

---

STATUTORY INSTRUMENTS

---

**1981 No. 231**

**Weights and Measures (Northern Ireland) Order 1981**

**PART VI**

**PACKAGED GOODS**

**Interpretation of Part VI**

**30.**—(1) In this Part—

“goods”, in relation to a package, excludes the container included in the package;

“importer”, in relation to a package, means, subject to Article 34(3), the person by whom or on whose behalf the package is entered for customs purposes on importation;

“modifications” includes additions, omissions and alterations;

“nominal quantity”, in relation to a package, means the units of weight or volume prescribed for the package and the number of them in the statement of quantity marked on the container included in the package (any other matter in the statement being disregarded);

“notice” means notice in writing;

“package” means, subject to Article 34(1), a container containing prescribed goods together with the goods in the container in a case where—

- (a) the goods are placed for sale in the container otherwise than in the presence of a person purchasing the goods; and
- (b) none of the goods can be removed from the container without opening it;

“packer” means, in relation to a package, the person who placed in the container included in the package the goods included in it;

“relevant package” mean a package which is made up in the United Kingdom or imported on or after 1st January 1980 or, if the goods in the package became prescribed goods after that date, on or after the date on which they became prescribed goods.

(2) For the purposes of this Part a package is non-standard if the quantity of the goods it contains is less by more than a prescribed amount than the nominal quantity on the package and is inadequate if the quantity of the goods it contains is less by more than twice that amount than the nominal quantity on the package.

(3) Regulations may make provision, in relation to a package which comprises more than one container or goods of more than one kind, as to which of the containers or goods shall be disregarded for the purposes of prescribed provisions of this Part.

(4) If two or more different nominal quantities are marked on a package, each of those quantities except the one which indicates the larger or largest quantity shall be disregarded for the purposes of this Part.

(5) In this Part, except this paragraph, references to this Part include Schedules 8 and 9.

## Quantity control

### Duties of packers and importers of packages

**31.**—(1) A person who is the packer or importer of relevant packages shall ensure that when a group of the packages marked with the same nominal quantity is selected in the prescribed manner and the packages in the group or such a portion of the group as is so selected are tested in the prescribed manner by an inspector—

- (a) the total quantity of the goods shown by the test to be included in the packages tested divided by the number of those packages is not less than the nominal quantity on those packages; and
- (b) the number of non-standard packages among those tested is not greater than the number prescribed as acceptable in relation to the number tested.

(2) A person discharges the duty imposed on him by paragraph (1) in respect of a group of packages if the quantity of goods in each package is or exceeds the nominal quantity on the package.

(3) Regulations in pursuance of paragraph (1) with respect to the manner of selecting or testing packages may, without prejudice to the generality of the powers to make regulations conferred by that paragraph or to the generality of Article 38, make provision by reference to a document other than the regulations (which may be or include a code of practical guidance issued by the Department or, as the case may be, the Secretary of State).

(4) Where, as a result of a test in respect of a group of packages which is carried out when the packages are in the possession of the packer or importer of the packages or another person, it is shown that the packer or importer of the packages has failed to comply with paragraph (1) in respect of the packages, then, without prejudice to the liability of the packer or importer under Article 32(1) in respect of the failure, the person in possession of the packages shall keep them in his possession—

- (a) except so far as he is authorised by or under regulations to dispose of them; or
- (b) if he is the packer or importer of them, until he has complied with paragraph (1) in respect of the group.

(5) A person who is the packer or importer of a relevant package shall ensure that the container included in the package is marked before the prescribed time and in the prescribed manner with—

- (a) a statement of quantity in prescribed units either of weight or of volume, as regulations require; and
- (b) his name and address or a mark which enables his name and address to be readily ascertained by an inspector or—
  - (i) if he is the packer of the package, the name and address of a person who arranged for him to make up the package or a mark which enables that name and address to be readily ascertained by an inspector,
  - (ii) if he is the importer of the package, the name and address of the packer of the package or of a person who arranged for the packer to make up the package or a mark which enables the name and address of the packer or the said person to be readily ascertained by an inspector; and
- (c) if regulations so provide, a mark allocated to him by a scheme in pursuance of Article 35(4) for the purpose of enabling the place where the package was made up to be ascertained.

(6) If at the time when a relevant package is made up or imported the container included in the package is not marked with such a statement as is mentioned in sub-paragraph (a) of paragraph (5), the packer or, as the case may be, the importer of the package shall—

- (a) decide what statement he proposes to mark on the container in pursuance of that sub-paragraph, and

- (b) make at that time, and maintain for the prescribed period, a record of the statement.
- (7) Until the time mentioned in paragraph (5) or any earlier time at which the container is actually marked in the prescribed manner in pursuance of sub-paragraph (a) of that paragraph, the container shall be treated for the purposes of this Part as marked with the statement in the record.
- (8) A statement applied to a package in pursuance of paragraph (5)(a) shall be deemed not to be a trade description within the meaning of the Trade Descriptions Act 1968 .
- (9) A person who makes up packages shall either—
- (a) use suitable equipment of the prescribed kind in an appropriate manner in making up the packages; or
  - (b) carry out at the prescribed time a check which is adequate to show whether he has complied with paragraph (1) in respect of the packages and—
    - (i) use suitable equipment of the prescribed kind in an appropriate manner in carrying out the check, and
    - (ii) make, and keep for the prescribed period, an adequate record of the check.
- (10) A person who is the importer of relevant packages shall—
- (a) carry out at the prescribed time such a check as is mentioned in sub-paragraph (b) of paragraph (9) and comply with heads (i) and (ii) of that sub-paragraph in connection with the check; or
  - (b) obtain before the prescribed time, and keep for the prescribed period, documents containing such information about the packages as is adequate to show that the person is likely to have complied with paragraph (1) in relation to the packages.
- (11) Without prejudice to the generality of the powers to make regulations conferred by paragraph (9) or (10) or to the generality of Article 38, regulations may provide—
- (a) for equipment not to be equipment for the purposes of the paragraph in question unless it is made from materials and on principles specified in the regulations and is inspected, tested and certified as provided by the regulations;
  - (b) for questions as to the suitability of equipment, the appropriate manner of using equipment and the adequacy of checks, records and information to be determined for those purposes by reference to documents other than the regulations (which may be or include codes or parts of codes of practical guidance issued or approved by the Department or, as the case may be, the Secretary of State);
  - (c) that the use and the possession for use, for the purposes of paragraph (9) or (10), of a thing which is equipment for the purposes of the paragraph in question shall not constitute a contravention of Article 6(1)(b).
- (12) Where regulations made by virtue of paragraph (11)(a) provide for inspection, testing and certification, of equipment, the Department may charge such reasonable fees as it may determine for the inspection, testing and certification of equipment.

## **Enforcement**

**32.—**(1) A person who fails to comply with Article 31 shall be guilty of an offence.

(2) If an inspector has reasonable cause to believe that a person has failed to comply with Article 31(1) in relation to a group of packages, the inspector may give to the person in possession of the packages instructions in writing specifying the packages and requiring him to keep the packages at a place specified in the instructions and at the disposal of the inspector for the period of twenty-four hours beginning with the time when the inspector gives him the instructions or for such shorter period as the inspector may specify; and if the person to whom the instructions are given fails without reasonable cause to comply with the instructions he shall be guilty of an offence.

---

*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Weights and Measures (Northern Ireland) Order 1981, PART VI. (See end of Document for details)*

---

(3) If an inspector has reasonable cause to believe that a person has failed to comply with Article 31(9) or (10), then—

- (a) the inspector may give to the person such instructions in writing as the inspector considers appropriate with a view to ensuring that the person does not subsequently fail to so comply; and
- (b) Schedule 8 shall have effect with respect to the instructions;

and if the instructions or the instructions with modifications come into force in pursuance of that Schedule and the person fails without reasonable cause to comply with them he shall be guilty of an offence.

(4) If a person—

- (a) purports to comply with head (ii) of Article 31(9)( b) or that head as applied by paragraph (10)( a) of that Article by making a record which he knows is false in a material particular; or
- (b) purports to comply with paragraph (10)( b) of that Article by reference to a document containing information which he knows is false in a material particular; or
- (c) with intent to deceive, alters any record kept for the purposes of Article 31(6) or head (ii) of paragraph (9)( b) of that Article or that head as applied by paragraph (10)( a) of that Article or any document kept for the purposes of paragraph (10)( b) of that Article,

he shall be guilty of an offence.

(5) If a person has in his possession for sale, agrees to sell or sells a relevant package which is inadequate and either—

- (a) he is the packer or importer of the package; or
- (b) he knows that the package is inadequate,

he shall be guilty of an offence; and if the packer of a relevant package which is inadequate, and which was made up by him in the course of carrying out arrangements with another person for the packer to make up packages, delivers the package to or to the order of a person to whom it falls to be delivered in pursuance of the arrangements, the packer shall be guilty of an offence.

(6) For the purposes of Articles 20 and 22 the quantity of the goods in a relevant package shall be deemed to be the nominal quantity on the package.

(7) No action shall lie in respect of a failure to comply with Article 31.

(8) Schedule 9 shall have effect with respect to the powers and duties of inspectors and the other matters there mentioned.

### **Defences to offences under Article 32**

**33.**—(1) Where a person is charged with an offence under Article 32(1) of failing to comply with Article 31(1) 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 on the packages when they were in his possession.

(2) Where the importer of packages is charged with an offence under Article 32(1) of failing to comply with Article 31(1) in respect of the packages, it shall be a defence to prove—

- (a) that in respect of the packages the accused complied with Article 31(10)( b); and
- (b) that within the prescribed period after obtaining the documents mentioned in that subparagraph relating to the packages he took all reasonable steps to verify the information contained in the documents and that when the relevant test in pursuance of Article 31(1) began he believed and had no reason to disbelieve that the information was true; and

- (c) that before the beginning of the period of seven days ending with the date when the hearing of the charge began he served on the prosecution a copy of the said documents and a notice which stated that the accused intended to rely on them in proving a defence under this paragraph; and
  - (d) that he took all reasonable steps to ensure that the quantity of goods in each of the packages did not alter while the packages were in his possession.
- (3) Where a person is charged with an offence under Article 32(1) of failing to comply with Article 31(5)( *b*) in respect of a package, it shall be a defence to prove—
- (a) that the container included in the package was marked at the time and in the manner mentioned in that paragraph with a mark as to which he had, before that time, given notice to an inspector stating that the mark indicated a name and address specified in the notice; and
  - (b) that at the time aforesaid the name and address were such as are mentioned in relation to him in that sub-paragraph.
- (4) Where a person is charged with an offence under Article 32(1) or an offence alleged to have been committed by him, as the packer or importer of a package, under Article 32(5), 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.

#### Special provision for certain packages

**34.**—(1) Paragraphs (2) to (6) apply only to packages containing goods of a prescribed quantity, and references to packages in those paragraphs shall be construed accordingly.

- (2) If in the course of carrying on a business—
  - (a) a person marks a package with the EEC mark and is neither the packer nor the importer of the package nor a person acting on behalf of the packer or importer of the package; or
  - (b) a person marks a package with a mark so closely resembling the EEC mark as to be likely to deceive,

the person shall be guilty of an offence.

(3) For the purposes of this Part a person who brings a package marked with the EEC mark into the United Kingdom does not import the package if he shows that the package is from a member State of the Economic Community in which it was liable to be tested under a law corresponding to Article 31(1) and, except in such cases as are determined by or under regulations, has not since leaving that State been in a country which is not such a member State.

- (4) Subject to paragraph (5)—
  - (a) the packer of packages which are marked with the EEC mark and which he intends to export from the United Kingdom; and
  - (b) a person who intends to import packages which are so marked and to export from the United Kingdom to a place in another member State of the Economic Community; and
  - (c) a person who intends to import packages, to mark them with the EEC mark and to export them as mentioned in sub-paragraph ( *b*),

shall give before the prescribed time and in the prescribed manner, to the Department a notice containing such information about the packages as is prescribed and, in the case of a person who has given such a notice in pursuance of sub-paragraph ( *b*) or ( *c*), such further information about the packages in question as an inspector may specify in a notice served on the person by the inspector; and a person who fails without reasonable cause to comply with this paragraph shall be guilty of an offence.

---

*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Weights and Measures (Northern Ireland) Order 1981, PART VI. (See end of Document for details)*

---

(5) Regulations may enable an inspector to give notice to any person providing that, until an inspector informs the person in writing that the notice is cancelled, any sub-paragraph of paragraph (4) which is specified in the notice shall not apply to the person or shall not apply to him as respects packages of a kind specified in the notice or a place so specified.

(6) In this Article “the EEC mark” means such mark as may be prescribed; and, without prejudice to the generality of Article 38, regulations prescribing a mark in pursuance of this paragraph may contain such provisions as the Department or, as the case may be, the Secretary of State considers appropriate with respect to the dimensions of the mark and the manner and position in which it is to be applied to the container included in a package and may provide for a mark which is not in accordance with those provisions to be disregarded for the purposes of the prescribed provisions of this Article.

#### Co-ordination of control

### Functions of the Department under Part VI

35.—(1) The Department shall—

- (a) keep under review the operation of this Part and carry out such research in connection with the review as the Department considers appropriate;
- (b) make available to packers and importers of packages, such information as the Department considers appropriate in connection with the operation of this Part;
- (c) seek to collaborate, with any authority in a place outside Northern Ireland appearing to the Department to have functions which correspond to those of the Department, about matters which are connected with packages and are of interest to the Department and the authority;
- (d) make and maintain a record of the names and addresses of packers and importers of packages and of—
  - (i) the kinds of packages which they make up or import, and
  - (ii) the marks of which particulars have been furnished by them in pursuance of paragraph (2).

(2) The Department may serve, on any person carrying on business as a packer or importer of packages, a notice requiring him—

- (a) to furnish the Department with particulars of the kind specified in the notice of any marks which, otherwise than in pursuance of Article 31(5)(c) are applied, to packages made up or, as the case may be, imported by him, for the purpose of enabling the place where the packages were made up to be ascertained; and
- (b) if he has furnished particulars of a mark in pursuance of the notice and the mark ceases to be applied for the purpose aforesaid to packages made up or imported by him, to give notice of the cesser to the Department;

but a notice given by the Department in pursuance of this paragraph shall not require a person to furnish information which he does not possess.

(3) A person who fails without reasonable cause to comply with a notice served on him in pursuance of paragraph (2) shall be guilty of an offence.

(4) The Department shall—

- (a) prepare a scheme which—
  - (i) allocates, to persons carrying on business as packers or importers of packages, marks from which there can be ascertained the places where packages made up or imported by them were made up, and
  - (ii) specifies the kinds of packages to which each mark is to be applied;

- (b) make such alterations of the scheme as the Department considers appropriate;
- (c) give, to each person to whom a mark is for the time being allocated by the scheme, a notice which specifies the mark, states that it has been allocated to him in pursuance of the scheme and specifies the kinds of packages to which it is to be applied.

#### Miscellaneous

#### Disclosure of information

36.—(1) 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 this Part when he was an inspector or a person who accompanied an inspector by virtue of paragraph 3(1) of Schedule 9,

he shall be guilty of an offence unless the disclosure was made in the performance of his duty as an inspector or other person mentioned in sub-paragraph ( b).

(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) A person guilty of an offence under this Article 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 and a fine;<sup>F1</sup> . . .

*Para. (4) rep. by 1984 NI 3*

F1 1984 NI 3

#### Power to modify Part VI

37. Regulations may provide—

- (a) that in relation to packages of a prescribed kind the provisions of this Part, except this Article, shall have effect with prescribed modifications;
- (b) for the provisions of this Part to apply, with prescribed modifications, to goods of a prescribed kind which are not comprised in packages.

#### Regulations under Part VI

38. Any power to make regulations conferred by this Part includes power to make provision by reference to documents which do not form part of the regulations and to include in the regulations such supplemental and incidental provisions as the Department considers appropriate.

**Status:**

Point in time view as at 01/01/2006.

**Changes to legislation:**

There are currently no known outstanding effects for the Weights and Measures (Northern Ireland) Order 1981, PART VI.