
STATUTORY INSTRUMENTS

2006 No. 659

The Weights and Measures (Packaged Goods) Regulations 2006

Citation, commencement, revocation and extent

1.—(1) These Regulations may be cited as the Weights and Measures (Packaged Goods) Regulations 2006 and shall come into force on 6th April 2006.

(2) The enactments listed in Part 1 of Schedule 1 are repealed or revoked, and the enactments listed in Part 2 of Schedule 1 are amended, to the extent there specified.

(3) These Regulations do not extend to Northern Ireland.

Interpretation

2. In these Regulations—

“batch” means a group of packages selected in accordance with the provisions of Schedule 2 for the purposes of conducting a reference test;

“bread” means bread in the form of single loaves (whether or not sliced);

“cosmetic product” has the meaning given by regulation 3 of the Cosmetic Products (Safety) Regulations 2004(1);

“credentials”, in relation to an inspector, means written authority, given by the local weights and measures authority who appointed him, for the inspector to exercise the powers conferred on inspectors by these Regulations;

“the E-mark” means a letter ‘e’, at least 3 mm high, having the form shown in Schedule 4;

“importer” means, in relation to a package or outer container, the person by whom, or on whose behalf, the package or outer container is brought into the United Kingdom;

“inspector” means an inspector of weights and measures appointed under section 72(1) of the 1985 Act;

“knitting yarn” means knitting yarn consisting of natural fibres (whether animal, vegetable or mineral), chemical fibres, or a mixture of such fibres;

“local weights and measures authority” has the same meaning as in section 69 of the 1985 Act;

“Member State” means a member State, Norway, Iceland or Liechtenstein;

“negative error” means the quantity by which the contents of a package are less than the nominal quantity;

“nominal quantity” means the weight or volume marked on or in respect of a package pursuant to regulation 5(1)(a) or 6(1)(a), or entered in a record made under regulation 5(2) or 6(2);

“outer container” means a container which contains two or more items, at least one of which is a package to which these Regulations apply, provided that:

(a) the items were placed in the container without the purchaser being present;

- (b) the items cannot be removed from the container without the container being opened or undergoing a perceptible modification; and
- (c) the container is intended, or would normally be regarded as appropriate, for sale to an ultimate consumer as the outermost layer of packaging;

“package” means the combination of a product and the individual package in which it is packed, provided that:

- (a) the product is placed in the package without the purchaser being present; and
- (b) except in the case of knitting yarn, the quantity of the product in the package cannot be altered without the package being opened or undergoing a perceptible modification;

“packer” means the person who placed the product in the package or the packages in the outer container;

“reference test” means the tests set out in Schedule 2;

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

“the 1986 Regulations” means the Weights and Measures (Packaged Goods) Regulations 1986(2);

“tolerable negative error” means the amount set out in the table in Schedule 3 in relation to the nominal quantity of the package.

Scope of application

3.—(1) Subject to paragraphs (2) to (6), these Regulations apply to:

- (a) packages intended for sale in constant unit nominal quantities which are:
 - (i) equal to values predetermined by the packer;
 - (ii) expressed in units of weight or volume; and
 - (iii) of not less than 5 grams or 5 millilitres and not more than 25 kilograms or 25 litres;
- (b) outer containers.

(2) These Regulations also apply to bread which is sold either unwrapped or in open packets if:

- (i) it has been made up to a pre-determined constant quantity; and
- (ii) it is intended for sale in constant unit nominal quantities expressed in units of weight, which are not less than 300 grams per loaf and not more than 10 kilograms per loaf.

(3) Schedule 5 sets out modifications in the application of these Regulations to bread.

(4) These Regulations do not apply to packages which are not marked with the E-mark and which:

- (a) contain a product which is intended solely for use in, or in connection with, a process or treatment in the course of a trade or business;
- (b) contain a product which is:
 - (i) intended, and which would normally be regarded as appropriate, for sale to an ultimate consumer; and
 - (ii) made up in quantities of less than 5 grams or 5 millilitres;

where the packages are not intended, or would not normally be regarded as appropriate, for sale to an ultimate consumer;

- (c) contain a single application of a cosmetic product;
- (d) are intended for despatch outside the United Kingdom;

- (e) are intended for use by Her Majesty's forces or by a visiting force within the meaning of any of the provisions of Part I of the Visiting Forces Act 1952(3);
 - (f) are intended for use as stores within the meaning of the Customs and Excise Management Act 1979(4) in a ship, aircraft or hovercraft on a voyage or flight to an eventual destination outside Great Britain; or
 - (g) contain a product listed in Schedule 6 in a quantity less than the predetermined constant quantity there shown against that product.
- (5) Regulations 4, 5, 6, 8, and 9 shall not apply to a package or an outer container which has been:
- (a) packed in, or imported into, a Member State other than the United Kingdom;
 - (b) marked with the E-mark in accordance with the law of that Member State; and
 - (c) marked with the name and address of the person in that Member State who packed or imported the package or outer container, or who arranged for the package or outer container to be packed,

if, after the package or outer container has left that Member State, at least one of the following conditions is satisfied in relation to it:

- (a) it has not entered a country which is not a Member State;
 - (b) it has been sealed at all times in a container bearing a customs seal;
 - (c) there has been no reasonable opportunity for any person to alter the quantity of the product contained within it.
- (6) These Regulations do not apply to:
- (a) a package of frozen or quick frozen poultry meat which is classified by weight category in accordance with Article 3(3) of Council Regulation (EEC) No. 1906/90(5);
 - (b) a package containing a product listed in Annex I to Council Regulation (EC) No. 2200/96(6).

Duty to comply with the three packers' rules

4.—(1) It shall be the duty of the packer or importer of packages to ensure that they are made up in such a way as to satisfy the following rules—

- (a) the contents of the packages shall be not less on average than the nominal quantity;
- (b) the proportion of packages having a negative error greater than the tolerable negative error shall be sufficiently small for batches of packages to satisfy the requirements specified in Schedule 2;
- (c) no package shall have a negative error greater than twice the tolerable negative error.

(2) Compliance with the rules in paragraphs (1)(a) and (b) shall be determined by the reference test.

Duty of packers and importers to mark packages

5.—(1) It shall be the duty of the packer or the importer of a package to ensure that the package is marked, in such a manner as to be indelible, easily legible and visible in normal conditions of presentation, with the following—

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- (3) 1952 c. 67.
 - (4) 1979 c. 2.
 - (5) Council Regulation (EEC) No. 1906/90 of 26 June 1990 on certain marketing standards for poultrymeat (O.J. No L173, 6/7/1990, p.1).
 - (6) Council Regulation (EC) No. 2200/96 of 28 October 1996 on the common organization of the market in fruit and vegetables (O.J. L297, 21/11/1996, p.1).

- (a) the nominal quantity, being the predetermined constant quantity in which that package is made up (including any additional quantity to which any statement on the package refers) in accordance with regulation 8; and
 - (b) the name and address of a person established in the United Kingdom who is either—
 - (i) the packer or the importer of the package, or
 - (ii) the person who arranged for the packer to make up, or the importer to import, the package,
 or a mark which enables the name and address of such a person to be readily ascertained by his local weights and measures authority.
- (2) If at the time when a package is made up or imported the package is not marked with the nominal quantity as mentioned in paragraph (1)(a), it shall be the duty of the packer or the importer of the package—
- (a) to decide what he proposes to mark on the package in pursuance of that sub-paragraph, and
 - (b) to make at that time, and to maintain until such time as the package is so marked, a record of the same.
- (3) A packer or importer may mark a package which—
- (a) is made up to comply with the requirements in regulation 4; and
 - (b) has a nominal quantity not exceeding 10 kilograms or 10 litres,
- with the E-mark, in which case the mark shall be indelible, easily legible and visible in normal conditions of presentation and be placed in the same field of vision as the indication of nominal quantity required by paragraph (1)(a).
- (4) Paragraphs (1) and (2) above shall not apply to milk which is sold or supplied to a consumer in a returnable container.
- (5) Where a package is sold or supplied to a consumer by a packer from his own premises, or from a vehicle used solely by him, paragraph (1)(b) shall only apply to that package if it is marked with the E-mark.
- (6) A packer or importer is not obliged to mark a package which is contained within an outer container and which is not intended, and would not normally be regarded as appropriate, for sale to an ultimate consumer as a separate item.
- (7) Where regulation 7(2)(a) of the Cosmetic Products (Safety) Regulations 2004 requires a package to be marked with information about the manufacturer or supplier established in a member State then the requirement in paragraph (1)(b) to mark the name and address of a packer or importer who is established in the United Kingdom shall not apply.

Duty of packers and importers to mark outer containers

6.—(1) It shall be the duty of the packer or the importer of an outer container, to ensure that an outer container is marked, in such a manner as to be indelible, easily legible and visible in normal conditions of presentation, with the following—

- (a) the nominal quantity of the packages contained in the outer container, being the predetermined constant quantity in which those packages are made up (including any additional quantity to which any statement on the package or outer container refers), or where the packages have different nominal quantities, each distinct nominal quantity, marked in accordance with regulation 8;
- (b) the number of packages contained in the outer container, or where the packages have different nominal quantities, the number of packages corresponding to each nominal quantity; and

- (c) the name and address of a person established in the United Kingdom who is either—
 - (i) the packer or the importer of the packages contained in the outer container, or
 - (ii) the person who arranged for the packer to make up, or the importer to import, those packages,or a mark which enables the name and address of such a person to be readily ascertained by his local weights and measures authority.
- (2) If at the time when an outer container is packed or imported the outer container is not marked with the nominal quantities and number of packages as mentioned in paragraphs (1)(a) and (b), it shall be the duty of the packer or the importer of the outer container—
 - (a) to decide what he proposes to mark on the outer container in pursuance of those subparagraphs, and
 - (b) to make at that time, and to maintain until such time as the outer container is so marked, a record of the same.
- (3) If an outer container contains one or more packages which are, or could lawfully be, marked with the E-mark, then the outer container may also be marked with the E-mark, provided the E-mark—
 - (a) is affixed in such a way that it refers only to, and is in the same field of vision as, the nominal quantity of the package or packages which are, or could lawfully be, marked with an E-mark; and
 - (b) is indelible, easily legible and visible in normal conditions of presentation.
- (4) Where an outer container is sold or supplied to a consumer by the packer of the outer container from the packer's own premises, or from a vehicle used solely by him, paragraph (1)(c) shall only apply to that outer container if it is marked with the E-mark.
- (5) A packer or an importer of an outer container need not mark the outer container with the information required by paragraphs (1)(a) to (c) above if information is marked on inner packaging which can be viewed without opening the outer container and the information required by paragraphs (1)(a) to (c) can be readily ascertained from such information.
- (6) Where regulation 7(2)(a) of the Cosmetic Products (Safety) Regulations 2004 requires an outer container to be marked with information about the manufacturer or supplier established in a member State then the requirement in paragraph (1)(c) to mark the name and address of a packer or importer who is established in the United Kingdom shall not apply.

Liability for labelling packages and outer containers

7. Where an indication of nominal quantity is marked on a package or an outer container otherwise than pursuant to the duty imposed on a packer or importer by regulation 5(1) or regulation 6(1), then the person who marks that indication shall be subject to the duties imposed by these Regulations as though he were the packer of the package or outer container.

Specific requirements as to quantity marking

8.—(1) Packages containing liquid products shall be marked with the nominal quantity by volume and packages containing other products shall be marked with the nominal quantity by weight except where the law provides otherwise or, in the absence of a legal requirement, trade practice provides otherwise.

(2) Where a package containing a solid foodstuff presented in a liquid medium (as defined by Article 8(4) of Directive 2000/13/EC(7)) is marked with the net drained weight then that is to be treated as the nominal quantity.

(3) Information as to the nominal quantity shall be marked in accordance with the following requirements:

- (a) the nominal quantity shall be expressed in the permitted metric units (except for milk in returnable packages where it may be expressed in pints) with the numerical value expressed in figures followed by the unit of measurement expressed in words or the relevant permitted symbol;
- (b) the permitted metric units and their symbols are:

<i>Unit of measurement (metric)</i>	<i>symbol</i>
kilogram	kg
gram	g
litre	l or L
centilitre	cl or cL
millilitre	ml or mL

- (c) a quantity (other than a fraction of a pint) shall not be expressed as a vulgar fraction;
- (d) the figures and words or symbols in which the nominal quantity is marked shall be of the following minimum height:

<i>Nominal quantity and unit of measurement</i>	<i>Minimum height of words or figures</i>
exceeding 1 kg	6 mm
exceeding 200 g but not exceeding 1 kg	4 mm
exceeding 50 g but not exceeding 200 g	3 mm
not exceeding 50 g	2 mm
exceeding 1 L	6 mm
exceeding 20 cl but not exceeding 1 L	4 mm
exceeding 5 cl but not exceeding 20 cl	3 mm
not exceeding 5 cl	2 mm

- (e) where milk is supplied in a returnable container with the nominal quantity expressed in pints, it may additionally be marked with an indication of the nominal quantity expressed in metric units in accordance with this regulation, which indication shall not be more prominent (and in particular the figures and words or symbols shall not be larger) than the indication of the nominal quantity in pints;
- (f) any supplementary indications in imperial units allowed by section 8(5A) of the 1985 Act(8) shall be expressed in the permitted imperial units with the numerical value expressed in figures followed by the unit of measurement expressed in words or the

(7) Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ L109, 6/5/200 p.29).

(8) Section 8(5A) was inserted by S.I.1994/2867 and amended by S.I. 2001/55.

relevant permitted abbreviation and shall not be more prominent (and in particular the figures and words or abbreviations shall not be larger) than the metric indication;

- (g) the permitted imperial units and their abbreviations are:

<i>Unit of measurement (imperial)</i>	<i>abbreviation</i>
gallon	gal
quart	qt
pint	pt
fluid ounce	fl oz
pound	lb
ounce	oz

- (h) if the word “net” is used it shall not be abbreviated.

Packers' and importers' duties as to equipment, checks and documentation

9.—(1) It shall be the duty of a packer in making up packages either—

- (a) to measure the product contained in each package using equipment which complies with paragraph (2) to ensure that the packages are packed in accordance with regulation 4(1), or
- (b) to carry out checks on the product contained in the packages using a system of sampling and tests which are sufficiently rigorous to ensure that the packages are packed in accordance with regulation 4(1), and for this purpose—
 - (i) to use equipment which complies with paragraph (2), and
 - (ii) to make, and to keep until the relevant date, a record of the checks, together with a record of the corrections and adjustments which they have shown to be necessary.

(2) Equipment complies with this paragraph if it is suitable for the use to which it is put.

(3) It shall be the duty of an importer—

- (a) to carry out such a check as is mentioned in paragraph (1)(b) and to comply with subparagraphs (i) and (ii) of that paragraph in connection with the check; or
- (b) to obtain, before the packages leave his possession, sufficient evidence to give reasonable grounds for believing that the packages have been packed in accordance with regulation 4(1).

(4) The importer shall keep, until the relevant date, the evidence obtained for the purposes of paragraph 3(b).

(5) The relevant date, for the purposes of paragraphs (1)(b)(ii) and (4), is either:

- (a) the date, as marked on the package, which indicates by when the product ought to be consumed; or
- (b) one year after the packages have left the possession of the packer or importer (as appropriate),

whichever occurs first.

Enforcement by local weights and measures authority

10.—(1) Subject to paragraph (3) below, it shall be the duty of a local weights and measures authority to enforce the provisions of these Regulations within the area of the authority.

(2) Subject to paragraph (3) below, proceedings for an offence under these Regulations shall not be instituted except by or on behalf of a local weights and measures authority.

(3) Proceedings for an offence under regulation 16 shall not be instituted in England or Wales except by or on behalf of the Director of Public Prosecutions.

(4) Proceedings for an offence under these Regulations, other than an offence under regulation 16, shall not be instituted after the expiration of the period of twelve months beginning with the date when the offence was committed.

(5) Schedule 7, which confers powers on inspectors and local weights and measures authorities, shall have effect.

(6) Nothing in these Regulations shall authorise any weights and measures authority to bring proceedings in Scotland for an offence.

Notices to local weights and measures authorities

11.—(1) Subject to paragraph (4), it shall be the duty of—

- (a) the packer of packages which are marked with the E-mark and which he intends to export from the United Kingdom,
- (b) a person who intends to import packages which are so marked and to export them from the United Kingdom to another Member State, or
- (c) a person who intends to import packages, to mark them with the E-mark and to export them as mentioned in sub-paragraph (b),

to give to the local weights and measures authority for the area in which the packages were packed or in which the place of intended import is situated, a notice in accordance with paragraph (2).

(2) A notice under paragraph (1)—

- (a) shall be given in writing before the expiry of the day on which—
 - (i) in a case falling within paragraph (1)(a), the packages in question are marked with the E-mark, or
 - (ii) in a case falling within paragraph (1)(b) or (c), the packages in question are imported; and
- (b) shall specify the place where the packages were packed or the place of intended import.

(3) Where a person has given a notice pursuant to paragraph (1), an inspector may serve a notice in writing on that person requiring him to provide to the inspector such further information about the packages as is specified in the notice.

(4) A person shall be under no duty to give a notice under paragraph (1) if:

- (a) the place where the packages were packed or the place to which he intends to import the packages, has already been specified by him in a previous notice to a local weights and measures authority given pursuant to paragraph (1); and
- (b) he has not, since that previous notice was given, informed that local weights and measures authority that he no longer uses that place for an activity falling within sub-paragraphs (a) to (c) of paragraph (1).

Instructions by inspectors

12.—(1) If an inspector has reasonable cause to believe that a person has failed to perform the duty imposed on him by regulation 4 in relation to a batch of packages, the inspector may give to the person in possession of the packages instructions in writing—

- (a) specifying the packages, and

(b) requiring that person to keep the packages at a place specified in the instructions and at the disposal of the inspector until the end of the next working day after the instructions have been issued, or for such shorter period as the inspector may specify.

(2) If an inspector has reasonable cause to believe that a person has failed to perform the duty imposed on him by regulation 9(1) or 9(3), the inspector may give to that person such instructions in writing as the inspector considers appropriate with a view to ensuring that that person does not subsequently fail to perform that duty.

(3) Instructions given to a person by an inspector under paragraph (2) shall not come into force until the expiration of 21 days beginning with the day when the instructions are given to him and, if during that period that person gives notice to the inspector that he objects to the instructions, they shall not come into force except as agreed in writing by that person or as directed by the Secretary of State.

(4) Where under paragraph (3) a person gives to an inspector notice of objection to instructions, it shall be the duty of the inspector to refer the instructions to the Secretary of State.

(5) Where instructions are referred to the Secretary of State in pursuance of paragraph (4), it shall be his duty—

- (a) to invite representations in writing about the instructions from the inspector who gave them and from the person to whom they were given;
- (b) to consider any representations made in response to the invitations within a period specified in the invitations;
- (c) either to direct that the instructions shall come into force, without modifications or with modifications specified in the direction, on a day so specified or to direct that they shall not come into force, and
- (d) to give notice of the direction to the inspector and to the person in question.

(6) Where—

- (a) instructions have been given to a person under paragraph (1); or
- (b) instructions given to a person under paragraph (2) have come into force (or have come into force with modifications) in accordance with paragraphs (3) to (5),

he shall be guilty of an offence if without reasonable cause he fails to comply with those instructions (or those instructions with modifications).

Offences relating to the making up and marking of packages and outer containers, and record keeping

13.—(1) A person who fails to comply with a duty imposed on him by regulation 4, 5, 6, 7, or 9 shall be guilty of an offence.

(2) If a person purports to comply with his duty under regulation 9(1)(b)(ii), or under regulation 9(1)(b)(ii) as applied by regulation 9(3)(a), by making a record which he knows is false in a material particular, he shall be guilty of an offence.

(3) If a person purports to comply with his duty under regulation 9(3)(b) by reference to evidence which he knows is false in a material particular, he shall be guilty of an offence.

(4) If a person, with intent to deceive, alters—

- (a) any record kept for the purposes of regulation 5(2), 6(2), 9(1)(b)(ii), or regulation 9(1)(b)(ii) as applied by regulation 9(3)(a), or
- (b) any evidence kept for the purposes of regulation 9(3)(b),

he shall be guilty of an offence.

Offences relating to the sale of packages

14.—(1) If a person has in his possession for sale, agrees to sell or sells a package in circumstances in which he knows or has reasonable grounds for believing that the package has a negative error greater than twice the tolerable negative error, he shall be guilty of an offence.

(2) If a person has in his possession for sale, agrees to sell or sells a package in circumstances where he knows, or has reasonable grounds for believing, that the package comes from a batch of packages which has failed the reference test, then he shall be guilty of an offence unless he can show that:

- (a) he had reasonable grounds for believing that corrective action had been taken after the batch had failed the reference test to ensure that the batch subsequently complied with the requirements of regulation 4, or
- (b) the actual quantity of the package exceeded the nominal quantity.

Offences relating to E-marks

15.—(1) A person who, in the course of carrying on a business—

- (a) marks a package or outer container with the E-mark and is neither the packer nor the importer of the package or outer container, nor a person acting on behalf of the packer or importer,
- (b) marks a package or outer container with a mark so closely resembling the E-mark as to be likely to deceive, or
- (c) marks a package or outer container with the E-mark otherwise than as permitted by these Regulations,

shall be guilty of an offence.

(2) A person who fails to comply with a duty imposed on him by regulation 11 shall be guilty of an offence.

Disclosure of information

16.—(1) Subject to paragraph (3), if a person discloses information which—

- (a) relates to a trade secret or secret manufacturing process, and
- (b) was obtained by him by virtue of these Regulations when he was an inspector or a person who accompanied an inspector by virtue of paragraph 3 of Schedule 7,

he shall be guilty of an offence unless the disclosure was made in the performance of his duty as an inspector or such other person.

(2) For the purposes of paragraph (1) information disclosing the identity of the packer of a package or the identity of the person who arranged with the packer of a package for the package to be made up shall be treated as a trade secret unless the information has previously been disclosed in a manner which made it available to the public.

(3) It shall not be an offence under paragraph (1) for a person to disclose information in circumstances where—

- (a) the person from whom the public authority received the information has consented to its disclosure; or
- (b) the information is disclosed more than 50 years after it was received by the public authority.

Corporate offence provisions

17. Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Penalties for offences

18.—(1) A person guilty of an offence under regulation 12(6), 13(1), 14(1), 14(2) or 15 shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person guilty of an offence under regulation 13(2), 13(3), or 13(4) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months, or to both.

(3) A person guilty of an offence under regulation 16(1) shall be liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or to both.

Defences

19.—(1) If a person is charged with an offence under regulation 13(1) for failing to perform the duty imposed on him by regulation 4 in respect of any packages, it shall be a defence to prove that the test in question took place when the packages were not in his possession and by reference to a nominal quantity which was not marked on the packages when they were in his possession.

(2) If an importer of packages is charged with an offence under regulation 13(1) for failing to perform the duty imposed on him by regulation 4 in respect of any packages, it shall be a defence to prove that—

- (a) he performed the duty imposed on him by regulation 9(3)(b) in respect of the packages;
- (b) he did not know or suspect, and could not reasonably have known or suspected, that the packages were not made up in accordance with regulation 4(1);
- (c) he took all reasonable steps to ensure that there was no reduction in the quantity of goods in any of the packages whilst they were in his possession; and
- (d) before the beginning of the period of seven days ending with the date when the hearing of the charge began, he served on the prosecutor copies of all the documents upon which he intended to rely in proving a defence under this regulation, together with a notice which stated that he intended to rely on those documents to establish his defence.

(3) Where a person is charged with an offence under regulation 13(1) for a failure to perform the duty imposed on him by regulation 4 in relation to any packages it shall be a defence for him to prove that:

- (a) the packages were made up in accordance with regulation 4(1); and
- (b) the failure of those packages to pass a test for determining compliance with regulation 4(1) was due entirely to the desiccation of the product contained in the packages after they were made up.

(4) Where a person is charged with an offence under regulation 13(1) or 14(2), it shall be a defence to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Trade Descriptions Act

20. An indication of nominal quantity applied to:

- (a) a package under regulation 5(1)(a);
- (b) an outer package under regulation 6(1)(a) and (b); or
- (c) a package or outer container which satisfies the conditions in regulation 3(5),

is deemed not to be a trade description within the meaning of the Trade Descriptions Act 1968(9).

Transitional provisions

21.—(1) The enactments set out in Part 1 of Schedule 1 shall continue in force, the enactments set out in Part 2 of Schedule 1 shall apply without amendment, and these Regulations (but for this regulation) shall have no effect, in relation to:

- (a) a regulated package, as defined by section 68(1) of the 1985 Act,
- (b) an outer container which is treated as a package by virtue of regulation 25 of the 1986 Regulations, and
- (c) goods to which Part V of the 1985 Act and the 1986 Regulations apply by virtue of regulation 27 of the 1986 Regulations,

which has or have been made up or imported prior to the 6th April 2006.

(2) Where, prior to 6th April 2006, the making up or marking of a package or container was subject to the provisions of Part IV of the 1985 Act and would, but for this paragraph, be subject to these Regulations on or after that date, then the packer or importer of such a package or container may, during the period ending with 6th April 2007, comply with the requirements of Part IV in respect of packing and marking such a package instead of the requirements of these Regulations.

(3) Where under these Regulations a packer or importer is not permitted to mark a package or outer container with the E mark because the nominal quantity is greater than 10 kilograms or 10 litres, then a packer or importer may, during the period ending with 6th April 2007, mark the package with the E-mark if he would have been permitted to do so prior to 6th April 2006.

(4) Where a person has given notice to a local weights and measures authority pursuant to section 54(4) of the 1985 Act and regulation 8(1) of the 1986 Regulations, that notice shall take effect, on 6th April 2006, as a notice given to that weights and measures authority under regulation 11 of these Regulations in respect of the place specified in that notice.

(5) Where an inspector has given instructions to a person under section 63(2) of the 1985 Act, then those instructions shall take effect as if they had been given to that person by an inspector on 6th April 2006 under regulation 12(2) of these Regulations.

(6) Subject to paragraph (7), section 64 of the 1985 Act shall continue to apply, and sections 83 to 85 of the 1985 Act shall apply without the amendments set out in Part 2 of Schedule 1, in respect of any information which was obtained prior to 6th April 2006 by a person specified in section 64(1)(b).

(7) Proceedings for an offence under section 64 of the 1985 Act shall not be instituted in England and Wales except by or on behalf of the Director of Public Prosecutions.

13th March 2006

Gerry Sutcliffe
Parliamentary Under Secretary of State for
Employment Relations and Consumer Affairs
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