
STATUTORY INSTRUMENTS

1988 No. 2040

The Weights and Measures (Miscellaneous Foods) Order 1988

Citation, commencement and revocation

1.—(1) This Order may be cited as the Weights and Measures (Miscellaneous Foods) Order 1988 and shall come into force on 1st January 1989.

(2) The Orders specified in Schedule 3 hereto are revoked to the extent specified in the third column of that Schedule.

Interpretation

2. In this Order, unless the context otherwise requires—

“the Act” means the Weights and Measures Act 1985;

“biscuits” includes wafers, rusks, crispbreads, extruded flatbread, oatcakes and matzos;

“bread” means bread in any form other than breadcrumbs and includes the following, and any part of the following that is to say, fancy loaves and milk loaves, and “loaf” in relation to bread includes a roll and a bap; and for the purposes of this Order any pre-packed sliced bread shall be deemed to be a whole loaf of bread and the pre-packing of sliced bread in any quantity by net weight shall be deemed to be the making for sale of a whole loaf of bread of that net weight;

“casein” and “caseinate” have the same meanings as they have in the Caseins and Caseinates Regulations 1985(1);

“chicory”, “chicory extract paste”, “coffee”, “coffee mixture”, “coffee extract paste”, “instant chicory”, “instant coffee”, “liquid chicory extract” and “liquid coffee extract” have the same meanings as they have in the Coffee and Coffee Products Regulations 1978(2);

“chocolate confectionery”, “flour confectionery” and “sugar confectionery” have the same meanings as they have in the Food Labelling Regulations 1984(3), except that “flour confectionery” includes food containing a filling which has as an ingredient vegetable protein material or microbial protein material;

“cocoa product”, “chocolate product”, “fancy chocolate product”, “container” in relation to these products and “reserved description” have the same meanings as they have in the Cocoa and Chocolate Products Regulations 1976(4); except that

“cocoa product” and “chocolate product” shall include a product specially prepared for diabetics or to which a slimming claim (as defined in the said Regulations) is lawfully applied and which has been specially prepared in connection with that claim by the addition of any ingredient other than an edible substance as so defined;

“coffee bag” means a permeable sealed bag, which is intended to be immersed in water in the course of preparation to drink, containing coffee or a coffee mixture, or a mixture of any of those products and instant coffee, which consists predominantly of coffee or a coffee mixture;

(1) S.I. 1985/2026.

(2) S.I. 1978/1420; relevant amending instruments are S.I. 1982/254, 1987/1986.

(3) S.I. 1984/1305, to which there are amendments not relevant to this Order.

(4) S.I. 1976/541; relevant amending instruments are S.I. 1982/17, 1984/1305.

“condensed milk” and “dried milk” have the same meanings as they have in the Condensed Milk and Dried Milk Regulations 1977(5);

“liquid coffee and chicory products” means liquid coffee extract and liquid chicory extract, and blends thereof;

“milk” means cows' milk in any liquid form other than that of condensed milk (including evaporated milk) or of cream;

“potatoes” means potatoes in the state in which they were harvested or in that state apart from cleaning; “preserved milk” means condensed milk (including evaporated milk) or dried milk; “solid and paste coffee and chicory products” means instant coffee, coffee extract paste, instant chicory, chicory extract paste, and blends thereof, and extracts of blends of roasted coffee and roasted chicory.

General requirements for certain foods to be pre-packed in prescribed quantities and their containers to be quantity marked or, when not pre-packed, to be sold by retail by quantity

3.—(1) Subject to the following provisions of this Order, the foods specified in column 1 of Schedule 1 to this Order, other than chunk honey and comb honey and cut lump salt, shall be pre-packed or, in the case of sugar, otherwise made up in a container for sale, only if they are made up in one of the quantities by net weight, or, in the case of milk, by capacity measurement, specified in column 2 in relation to the foods, subject to the exceptions specified in column 3.

(2) Subject to the following provisions of this Order, the foods specified in column 1 of Schedule 1 to this Order, other than cut lump salt and milk, shall be pre-packed or, in the case of honey, cocoa products and chocolate products, solid and paste coffee and chicory products and sugar, otherwise made up in a container for sale, only if the container is marked with an indication of quantity by net weight, subject to the exemptions specified in column 4.

(3) Subject to the following provisions of this Order, the foods specified in column 1 of Schedule 1 to this Order, other than bread and chunk honey and comb honey and milk, shall, when not pre-packed, if sold by retail be sold only by net weight, subject to the exceptions specified in column 5.

Provision for the containers of certain foods not sold by retail to be accompanied by a document indicating quantity

4.—(1) In the case of solid and paste coffee and chicory products, cocoa products and chocolate products, honey, caseins and caseinates or preserved milk for human consumption pre-packed or otherwise made up in a container for sale, the information required by article 3(2) above or, as the case may be, 7, 9(2) or 12 below to be marked on the container may, if:—

- (a) the foods are not sold by retail; and
- (b) the net weight of the foods is not less than the particular quantities specified in paragraph (2) below in relation to the foods,

be given at the time when they are sold in a document accompanying the container and containing an indication of quantity by net weight expressed in the case of honey in both imperial and metric units of measurement and in other cases in metric units only.

(2) The quantities referred to in paragraph (1) above are:

solid and paste coffee and chicory products	5 kg
cocoa products and chocolate products	10 kg
honey	10 kg

(5) [S.I. 1977/928](#); the relevant amending instrument is [S.I. 1986/2299](#).

caseins and caseinates	10 kg
preserved milk for human consumption	10 kg

Special provisions in respect of particular foods **Biscuits and shortbread**

5.—(1) Article 3(1) and (2) above shall not apply in relation to biscuits which have been pre-packed on the same premises as those on which they were produced, where either:—

- (a) the biscuits are in the possession of the producer for sale by him by retail on those premises; or
- (b) if the producer has agreed to sell or has sold the biscuits, he agreed to sell or sold them by retail on those premises.

(2) Biscuits to which paragraph (1) above applies (other than wafer biscuits which are not cream-filled) shall be pre-packed only if the container is marked with an indication of quantity by net weight:

Provided that there shall be exempted from the requirements of this paragraph biscuits pre-packed in a quantity not exceeding 100 g.

- (3) Shortbread shall be pre-packed only if the container is marked with an indication of quantity by net weight:

Provided that there shall be exempted from the requirements of this paragraph shortbread—

- (a) where made up in a quantity not exceeding 50 g; or
- (b) consisting of a piece or pieces each weighing 200 g or more if the number of pieces in the container, if more than one, is marked on the container or is clearly visible and capable of being easily counted through the container.

(4) Wafer biscuits which are not cream-filled shall be pre-packed only if the container is marked with an indication of quantity by number or, in the case of a container marked with the EEC mark within the meaning of section 54 of the Act, only if it is marked with an indication of quantity by net weight.

(5) Wafer biscuits which are not cream-filled and which are not pre-packed shall if sold by retail be sold only by number.

(6) Shortbread, except where the quantity does not exceed eight pieces, shall, when not pre-packed, if sold by retail be sold only by net weight.

Bread

6.—(1) Subject to paragraph (2) below, a whole loaf of bread of a net weight exceeding 300 g, when not pre-packed, shall be made for sale only if it is of a net weight of 400 g or a multiple of 400 g.

(2) There shall be exempted from the requirements of paragraph (1) above any sale in pursuance of a contract for the supply of bread for consumption on the premises of the buyer if the contract provides for each delivery of bread thereunder to be of a specified aggregate quantity of not less than 25 kg and for the weighing of the bread on delivery.

Caseins and caseinates

7. Caseins and caseinates for human consumption in a quantity of not less than 5 g shall be pre-packed or otherwise made up in a container for sale only if the container is marked with an indication of quantity by net weight.

Cocoa and chocolate products

8.—(1) Subject to paragraph (2) below, cocoa products and chocolate products not specified in Schedule 1 to this Order shall be pre-packed or otherwise made up in a container for sale only if the container is marked with an indication of quantity by net weight:

Provided that there shall be exempted from the requirements of this paragraph products pre-packed in a quantity by net weight of less than 50 g.

(2) Nothing in paragraph (1) above shall require a container to be marked with an indication of quantity by net weight if it is a container in which fancy chocolate products are pre-packed, except that when the products are on sale by retail the exemption provided by this paragraph shall apply only if an indication of quantity by net weight is given on a ticket or notice displayed on or in immediate proximity to the products.

(3) Except in the case of an article the net weight of which is less than 50 g, cocoa products and chocolate products which are not pre-packed shall, when sold by retail, be sold only by net weight.

Coffee and chicory products

9.—(1) Liquid coffee and chicory products in a quantity of not less than 5 ml shall be pre-packed or otherwise made up in a container for sale only if the container is marked with an indication of quantity by capacity measurement.

(2) Where the contents of a container in which solid and paste coffee and chicory products or liquid coffee and chicory products are pre-packed or otherwise made up for sale consists of packs of such products not intended for individual sale, the container shall, in addition to any marking required by article 3(2) and paragraph (1) above, be marked with the total number of such packs.

Liquid edible oil

10 Liquid edible oil shall be pre-packed only if the container is marked with an indication of quantity by volume:

Provided that there shall be exempted from the requirements of this article liquid edible oil pre-packed in a quantity of less than 5 ml or more than 20 L.

Milk

11.—(1) Milk which is not pre-packed shall be sold only by capacity measurement or by net weight.

(2) If in the case of any pre-packed milk made up in a quantity of less than ½ pt its container is clearly and conspicuously marked with a statement in writing that it is not for sale otherwise than by means of a vending machine, then, notwithstanding that the milk is made up in a quantity other than one of those specified in column 2 of Schedule 1 to this Order in relation to milk, a person shall not by reason only of that fact be guilty of an offence under section 25(2) of the Act—

- (a) in respect of a sale of that milk by that or any other person if the sale is by means of a vending machine or is otherwise than by retail; or
- (b) in respect of the possession of that milk by that or any other person if the milk is shown to be in that possession—
 - (i) for sale by means of a vending machine which complies with paragraph (3) below; or
 - (ii) for sale otherwise than by retail; or
 - (iii) for delivery after sale otherwise than by retail.

(3) Milk shall be sold by means of, or offered or exposed for sale in, a vending machine only if there is displayed on or in the machine—

- (a) an indication of the quantity by capacity measurement of the milk comprised in each item for sale by means of that machine; and
- (b) except where the machine is on premises at which the seller carries on business, a statement of the name and address of the seller.

Preserved milk

12. Preserved milk for human consumption in a quantity of not less than 5 g shall be pre-packed or otherwise made up in a container for sale only if the container is marked with an indication of quantity by net weight.

Potatoes

13.—(1) Where at any premises other than a vehicle or ship any potatoes have been sold by weight when made up in a container, and the sale is otherwise than by retail, the buyer may require all or any of the following weighings to be carried out at those premises, that is to say—

- (a) a weighing of that container while the potatoes are therein;
- (b) a weighing of that container after the removal of the potatoes therefrom;
- (c) a weighing of a similar container which is empty,

and thereupon the seller shall either carry out or permit the buyer to carry out the weighing or weighings so required; and if the seller without reasonable cause contravenes this requirement he shall be guilty of an offence.

(2) The occupier of any premises at which any potatoes are made up in a container for sale by weight otherwise than by retail, or of any premises (other than a vehicle or ship) at which such potatoes so made up are so sold, shall provide suitable weighing equipment and make that equipment available for any weighing or weighings required under the foregoing paragraph to be carried out at those premises; and if he without reasonable cause contravenes any of the requirements of this paragraph he shall be guilty of an offence.

(3) Any person guilty of an offence under this article shall be liable on summary conviction to a fine not exceeding £2,000.

14. Potatoes which are not pre-packed shall, if sold by retail, be sold only—

- (a) by net weight; or
- (b) if the food is sold in a container which does not exceed the appropriate permitted weight specified in the Table in Schedule 2 to this Order, either by net weight or gross weight.

Miscellaneous foods to be marked when pre-packed with quantity by number

15.—(1) Subject to paragraph (2) below, foods of any of the following descriptions, that is to say—

- (a) cereal biscuit breakfast foods, other than foods in the case of which none of the biscuits weighs more than 10 g;
- (b) flour confectionery, except when consisting of uncooked pastry or uncooked pastry cases, not containing any filling, or shortbread;
- (c) fruit preservative tablets, rennet tablets, saccharin tablets, soft drink tablets and sweetening tablets;
- (d) shell eggs;
- (e) vanilla pods;
- (f) capsule and tablet foods,

shall be pre-packed only if the container is marked with an indication of quantity by number.

- (2) There shall be exempted from the requirements of this article—
- (a) flour confectionery, if the number of items in the container is clearly visible and capable of being easily counted through the container; and
 - (b) any foods in a quantity by number of one.

Other pre-packed foods

16.—(1) This article applies to foods of any description which are not goods—

- (a) required by any other provision of this Order or under or by virtue of any other provision of the Act to be pre-packed only if the container is marked with an indication of quantity; or
- (b) in the case of which when sold pre-packed (whether on any sale or on a sale of any particular description) the quantity of the goods sold expressed in a particular manner is required by or under any such provision to be made known to the buyer at or before a particular time; or
- (c) expressly exempted by any such provision from all such requirements which would otherwise apply thereto.

(2) Subject to paragraph (3) below, foods to which this article applies shall be pre-packed only if the container is marked with an indication of quantity either by net weight or by capacity measurement.

(3) The following shall be exempted from the requirements of this article, that is to say—

- (a) bread and bun loaves, fruit loaves, malt loaves and fruited malt loaves;
- (b) food to which articles 4 and 5 of the Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruits and Vegetables, Meat and Poultry) Order 1984⁽⁶⁾ apply, other than dates;
- (c) freeze drinks in a quantity of less than 50 ml;
- (d) herbs, whole and sifted except saffron, in a quantity of less than 25 g;
- (e) iced lollies and water ices;
- (f) intoxicating liquor to which article 6 of the Weights and Measures (Intoxicating Liquor) Order 1988⁽⁷⁾ applies;
- (g) milk;
- (h) potato crisps and other similar products commonly known as snack foods in a quantity of less than 1 oz up to and including 30th June 1989 and thereafter in a quantity of less than 25 g;
- (i) single portion vending machine beverage packs in a quantity of less than 25 g or of less than 25 ml whether or not they contain other foods to which this article does not apply;
- (j) single toffee apples;
- (k) soft drinks of any description in a syphon;
- (l) sugar confectionery consisting of rock or barley sugar in sticks or novelty shapes;
- (m) sugar confectionery not included in sub-paragraph (l) above, and chocolate confectionery, in a quantity of less than 50 g;
- (n) goods of any other description, except saffron, in a quantity of less than 5 g or of less than 5 ml.

⁽⁶⁾ S.I. 1984/1315, as amended by S.I. 1985/988, 1980.

⁽⁷⁾ S.I. 1988/2039.

Multipacks

17.—(1) Nothing in the previous provisions of this Order shall require any container to be marked with any information or to enclose foods of a particular quantity if all the following provisions are satisfied:—

- (a) the contents of the container in which any foods to which the Order applies are pre-packed or otherwise made up in the container for sale consist of two or more packs of goods;
- (b) where the goods in any pack, if sold individually, would be required by the Order to be made up in a specified quantity, the goods in any such pack are so made up;
- (c) where any pack, if sold individually, would be required by the Order to be marked with an indication as to the quantity of the goods, the pack is so marked;
- (d)
 - (i) the container is marked with a description of the goods in each pack, the total number of packs containing goods of each description and where paragraph (c) above applies with an indication as to the quantity of the goods in each such pack; or
 - (ii) where each pack to which paragraph (c) above applies contains the same quantity of identical goods, an indication as to the quantity of the goods in at least one such pack is clearly visible, and the total number of such packs is clearly visible and capable of being easily counted, through the container, or
 - (iii) where each pack does not contain goods of the same description or does contain such goods but does not contain them in the same quantity, an indication as to the quantity of any goods in each pack to which paragraph (c) above applies, or if there are two or more identical such packs an indication as to the quantity of the goods in at least one of them, is clearly visible, and the total number of such packs of each description is clearly visible and capable of being easily counted, through the container.

(2) Where the provisions of both article 4 and paragraph (1) above apply in a particular case, the information permitted by paragraph (1)(d)(i) above to be marked on the container may be given in a document accompanying the container.

Application of section 25 of the Act as modified in relation to certain foods

18.—(1) Section 25(2) and (3) of the Act shall apply in the case of any solid and paste coffee and chicory products, cocoa products and chocolate products, honey, caseins and caseinates or preserved milk for human consumption pre-packed or otherwise made up in a container for sale where the information required by article 3(2), 7, 9(2) or 12, or permitted by article 17 (1)(d)(i), to be marked on the container is given in a document accompanying the container in accordance with article 4 or 17(2) with the following modifications:—

- (a) in section 25(2) the words “whether the sale is, or is to be, by retail or otherwise” shall be omitted; and
- (b) in paragraphs (d) and (e) of section 25(3)—
 - (i) after the word “information” there shall be inserted the words “or is accompanied by a document containing particular information”; and
 - (ii) after the words “so marked” there shall be inserted the words “or accompanied”.

(2) Where subsections (2) and (3) of section 25 of the Act apply by virtue of paragraph (1) above, a person shall not be guilty of an offence under the said subsection (2) by reason only of—

- (a) having in his possession for sale, or
- (b) having in his possession for delivery after sale, or
- (c) causing or suffering any other person to have in his possession for sale or for delivery after sale,

solid and paste coffee and chicory products, cocoa products and chocolate products, honey, caseins and caseinates or preserved milk for human consumption pre-packed or otherwise made up in a container for sale otherwise than in a container so accompanied.

16th November 1988

Eric Forth
Parliamentary Under-Secretary of
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