

Consumer Law Bulletin

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ENFORCEMENT

New Legislation

The Regulatory Enforcement and Sanctions Act 2008 (Amendment of Schedule 3) Order 2013, SI 2013/2215

This Order amends the Regulatory Enforcement and Sanctions Act 2008, Sch 3 (RESA 2008) by adding legislation to the list in that Schedule. Enactments listed in Sch 3, and the provisions of any secondary legislation made under a listed Act, are 'relevant enactments' for the purposes of the definition in RESA 2008, s 4 of a 'relevant function' of a local authority in England or Wales.

The definition of 'relevant function' applies for the purposes of RESA 2008, Pts 1 and 2. It covers particular regulatory functions under any 'relevant enactment' in relation to any activity, such as a statutory function of giving guidance in relation to an activity. It also covers functions relating to the enforcement of any restrictions or requirements that under or by virtue of any 'relevant enactment' relate to an activity.

Article 2 of this Order adds enactments to the list in RESA 2008, Sch 3. Provisions of the added legislation, and of any secondary legislation made under a newly specified Act, will as a result constitute 'relevant enactments' for the purposes of the definition of a 'relevant function' of a local authority in England or Wales which applies for the purposes of RESA 2008, Pts 1 and 2.

The new 'relevant enactments' comprise:

- the Single Use Carrier Bags Charge (Wales) Regulations 2010, SI 2010/2880

ENFORCEMENT

- the Sunbeds (Regulation) Act 2010 and regulations made under it
- and the Housing Act 2004, Pt 1 (HA 2004) under which local authorities assess the condition of residential housing in their areas and enforce housing standards.

Article 2(3) also removes a reference to HA 2004, Pt 5, which has been repealed, from RESA 2008, Sch 3.

The Co-ordination of Regulatory Enforcement (Enforcement Action) (Amendment) Order 2013, SI 2013/2286

This Order amends the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, SI 2009/665.

SI 2009/665, made under the Regulatory Enforcement and Sanctions Act 2008, ss 28(6) and 29(1) (the RES Act), specifies action that is and is not to be regarded as ‘enforcement action’ for the purposes of RESA 2008, Pt 2.

The present Order amends SI 2009/665 by adding a number of statutory enforcement actions under the Housing Act 1985, the Housing Act 2004, the Single Use Carrier Bags Charge (Wales) Regulations 2010, SI 2010/2880, and the Fish Labelling Regulations 2013, SI 2013/1768 to the list of actions which are to be regarded as ‘enforcement actions’ for the purposes of the Regulatory Enforcement and Sanctions Act 2008, Pt 2.

This is connected to amendments made to RESA 2008, Sch 3 by the Regulatory Enforcement and Sanctions Act 2008 (Amendment to Schedule 3) Order 2013, SI 2013/2215 above.

Paragraph 10 of art 2 of this Order amends art 2(2)(b)(iii) of the SI 2009/665. That provision currently prevents any action listed in art 2(1) of SI 2009/665 from being regarded as ‘enforcement action’ for the purposes of RESA 2008, Pt 2 where it is taken by a local authority pursuant to or in connection with the exercise of any function under the Gambling Act 2005 (GA 2005). The amendment to art 2(2)(b)(iii) has the effect that action taken by a local authority pursuant to or in connection with the exercise of functions under the GA 2005 in relation to Pt 4 of the RES Act will also constitute ‘enforcement action’. GA 2005, Pt 4 contains offences for the protection of children and young persons.

Article 2(11) of this Order amends art 3 of SI 2009/665 so that the requirements of s 28(1) to (4) of the Act for a local authority to notify the primary authority before taking enforcement action and not to take the proposed action if so directed by the primary authority do not apply to the making of emergency prohibition orders or the service of notices of emergency remedial action under HA 2004, Pt 1.

INFORMATION

The Regulators Code

The Regulators’ Code was published by the Better Regulation Delivery office (BRDO) in July 2013 and replaces the Regulators’ Compliance Code. The

new code is shorter, easier to follow and clarifies requirements for regulators, providing a framework for how regulators should engage with those they are regulating. Publication of the Code now, before statutory implementation, will enable regulators time to reflect on the content and prepare for its statutory introduction, anticipated in spring 2014.

Nearly all non-economic regulators, including local authorities and fire and rescue services, will need to have regard to the Code when developing standards, policies or procedures that either guide their regulatory activities with businesses or apply to other regulators.

The Code is a flexible, principles-based framework for regulatory delivery that leaves regulators free to develop their own service and enforcement policies to meet the needs of businesses (or other regulated entities in some cases). BRDO is creating a range of supporting resources, including guidance, tools, templates and case studies, liaising with regulators and business representatives as necessary.

FOOD

NEW LEGISLATION

The Fish Labelling Regulations 2013, SI 2013/1768

These Regulations designate the Secretary of State to draw up and publish the list of commercial designations of fish species accepted in the UK pursuant to art 4(2) of Council Regulation (EC) 104/2000 on the common organisation of the markets in fishery and aquaculture products.

They also enforce in England the traceability requirements of Council Reg (EC) 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy and art 67 of Commission Implementing Reg (EU) 404/2011 laying down detailed rules for the implementation of Council Reg (EC) 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy

Regulation 7 applies the Food Safety Act 1990, s 10 (FSA 1990) with modifications so that an authorised officer of an enforcement authority can serve an improvement notice on an operator who fails to comply with the consumer information requirements or traceability requirements.

Regulation 8 applies FSA 1990, s 37 with modifications so that an operator can appeal against service of an improvement notice to the First-tier Tribunal.

Regulation 9 applies FSA 1990, s 39 to enable the First-tier Tribunal to either cancel or affirm an improvement notice.

Regulation 10 requires operators to keep records of information specified in art 58(4) of Council Reg (EC) 1224/2009 (as read with art 67(4) of Commission Implementing Council Reg (EU) 404/2011) and creates an offence for failure to comply with that requirement.

FOOD

Regulation 11 creates an offence for failure to produce those records on demand in breach of that article.

Regulation 13 and the Schedule apply certain other provisions of the FSA 1990 to these Regulations with consequential modifications.

Regulation 14 provides that each food authority in England must execute and enforce these Regulations in its area.

Regulation 15 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that.

The Fish Labelling Regulations (Northern Ireland) 2013, SI 2013/219

These regulations implement the above requirements for the purposes of Northern Ireland.

The Food Additives, Flavourings, Enzymes and Extraction Solvents (England) Regulations 2013, SI 2013/2210

These Regulations, which apply to England only, provide for the execution and enforcement of the following EU Regulations:

- Council Reg (EC) 2065/2003 on smoke flavourings used or intended for use in or on foods;
- Council Reg (EC) 1332/2008 on food enzymes;
- Council Reg (EC) 1333/2008 on food additives;
- Council Reg (EC) 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods.

These Regulations also implement Council Dir 2009/32/EC on the approximation of the laws of the member states on extraction solvents used in the production of foodstuffs and food ingredients.

The Regulations revoke, in whole or in part, the following Regulations:

- the Extraction Solvents in Food Regulations 1993, SI 1993/1658;
- the Smoke Flavourings (England) Regulations 2005, SI 2005/464;
- the Food (Suspension of the Use of E128 Red 2G Food Colour) (England) Regulations 2007, SI 2007/2266;
- the Food Enzymes Regulations 2009, SI 2009/3235;
- the Food Additives (England) Regulations 2009, SI 2009/3238;
- the Flavourings in Food (England) Regulations 2010, SI 2010/2817.

These Regulations, in Pt 2, provide that it is an offence, subject to any applicable transitional arrangements, to contravene or to use or place on the market a product that contravenes specified requirements of:

- Council Reg (EC) 1333/2008 relating to food additives (Sch 1, reg 3 and Table 1);
- Council Reg (EC) 1334/2008 relating to food flavourings and foods with flavouring properties (Sch 2, reg 4 and Table 1);
- Council Reg (EC) 2065/2003 relating to smoke flavourings (Sch 3, reg 5 and Table 1); and
- Council Reg (EC) 1332/2008 relating to food enzymes (Sch 4, reg 6 and Table 1).

These Regulations also provide in Pt 2 that in the case of certain types of non-compliance, relating to labelling, an authorised officer of an enforcement authority may serve a compliance notice requiring specified steps to be taken, failing which an offence will be committed (Schs 1–4, reg 7 and Table 2). A person served with a compliance notice may appeal against it to a magistrate's court (reg 8).

Part 3 of the Regulations implement Council Dir 2009/32/EC relating to extraction solvents, in particular by:

- specifying the circumstances where the controls on extraction solvents do not apply (reg 10);
- defining what constitutes a permitted extraction solvent (reg 11);
- prohibiting any person from using an extraction solvent other than a permitted extraction solvent, as defined, in the production of food (reg 12);
- prohibiting any person from placing on the market an extraction solvent that is not a permitted extraction solvent or which is not accompanied by certain information on the packaging, container or label (regs 13 and 14).

In Pt 4, the Regulations:

- designate the Food Standards Agency (FSA) as the competent authority for the purposes of applications for authorisation of a smoke flavouring (reg 15);
- assign the duty of enforcing these Regulations to food authorities (reg 16);
- provide for the maximum penalty to which a person may be liable on conviction for an offence under these Regulations (reg 17);
- provide that, where food is certified as being food which it is an offence to place on the market, the food will be treated for the purposes of FSA 1990, s 9 as failing to comply with food safety requirements (reg 18); and
- apply, with certain modifications, various provisions of the Food Safety Act 1990 for the purposes of these Regulations (reg 19).

FOOD

In Part 5, the Regulations:

- make a minor amendment to the Food Labelling Regulations 1996, SI 1996/1499 (reg 20);
- revoke certain instruments in whole or in part (Sch 5, reg 21); and
- provide for the FSA to carry out a review of the operation and effect of these Regulations within five years of them coming into force (reg 22).

The Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013, SI 2013/266

These regulations implement the above requirements for the purposes of Scotland

The Contaminants in Food (England) Regulations 2013, SI 2013/2196

These Regulations, which apply in relation to England only, revoke and re-enact with changes the Contaminants in Food (England) Regulations 2010, SI 2010/2228. They make provision for:

- the continuing implementation of Council Directive 76/621/EEC relating to the fixing of the maximum level of erucic acid in oils and fats intended as such for human consumption and in foodstuffs containing added oils or fats and of Commission Directive 80/891/EEC relating to the Community method of analysis for determining the erucic acid content in oils and fats intended to be used as such for human consumption and foodstuffs containing added oils or fats; and
- the continuing execution and enforcement of Commission Reg (EC) 1881/2006 setting maximum levels for contaminants in foodstuffs.

Commission Reg (EC) 1881/2006 has been amended by:

- Commission Reg (EC) 1126/2007, which concerns maximum permitted levels for Fusarium toxins in maize and maize products;
- Commission Reg (EC) 565/2008, which concerns the establishment of a maximum level for dioxins and PCBs in fish liver;
- Commission Reg (EC) 629/2008, which concerns maximum permitted levels for certain heavy metals;
- Commission Reg (EU) 105/2010, which concerns maximum permitted levels for ochratoxin A;
- Commission Reg (EU) 165/2010, which concerns maximum levels for aflatoxins and the treatment of certain foods found to contain aflatoxins in excess of those levels;
- Commission Reg (EU) 420/2011, which concerns the collection of occurrence data by member states;
- Commission Reg (EU) 835/2011, which concerns maximum levels for polycyclic aromatic hydrocarbons;

- Commission Reg (EU) 1258/2011, which concerns revised limits for nitrates in leafy vegetables;
- Commission Reg (EU) 1259/2011), which concerns maximum permitted levels for dioxins, dioxin-like PCBs and non dioxinlike PCBs;
- Commission Reg (EU) 594/2012 concerning maximum permitted levels of ochratoxin A, non dioxin-like PCBs and melamine in foodstuffs; and
- Commission Reg (EU) 1058/2012, which concerns maximum permitted levels for aflatoxins in dried figs.

The Regulations also provide for the execution and enforcement of Commission Reg (EC) 124/2009, which concerns maximum permitted levels for certain feed additives that may, in specified circumstances, occur in food.

The Regulations provide it is an offence to place specified foods on the market containing erucic acid in excess of permitted levels (regs 3 and 4).

CASES

R (on the application of Newby Foods Ltd) v Food Standards Agency, [2013] EWHC 1966 (Admin), [2013] All ER (D) 180 (Jul)

In a dispute involving butchery, the court stayed the action and referred the following questions to the Court of Justice of the European Union:

(i) whether the words ‘loss or modification of the muscle fibre structure’ in para 1.14 of Annex I to Council Reg (EC) 853/2004 meant ‘any loss or modification of the muscle fibre structure’ that was visible using standard techniques of microscopy;

(ii) whether a meat product could be classified as a meat preparation within para 1.15 of Annex I where there had been modification of its muscle fibre structure that was visible using standard techniques of microscopy;

(iii) where the answer to (i) was no and the answer to (ii) was yes, whether the degree of loss or modification of the muscle fibre structure that was sufficient to require the meat product to be classified as mechanically separated meat (MSM) within para 1.14 of Annex I was the same as that required to eliminate the characteristics of fresh meat within para 1.15;

(iv) the extent to which the characteristics of fresh meat had to have been diminished before they could be said to have been eliminated within the meaning of para 1.15; and

(v) where the answer to (i) was no, but the answer to (iii) was also no:

(a) what the degree of modification required to the muscle fibre structure was in order for the product in question to be classified as MSM; and

(b) what the criteria that ought to be used by national courts in determining whether or not the muscle fibre structure of the meat has been modified by that degree was.

LICENSING

LICENSING

NEW LEGISLATION

The Scrap Metal Dealers Act 2013 (Prescribed Documents and Information for Verification of Name and Address) Regulations 2013, SI 2013/2276

The Regulations prescribe the documents and information which are sufficient to verify the name and address of the person supplying scrap metal, for the purposes of the Scrap Metal Dealers Act 2013, s 11(3)(a) (SMDA 2013).

SMDA 2013, s 11 places an obligation on a scrap metal dealer to verify the full name and address of the person who supplies the scrap metal before receiving it. Failure to fulfill this obligation will constitute a criminal offence.

The scrap metal dealer, the site manager, and any person who has responsibility for verifying the name and address of the supplier under arrangements that have been made by the dealer or the site manager can commit this offence.

MEDICINES

INFORMATION

Medicines regulator issues warning against dangerous tanning products

People tempted by a quick-fix pre or post-holiday tan were today warned by the Medicines and Healthcare products Regulatory Agency (MHRA) about the dangers of using unlicensed tanning injections and nasal sprays containing Melanotan. The MHRA has received 18 reports detailing 74 separate reactions which are suspected to be side effects linked to the use of Melanotan. These include stomach and heart problems as well as blood and eye disorders. To combat the illegal trade in these products, and to safeguard public health, the MHRA has closed down 72 websites offering to supply Melanotan to UK customers within the last three months and continues to monitor websites targeting UK consumers.

Products called Melanotan I, Melanotan II and Ubertain work by increasing the levels of melanin, which is the body's natural protection from the sun and result in tanned skin. However, no product has been approved for use in the UK and as unlicensed medicines. These products carry health risks and may cause possible unknown side effects.

All products are in the form of injections and can be self-injected which means there are serious safety issues concerning needle use, such as the dangers of cross-contamination and infections.

SAFETY

NEW LEGISLATION

The Packaging (Essential Requirements) (Amendment) Regulations 2013, SI 2013/2212

These Regulations amend the Packaging (Essential Requirements) Regulations 2003, SI 2003/1941.

SI 2003/1941 implemented Council Dir 94/62/EC, arts 9 and 11 on packaging and packaging waste which relate to the essential requirements to be satisfied by packaging.

These Regulations implement art 1 and the Annex of Commission Dir 2013/2/EU which amends Annex I of Council Dir 94/62/EC.

These Regulations amend the definition of ‘packaging’, which contains a reference to SI 2003/1947, Sch V and substitute Sch V of these Regulations. Schedule V set outs the revised list of illustrative examples of packaging stated in the Annex of Commission Dir 2013/2/EU.

The Pyrotechnic Articles (Safety) (Amendment) Regulations 2013, SI 2013/1950

These Regulations implement the Directive of the European Parliament and of the Council on the harmonisation of the laws of the member states relating to the making available on the market of pyrotechnic articles (recast) Council Dir 2013/29/EU. Notes on this Directive can be found in the Consumer Law Bulletin 317.

The Regulations amend the Pyrotechnic Articles (Safety) Regulations 2010, SI 2010/1554 as regards the provisions in Council Dir 2013/29/EU relating to the prohibition on use of detonative explosives in the manufacture of categories P1, P2, T2 pyrotechnic arts and category F4 fireworks except on certain conditions. Category F4 fireworks are referred to as category 4 fireworks in SI 2010/1554.

SI 2010/1554 implemented Council Dir 2007/23/EC on the placing on the market of pyrotechnic articles. Council Dir 2013/29/EU revokes the Council Dir 2007/23/EC with effect from 1 July 2015.

The prohibition in Council Dir 2007/23/EC would have prevented the manufacture and supply of certain products, eg car airbags. Council Dir 2013/29/EU amends the prohibition so that these products are permitted subject to certain conditions thus enabling the uninterrupted manufacture and supply of products using detonative explosives.

NEW EU LEGISLATION

Commission Implementing Decision of 18 July 2013 on the compliance of European standards series EN 15649 (Pts 1–7) for floating leisure arts for use on and in the water with the general safety requirement of Directive 2001/95/EC of the European Parliament and of the Council and publication of the references of those standards in the Official Journal of the European Union

This Council Decision introduces the EN 15649 series as a harmonised standard for floating and leisure arts for the purposes of Council Directive 2001/95/EC (The General Product Safety Directive)

INFORMATION

CHIP for everyone: Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/1716

The Chemicals (Hazard Information and Packaging for Supply) Regulations 2009 (known as the CHIP Regulations) are being replaced by the new Council Reg 1272/2008/EC on classification, labelling and packaging of substances and mixtures (CLP Regulation).

The guidance document issued by the Health and Safety Executive explains the duties and obligations under the CHIP Regulations and provides links to guidance on the CLP Regulation. From 1 June 2015 the CLP Regulation takes over and most of the existing CHIP will be revoked.

The CLP Regulation

The CLP Regulation already applies to chemical substances when they are placed on the market. This means suppliers of any chemical substance or substances, but not a preparation, should already be classifying, labelling and packaging that substance according to the CLP Regulation.

Suppliers of a preparation, the CLP Regulation do not have to apply the CLP Regulation until June 2015, but can choose to do so earlier if they wish.

This second edition of CHIP is not intended as a detailed guide to the CLP Regulation. Part 8 of this guide provides links to guidance on the CLP Regulation.

The main purpose of the CLP Regulation is to adopt, within the EU, the UN Globally Harmonised System (GHS) on the classification and labelling of chemicals.

Restriction on Hazardous Substances Regulations: RoHS 2 Guidance

These guidance notes explain the requirements of the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (the RoHS 2 Regulations).

They are intended for businesses and individuals placing or making electrical and electronic equipment available on the UK market from 2 January 2013

and explains the requirements on business, how to comply with the law and provides sources of further information.

WEIGHTS AND MEASURES

INFORMATION

WELEMC guide 6.12: Guide on Council Dir 751107/EEC measuring container bottles

This document is intended to give guidance to manufacturers of MCB and authorities responsible for ensuring compliance with the requirements of the Directive and how they can be met. The document also considers the International Organisation for Legal Metrology's recommendation for MCB.

The Deregulation (Weights and Measures) Order 1999, SI 1999/503 and the Legislative Reform (Verification of Weighing and Measuring Equipment) Order 2008, SI 2008/3262—Guidance on Regulations: July 2013, version 11

A new version of these guidance notes has been issued. The most recent version includes further clarification on the process of approval and an application flow chart

CONSUMER CREDIT AND PRICES

INFORMATION

Plymouth City Council is stopping payday loan companies from advertising on billboards and bus stops in the city and also blocking access to websites offering payday loans. The council, which is said to be the first to take such action, is tackling the use of payday loans because of concerns they are causing the city's residents to rack up large debts.

Access to the 50 most frequented payday loan company websites will be blocked on the whole of the council's computer network. The local authority has also reached an agreement with commercial partners to stop payday loan companies from advertising on billboards and at bus stops.

FAIR TRADING

NEW LEGISLATION

The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2013, SI 2013/1808

The Enterprise Act 2002, Pt 9 (EA 2002) restricts the disclosure of 'specified information' which relates to the affairs of an individual or any business of an undertaking. 'Specified information' is defined by EA 2002, s 238.

EA 2002, s 241(3) provides that a public authority may disclose specified information which it holds and is restricted by EA 2002, Pt 9, to any other person for the purposes of facilitating the exercise of functions that person

FAIR TRADING

has under or by virtue of EA 2002, an enactment specified in Sch 15 or any subordinate legislation specified for the purposes of s 241(3)(c).

Article 2 specifies the Green Deal Framework (Disclosure, Acknowledgment, Redress etc) Regulations 2012, SI 2012/2079 for the purposes of EA 2002, s 241(3)(c).

Corrigendum to Commission Dec 2010/18/EC of 26 November 2009 on Establishing the Ecological Criteria for the Award of the Community Ecolabel for Wooden Floor Coverings

This makes some corrections to Commission Dec 2010/18/EC, para 2.2 (b)

INFORMATION

Empowered consumers, unleashed business—Report from the EU-e commerce task force

The European E-Commerce taskforce has written a report reviewing cross-border e-commerce in the EU and giving advice on how to boost international online sales. The report identified two priority objectives for the government and industry to boost cross-border E-Commerce.

- to increase consumer confidence and trust when buying goods and services cross border—'empowered consumers';
- to reduce or remove the barriers for retailers, particularly SME's, when trading cross-border to encourage more merchants to export—'unleashed business';

Four actions that could be taken to 'empower consumers':

- to increase consumer awareness of cross-border offers UK Trade and Investment (UKTI) should provide information to help SME's, optimise their online communications for web exporting;
- to increase trust and confidence to buy from a EU retailer UKTI should help SME's understand different international standards of service and consumer expectations and BIS should work together with consumer organisations, credit card providers and other stakeholders to increase consumer awareness of the international voluntary chargeback mechanisms of credit card providers;
- to develop international parcel services, BIS should encourage and support Royal Mail and other parcel delivery providers to provide better international services for SME's and BIS should explore and support ways to improve international parcel delivery standards;
- to develop an open and effective market in payment services the UK objectives for the revision of the EU Payment Services Directive should prioritise action on surcharges, interchange fees and long international refund times.

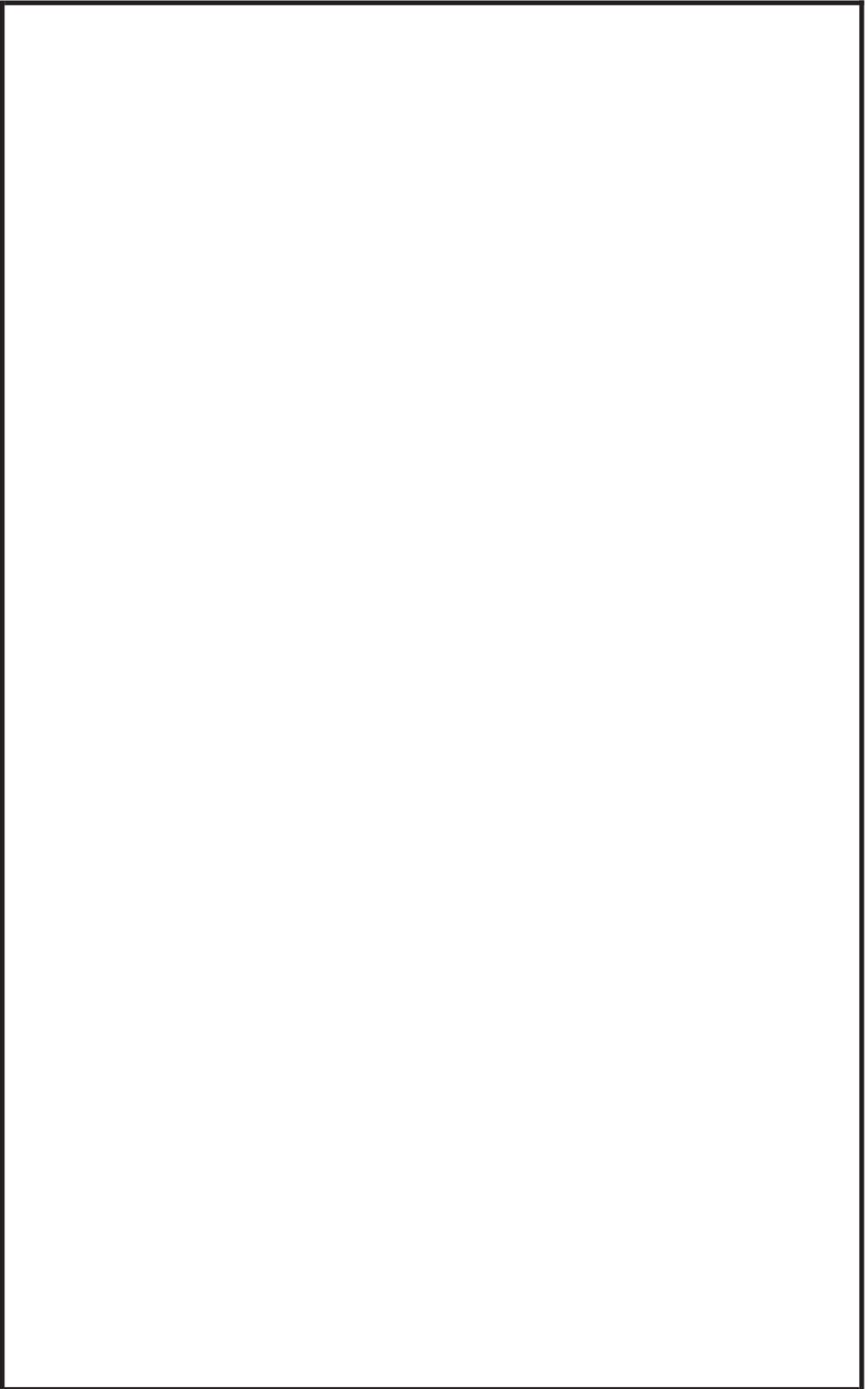
'Unleashed business'

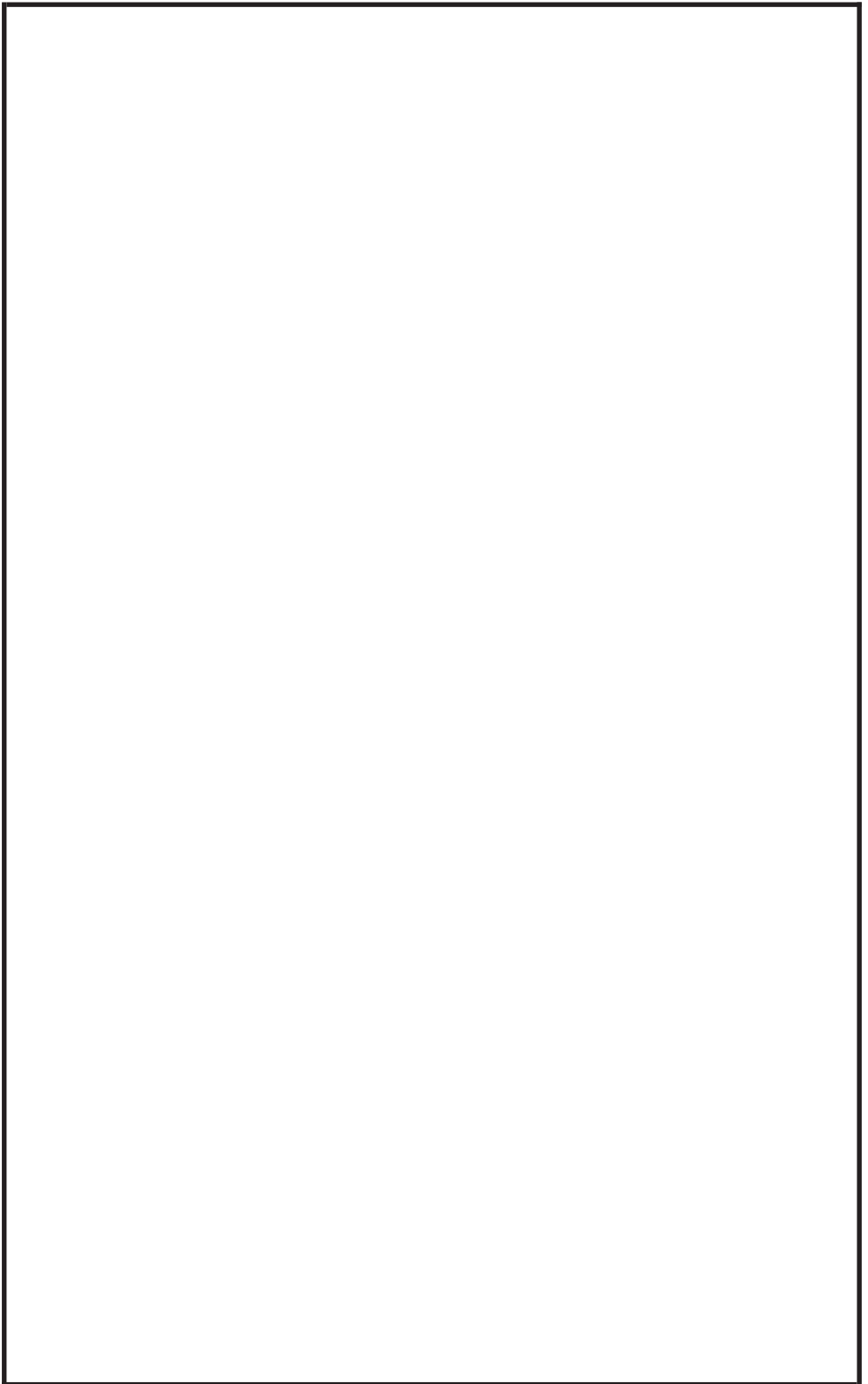
The taskforce identified three key actions that could be taken to address the barriers faced by e-retailers:

- to increase access to advice and services to support e-commerce UKTI and the SME Digital Capability Programme should work together to ensure clarity of communications and cross referrals for SME's on cross-border web-drive exports UKTI should provide market insights on EU cross-border web exporting and UKTI should continue to develop new support for web exporters and integrate this with their existing 'Passport to Export' and other services for exporters
- to reduce the regulatory burden when retailing cross-border BIS should engage with the EU and EU member states to work on common promotion regulations in the EU HM Treasury should review existing VAT regulations in the EU member states and consider any scope for further simplification and BIS should investigate examples of establishment and legal entity restrictions imposed on e-commerce enabling services and pursue appropriate enforcement action.

£300,000 Fine for Tesco over promotion

A £300,000 fine has been imposed on Tesco following a misleading 'half price' promotion on strawberries. Consumer law requires a discounted price to be offered for not much longer than the original price. However, Tesco offered strawberries at a discounted rate of £1.99 for almost 14 weeks despite having only offered the original price of £3.99 for one week. The case was brought by Birmingham City Council's trading standards.





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