

EXPLANATORY MEMORANDUM TO
InThe Weights and Measures (Packaged Goods) Regulations (Northern Ireland)
2011

SR 2011 no. 331

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 13(1) of the Weights and Measures (Northern Ireland) Order 1981 and section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Regulations are aimed at protecting consumers from short measure and ensuring that they can rely on the accuracy of quantity indications, while making reasonable allowances for the small variations in quantity from package to package which are inherent in the use of automatic packing machinery.
- 2.2. The existing legislation has been recognised as overly complex and burdensome. The proposed Regulations will deregulate and simplify the law on packaged goods and reflect more precisely the wording in the Directives.
- 2.3. The Secretary of State for Trade and Industry reformed legislation in this area in Great Britain by making the Weights and Measures (Packaged Goods) Regulations 2006 (S.I.2006/659). The Northern Ireland Regulations will similarly reform the equivalent NI legislation.
- 2.4. The main changes from the existing legislation are set out below.
- 2.5. Removal of rules on how a packer may dispose of packages that have failed a reference test, and replacement by a new offence, with appropriate defences, of selling a package that was part of a failed batch.
- 2.6. Removal of detailed requirements for checks made by packers or importers to be carried out in accordance with the statutory provisions of the Packers' Code and replacement with a new, straightforward requirement that where checks are made they must be sufficiently rigorous to ensure that packages comply with three packers' rules. The Code and the Inspectors' Manual, however, remain relevant reference material for the understanding of average quantity control procedures in general. However, the guidance which they provide on the requirements of the 1990 Regulations is no longer relevant.
- 2.7. Reducing the requirement for exporters of E-marked packages to give notice to the Trading Standards Service of the Department for each batch of packages to be exported, to a requirement for a one off notice.

- 2.8. Removal of statutory record keeping requirements for retailers who complete baking process for part baked bread and who give notice that they will pack to a minimum standard.
- 2.9. Reduced period of record keeping for packages marked with a best before date.
- 2.10. A consolidation of all statutory provisions, on the average system, into a single set of regulations which includes the relevant provisions of the Weights and Measures (Quantity Marking and Abbreviation of Units) Regulations (Northern Ireland) 1991 (S.R. 1991 No 84). The regulations replace provisions on the average system which were previously spread across primary legislation, secondary legislation and statutory guidance.
- 2.11. The replacement of the existing duty on packers to pass a reference test with a new duty to make up packages in line with the three packers' rules. The three packers' rules are already incorporated into the existing legislation. The first two packers' rules are those that are currently tested by passing the reference test. The third rule was reflected in the requirements of the inadequate package offence in Article 32(5) of the 1981 Order. In the new Regulations compliance with the three packers' rules will be determined by the reference test, but the duty will be to pack to the rules rather than to pass a test.
- 2.12. A more uniform application of the average system to all packages made up in a constant nominal quantity between 5 g or ml and 25 kg or L with fewer modifications or exceptions for special treatment of certain types of goods and packages.
- 2.13. Simpler rules on E-marking and on outer containers.
- 2.14. Simpler enforcement, including replacement of the time limit for conducting reference tests on desiccating products with a new defence; clarification that nominal quantity must include any additional quantities marked on the package; and a new liability for quantity control for a person who affixes an indication of quantity to a package.

3. Background

- 3.1. These Regulations set out a complete regime for the average system of quantity control applied to packaged goods. The aim is to simplify the legislation and rationalise its scope as well as removing unnecessary burdens from packers and importers of packaged goods.
- 3.2. They revoke and replace the existing legislation on packaged goods, Part VI of the Weights and Measures (NI) Order 1981 and the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 1990, which implement Directives 75/106/EEC and 76/211/EEC, governing the quantity control of packaged goods.

4. Consultation

- 4.1. It was not considered necessary to consult on the Regulations in Northern Ireland as a full consultation exercise has already been carried out for the corresponding GB Regulations.

5. Equality Impact

- 5.1. The Regulations have been considered against the criteria set out in the Department's Equality Scheme and do not appear to have any adverse implications for Section 75 groups.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment has been prepared for the proposed Regulations and a summary is set out below.
- 6.2. The re-implementation of the relevant EC directives should achieve an overall reduction in compliance costs for packers and importers of packaged goods by expressing in simpler terms their duties and clarifying the rules governing e-marking under the proposed Regulations.
- 6.3. There will be no significant costs or detriment from this proposal for consumers. There is, however, potential for any savings made by packers to be passed on to consumers.
- 6.4. The simpler system of enforcement and offences and defences may also reduce costs for Trading Standards Service.
- 6.5. In short the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 will update and simplify NI legislation regulating the quantity control of packaged goods and remove unnecessary burdens on packers whilst maintaining safeguards for consumers.

7. Financial Implications

- 7.1. There are limited financial implications for the Department as the Regulations replace existing regulations which are enforced by Trading Standards Service. The simpler system of enforcement and offences and defences may slightly reduce costs for Trading Standards Service.
- 7.2. The Regulations should contribute to an overall reduction in compliance costs for industry by expressing in simpler terms the duties on packers and importers of packaged goods under Directives 75/106/EEC and 76/211/EEC.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department has considered the matter of Community Law and Convention Rights and is satisfied that there are no matters of concern. As set out below the Regulations re-implement a European Community Directive.

9. EU Implications

- 9.1. The Regulations re-implement in simpler and more deregulatory form Directives 75/106/EEC and 76/211/EEC, governing the quantity control of packaged goods.

10. Parity or Replicatory Measure

- 10.1. The Regulations will in essence replicate the provisions of the Weights and Measures (Packaged Goods) Regulations 2006 (S.I.2006/659) in NI.

11. Additional Information

- 11.1. The Regulations, backed by monitoring, enforcement and penalties, place a responsibility on, and an incentive for, the packer to fill the package with the marked amount on average. The consumer therefore benefits from not having to collect information about the quantity or volume in the package, and similarly does not incur the additional costs of verifying that each label is accurate since they can be confident that on average they will get the right amount. This gives consumers confidence when they make their purchases; gives firms an incentive to behave properly and helps the market allocate resources in a way that maximises economic benefit.