
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make the necessary adjustments to remove provisions of national weights and measures law that overlap or conflict with Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers (“the FIC Regulation”). These Regulations enable the enforcement of certain provisions of the FIC Regulation, to the extent that the provisions relate to net quantity. The FIC Regulation sets out common principles, requirements and procedures in relation to food information.

These Regulations amend the Weights and Measures Act 1985 (1985 c.72), the Weights and Measures (Miscellaneous Foods) Order 1988 (S.I. 1988/2040), the Weights and Measures (Intoxicating Liquor) Order 1988 (S.I. 1988/2039), the Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruits and Vegetables, Meat and Poultry) Order 1984 (S.I. 1984/1315), the Weights and Measures (Quantity Marking and Abbreviations of Units) Regulations 1987 (S.I. 1987/1538) and the Weights and Measures (Packaged Goods) Regulations 2006 (S.I. 2006/659).

The national provisions are amended to remove from their scope items falling within the definition of “prepacked food” in Article 2(2)(e) of the FIC Regulation. Due to differences between the definition of “pre-packed” under national legislation (section 94(1) of the Weights and Measures Act 1985), and the definition of “prepacked food” under the FIC Regulation, the national legislation must, on the whole, be maintained, in order to regulate the residual categories that are caught by the national legislation but are not within the scope of the FIC Regulation. Those categories are items that are a) made up for direct sale (within the meaning of the FIC Regulation) by way of retail and/or b) made up in advance ready for retail sale in an open container. Items caught by b) include items that are packaged in the form in which they will be presented for retail sale (where that is in an open container), without further processing or labelling. Both of these categories are captured by the definition of “pre-packed” but do not fall within the scope of “prepacked food” under the FIC Regulation. Consequential amendments have been made to clarify what is meant by “not pre-packed”, which in practice now includes only foods sold loose, and “otherwise made up in a container for sale”, which in practice now includes only foods that are made up in a container for wholesale that do not otherwise fall within the scope of the FIC Regulation or within the scope of limb b) of the definition of “pre-packed” referred to above.

Regulations 3 and 4 and 6 to 10 amend certain provisions of the Weights and Measures Act 1985 to enable the offence and enforcement provisions of that Act to apply, where relevant, to products regulated by the FIC Regulation.

Regulation 5 inserts a new offence into the Weights and Measures Act 1985 for non-compliance with certain requirements of the FIC Regulation. Those requirements are the provisions of Article 8 (where applicable) and Chapter V, in each case to the extent that they relate to net quantity, and Article 9(1)(e). Article 8 sets out responsibilities of food business operators. Chapter V sets out mandatory requirements where food information is provided on a voluntary basis. Article 9(1)(e) provides for the net quantity requirement, which must be applied in accordance with the relevant provisions of Articles 10 to 35, which includes Article 23 (net quantity) and by reference Annex IX (technical rules relating to net quantity).

Regulation 12 removes products subject to the FIC Regulation from the scope of paragraphs 2 to 4 of Schedule 7.

Regulations 15 and 16 amend the Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruits and Vegetables, Meat and Poultry) Order 1984 to exclude products that are within the scope of prepacked

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food as defined in the FIC Regulation and to clarify which products remain within the scope of that Order.

Regulation 18 amends the Weights and Measures (Quantity Marking and Abbreviations of Units) Regulations 1987 to clarify that Part II of those Regulations does not apply to products that are within the scope of the FIC Regulation.

Regulations 21 to 32 amend provisions of the Weights and Measures (Miscellaneous Foods) Order 1988 to exclude products that are within the scope of prepacked food as defined in the FIC Regulation and to clarify which products remain within the scope of that Order.

Regulation 34 substitutes Article 6 of the Weights and Measures (Intoxicating Liquor) Order 1988, to exclude intoxicating liquor and other liquids specified in column 1 of Schedule 1 to that Order that are within the scope of prepacked food as defined in the FIC Regulation and to clarify which products remain within the scope of that Order.

Regulations 37 and 38 amend regulation 3 to revoke exemptions from the Weights and Measures (Packaged Goods) Regulations 2006 for small quantities of specific products listed in Schedule 6, other than in relation to sugar, a specific exemption for which is provided in Article 2(2) of Council [Directive 2001/111/EC](#) of 20 December 2001 relating to certain sugars intended for human consumption; this can be maintained in accordance with Article 11 of the FIC Regulation. Regulation 37 also revokes exemptions in relation to fruits and vegetables listed in Annex I to Council Regulation 2200/96 and frozen poultry meat. These exemptions are no longer compatible with EU law.

Regulation 37 also provides for a new regulation 3(6), which limits the application of the labelling requirements (as defined) under the Weights and Measures (Packaged Goods) Regulations 2006 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, in accordance with Article 11 of the FIC Regulation. For pre-packed food that is not e-marked, the provisions of the FIC Regulation will apply and therefore those items are excluded from the quantity labelling requirements of the Weights and Measures (Packaged Goods) Regulations 2006 (other than in relation to Regulation 8(1) of the Weights and Measures (Packaged Goods) Regulations 2006 to the extent that trade practice provides that liquid products may be marked with nominal quantity by weight and that packages containing other products may be marked with nominal quantity by volume; this can continue to be applied to pre-packed food that is not e-marked, in accordance with Article 42 of the FIC Regulation).

An impact assessment was undertaken at the EU level in relation to the FIC Regulation, which is available from http://ec.europa.eu/food/food/labellingnutrition/foodlabelling/publications/ia_general_food_labelling.pdf. Copies can be obtained from the National Measurement Office, Department for Business, Innovation and Skills, Stanton Avenue, Teddington, TW11 0JZ. The changes made by these Regulations do not impact directly on the costs of businesses, the voluntary sector or the public sector.