

Consumer Law Bulletin

Bulletin Editor

Ian Turner, BA (Hons), DTS, MTSI
Editor of O'Keefe: The Law of Weights and Measures

ENFORCEMENT**NEW LEGISLATION****FOOD*****The Food Information Regulations 2014***

These Regulations make important changes to the law relating to Food Labelling requirements in England, and implement provisions of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers (FIC).

They also implement, in England, certain provisions of Article 6 of Directive 1999/2/EC concerning foods and food ingredients treated with ionising radiation and the second paragraph of Directive 2000/36/EC relating to cocoa and chocolate products intended for human consumption.

Regulation 3 contains a derogation relating to milk or milk products presented in a glass bottle intended for reuse.

Regulation 4 and Schedule 2 provide a derogation relating to the use of a minced meat designation for minced meat that does not comply with the requirements laid down in point 1 of Part B of Annex VI to FIC.

Regulation 5 enables particulars relating to an allergenic substance or product in a non-prepacked food to be made available (subject to the provisions of the regulation) using any means that a food business operator chooses. The required particulars must be made available under FIC but can be made available using the means provided for in FIC or in accordance with the provisions of regulation 5.

Regulation 6 requires the name of the food to be provided in the case of certain non-prepacked foods and foods pre-packed for direct sale.

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Regulation 7 requires a quantitative indication of the meat content to be given in the case of certain products. Those particulars must be given in one of the ways specified in regulations 6(4) (in the case of the name of the food) and 7(5) (in the case of the meat content indication). The provisions of regulations 6(4) and 7(5) do not apply to an offer for sale made by means of distance communication. Article 14(2) of FIC applies in the case of such an offer. Regulation 1(9) provides for regulations 5, 6 and 7 to cease to have effect on 13 December 2021.

Regulation 8 requires certain information to be provided when irradiated food products or food products containing an irradiated ingredient are sold in bulk and when irradiated ingredients are used in certain pre-packed food products.

Regulation 9 imposes an obligation on food authorities and port health authorities to enforce the regulations and empowers other district councils (which are not defined as food authorities for this purpose) to enforce certain allergen-related provisions.

Regulation 10 makes it an offence to fail to comply with specified provisions of FIC and the allergen-related requirement in regulation 5(5).

Regulation 11 provides for the punishment of that offence.

Regulation 12 and Schedule 4 apply certain provisions of the Food Safety Act 1990 with modifications. This includes the application (with modifications) of section 10(1), enabling an improvement notice to be served requiring compliance with specified provisions of FIC (except to the extent that some of the provisions apply to the mandatory particular relating to net quantity or quantity in general) or with specified provisions of regulations 5–8. The provisions, as applied, make the failure to comply with an improvement notice an offence.

Regulation 13 and entry 1 of the table in Part 1 of Schedule 6 revoke most of the Food Labelling Regulations 1996 on 13 December 2014 so far as those Regulations apply to England. Regulation 13 and entry 1 of the table in Part 2 of Schedule 6 revoke the remainder of the provisions in the Food Labelling Regulations 1996 (relating to alcohol-related terms, cream and cheese) on 13 December 2018 so far as those Regulations apply to England. Regulation 13 and Schedule 6 also revoke other relevant statutory instruments. With some exceptions, the revocations have the same territorial extent and application as the statutory instruments being revoked.

Regulation 14 and Schedule 7 amend the Food Labelling Regulations 1996, so far as those Regulations apply to England, during the period before those Regulations are revoked. They make amendments to other statutory instruments to take account of the repeal and replacement of the relevant EU legislation and the revocation of the Food Labelling Regulations 1996. With some exceptions, the amendments have the same territorial extent and application as the statutory instruments being amended. Regulation 14 and Part 1 of Schedule 7 also amend the Food (Lot Marking) Regulations 1996,

in their application to England, to take account of the repeal and replacement of Council Directive 89/396/EEC on indications or marks identifying the lot to which a foodstuff belongs.

Part 2 of Schedule 7 contains the provision implementing the second paragraph of subparagraph 1 of Article 3 of Directive 2000/36/EC of the European Parliament and of the Council (mentioned above).

Regulation 15 requires the Secretary of State to review the operation and effect of these Regulations from time to time and to publish a report before 13 December 2019 and within every five years after that. Following the first review it will fall to the Secretary of State to consider whether regulations 5, 6 and 7, and regulation 12 and Schedule 4 so far as they relate to those regulations, should be allowed to expire as regulation 1(9) provides, be revoked early, or to continue in force with or without amendment. A further instrument would be needed to continue regulations 5, 6 and 7, and amendment or to revoke them early. It will also fall to the Secretary of State to consider whether the remainder of these Regulations should remain as it is, or be revoked or be amended. A further instrument would be needed to revoke or amend the remainder of these Regulations.

The Food Information Regulations (Northern Ireland) 2014

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

The Food Hygiene (Wales) (Amendment) Regulations 2014

These Regulations, which apply to Wales, implement Commission Regulation (EU) No 216/2014 amending Regulation (EC) No 2075/2005 laying down specific rules on official controls for *Trichinella* in meat.

They also implement Commission Regulation (EU) No 218/2014 amending Annexes to Regulations (EC) No 853/2004 and (EC) No 854/2004 and of the Council and Commission Regulation (EC) No 2074/2005, which removes the requirement for a special health mark and the restriction to the national market for emergency slaughter meat.

These Regulations also implement Commission Regulation (EU) No 579/2014 granting derogation from certain provisions of Annex II to Regulations (EC) No 852/2004 as regards the transport of liquid oils and fats by sea.

These Regulations implement Commission Regulation (EU) No 218/2014 by amending the Food Hygiene (Wales) Regulations 2006 to revoke regulation 32A (special health mark) and Schedule 6A (the special health mark) (regulation 2(2) and (5)).

These Regulations implement Commission Regulation (EU) No 216/2014 by amending the Food Hygiene (Wales) Regulations 2006 so that the definition of Regulation 2075/2005 in Schedule 1 includes the amendments made to its articles by Regulation 216/2014 (regulation 2(3)).

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These Regulations implement Commission Regulation (EU) No 579/2014 by amending the Food Hygiene (Wales) Regulations 2006 so that the reference to the Annex to Commission Directive 96/3/EC (list of acceptable previous cargoes) at paragraph 2(2) of Schedule 3 is substituted by the Annex to Regulation (EU) No 579/2014 (regulation 2(4)).

The Food Hygiene and Official Feed and Food Controls (Scotland) Amendment Regulations 2014

These Regulations implement Commission Regulation (EU) No 704/2014 amending Commission Regulation (EU) No 211/2013 on certification requirements for import into the Union of sprouts and seeds intended for the production of sprouts. They also implement Commission Regulation (EU) No 579/2014 granting derogation from certain provisions of Annex II to Regulation (EC) No 852/2004 as regards the transport of liquid oils and fats by sea.

Regulation 2 implements Commission Regulation (EU) No 579/2014 in whole, by amending the Food Hygiene (Scotland) Regulations 2006.

Regulation 3 implements Commission Regulation (EU) No 704/2014 in whole, by amending the Official Feed and Food Controls (Scotland) Regulations 2009.

INFORMATION

Call by councils for 'obesity action fund' to be created from slice of tax on fast food, soft drinks and confectionery – 12 July 2014

An obesity action fund should be created by taking a slice of existing tax on fast food, soft drinks and confectionery, councils say.

The Local Government Association (LGA), which represents almost 400 local authorities in England and Wales – who last year took over responsibility for public health – is calling for a fifth of the current VAT on these 'obesity fuellers' to go to councils to tackle the condition. The extra £1 billion from this share could help transform the lives of the three and half million overweight or obese children in this country, it says. Currently, health problems associated with being overweight or obese cost the country £5 billion, according to government statistics.

The LGA's call comes as latest figures reveal the scale of the obesity crisis in this country. The NHS currently spends £1 million an hour on diabetes – ten per cent of its annual budget. The number of obese people is set to soar – more than doubling over the next 40 years. Today, one in four adults is obese compared to less than 15 per cent in 1993. One in seven hospital beds are filled with patients suffering diabetes-related problems, which are often related to obesity.

Guidance: Food allergen labelling and information requirements under the EU Food Information for Consumers Regulation No 1169/2011

This guidance has been introduced to help food businesses deal with the introduction of the allergen labelling requirements under the Food Information for Consumers Regulations No 1169/2011. The Guidance includes general advice and information on allergy and intolerance, the food labelling rules and specific voluntary best practice guidance on cross-contamination controls for pre-packed and loose foods. The allergen requirements relate to both pre-packed and unpackaged foods.

It is also intended to assist authorised food officers of the local food authority in enforcing these measures. Technical advice on the interpretation and application of the requirements is provided. The guidance is produced by the Food Standards Agency and can be found on their website.

New food crime unit to be created

The Government is to set up a new food crime unit to investigate and police the food industry, following a probe into last year's horsemeat scandal.

The new special force was the key recommendation from food security expert Professor Chris Elliott, who was commissioned by the Government to look into the UK food chain last year. The new unit will comprise a specialist team within the Food Standards Agency.

'There is a huge incentive for the criminal to pursue food crime ... which risks proliferation if left unchecked,' the inquiry report says.

'I believe the creation of a national food crime prevention framework will ensure measures are put in place to further help protect consumers from any food fraud incidents in the future,' added Professor Elliott, of Queen's University Belfast.

Law enforcement agencies believe food crime is becoming a major problem. International gangs are said to be diversifying elements of their operations from drug trafficking and armed robbery into fraudulent foods.

Michael Ellis, assistant director of Interpol, said: 'Criminals have realised that they can make the same amount of money by dealing with counterfeit food. Invariably sentences are much lighter'.

'In my experience, the patterns used by criminals involved in counterfeiting are very similar to those used in the dealing of drugs. They operate front companies, they employ front bank accounts, they will have false declarations for the movement of their goods, and they will mis-declare their shipments.'

Professor Elliott made a series of other recommendations, all of which the Government said it will take on board.

They include better intelligence gathering and sharing of information to make it more difficult for criminals to operate; new, unannounced audit

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checks by the food industry to protect businesses and their customers; and the development of a whistle blowing system that would better facilitate the reporting of food crime.

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Guidance: Restriction of Hazardous Substances (RoHS) Regulations 2012 – RoHS 2

These Guidance notes explain the requirements of the Restriction of the Use of Certain Hazardous Substances in the Electrical and Electronic Equipment Regulations 2008 (the RoHS Regulations).

It is intended for businesses and individuals placing or making electrical and electronic equipment available on the UK market between 1 July 2006 and 1 January 2013.

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

Challenge to EU Tobacco Law Backed by British Health Secretary

The EU's Tobacco Products Directive is set to be challenged in court by an e-cigarette manufacturer, in a move that has the surprise backing of British Secretary of State for Health Jeremy Hunt. This appears to be something of a U-turn for Hunt, who has previously written to MEPs urging even more restrictive legislation cigarettes.

Totally Wicked, the UK's leading manufacturer of e-cigarettes, is bringing the challenge on the grounds that Article 20 of the directive is a breach of EU law on the free movement of goods and provision of services in the EU.

Article 20 of the Tobacco Products Directive, which will come into force in 2016, deals with electronic cigarettes – even though they don't actually contain any tobacco. The stipulations are draconian, including that member states must be notified of all products coming onto the market at least six months before they are released, and that the notification must include all ingredients, a toxicology report, a description of components, nicotine dosing information, a description of the production process, and a guarantee that the manufacturer take personal responsibility for the safety of the product, and more; all e-cigarettes and refills will have to carry a warning that nicotine is addictive, and possible side effects will have to be included in an information leaflet; advertising won't be allowed on TV or radio; and vast amounts of data on the industry and on possible negative effects of the products will have to be recorded and stored.

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The Plant Health (Fees) (Wales) Regulations 2014

These Regulations, which apply in relation to Wales, specify fees payable to the Welsh Ministers in the field of plant health. They revoke and replace the Plant Health (Fees) (Wales) Regulations 2013 (SI 2013/1700).

The fees are payable in relation to specified inspections and other operations carried out pursuant to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community. The fees for documentary, identity and plant health checks in relation to certain imports of plants, plant products and other objects from third countries are specified pursuant to the requirement in Article 13d of Council Directive 2000/29/EC.

The fee levels provided for in these Regulations form the final part of a phased move towards full cost recovery of fees over a three-year period. These Regulations provide for average decreases and increases in, and the continuation unchanged of, the fees specified in the 2013 Regulations as follows:

- (1) Import inspection fees (other than documentary and identity checks) decrease by 3.5%;
- (2) Fees for import inspection documentary and identity checks increase by 24.5%;
- (3) Fees relating to seed potato inspections remain unchanged;
- (4) Licensing fees increase by 2.2%;
- (5) Fees for plant passporting services increase by 21.2%; and
- (6) Fees for inspections of potatoes originating in Egypt remain unchanged.

New fees are introduced in relation to potatoes originating in Lebanon as follows: £31.86 for an application for a licence and £117.39 for an inspection.

Regulation 8 sets out the consequences of failure to pay any fee.

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Consultation: Implementation of the Amended Batteries Directive 2013/56/EU

This Directive extends the ban on the placing on the market of portable batteries and accumulators containing cadmium to portable batteries and accumulators intended for use in cordless power tools. In order to enable the recycling industry and consumers to adapt to the relevant substitute technologies, this ban will apply from 1 January 2017.

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The 2013 Directive also prohibits the marketing of button cells with a mercury content of less than 2% by weight. These button cells previously benefited from an exemption that has been removed by the 2013 Directive. This ban will apply from 1 October 2015 and the Commission will report to the European Parliament and to the Council on the availability of alternatives to button cells for hearing aids.

Batteries and accumulators lawfully placed on the market for the first time prior to the respective bans can still be marketed until stocks run out.

A consultation on the Secretary of State's draft Strategy and Policy Statement to Ofgem

The Energy Act 2013 provides powers for the Secretary of State to designate a Strategy and Policy Statement (SPS) in which he would set out the Government's strategic priorities and other main considerations of its energy policy, the policy outcomes to be achieved as a result of the implementation of that policy, and the roles and responsibilities of those who are involved in implementation of that policy. The Act and imposed new duties on Ofgem (Office of Gas and Electricity Market) to have regard to the strategic priorities when carrying out its regulatory functions and to carry out those functions in the way it considers is best calculated to further the delivery of the specified policy outcomes.

Ofgem will be required to report each year in its forward work programme on its strategy for furthering the delivery of the policy outcomes and to report annually on the extent to which it has achieved its plans and the ways in which it has complied with its SPS duties under the Act.

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New WELMEC Guides

The following WELMEC Guides have been recently published:

WELMEC Guide 2.0: Directive 2009/23/EC: Common application non-automatic weighing instruments (Issue 6 May 2014)

WELMEC Guide 8.16.2: Measuring Instruments Directive 2004/22/EC Automatic Gravimetric Filling Instruments Corresponding Tables OIML R 61-1 2004 – MID-006 III (Issue 2 April 2014)

WELMEC Guide 8.16.3: Measuring Instruments Directive 2004/22/EC Discontinuous Totalisers Corresponding Tables OIML R 107-1 1997 – MID-006 IV (Issue 2 April 2014)

WELMEC Guide 8.16.4: Measuring Instruments Directive 2004/22/EC Continuous Totalisers Corresponding Tables OIML R 50-1 1997 – MID-006 V (Issue 2 April 2014)

WELMEC Guide 8.16.5: Measuring Instruments Directive 2004/22/EC Automatic Rail Weighbridges Corresponding Tables OIML R 106-1 1997 – MID-006 VI (Issue 2 April 2014)

WELMEC Guide 10.8: Guide for common application of MID MI-005 and OIML R117-1, (R81, R80, R139) (Issue 1 January 2014)

WELMEC Guide 10.9: Guide on evaluating purely digital ancillary devices (MI-005) (Issue 1 May 2014)

WELMEC Guide 11.1: Measuring Instruments Directive 2004/22/EC: Common application for utility meters (Issue 5 January 2015)

Smart Metering Implementation Programme

The Government's vision is for every home and smaller business in Great Britain to have smart electricity and gas meters. Smart meters will play an important role in Britain's transition to a low-carbon economy and help to meet some of the long-term challenges in ensuring an affordable, secure and sustainable energy supply. The Government has introduced licence conditions on energy suppliers that require them to take all reasonable steps to install smart metering systems in domestic and smaller non-domestic premises by the end of 2020. The licence conditions require that energy suppliers install smart metering systems that meet the requirements set out in the Smart Metering Equipment Technical Specification (SMETS).

The initial version of the SMETS (SMETS 1) was designated by the Secretary of State on 18 December 2012. This version was updated to provide clarification on a small number of requirements on 31 March 2014. In August 2012 the Government consulted on proposed updates to the specification (SMETS 2), arrangements for the provision of communications hubs and enduring governance of the Technical Specifications. The Government communicated in its two-part response to the SMETS 2 consultation that:

- The Data and Communications Company (DCC) will be required to provide energy suppliers with communications hubs that comply with the Communications Hub Technical Specifications (CHTS);
- Energy suppliers will be required to install DCC-provided communications hubs in domestic premises (for non-domestic premises, suppliers would be required to install SMETS compliant meters but not communications hubs);
- Specifications for HAN Connected Auxiliary Load Control Switches and Prepayment Interface Devices will be included in SMETS 2. While energy suppliers will not be required to install these devices under the roll-out licence condition, if they did install them they would be required to comply with technical specifications provide alongside the SMETS;
- For a period of time both new SMETS 1 and SMETS 2 installations will count towards energy suppliers' roll-out targets, with the Secretary

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of State providing notice of the point at which new SMETS 1 installations will no longer count towards these targets; and

- The SMETS (and other technical specifications including the CHTS), will ultimately be incorporated into the Smart Energy Code (SEC) and thereby be subject to the SEC modification process.

This consultation proposes amendments to the DCC license and the gas and electricity supply licenses to implement these policy positions.

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NEW LEGISLATION

The Provision of Services (Amendment) Regulations 2014

These Regulations amend the Provision of Services Regulations 2009. The 2009 Regulations implement Directive 2006/123/EC (the “Services Directive”).

Regulation 2(2) amends regulations 15(5) and (6) of the 2009 Regulations, which implement Article 10(4) of the Services Directive. The amendment provides that where a competent authority whose functions relate to the whole of the United Kingdom grants an authorisation, the service provider must be able to have access to, or to exercise, the service activity throughout the whole of the United Kingdom.

The amendment also provides that where an authorisation is granted by a competent authority whose functions relate only to part of the United Kingdom (a “territorial authority”) the service provider must be able to have access to, or to exercise, the service activity throughout the whole of the United Kingdom by virtue of the authorisation and authorisations granted or treated as granted by other territorial authorities.

The amendment clarifies that these provisions do not apply where an authorisation for an individual establishment or a limitation of the authorisation to a particular area or part of the United Kingdom is justified by an overriding reason relating to the public interest. Regulation 2(3) amends regulation 38(1) of the 2009 Regulations to transfer the duty to establish and Customs jointly to the Secretary of State, any other Minister of the Crown with responsibility for a government department, or any government department.

The Video Recordings Act 1984 (Exempted Video Works) Regulations 2014

These Regulations amend the Video Recordings Act 1984. The Act provides for labelling and certification requirements in respect of the supply of video works. By section 2(1) of the Act, a video work (other than a video game) is exempt from these requirements if, taken as a whole, it is designed to inform, educate or instruct, or is concerned with sport, religion or music. This

exemption is subject to sections 2(2) and (3) of the Act, which set out certain cases in which such a video work is not an exempted work even if it otherwise falls within section 2(1) of the Act.

Regulation 2(3) inserts new subsections (1ZA)–(1ZC) into section 2 of the Act. These provide for new cases in which a video work (other than a video game) is not an exempted work. The cases relate to violence (other than mild violence); dangerous activities; drugs, alcohol and tobacco; suicide, scarification/mutilation and self-harm; criminal offences; sexual messages and sexual activity (other than mild sexual activity, but including acts of force or restraint); genitalia and urinary or excretory functions; swearing (other than mild bad language) and offensive discriminatory behaviour.

Regulations 2(2) and (4) make consequential amendments to section 2. Regulation 3 amends section 3(5) of the Act. This section specifies a circumstance in which supplies of video works are exempted supplies, and currently operates by way of cross-reference to section 2(2). The effect of the amendment is to maintain the current scope of this exemption.

Regulation 4 makes a saving in respect of video works first placed on the market before the entry into force of the Regulations.

INFORMATION

Countries pledge to tackle multi-billion pound intellectual property crime

A new coalition to tackle counterfeiting, copyright infringement and other intellectual property crime was launched at the first International Intellectual Property (IP) Enforcement Summit in London today (Thursday 12 June).

More than 300 delegates from 30 countries attended the event hosted by the UK government in partnership with the Office for Harmonization in the Internal Market and the European Commission.

In his closing speech, Intellectual Property Minister Lord Younger declared the next 12 months a ‘year of IP enforcement’ as he set out the scale of the task ahead and highlighted the important steps taken. This included an international commitment to maintain momentum in tackling IP crime as a global issue.

Guidance on the Consumer Protection (Amendment) Regulations 2014: Misleading and Aggressive Commercial Practices – New Private Rights for Consumers

The Department of Business, Innovation and Skills (BIS) has published guidance for businesses on the Consumer Protection (Amendment) Regulations 2014 (the Regulations).

The Regulations amend the Consumer Protection from Unfair Trading Regulations 2008 (CPUT Regulations) to give new rights of redress to consumers who are misled or intimidated into entering a contract or making

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a payment. The guidance summarises the acts and omissions that trigger consumers' new private rights of redress, and their new remedies. The new standard remedies are the right to:

- unwind the contract and receive a full refund; and
- keep the goods or service, but request a discount to the price.

Under the regulations, the consumer will have a right to seek damages. Provided that it has been shown that the trader has committed a misleading or aggressive action under the CPUR Regulations, the consumer will not need to demonstrate loss to claim the new standard remedies. However, the consumer will still need to demonstrate loss in order to claim the damages remedy.

The changes come into force on 1 October 2014 and apply to contracts entered into, or payments made, on or after that date.

ANIMAL HEALTH

NEW LEGISLATION

The Diseases of Swine Regulations 2014

These Regulations implement the provisions for the control of:

- (a) swine vesicular disease contained in Council Directive 92/119/EEC introducing general Community measures for the control of certain animal diseases and specific measures relating to swine vesicular disease;
- (b) classical swine fever contained in Council Directive 2001/89/EC on Community measures for the control of classical swine fever; and
- (c) African swine fever contained in Council Directive 2002/60/EC laying down specific control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever.

Part 1 is introductory and includes definitions.

Part 2 deals with requirements for disease notification and the investigation of suspicion of disease.

Part 3 deals with measures to be taken on infected premises where disease is confirmed.

Part 4 deals with measures to be taken on suspicion and confirmation of disease at a

slaughterhouse.

Part 5 deals with measures to be taken on suspicion and confirmation of disease in feral pigs.

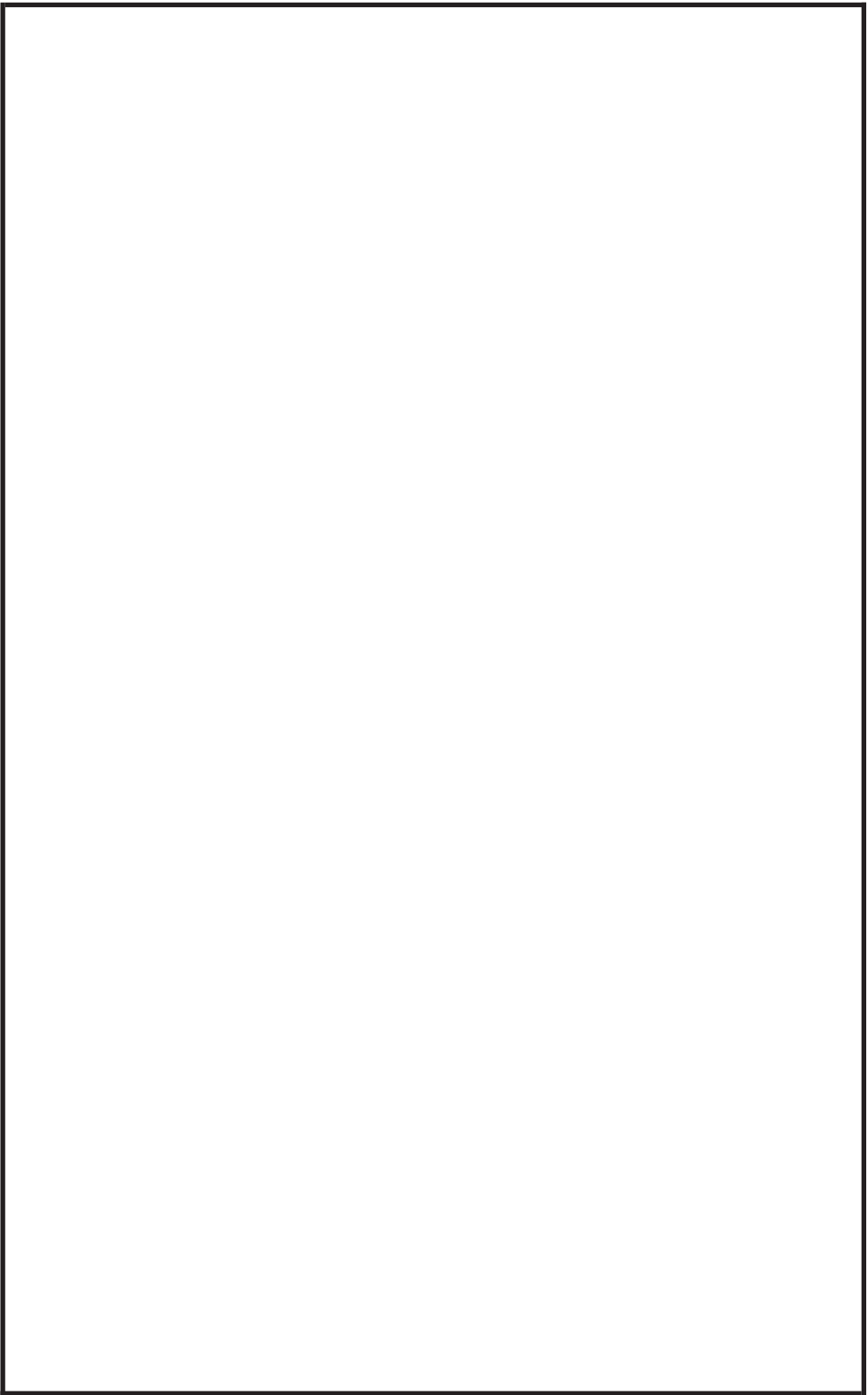
Part 6 makes provision for the establishment of protection zones, surveillance zones and infection zones following the confirmation of disease on any premises.

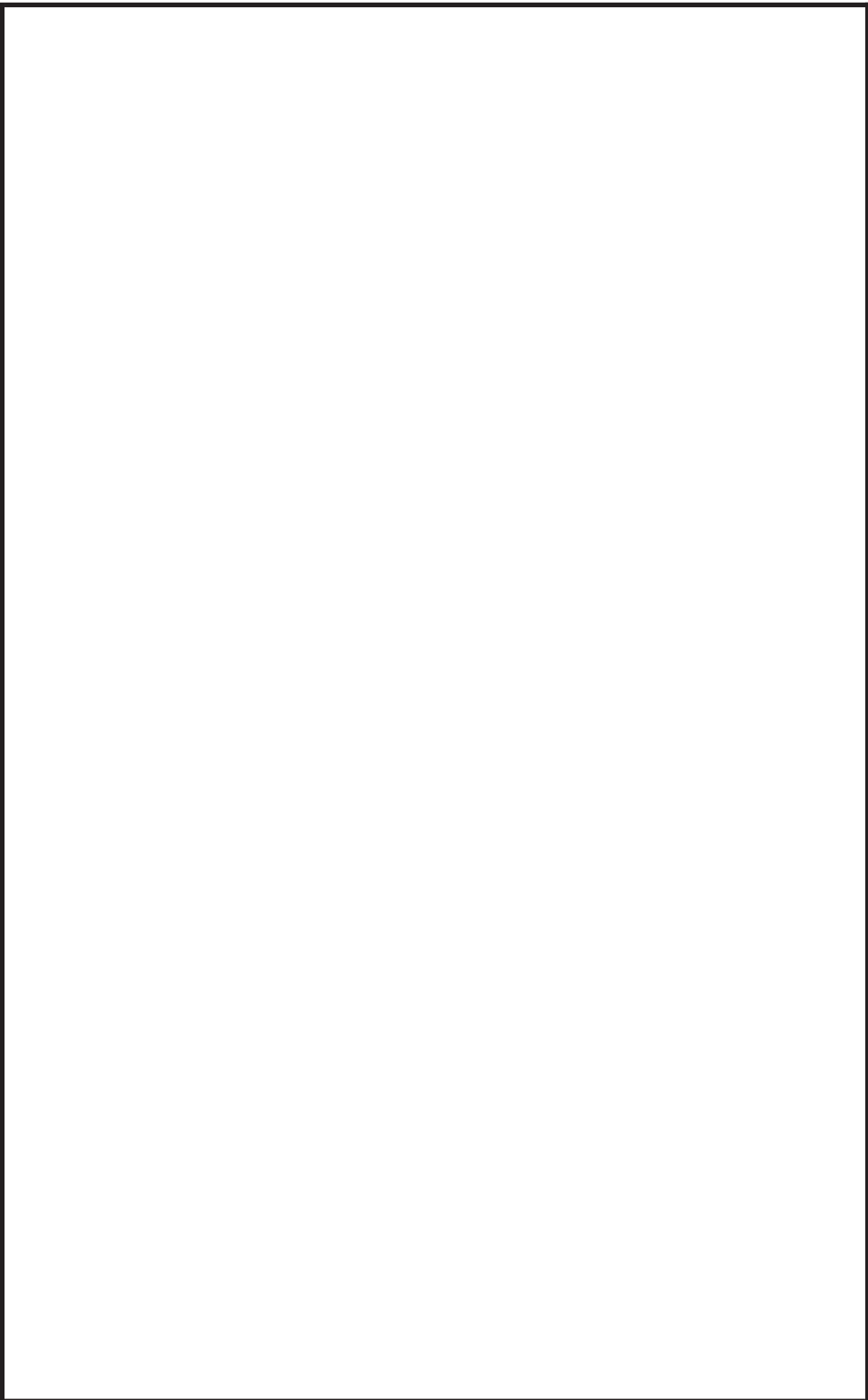
Part 7 prohibits vaccination against disease except in certain circumstances. For classical swine fever provision is made for declaring an emergency vaccination zone.

Part 8 contains provisions relating to inspection and enforcement.

The Welfare of Animals at the Time of Killing (Consequential Amendments) (Wales) Regulations 2014

These Regulations make amendments consequential on the Welfare of Animals at the Time of Killing (Wales) Regulations 2014. They make consequential amendments to three Acts of Parliament and one statutory instrument to provide that those Acts and instrument refer to certificates of competence and licences issued under the Welfare of Animals at the Time of Killing (Wales) Regulations 2014.





Correspondence about the contents of this Bulletin should be sent to:
Fiona Prowting, LexisNexis Butterworths, Lexis House, 30 Farringdon Street,
London EC4A 4HHL
(Tel: +44 (0)20 3364 4445).
(Email: fiona.prowting@lexisnexis.co.uk).

Subscription and filing enquiries should be directed to:
LexisNexis Butterworths Customer Services, PO Box 1073, Belfast BT10 9AS
(Tel: +44 (0)845 370 1234).

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