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STATUTORY RULES OF NORTHERN IRELAND

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**2011 No. 331**

**WEIGHTS AND MEASURES**

**The Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011**

Made - - - - 22nd September  
2011  
Coming into operation 1st November 2011

The Department of Enterprise, Trade and Investment (1) (“the Department”) makes the following Regulations, in exercise of the powers conferred by Article 13(1) of the Weights and Measures (Northern Ireland) Order 1981 (2) and now vested in it (3) and section 2(2) of the European Communities Act 1972 (4).

The Department is designated (5) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the regulation, labelling and control of packages and products made up to a pre-determined constant nominal quantity.

**Citation and commencement**

1. These Regulations may be cited as the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 and shall come into operation on 1st November 2011.

**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 2008 (6);

“credentials” in relation to an inspector, means written authority, given by the Department, for the inspector to exercise the powers conferred on inspectors by these Regulations;

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(1) Formerly known as the Department of Economic Development; see S.I. 1999/283 (N.I. 1), Art. 3(5)  
(2) S.I. 1981/231 (NI 10) as amended by 2000 c. 5 (N.I.)  
(3) By S.I. 1982/846 (N.I. 11), Art. 4  
(4) 1972 c. 68.  
(5) S.I. 2005/2766  
(6) S.I. 2008/1284

“customs seal” means—

- (a) an official customs seal used to secure or identify any goods for any of the purposes of the customs and excise Acts; or
- (b) a seal which a trader has been authorised by Her Majesty’s Revenue and Customs to use to secure or identify any goods for any of the purposes of the customs and excise Acts in place of an official customs seal;

“customs and excise Acts” has the same meaning as in the Customs and Excise Management Act 1979 (7);

“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” has the same meaning as in the “1981 Order”;

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

“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 1981 Order” means the Weights and Measures (Northern Ireland) Order 1981;

“the 1990 Regulations” means the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 1990 (8);

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

(2) The Interpretation Act (Northern Ireland) 1954 (9) shall apply to these Regulations as it applies to an Act of the Assembly.

(7) 1979 c.2

(8) S.R. 1990 No.410 as amended by S.R. 1992 No. 485, S.R. 1994 No.321 and S.R. 1995 No.229

(9) 1954 c.33 (N.I.)

### 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:
- (a) it has been made up to a pre-determined constant quantity; and
  - (b) 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 **(10)**;
  - (f) are intended for use as stores within the meaning of the Customs and Excise Management Act 1979 **(11)** in a ship, aircraft or hovercraft on a voyage or flight to an eventual destination outside Northern Ireland; 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:

- (d) it has not entered a country which is not a Member State;
- (e) it has been sealed at all times in a container bearing a customs seal;

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**(10)** 1952 c.67

**(11)** 1979 c. 2

- (f) 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 9(1) of [Commission Regulation \(EC\) No. 543/2008](#)(12);
  - (b) a package containing a product listed in Annex I to Council Regulation (EC) [No. 2200/96](#)(13).

#### **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) a package shall not 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—

- (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 the Department.

(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 the packer or importer 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—

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(12) [Commission Regulation \(EC\) No 543/2008](#) of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat, as corrected by Article 9(9) of [Commission Regulation \(EC\) No. 936/2008](#)

(13) 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) is made up to comply with the requirements in regulation 4; and
- (b) has a nominal quantity not exceeding 10 kilograms or 10 litres,
- (c) 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) 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 the packer's own premises, or from a vehicle used solely by the packer, 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 12(1)(a) of the Cosmetic Products (Safety) Regulations 2008 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,
  - (iii) or a mark which enables the name and address of such a person to be readily ascertained by the Department.

(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 the packer or the importer proposes to mark on the outer container in pursuance of those sub-paragraphs, 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 the packer, 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) 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 12(1)(a) of the Cosmetic Products (Safety) Regulations 2008 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 that person 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(14)) 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 containers 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

(14) 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)

<i>Unit of measurement (metric)</i>	<i>Symbol</i>
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 Article 6(7A) of the 1981 Order (15) 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 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 sub-paragraphs (i) and (ii) of that paragraph in connection with the check; or
  - (b) to obtain, before the packages leave the importer's 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**

- 10.**—(1) Subject to paragraph (4), it shall be the duty of the Department to enforce the provisions of these Regulations.
- (2) Subject to paragraph (4), proceedings for an offence under these Regulations shall not be instituted except by or on behalf of the Department or by or on behalf of the Director of Public Prosecutions for Northern Ireland.
- (3) 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.
- (4) Proceedings for an offence under regulation 16 shall not be instituted except by or on behalf of the Director of Public Prosecutions for Northern Ireland.
- (5) Schedule 7, which confers powers on inspectors and the Department, shall have effect.

### **Notices to the Department**

- 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 are intended for 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 Department, 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 that person to provide to the inspector such further information about the packages as is specified in the notice.
- (4) A person shall not be under a duty to give a notice under paragraph (1) if:
  - (a) the place where the packages were packed or the place to which they are intended to be imported, has already been specified by that person in a previous notice to the Department given pursuant to paragraph (1); and
  - (b) that person has not, since that previous notice was given, informed the Department that the place is no longer used 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 that person 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 that person 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 that person and, if during that period that person gives notice to the inspector objecting to the instructions, they shall not come into force except as agreed in writing by that person or as directed by the Department.
- (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 Department.
- (5) Where instructions are referred to the Department in pursuance of paragraph (4), it shall be the duty of the Department—
- (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),

it is an offence if that person fails, without reasonable cause, 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 by regulation 4, 5, 6, 7, or 9 shall be guilty of an offence.

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

(3) If a person purports to comply with the duty under regulation 9(3)(b) by reference to evidence known to be false in a material particular, that person 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),

that person shall be guilty of an offence.

### **Offences relating to the sale of packages**

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

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

- (a) the person 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 that person 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 the person by virtue of these Regulations when the person was an inspector or a person who accompanied an inspector by virtue of paragraph 3 of Schedule 7,

that person shall be guilty of an offence unless the disclosure was made in the performance of their 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 information was obtained has consented to its disclosure; or
- (b) the information is disclosed more than 50 years after it was received by the Department.

### **Corporate offence provisions**

**17.** For purposes of these Regulations, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited”.

### **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 that person 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 the person’s possession and by reference to a nominal quantity which was not marked on the packages when they were in the person’s possession.

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

- (a) performed the duty imposed by regulation 9(3)(b) in respect of the packages;

- (b) 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) 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 the importer's possession; and
  - (d) before the beginning of the period of seven days ending with the date when the hearing of the charge began, served on the prosecutor copies of all the documents upon which it is intended to rely in proving a defence under this regulation, together with a notice which stated an intention to rely on those documents to establish a defence.
- (3) Where a person is charged with an offence under regulation 13(1) for a failure to perform the duty imposed on the person by regulation 4 in relation to any packages it shall be a defence for the person 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 the person 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 container 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 **(16)**.

### **Transitional provisions**

**21.—(1)** The statutory provisions set out in Part 1 of Schedule 1 shall continue in operation, the statutory provisions 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 relevant package, as defined by Article 30(1) of the 1981 Order,
- (b) an outer container which is treated as a package by virtue of regulation 25 of the 1990 Regulations, and
- (c) goods to which Part VI of the 1981 Order and the 1990 Regulations apply by virtue of regulation 27 of the 1990 Regulations,

which has or have been made up or imported prior to the 1st November 2011.

(2) Where, prior to 1st November 2011, the making up or marking of a package or container was subject to the provisions of Part V of the 1981 Order 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 1st November 2012, comply with the requirements of Part V of the 1981 Order 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 1st November 2012, mark the package with the E-mark if the packer or importer would have been permitted to do so prior to 1st November 2011.

(4) Where a person has given notice to the Department pursuant to Article 34(4) of the 1981 Order and regulation 8(1) of the 1990 Regulations, that notice shall take effect, on 1st November 2011, as a notice given to the Department 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 Article 32(3) of and Schedule 8 to the 1981 Order, then those instructions shall take effect as if they had been given to that person by an inspector on 1st November 2011 under regulation 12(2) of these Regulations.

(6) Subject to paragraph (7), Article 36 of the 1981 Order shall continue to apply, and Articles 46 and 47 of the 1981 Order shall apply without the amendments set out in Part 2 of Schedule 1, in respect of any information which was obtained prior to 1st November 2011 by a person specified in Article 36(1)(b).

(7) Proceedings for an offence under Article 36 of the 1981 Order shall not be instituted except by or on behalf of the Director of Public Prosecutions for Northern Ireland.

#### **Repeals, revocations and amendments**

**22.** The statutory provisions listed in Part 1 of Schedule 1 are repealed or revoked, and the statutory provisions listed in Part 2 of Schedule 1 are amended, to the extent there specified.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 22nd September 2011



*M. Bohill*  
A senior officer of the  
Department of Enterprise, Trade and Investment

## SCHEDULE 1

Regulation 2

## Part 1 Repeals and Revocations

<i>Statutory provision revoked</i>	<i>Reference</i>	<i>Extent of repeal or revocation</i>
The Weights and Measures (Northern Ireland) Order 1981	<a href="#">S.I. 1981/231 (N.I. 10)</a>	Articles 30 to 38.  Article 46(2) and (5).  Article 47(3).  Article 48(4).  Schedules 8 and 9.
The Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 1990	<a href="#">S.R. 1990 No.410</a>	The whole Regulations
The Weights and Measures (Packaged Goods) (Amendment) Regulations (Northern Ireland) 1992	<a href="#">S.R. 1992 No.485</a>	The whole regulations
The Weights and Measures (Packaged Goods) (Amendment) Regulations (Northern Ireland) 1994	<a href="#">S.R. 1994 No.321</a>	The whole regulations
The Weights and Measures (Packaged Goods) and Quantity Marking and Abbreviations of Units (Amendment) Regulations (Northern Ireland) 1995	<a href="#">S.R. 1995 No.229</a>	Part II of the Schedule in so far as it amends the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 1990

## Part 2—Minor and Consequential Amendments

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

1. The 1981 Order is amended as follows.
2. In Article 2(2) after the definition of “occupier”, insert—
 

“packaged goods regulations” means the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011;”
3. After Article 20(5), add—
 

“(6) For the purposes of this Article the quantity of goods in a package, or of a loaf of bread, to which the packaged goods regulations apply shall be deemed to be the nominal quantity (within the meaning of those regulations) of the package or the loaf of bread.”
4. After Article 22(9), add—
 

“(10) For the purposes of this Article the quantity of goods in a package, or of a loaf of bread, to which the packaged goods regulations apply shall be deemed to be the nominal quantity (within the meaning of those regulations) of the package or the loaf of bread.”

5. In Article 40(1) after the words “this Order or any enactment falling to be repealed by it” and after the words “under this Order or any such enactment”, insert “and the packaged goods regulations”.

6. In Article 42(1)(a) and (c), after the words “this Order or any instrument made under it”, insert “or the packaged goods regulations”.

7. In Article 44 after “this Order” insert “or any provision of the packaged goods regulations”.

8. In Articles 45(1)(a) and 45(1A)(b), after the words “this Order or of any instrument made under it”, insert “or the packaged goods regulations”.

9. In Article 46(1) omit the words “other than an offence under Articles 32, 34, 35(3) and 36.”

10. In Article 47(5), omit the words “or Article 36”.

*Weights and Measures (Miscellaneous Foods) Order (Northern Ireland) 1989, S.R. 1989 No.69*

11. In Article 6(4), omit the words from “or, in the case of a container” to “indication of quantity by net weight”.

*Capacity Serving Measures (Intoxicating Liquor)  
Regulations (Northern Ireland) 1993, S.R. 1993 No.441*

12. Regulation 3(2) is revoked.

*Measuring Equipment (Capacity Measures)  
Regulations (Northern Ireland) 1998, S.R. 1998 No.48*

13. Regulation 3(1)(b) is revoked.

*Weights and Measures (Quantity Marking and Abbreviations  
of Units) Regulations (Northern Ireland) 1999 S.R.1999 No. 84*

14. In regulation 2(1)(a), omit the words “or Article 30(1A) or 31 (5) or (5A)”.

*The Weighing Equipment (Automatic Gravimetric Filling  
Instruments) Regulations (Northern Ireland) 2005, S.R. 2005 No.27*

15. Regulation 3(3) is revoked.

*The Weighing Equipment (Non-Automatic Weighing Machines)  
Regulations (Northern Ireland) 2006, S.R. 2006 No.5*

16. Regulation 3(2) paragraphs (f) and (g) are revoked.

*Criminal Justice and Police Act 2001 (2001 c. 16)*

17. The Criminal Justice and Police Act 2001 is amended as follows.

18. In section 57(1)(d), for the words “Schedule 9 to the Weights and Measures (Northern Ireland) Order 1981 (S.I. 1981/231 (N.I. 10))”, substitute “Schedule 7 to the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011”.

19. For section 66(4)(f) substitute—

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“(f) Schedule 7 to the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (Powers of inspectors and the Department);”

20. In Part 1 of Schedule 1—

- (a) omit paragraph 31; and
- (b) insert after paragraph 73N(17) —

*“Weights and Measures (Packaged Goods) Regulations  
(Northern Ireland) 2011 (S.R. 2011 No. 331)*

73O. The power of seizure conferred by paragraph 4 of Schedule 7 to the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (Powers of inspectors and the Department);”

## SCHEDULE 2

Regulation 2

### The reference test

This Schedule lays down the procedures of the reference test for statistical checking of batches of packages in order to meet the requirements of regulation 4(1)(a) and (b).

#### **1. REQUIREMENTS FOR MEASURING THE ACTUAL CONTENTS OF PACKAGES**

- 1.1 The actual contents of packages may be measured directly by means of weighing instruments or volumetric instruments or, in the case of liquids, indirectly, by weighing the packed product and measuring its density.
- 1.2 In all operations for checking quantities of products expressed in units of volume, the value employed for the actual contents shall be measured at or corrected to a temperature of 20°C, whatever the temperature at which packaging or checking is carried out. However this rule shall not apply to deep frozen or frozen products the quantity of which is expressed in units of volume.
- 1.3 Irrespective of the method used, the error made in measuring the actual contents of a package shall not exceed one-fifth of the tolerable negative error for the nominal quantity in the package.

#### **2. REQUIREMENTS FOR CHECKING BATCHES OF PACKAGES**

- 2.1 The checking of packages shall be carried out by sampling and shall be in two parts:
  - 2.1.1 a check covering the actual contents of each package in the sample,
  - 2.1.1 another check on the average of the actual contents of the packages in the sample.
- 2.2 A batch of packages shall be considered acceptable if the results of both these checks satisfy the acceptance criteria.
- 2.3 For each of these checks, there are three sampling plans:
  - (a) a single sampling plan for non-destructive testing, i.e. testing which does not involve opening the package,
  - (b) a double sampling plan for non-destructive testing, and
  - (c) a single sampling plan for destructive testing, i.e., testing which involves opening or destroying the package.

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(17) Paragraph 73N was inserted by paragraph 2(4) of Schedule 6 to the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010



- 2.4 For economic and practical reasons, the third test shall be limited to the absolutely essential minimum; it is less effective than the non-destructive tests. Destructive testing shall therefore be used only when non-destructive testing is impracticable. As a general rule it shall not be applied to batches of fewer than 100 units.

**Package batches**

- 2.5 The batch shall comprise all the packages of the same nominal quantity, the same type and the same production run, packed in the same place, which are to be inspected. The batch size shall be limited to the amounts laid down below.
- 2.6 When packages are checked at the end of the packing line, the number in each batch shall be equal to the maximum hourly output of the packing line, without any restriction as to batch size.
- 2.7 In other cases the batch size shall be limited to 10,000.
- 2.8 For batches of fewer than 100 packages, the non-destructive test, where carried out, shall be 100%.
- 2.9 Before the tests in paragraphs 3 and 4 are carried out, a sufficient number of packages shall be drawn at random from the batch so that the check requiring the larger sample can be carried out. For the other check, the necessary sample shall be drawn at random from the first sample and marked.
- 2.10 This marking operation shall be completed before the start of measuring operations.

**3. CHECKING OF THE ACTUAL CONTENTS OF A PACKAGE**

- 3.1 The minimum acceptable contents shall be calculated by subtracting the tolerable negative error for the contents concerned from the nominal quantity of the package.
- 3.2 Packages in the batch whose actual contents are less than the minimum acceptable contents shall be considered defective.

Single sampling plan for non-destructive testing.

- 3.3 The number of packages checked shall be equal to the number in the sample, as indicated in the table below.
- 3.4 If the number of defective packages found in the sample is less than or equal to the acceptance criterion indicated in that table, the group shall be considered as acceptable for the purpose of the check..
- 3.5 If the number of defective packages found in the sample is equal to or greater than the rejection criterion there indicated, the group shall be rejected.

<i>Number in group</i>	<i>Number in sample</i>	<i>Number of defective packages</i>	
		<i>Acceptance criterion</i>	<i>Rejection criterion</i>
100 to 500	50	3	4
501 to 3,200	80	5	6
3,201 and above	125	7	8

- 3.6 For a batch of fewer than 100 packages the batch shall be considered acceptable for the purposes of the check if the number of defective packages does not exceed 5%.

*Double sampling plan for non-destructive testing*

- 3.7 Non-destructive testing shall be carried out in accordance with a double sampling plan as shown in the table below.
- 3.8 The first number of packages checked shall be equal to the number of units in the first sample, as indicated in the plan.

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- 3.9 If the number of defective units found in the first sample is less than or equal to the first acceptance criterion, the batch shall be considered acceptable for the purpose of this check.
- 3.10 If the number of defective units found in the first sample is equal to or greater than the first rejection criterion, the batch shall be rejected.
- 3.11 If the number of defective units found in the first sample lies between the first acceptance criterion and the first rejection criterion, a second sample shall be checked, the number of units in which is indicated in the plan. The defective units found in the first and second samples shall be added together and:
  - 3.11.1 If the aggregate number of defective units is less than or equal to the second acceptance criterion, the batch shall be considered acceptable for the purpose of this check,
  - 3.11.2 If the aggregate number of defective units is greater than or equal to the second rejection criterion, the batch shall be rejected.

Number in batch	Samples		Number of defective units		
	Order	Number	Aggregate number	Acceptance criterion	Rejection criterion
100 to 50	1st	30	30	1	3
	2nd	30	60	4	5
501 to 3,200	1st	50	50	2	5
	2nd	50	100	6	7
3,201 and over	1st	80	80	3	7
	2nd	80	160	8	9

Single sampling plan for destructive testing

- 3.12 Destructive testing shall be carried out in accordance with the single sampling plan below and shall be used only for batches of 100 or more.
- 3.13 The number of packages checked shall be equal to 20.
- 3.14 If the number of defective units found in the sample is less than or equal to the acceptance criterion, the batch of packages shall be considered as acceptable.
- 3.15 If the number of defective units found in the sample is equal to or greater than the rejection criterion, the batch of packages shall be rejected.

Number in batch	Number in sample	Number of defective packages	
		Acceptance criterion	Rejection criterion
Whatever the number ( ≥ 100)	20	1	2

**4. CHECKING OF AVERAGE ACTUAL VOLUME OF THE CONTENTS OF THE INDIVIDUAL PACKAGES MAKING UP A BATCH**

4.1 A batch of packages shall be considered acceptable for the purpose of this check if the

mean value  $\bar{x} = \frac{\sum x_i}{n}$  of the actual quantity of the contents of the packages in the sample is greater than the value:

$$Q_n - \frac{s}{\sqrt{n}} \cdot t_{(1-\alpha)}$$

4.2 In this formula:

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- $Q_n$  = the nominal quantity of the package,
- $n$  = the number of packages in the sample for this check,
- $s$  = the estimated standard deviation of the actual contents of the batch,
- $t_{(1-\alpha)}$  = 0.995 confidence level of a Student distribution with  $\delta = n-1$  degree of freedom

4.3 If  $\chi_i$  is the measured value for the actual contents of the  $i$ -th item in a sample containing  $n$  items, then:

The mean of the measured values for the sample is obtained by the following calculation:

$$\bar{x} = \frac{\sum_{i=1}^{i=n} \chi_i}{n}$$

4.4 and the estimated value of the standard deviation  $s$  is obtained by the following calculation:

—  $\sum_{i=1}^{i=n} (\chi_i)^2$   
the sum of the squares of the measured values:

—  $\left[ \sum_{i=1}^{i=n} \chi_i \right]^2$   
the square of the sum of the measured values:

then  $\frac{1}{n} \left[ \sum_{i=1}^{i=n} \chi_i \right]^2$

—  $SC = \sum_{i=1}^{i=n} (\chi_i)^2 - \frac{1}{n} \left[ \sum_{i=1}^{i=n} \chi_i \right]^2$   
the corrected sum

—  $v = \frac{SC}{n-1}$   
the estimated variance:

the estimated value of the standard deviation is:  $s = \sqrt{v}$

Criteria for acceptance or rejection of the batch of packages for checking the mean

4.5 Criteria for non-destructive testing:

Number in batch	Number in sample	Criteria	
		Acceptance	Rejection
100 to 500 (inclusive)	30	$\bar{x} \geq Q_n - 0.503s$	$\bar{x} < Q_n - 0.503s$
> 500	50	$\bar{x} \geq Q_n - 0.379s$	$\bar{x} < Q_n - 0.379s$

4.6 Criteria for destructive testing:

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<i>Number in batch</i>	<i>Number in sample</i>	<i>Criteria</i>	
		<i>Acceptance</i>	<i>Rejection</i>
Whatever the number ( $\geq 100$ )	20	$\bar{x} \geq Q_n - 0.640s$	$\bar{x} < Q_n - 0.640s$

- 4.7 For batches of fewer than 100 packages, the average of the measured values of the actual contents shall be determined by application of the formula in paragraph 4.3 where  $n$  equals the number of packages in the batch. If the average is equal to or greater than the nominal quantity of the packages in the batch, the batch shall be considered as acceptable for the purposes of the check.

### SCHEDULE 3

Regulation 2

#### Tolerable negative error

In calculating the amount of a tolerable negative error in a case where the error is to be calculated as a percentage of the nominal quantity, the amount shall be rounded up to the nearest one-tenth of a gram or millilitre.

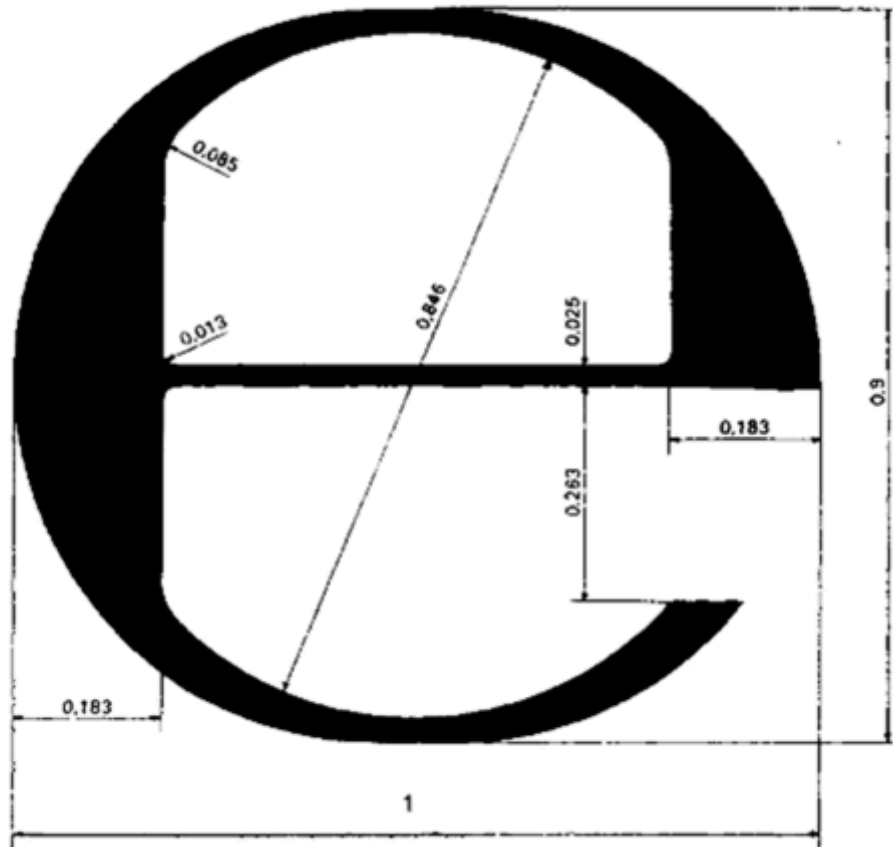
<i>Nominal quantity in grams or millilitres</i>	<i>Total negative error</i>	
	<i>As a percentage of nominal quantity</i>	<i>g or ml</i>
5 to 50	9	–
from 50 to 100	–	4.5
from 100 to 200	4.5	–
from 200 to 300	–	9
from 300 to 500	3	–
from 500 to 1,000	–	15
from 1,000 to 10,000	1.5	–
from 10,000 to 15,000	–	150
above 15,000	1	–

### SCHEDULE 4

Regulation 2

#### The E-Mark

The figures marked on the E-mark below show its relative dimensions as a proportion of its width.



## SCHEDULE 5

Regulation 3(3)

### Application to bread

1. References to the packer shall be treated as referring to the person who made the bread, or in the case of bread supplied to a retailer part-baked, completed the baking.
2. References to the making up or the packing of a package shall be treated as referring to the making up for sale of the loaf of bread.
3. References to the nominal quantity of a package shall be treated as references to the predetermined constant quantity to which the loaf of bread has been made up, including (where applicable) any additional quantity which has been marked on the packaging.
4. In their application to bread which is sold unwrapped—
  - (a) references to a package and references to what a package contains shall be treated as referring to the loaf of bread; and
  - (b) references to the contents of a package shall be treated as referring to the quantity of bread in the loaf.
5. Regulation 3(5) shall not apply.

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6. The following provisions of regulations 5 and 6 shall not apply to bread sold in open packets—
  - (a) in regulation 5, paragraphs (1)(a), (2), (3), and (4); and
  - (b) in regulation 6, paragraphs (1)(a) and (b), (2), (3) and (4).
7. Regulations 5 and 6 shall not apply to bread which is sold unwrapped.
8. Regulations 8 and 11 shall not apply.
9. Where the chief inspector gives a written notice to a packer of bread that regulation 9(1)(b)(ii) (duty to keep records) does not apply to him then the packer shall be exempt from that requirement whilst the notice is in force.
10. In Regulation 19(1), for the words “which was not marked on the packages when they were in his possession” there shall be substituted—

“which was not the nominal quantity to which the bread was made up.”
11. Where bread is not made up by means of a continuous process, for paragraphs 2.5 to 2.7 of Schedule 2 there shall be substituted—
  - 2.5 The batch shall comprise all the loaves of bread of the same nominal quantity and type, which have been baked in the same bakery, and which are available to be inspected.
  - 2.6 Where it is reasonably practicable to do so, the batch shall be comprised of bread baked in the same oven at the same time.
  - 2.7 The batch size shall be subject to a maximum of 10,000 in number.”
12. In Schedule 7—
  - (a) paragraph 5 shall not apply; and
  - (b) in paragraph 7, for the words “, 1(f) or 5” there shall be substituted “or 1(f)”.
13. Where bread is supplied part-baked to a retailer who completes the baking in the premises from which the bread is sold, then the retailer may by giving written notice to the Department choose not to have the bread treated as a package under these Regulations.

## SCHEDULE 6

Regulation 3(4)(g)

Products referred to in regulation 3(4)(g) to which the Regulations do not apply where the predetermined constant quantity is less than that shown

<i>Description of goods</i>	<i>Predetermined constant quantity</i>
Biscuits and shortbread Biscuits includes wafers, rusks, crispbreads, extruded flatbread, oatcakes and matzos	50 g
Cocoa and chocolate products which are "designated products" as defined by regulation 2(1) of the Chocolate Products (England) Regulations 2003(a)	50 g
Chocolate confectionery being any food which is ready for consumption without further preparation, of which a characterising ingredient is chocolate, cocoa or non-fat cocoa solids, and includes food of which a characterising ingredient is carbohydrate sweetening matter and which has a chocolate or chocolate-flavoured coating, but not including any biscuits, chocolate products, flour confectionery or edible ice	50 g
Herbs and spices	25 g
Potato crisps and other similar products commonly known as snack foods	25 g
Single portion vending machine beverage packs	25 g or 25 ml
Individual portion of a food intended as a minor accompaniment to another food or another service. This includes butter and other fat spreads, milk, cream and cheeses, jams and marmalades, mustards, sauces, tea, coffee and sugar, and another service includes the provision of sleeping accommodation at an hotel or other establishment at which such accommodation is provided by way of trade or business.	25 g or 25 ml
Sugar confectionary being any food which is ready for consumption without further preparation, of which a characterising ingredient is carbohydrate sweetening matter, and includes sweetened liquorice and chewing gum, but does not include any chocolate confectionery, chocolate products, cocoa products, flour confectionery, edible ice, table jellies, slab marzipan or sugar.	50 g
Sugar	20 g

## SCHEDULE 7

Regulation 10(5)

## Powers of inspectors and the Department

*Powers of entry and inspection*

1. Inspectors may on production if so requested of their credentials, at all reasonable times—
  - (a) enter any premises (except premises used only as a private dwelling-house) as to which they have reasonable cause to believe that packages are made up on the premises or that imported packages belonging to the importer of them are on the premises or that packages intended for sale are on the premises;

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- (b) inspect and test any equipment which they have reasonable cause to believe is used in making up packages in the United Kingdom or in carrying out a check mentioned in paragraphs (1) and (3) of regulation 9;
  - (c) inspect, and measure in such manner as they think fit, any thing which they have reasonable cause to believe is or contains or is contained in a package and, if they consider it necessary to do so for the purpose of inspecting the thing or anything in it, break it open;
  - (d) inspect and take copies of, or of any thing purporting to be—
    - (i) a record, document, or certificate of a kind mentioned in regulations 5(2), 9(1) or 9(3)(a); or
    - (ii) evidence of a kind mentioned in regulations 9(3)(b) or 9(4);
  - (e) require any person on premises which inspectors are authorised to enter by virtue of paragraph (a) to provide such assistance as the inspectors reasonably consider necessary to enable them to exercise effectively any power conferred on them by paragraphs (a) to (d);
  - (f) require any person to give to them such information as the person possesses about the name and address of the packer and of any importer of a package which inspectors find on premises they have entered by virtue of this paragraph or paragraph 2.
2. If a lay magistrate, on sworn information in writing—
- (a) is satisfied there is reasonable ground to believe that—
    - (i) a package or thing containing a package, or
    - (ii) any such equipment, record, document or certificate as is mentioned in paragraph 1, is on any premises or that an offence under regulations 12 to 15 is being or is about to be committed on any premises, and
  - (b) is also satisfied either—
    - (i) that admission to the premises has been refused or that a refusal is apprehended and that notice of the intention to apply for a warrant has been given to the occupier, or
    - (ii) that an application for admission or the giving of such a notice would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,
- the lay magistrate may by warrant under his hand, which shall continue in force for a period of one month, authorise inspectors to enter the premises if need be by force.

3.—(1) Inspectors entering any premises by virtue of paragraph 1 or 2 may take with them such other persons and equipment as they consider necessary.

(2) It shall be the duty of inspectors who leave premises which they have entered by virtue of paragraph 2 and which are unoccupied or from which the occupier is temporarily absent to leave the premises as effectively secured against trespassers as they found them.

#### *Power of seizure*

4. Where inspectors have reasonable cause to believe that an offence under regulations 12 to 15 or this Schedule has been committed and that any equipment, record, document, package or thing containing or contained in a package may be required as evidence in proceedings for the offence they may seize it and detain it for as long as it is so required.



#### *Power to require information*

5.—(1) An inspector may serve, on any person carrying on business as a packer or importer of packages, a notice requiring that person—

- (a) to furnish the inspector from time to time with particulars of the kind specified in the notice of any marks which are applied from time to time to packages made up in that area by that person or to packages imported by that person, for the purpose of enabling the place where the packages were made up to be ascertained, and
- (b) if the person has furnished particulars of a mark in pursuance of the notice and the mark ceases to be applied to such packages for that purpose, to give notice of the cesser to the inspector.

(2) A notice given by an inspector under this paragraph shall not require a person to furnish information which that person does not possess.

#### *Purchase of goods*

6.—(1) The Department may purchase goods, and authorise any of its officers to purchase goods on its behalf, for the purpose of ascertaining whether an offence under regulations 12 to 15 has been committed.

(2) If an inspector breaks open a package in pursuance of paragraph 1(c) otherwise than on premises occupied by the packer or importer of the package, and the package is not such that the packer or importer is in breach of regulation 4(1)(c), it shall be the duty of the inspector, if the owner of the package requests the inspector to do so, to buy the package on behalf of the Department.

#### *Failure to provide assistance or information*

7. Any person who without reasonable cause fails to comply with a requirement made of that person in pursuance of paragraph 1(e), 1(f) or 5 shall be guilty of an offence.

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### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

#### **Introduction**

These Regulations provide for the control of packages containing products packed in constant nominal quantities. They provide for the average system to apply to the quantity contained in each batch of packages which is made up. The Regulations implement European Union Directives on prepackaged goods and on the units of measurement to be applied to such packages.

#### **Previous legislation**

These Regulations repeal the previous legislation on packaged goods contained in Part VI of the Weights and Measures (Northern Ireland) Order 1981 and the regulations made thereunder: the

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Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 1990 (S.R. 1990 No. 410) as amended by S.R. 1992 No.485 and S.R. 1994 No.321.

### **EU Directives implemented**

These Regulations re-implement the following Directives in whole or part:

- (a) Council Directives: [75/106/EEC](#) on the approximation of the laws of the Member States relating to the making-up by volume of certain prepackaged liquids (as amended by Commission Directive [78/891/EEC](#) (OJ No L311, 4.11.1978, p. 21), and Council Directives [79/1005/EEC](#) (OJ No L308, 4.12.1979, p. 25), [85/10/EEC](#) (OJ No L4, 5.1.1985, p. 20), [88/316/EEC](#) (OJ No. L143, 10.6.1988, p. 26) and [89/676/EEC](#) (OJ No L398, 30.12.1989, p. 18);
- (b) Council Directive [76/211/EEC](#) on the approximation of the laws of the Member States relating to the making-up by weight or by volume of certain prepackaged products (OJ No L46, 21.2.1976, p. 1) as amended by Commission Directive [78/891/EEC](#) (OJ No L311, 4.11.1978 p. 21); and
- (c) Council Directive [80/181/EEC](#) on the approximation of the laws of the Member States relating to units of measurement (OJ L39, 15.2.1980, p. 40) as amended by Directives [85/1/EEC](#) (OJ L2, 3.1/1986, p. 11), [89/617/EEC](#) (OJ L357, 7.12.1989, p. 28) and [1999/103/EC](#) (OJ L34, 9.2.200, p. 17) as it applies to packaged goods.

### **Provisions of the Regulations**

These Regulations apply to packages which are packed in constant nominal quantities by weight or volume which are predetermined by the packer and are not less than 5 grams or 5 millilitres and not more than 25 kilograms or 25 litres (regulation 3). They also apply to “outer containers” containing at least one package and to bread which is unwrapped. Regulation 3 also sets out exceptions to the application of the regulations.

Regulation 4 sets out the three rules with which packers must comply in making up packages. Compliance with the rules is to be determined by the reference test set out in Schedule 2. Regulations 5 and 6 set out the information which must be marked on packages and outer containers and the circumstances in which the E-mark (the form of which is shown in Schedule 4) may be marked on a package or outer container. Regulation 7 provides that a person other than a packer or importer who marks an indication of nominal quantity on a package will become liable under the Regulations as though he were a packer or importer. Regulation 8 sets out specific requirements as to the marking of weight or volume on packages.

Regulation 9 imposes duties on packers and importers as to the measurement of the contents of packages, the checking of the contents and keeping of records. Regulations 10 to 12 provide for the enforcement of the Regulations by the Department and matters connected therewith. Additional powers of inspectors of weights and measures and the Department are set out in Schedule 7. Regulation 13 lays down penalties in respect of the making up and marking of packages and outer containers and keeping records of proposed markings. Regulation 14 lays down penalties in respect of the knowing sale of packages containing short measure or of packages which come from a batch that has failed the reference test. Regulation 15 prohibits the marking of the E-mark on packages except as permitted by the Regulations. Regulation 16 makes the unauthorised disclosure of information concerning trade secrets and secret manufacturing processes an offence. Regulations 17 to 20 contain provisions supplementary to the offence provisions.

Regulation 21 contains transitional provisions in respect of the application of the pre-existing law to packages made up or actions taken before the Regulations come into force and provides a one year transitional period in respect of the application of the E-mark under the pre-existing law.

