



Department
for Business
Innovation & Skills

**WEIGHTS AND MEASURES
(FOOD) (AMENDMENT)
REGULATIONS 2014**

Guidance

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GUIDANCE ON THE 2014 REGULATIONS

Guidance on the Weights and Measures (Food) (Amendment) Regulations 2014

Introduction

1. The following guidance has been produced by the National Measurement Office of the Department for Business Innovation and Skills to assist all affected by the Weights and Measures (Food) (Amendment) Regulations 2014 (“the 2014 Regulations”).
2. This guidance is not intended to be an exhaustive explanation of the law and has no legal force. It provides an introduction to the 2014 Regulations only, including an explanation of each provision to aid understanding. The guidance does not provide a comprehensive explanation of the requirements provided for in Regulation (EU) No 1169/2011 on the provision of food information to consumers (“FIC”). The Table at the Annex sets out when the different regimes will apply.
3. The 2014 Regulations revoke any provisions in national law that conflict or overlap with the directly applicable EU requirements under FIC (unless directly derived from other specific EU laws or permitted in accordance with Article 42 FIC which allows for certain national provisions to be maintained) and provide for enforcement of quantity labelling aspects of FIC under the Weights and Measures Act 1985 (“the 1985 Act”). The law will continue to be enforced by Local Weights and Measures Authorities as part of Local Authorities Trading Standards Services. Further assistance and advice on the law in this area can be obtained from Trading Standards. Consumers can obtain help and advice from the Citizens Advice Consumer Service here: www.adviceguide.org.uk/consumer.

Background

The law before 13 December 2014

4. The 2014 Regulations amend national weights and measures laws that apply to foods, in order to take account of changes agreed at European level. The national laws were made under powers contained in the Weights and Measures Act 1963 or Part IV of the 1985 Act and consist of the Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruit and Vegetables, Meat and Poultry) Order 1984 (SI1984/1315) as amended; the Weights and Measures (Miscellaneous Foods) Order 1988 (SI1988/2040) as amended and the Weights and Measures (Intoxicating Liquor) Order 1988 (SI1988/2039) as amended. In addition changes are made to the Weights and Measures (Packaged Goods) Regulations 2006 (SI2006/659), the Weights and Measures (Quantity Marking and Abbreviations of Units) Regulations 1987 (SI1987/1538) as amended, and the 1985 Act. The main purpose of this legislation is to ensure consumers are provided with information on

quantity and that they can have confidence that the quantity is accurate, and that the market is fair for businesses.

FIC

5. FIC was agreed by all Member States and will be directly applicable in the UK from 13th December 2014. FIC applies to all food business operators, and requires that certain mandatory food information be provided for consumers and mass caterers. This mandatory information includes the net quantity of the food (Article 9(1)(e)). Under FIC, packaged foods sold to consumers or mass caterers, or intended for supply to consumers or mass caterers, must be labelled with net quantity. In addition, food business operators that supply food not intended for sale to consumers or mass caterers must provide certain information when supplying other food business operators (Article 8(8)). FIC also sets out rules for how the quantity information should appear on the packaging (Article 12), how it should be presented (Article 13), how it applies to distance selling (Article 14), when it can be omitted (Article 16) and further detailed requirements that apply to the quantity information (Article 23 and Annex IX). The purpose is to ensure consumers have sufficient information on quantity and that the rules are the same across the EU, making it easier for businesses to trade.
6. There is no scope under FIC for the UK to maintain its national rules which overlap or conflict with FIC after 13 December 2014, except where such requirements are derived from more specific EU provisions on weights and measures or where national provisions provide for quantity to be expressed in a different manner and are permitted in accordance with Article 42 FIC. The 2014 Regulations therefore revoke any provisions in national law that conflict or overlap with the directly applicable EU requirements under FIC and which are not directly derived from separate EU law or permitted under Article 42. In addition the 2014 Regulations extend the application of the existing enforcement regime under Part IV of the 1985 Act to ensure that the quantity requirements under FIC can be enforced in the same way as the national rules that they are replacing.

Main changes

Definition of ‘prepacked food’ and ‘pre-packed’

7. Article 2(2)(e) FIC introduces a definition for ‘prepacked food’ which differs from existing definitions of ‘pre-packed’ in national legislation. ‘Prepacked food’ is defined in FIC as:

“any single item for presentation as such to the final consumer and to mass caterers, consisting of a food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging; ‘prepacked food’ does not cover foods packed on the sales premises at the consumer’s request or prepacked for direct sale”.

8. The definition of pre-packed in Section 94 of the 1985 Act is unchanged:

“pre-packed means made up in advance ready for retail sale in or on a container”;

Where the 1985 Act is referring to pre-packed foods within scope of FIC, that is made clear by specific reference being made to 'prepacked food within the meaning of the FIC Regulation'. Where the term 'pre-packed' is used in the 1985 Act without reference to FIC, then the definition at Section 94 continues to apply.

9. References to 'pre-packed' in the Weights and Measures (Packaged Goods) Regulations 2006 (SI2006/659), in relation to food, have the same meaning as Article 2(2)(e) FIC.
10. References to 'pre-packed' in the Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruit and Vegetables, Meat and Poultry) Order 1984 (SI1984/1315) and the Weights and Measures (Miscellaneous Foods) Order 1988 (SI1988/2040) continue to apply to products that were previously covered (that is, those within the scope of Section 94 of the 1985 Act) except that they now exclude from their scope pre-packed foods subject to FIC. As such the definition of 'pre-packed' in these Orders has been amended and references to 'pre-packed' in these Orders now only apply to foods which are:
 - a) made up for direct sale (within the meaning of Article 2(2)(e) of the FIC Regulations) by way of retail; and/or
 - b) made up in advance ready for retail sale in an open container.

Definition of 'Pre-packed for Direct Sale'

11. References to 'pre-packed for direct sale' are intended to apply to those foods that have been packed on the same premises from which they are being sold.

Definition of 'loose'

12. References to loose items, as well as items which are self-evidently sold loose, include foods which are packed on the sales premises at the request of the consumer.

Weights and Measures Food Orders

13. The main changes are that the scope of the national weights and measures legislation for foods is reduced to remove any pre-packed foods subject to directly applicable FIC quantity labelling rules. The Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruit and Vegetables, Meat and Poultry) Order 1984 (SI1984/1315) and the Weights and Measures (Miscellaneous Foods) Order 1988 (SI1988/2040) are amended so that they will only apply to foods packaged for direct sale and/or sold in open containers, foods sold loose, and relevant wholesale transactions (which excludes the sale or supply of food intended for consumers or mass caterers or any other sales regulated under FIC; and any other supply of food that is made up in advance ready for retail sale in an open container).
14. **These categories can be maintained as they are not subject to the directly applicable mandatory requirements under FIC.** The Orders will only apply to foods in these categories in circumstances where they already apply to those foods. There is no extension of application to any new foods or new categories of foods. This will maintain the status quo pending a review of the remaining food quantity labelling requirements, to be held in 2015.

15. The scope of the Weights and Measures (Intoxicating Liquor) Order 1988 is amended so that the volume labelling requirements no longer apply to pre-packed foods subject to the directly applicable FIC quantity labelling requirements.

Packaged Goods Regulations

16. The Weights and Measures (Packaged Goods) Regulations 2006 (“PGR”) are amended to exclude any non e-marked packages of food from the quantity labelling requirements that apply under PGR, subject to retention of the rule at Regulation 8(1) for all packages. This means that all non e-marked foods that satisfy the FIC definition of “prepacked food” are now subject to quantity labelling requirements under FIC and not PGR. However, this does not prevent those packages from being labelled in a larger font size than required under FIC or from including the name and address of the packer or importer in line with PGR standards. Under Regulation 8(1) liquid products may continue to be marked with nominal quantity by weight and packages containing other products may continue to be marked with nominal quantity by volume, where so provided by trade practice. E-marked packages will continue to be subject to the labelling requirements under PGR to ensure continued compliance with Directive 76/211/EEC relating to the making up by weight or volume of certain pre-packaged products. There is no change to the requirement that any package displaying the e-mark must comply with the “Three Packers Rules” (in Regulation 4 PGR) and be within the quantity range of 5 g or ml to 10 kg or L.
17. Further advice on legibility can be found in paragraph 34 of the [Guidance Notes](#) on the Weights and Measures (Packaged Goods) Regulations 2006.
18. In addition, the 2014 Regulations make two further amendments to reflect separate European law. These allow for e-marking of fruits and vegetables and remove an exemption for frozen poultrymeat.

The Weights and Measures (Quantity Marking and Abbreviations of Units) Regulations 1987

19. These Regulations are amended to clarify that the requirements of Part II of those Regulations (quantity marking of containers and units of measurement to be used in marking) do not apply to pre-packed foods subject to FIC.

Weights and Measures Act 1985

20. The 1985 Act is amended to bring the requirements relating to quantity under FIC into the existing weights and measures enforcement regime. As a consequence of the amendments to the Food Orders and Regulations outlined above, there will be a corresponding reduction in scope of the existing regime, which is substantially reduced so that it only applies to categories of products to which FIC does not apply.

The 2014 Regulations

Citation and Commencement

21. Regulation 1 sets out the date that the 2014 Regulations will come into force. This date is the 13 December 2014 and will coincide with the entry into force of FIC.

Amendment to the Weights and Measures Act 1985

22. Regulation 2 provides that the Act is amended as set out in Regulations 3 to 12.
23. Regulation 3 amends Section 27 to exempt any goods that are subject to FIC from the requirement for the quantity to be stated in writing.
24. Regulation 4 amends Section 30 to ensure that products subject to FIC are within the scope of the offence for possessing for sale any goods in a quantity less than stated.
25. Regulation 5 inserts a new Section 31A which makes it an offence for a food business operator to fail to meet any requirements relating to quantity under Article 8 (Responsibilities), Article 9(1)(e) (mandatory indication of net quantity) or Chapter V (voluntary food information) of FIC. It also provides that no offence is committed where the business is acting in accordance with any exception contained in Chapter IV of FIC, national measures under Articles 40 or 42 FIC, or transitional measures for foods placed on the market before 13 December 2014 under Article 54(1). The exceptions in Chapter IV include exemptions for foods which are subject to losses in volume or mass but are sold by number or weighed in the presence of the purchaser; foods (except herbs and spices) with a net quantity less than 5 g or 5 ml; or foods which are normally sold by number, provided that either the number is indicated on the packaging or the number of items can be clearly seen and counted from the outside.
26. Regulation 6 amends Section 32 to disapply it from new Section 31A.
27. Regulation 7 amends Section 35(3) to disapply the defence for subsequent deficiency to foods labelled in line with FIC.
28. Regulation 8 amends Section 37(1)(b) to apply the defence that other articles of the same kind were available for testing and that a reasonable number of those articles should also be tested and an average result used.
29. Regulation 9 amends Section 38 to extend to FIC the powers for inspectors of weights and measures to weigh, measure or break open goods.
30. Regulation 10 amends Section 42 to extend the powers of Local Weights and Measures Authorities to make test purchases for assessing compliance with FIC.
31. Regulation 11 amends Section 94 (Interpretation) to define “FIC Regulation” as Regulation EU 1169/2011.
32. Regulation 12 amends Schedule 7 (Composite goods and collections of articles) to exclude goods subject to FIC from the requirements of that Schedule. This

ensures that goods subject to FIC do not have to meet those additional requirements relating to quantity marking.

Amendment to the Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruits and Vegetables, Meat and Poultry) Order 1984

33. Regulation 13 provides that the Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruits and Vegetables, Meat and Poultry) Order 1984 is amended as set out in Regulations 14 to 16.
34. Regulation 14 amends Article 2 on the Interpretation of the Order by inserting new definitions for “mass caterer”, “pre-packed” and “relevant wholesale” and “loose”.
35. “Mass caterer” is defined in line with the definition under FIC.
36. “Pre-packed” is defined to exclude any pre-packed foods subject to the directly applicable requirements of FIC. Therefore, pre-packed in this Order only applies to foods which are made up for direct sale for retail (within the meaning of Article 2(2)(e) FIC) and/or made up in advance for retail sale in an open container. **The effect of this is to limit the scope of the Order so that it no longer applies to sales of any pre-packed foods subject to the requirements of FIC.**
37. “Relevant wholesale” is defined as a sale by wholesale but excludes: sales to a mass caterer; supply of food intended for sale to the final consumer or to a mass caterer, and packaged as such; any other supply of food that is made up in advance ready for retail sale in an open container; or a supply to which Article 8(8) FIC applies (requirement to provide relevant quantity information needed for subsequent compliance where food is supplied to another food business operator). **The effect of this is to limit the scope of the Order so that the provisions of this Order that apply to relevant wholesale do not apply to any transactions subject to FIC.**
38. It is clarified that references to “loose” include items packed at the request of the customer.
39. Regulation 15 amends Article 4 (Cheese, fish, meat and poultry) to clarify that Paragraph 2 only applies to food sold loose and that Paragraph 3 only applies to foods sold in “a relevant manner”, which is defined in new Paragraph 3A as meaning pre-packed when sold otherwise than by retail, foods sold to a mass caterer when sold loose, or any foods sold by relevant wholesale (as defined).
40. Regulation 16 amends Article 5 (Fresh fruits and vegetables other than potatoes) to clarify that Paragraphs 4 and 6 only apply to food sold loose and Paragraph 5 only applies to foods sold pre-packed (i.e. by direct sale or in open packs) or loose.

Amendment to the Weights and Measures (Quantity Marking and Abbreviations of Units) Regulations 1987

41. Regulation 17 provides that these Regulations are amended as set out in Regulation 18.

42. Regulation 18 amends Regulation 2(1) (quantity marking of containers and units of measurement to be used in marking) to clarify that it does not apply to pre-packed foods subject to FIC.

Amendment to the Weights and Measures (Miscellaneous Foods) Order 1988

43. Regulation 19 provides that the Order is amended as set out in Regulations 20 to 32.
44. Regulation 20 amends the Interpretation of the Order by inserting definitions of “container”, “mass caterer”, “pre-packed” and “relevant wholesale” and “loose”. The purpose is to limit the application of the Order to those foods not covered by the mandatory requirements of FIC. In addition, certain other definitions and references to food legislation have been updated to reflect current food law.
45. “Mass caterer” is defined in line with the definition under FIC.
46. “Pre-packed” is defined to exclude any pre-packed foods subject to the directly applicable requirements of FIC. Therefore, pre-packed in this Order only applies to foods which are made up for direct sale for retail (within the meaning of Article 2(2)(e) FIC) and/or made up in advance for retail sale in an open container. **The effect of this is to limit the scope of the Order so that it no longer applies to any sales of pre-packed foods subject to the requirements of FIC.**
47. “Relevant wholesale” is defined as a sale by wholesale but excludes: sales to a mass caterer; supply of food intended for sale to the final consumer or to a mass caterer, and packaged as such; any other supply of food that is made up in advance ready for retail sale in an open container; or a supply to which Article 8(8) FIC applies (requirement to provide relevant quantity information needed for subsequent compliance where food is supplied to another food business operator). **The effect of this is to limit the scope of the Order so that the provisions of this Order that apply to relevant wholesale do not apply to any transactions subject to FIC.**
48. It is clarified that references to items being “loose” include items packed at the request of the customer.
49. Regulation 21 substitutes a new Article 3 to make it easier to understand the remaining provisions.
50. New Article 3(1)(a) now requires only the pre-packed foods (i.e. by direct sale and/or in open containers) listed in Schedule 1 to be marked with net weight. New Article 3(1)(b) requires net weight marking for cocoa products and chocolate products, solid and paste coffee and chicory products and sugar, when made up in a container for relevant wholesale (i.e. excluding any transactions subject to FIC). Both are subject to the exemptions in column 2 of Schedule 1.
51. New Article 3(2) requires all honey (unless sold loose or in a quantity of less than 5 g) to be marked with net weight. **This is the only provision of this Order that applies to pre-packed foods subject to FIC** and is a national rule permissible

under Article 42 of FIC, which allows Member States to retain provisions for the expression of net quantity to be made in a manner other than that specified in FIC. The retention of this rule avoids doubt over whether honey should be expressed in units of weight or volume (when it is in liquid form) and continues to allow for traditional UK practice of selling honey by weight. There is nothing to prevent units of volume being used in addition to weight.

52. New Article 3(3) and (4) deal with foods sold loose. This does not make any changes to the existing rules, it merely re-writes them to make them easier to understand. The requirement remains that the foods specified in Schedule 1 (except biscuits when sold in a quantity of eight or less (unless they are wafer biscuits which are not cream filled); bread; chunk honey; or comb honey;) must be sold by net weight if they are being sold loose by retail.
53. Regulation 22 amends Article 4 (which allows for quantity to be given in accompanying documents), to limit the scope so that it only applies to pre-packed foods (i.e. for direct sale or in open containers) or relevant wholesale foods (as defined).
54. Regulation 23 amends Article 5 (Biscuits and shortbread) to make a consequential change as a result of changes to Article 3. It also replaces a reference in Article 5(5) to “not pre-packed” with “loose” to clarify that this is all that is now caught by this provision. By virtue of Article 2 “loose” includes foods made up at the request of the consumer. It also substitutes a new paragraph 6 to clarify that this applies to foods sold “loose”.
55. Regulation 24 substitutes a new Article 7 (Caseins and caseinates) to limit the scope of the application of this provision to foods sold pre-packed (i.e. by direct sale or in open containers) or by relevant wholesale (as defined).
56. Regulation 25 amends Article 8 (Cocoa and chocolate products) to limit the scope of the application of paragraph 1 to foods sold pre-packed (i.e. by direct sale or in open containers) or by relevant wholesale (as defined) and paragraph 3 to foods sold loose.
57. Regulation 26 amends Article 9 (Coffee and chicory products) to limit the scope of the application of paragraphs 1 and 2 to foods sold pre-packed (i.e. by direct sale or in open containers) or by relevant wholesale (as defined).
58. Regulation 27 amends paragraph 1 of Article 11 (Milk) to limit its application to foods sold loose or made up in a container for relevant wholesale (as defined).
59. Regulation 28 substitutes a new Article 12 (Preserved Milk) to limit the scope of its application only to foods sold pre-packed (i.e. by direct sale or in open containers) or by relevant wholesale (as defined).
60. Regulation 29 amends Article 14 (Potatoes) to limit its application to foods sold loose.

61. Regulation 30 amends Article 17 (Multipacks) to clarify that this only applies to foods sold pre-packed (i.e. direct sale and open containers) and foods sold by relevant wholesale (as defined).
62. Regulation 31 amends Article 18 (application of Section 25 of the Act as modified in relation to certain foods) to clarify that paragraphs 1 and 2 only apply to foods sold pre-packed (i.e. direct sale and open containers) and foods sold by relevant wholesale (as defined).
63. Regulation 32 substitutes a new Schedule 1 to make it clearer to understand the remaining requirements.

Amendment to the Weights and Measures (Intoxicating Liquor) Order 1988

64. Regulation 33 provides that the Weights and Measures (Intoxicating Liquor) Order 1988 is amended as set out in Regulation 34.
65. Regulation 34 amends Article 6 by substituting a new Paragraph 1 to clarify that the requirement in Schedule 1 to mark quantity by volume only applies to foods sold pre-packed for direct sale in a closed container or, for spirits only, made up in a container for relevant wholesale. It also amends Article 6(2) to limit its scope to foods pre-packed for direct sale. Regulation 34 also includes definitions of “mass caterer” and “relevant wholesale” that apply only to this Article. The result is to exclude from the scope of the labelling requirements in this Order any foods subject to the directly applicable quantity labelling provisions of FIC. There are no changes to specified quantities or any other requirements under the Order.

Amendment to the Weights and Measures (Packaged Goods) Regulations 2006

66. Regulation 35 provides that PGR is amended as set out in Regulations 36 to 38.
67. Regulation 36 amends Regulation 2 on the Interpretation of PGR by inserting new definitions for “food”, “labelling requirements”, “mass caterer” and “pre-packed” and amends the definition of “nominal quantity” to include net quantity as required by FIC.
68. “Food” has the same meaning as in EC Regulation 178/2002.
69. “Labelling Requirements” means any requirements under PGR that require labelling to be carried out (Regulations 5(1)(a), 5(2), 6(1)(a), 6(1)(b), 6(2), 7,8(1) and 8(3)(d)).
70. “Mass caterer” has the same definition as in FIC and “pre-packed” in relation to food has the same meaning as “prepacked food” in FIC.
71. The definition of “nominal quantity” is amended to clarify that marking net quantity under FIC meets the requirement for marking nominal quantity under PGR.
72. Regulation 37 amends Regulation 3 to substitute subparagraph (4)(g), the effect of which is to revoke Schedule 6, but also to insert a new subparagraph (4)(g)

maintaining the exemption in relation to sugar in a quantity of less than 20 g, which is permitted under separate European law (Article 2(2) of Directive 2001/111/EC).

73. Regulation 37 also substitutes a new Regulation 3(6) which has the effect of revoking exemptions that applied to frozen or quick frozen poultry meat or fruits and vegetables. Those exemptions are no longer compatible with EU law. The system of weight classification under Council Regulation (EEC) 1906/90 was repealed by Council Regulation 1047/2009 so the exemption no longer has any effect and can be revoked. The exemption for fruits and vegetables listed in Annex I to Council Regulation 2200/96 was intended to ensure compatibility between the Regulation and the e-marking regime. However, Council Regulation 2200/96 is not considered to be incompatible with e-marking and this exemption can be revoked. This will ensure that packers of fruit and vegetables can choose to apply an e-mark if they meet the requirements.
74. New Article 3(6) limits the application of the labelling requirements under PGR in relation to food to those packages which are marked with the e-mark. This recognises that for e-marked packages the more specific EU rules on weights and measures under Directive 76/211/EEC will continue to apply, but that those rules cannot apply to food packages which are not e-marked and are therefore not within the scope of that Directive. The effect is that food packages to which PGR applies, but which are not e-marked, will continue to benefit from the average system but will be subject to the quantity labelling rules under FIC, rather than PGR. The only exception is that Regulation 8(1) PGR, whereby liquid products may be marked with nominal quantity by weight and packages containing other products may be marked with nominal quantity by volume, where so provided by trade practice, will continue to apply where relevant to food packages subject to FIC. In this case Article 42 of FIC applies which permits retention of such existing rules.
75. Regulation 38 revokes Schedule 6 which contained exemptions from the PGR for small quantities of specific products. Other than in relation to sugar (as to which see paragraph 72 above) these national exemptions are not compatible with FIC and cannot be retained.

Schedule

76. The Schedule comprises a new Schedule 1 to the Weights and Measures (Miscellaneous Foods) Order 1988 substituted by Regulation 32. This is intended to make it clearer to understand the remaining requirements.

ANNEX

Table: Application of different quantity marking regimes.

		Product Categories		
		Prepacked food within the scope of FIC (that is, any single item for presentation as such to the final consumer and to mass caterers, consisting of a food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging)	Packages to which an e-mark is applied	Non e-marked items made up for direct sale by way of retail and/or made up in advance in an open container, loose foods, or foods sold by way of relevant wholesale
Applicable Requirements	Regulation (EU) No 1169/2011 on the provision of food information to consumers (FIC)	Must comply with FIC quantity labelling requirements.	Must comply with FIC, but also subject to more specific rules on quantity labelling under PGR. Where there is a conflict PGR applies.	N/A
	Weights and Measures (Packaged Goods) Regulations 2006 as amended	Must comply with PGR requirements except the quantity labelling requirements.	Must comply with PGR requirements.	N/A
	Weights and Measures (Miscellaneous Foods) Order 1988 as amended	Only in relation to pre-packed honey where it must be marked with net weight.	N/A	Must comply with the requirements of the Miscellaneous Foods Order.
	Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruits and Vegetables, Meat and Poultry) Order 1984 as amended	N/A	N/A	Must comply with the requirements of the Weights and Measures (Cheese, Fish, Fresh Fruits and Vegetables, Meat and Poultry) Order.
	Weights and Measures (Intoxicating Liquor) Order 1988 as amended	Must comply with the requirements of the 1988 Order except the quantity labelling requirements in Article 6.	Must comply with the requirements of the 1988 Order.	Must comply with the requirements of the 1988 Order.

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.