

EXPLANATORY MEMORANDUM TO
THE WEIGHTS AND MEASURES (SPECIFIED QUANTITIES) (PRE-PACKED
PRODUCTS) REGULATIONS 2009

2009 No. 663

1. This explanatory memorandum has been prepared by the Department for Innovation, Universities and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations repeal all specified or prescribed quantities (the fixed sizes certain products must be sold in) for all pre-packaged goods except wines and spirits and amend the prescribed quantities for pre-packaged wines and spirits by reducing the ranges that are covered and adding new sizes.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Regulations implement Directive 2007/45/EC laying down rules on nominal quantities for prepacked products by amending Schedules 4, 5, 6 and 7 of the Weights and Measures Act 1985 and subordinate legislation made under section 22 of that Act, namely the Weights and Measures (Knitting yarns) Order 1988 (SI 1988/895), the Weights and Measures (Intoxicating Liquor) Order 1988 (SI 1988/2039) and the Weights and Measures (Miscellaneous Foods) Order 1988 (SI 1988/2040). The Regulations also make a minor consequential amendment to the Aerosol Dispensers (EEC Requirements) Regulations 1977 (SI 1977/1140). A transposition note is attached.

4.2 Explanatory Memorandum on "Amended proposal for a Directive of the European Parliament and of the Council laying down rules on nominal quantities for pre-packed products, repealing Council Directive 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC" Council Document Number: 8680/06 was submitted by the Department of Trade and Industry on 13th June 2006. The Commons European Scrutiny Committee considered it politically important and cleared it (Report No. 32, Item No. 27477, Session 05/06). The Lords Select Committee on the EU referred it to Sub-Ctte G (Progress of Scrutiny: 18th December 2006, Session 06/07).

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

Lord Paul Drayson of Kensington, Minister of State for Science and Innovation, has made the following statement regarding Human Rights:

In my view the provisions of The Weights and Measures (Specified Quantities) (Pre-packed Products) Regulations 2009 are compatible with the Convention rights

7. Policy background

7.1 The policy aim of deregulating specified quantities for pre-packaged goods, except wines and spirits, is to reduce burdens on business by giving packers the freedom to pack in any size and to give consumers greater choice.

7.2 Under existing legislation the UK has in place restrictions on the use of pack size for approximately 30 categories of goods, mainly foods, although some pre-packaged solid fuel, ballast, and ready mixed cement mortar and ready mixed concrete are also regulated. The original purpose behind these restrictions was to ensure that consumers could be certain that a range of packaged products, reflecting the staples of the time, would be sold in standard quantities. This enabled consumers to make cost and value comparisons between different sizes and brands more easily and protected them from marginal reductions in pack size. However, it also restricted the choice available to consumers and limited the freedom that producers had in responding to demand, restricting innovation in packaging and product development.

7.3 Since the introduction of specified quantities in the UK in the 1960s, advances in consumer protection have been made which ensure that almost all pre-packaged foods made up in a constant nominal weight or volume are required to be labelled with their quantity. In addition, unit price information (e.g. price per kilo or per litre) must be displayed in all large retail stores, making it easier for consumers to make comparisons between a much wider range of pack sizes and products. These newer methods of consumer protection provide consumers with the information they need without restricting their choice of pack size and apply to many more products than the limited range covered by specified quantities.

7.4 The deregulation of specified quantities will give greater freedom to packers and retailers to make up and sell their products in any size to meet demand and will also give greater choice to consumers. In addition, the removal of specified quantities in other Member States will ensure that UK exports will no longer be subject to any restrictions on pack size across the European Union, except for wines and spirits. It will also remove an anomaly whereby, following a European Court of Justice Case (ref C-3/99 Cidrerie Ruwet 2000 ECR I-8749), national rules on specified quantities could not be applied to imports legally manufactured or marketed in another Member State. This created a market where domestic goods were subject to more restrictive rules than imports.

7.5 For wines and spirits mandatory restrictions will remain across all Member States, recognising the unique properties of alcohol.

7.6 The main changes implemented by the Regulations are:

- Deregulation of specified quantities for over 30 categories of pre-packaged goods.
- A reduction in the range of sizes of pre-packaged spirits subject to specified quantities so that those outside the range 100 ml to 2000 ml will no longer be regulated.
- The addition of the 1750 ml size for pre-packaged spirits.
- A reduction in the range of sizes of pre-packaged still wines subject to specified quantities so that those outside the range 100 ml to 1500 ml will no longer be regulated.
- The removal of the restriction on the use of the 187 ml size for pre-packaged still wines, which limited its use to duty free sales.
- Derogation from Directive 75/324/EEC, with the result that aerosols are now only required to be marked by volume rather than weight and volume.

7.7 The Department has no plans at present to issue a Consolidated Text for any of the legislation being amended.

8. Consultation outcome

8.1 The Department for Innovation, Universities and Skills consulted with stakeholders on the implementation of Directive 2007/45/EC between 23rd October 2008 and 1st January 2009, for a period of 10 weeks. This slightly condensed consultation period was necessary in order to ensure implementation of the Directive by 11 April 2009 and publication of the guidance for business 10 weeks before the Regulations come into force. A total of 127 responses were received to the consultation, which also covered the future of specified quantities for non pre-packaged alcohol and unwrapped bread which are not within the scope of the Directive or these Regulations.

8.2 The main question on which views were sought with regard to implementation of the Directive was whether the UK should take advantage of an optional extended transitional period up to October 2012 (2013 for white sugar) whereby existing restrictions on pack size could be maintained for butter, dried pasta, milk and coffee and white sugar. The vast majority of respondents including a majority of consumers, businesses and enforcement officers favoured deregulating all products in April 2009, thereby not making use of the optional extensions. The Government's Response to this question was published on 23rd January.

9. Guidance

9.1 Guidance for business explaining the changes to specified quantities being made in these Regulations was published on 23rd January. It was circulated directly to all those who responded to the consultation and has been published on the website of the National Weights and Measures Laboratory.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal. The Regulations are removing a burden by giving business freedom to pack in any size. No new burdens will be imposed as packers will be free to pack in any size including

those they currently use. From April only pre-packaged wines and spirits will be required to be made up in specified quantities and the Regulations are simply maintaining and updating the existing restrictions that apply to wines and spirits.

10.2 The impact on the public sector is minimal. There may be some small savings for Trading Standards Departments as specified quantities will cover fewer products. However, Trading Standards will still be responsible for enforcing quantity labelling requirements on those products, so any savings would be marginal.

10.3 An Impact Assessment to accompany the Regulations has not been prepared as there are no new burdens being imposed on the private or voluntary sector.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that as the Regulations are giving greater freedom to business, that this should apply equally to small business and no additional action is necessary.

12. Monitoring & review

12.1 The operation of weights and measures legislation is subject to regular review via a bi-annual meeting of the National Weights and Measures Laboratory, the Local Authority Co-ordinators of Regulatory Services (LACORS) and the Trading Standards Institute. The National Weights and Measures Laboratory will invite feedback on the operation of The Regulations once they are in place.

13. Contact

Lynnette Falk at the Department for Innovation, Universities and Skills Tel: 0207 215 0109 or email: lynnette.falk@dius.gsi.gov.uk can answer any queries regarding the instrument.

Transposition Note

The Weights and Measures (Specified Quantities) (Pre-packed Products) Regulations 2009 (“the Regulations”) implement Directive 2007/ 45/ EC of the European Parliament and the Council laying down rules on nominal quantities for pre-packed products, repealing Council Directives 75/106/EEC and 80/232/ EEC and amending Council Directive 76/211/EEC (“the Directive”).

The Regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Article	Objective	Implementation	Responsibility
1.2	Wines and spirits sold in duty-free shops for consumption outside the European Union to be exempt from restrictions on the placing on the market of pre-packed wines and spirits made up otherwise than in nominal quantities.	Regulation 4(3) amends the Weights and Measures (Intoxicating Liquor) Order 1988 by inserting an appropriate exemption.	Secretary of State
2.1	Removal of restrictions on the placing on the market of pre-packed products (other than wines and spirits) made up otherwise than in nominal quantities.	Regulation 2 amends Schedules 4, 5 and 6 to the Weights and Measures Act 1985 (which make provision for nominal quantities) so as to limit their application to products which are not pre-packed. Regulations 3 and 5 exempt pre-packed products (other than wines and spirits) from provision for	Secretary of State

		nominal quantities in orders made under section 22 of the Weights and Measures Act 1985	
3 and Schedule	Pre-packed wines and spirits to be placed on the market only in nominal quantities.	Regulation 4 makes appropriate provision for nominal quantities for pre-packed wines and spirits by partially revoking Schedule 1 to the Weights and Measures (Intoxicating Liquor) Order 1988 and inserting into the 1988 Order a new Schedule A1 applicable to those products.	Secretary of State
4.1	Nominal total capacity of aerosol dispensers to be indicated.	Regulation 2 amends Schedule 7 to the Weights and Measures Act 1985 so as to require that aerosol dispensers be marked with an indication of total capacity.	Secretary of State
4.2	Indication of the nominal weight of aerosol dispensers no longer to be obligatory.	Regulation 2 confines quantity indication requirements to the indication of the net volume of the container.	Secretary of State
5	Nominal quantities for pre-packed wines and spirits to	Regulation 4(3) amends the Weights and Measures	Secretary of State

	apply to each prepackage contained in a multipack.	(Intoxicating Liquor) Order 1988 by inserting provision in relation to multipacks.	
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