

Regulation 17 prevents recovery of fees or disbursements by an enforcement agent in relation to any enforcement stage during which the enforcement power ceases to be exercisable.

### ***The General Ophthalmic Services (Amendment) Regulations (Northern Ireland) 2014***

These Regulations amend the General Ophthalmic Services Regulations (Northern Ireland) 2007 to update provision in relation to mobile services.

They clarify to whom mobile services may be provided and the information that contractors must provide to the Regional Health and Social Care Board prior to providing mobile services. The Regulations introduce a new provision that forbids the offer of any inducements by contractors in order to secure the provision of mobile services.

## FAIR TRADING

In addition, these Regulations omit para 14(3) of Sch 1 to the principal Regulations, so that where a contractor tests the sight of a patient with diabetes or glaucoma there is no longer a requirement to notify the patient's doctor of the test results.

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Published by LexisNexis ([www.lexisnexis.co.uk](http://www.lexisnexis.co.uk))



ISBN 978-1-4057-7830-5

