

**EXPLANATORY MEMORANDUM TO
THE WEIGHTS AND MEASURES (MISCELLANEOUS FOODS)(AMENDMENT)
ORDER 2005**

2005 No. 3057

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty. It contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1. The Order updates weights and measures legislation in the light of developments in European Community law. First, it modifies restrictions on package sizes by allowing imports into the UK of pre – packaged foods in any size sold in another Member State even if the package size is not allowed in the UK. Second, it removes all restrictions on package sizes of chocolate and cocoa products.

3. Matters of special interest to the JCSI

3.1 None.

4. Legislative background

4.1 The Order is laid in exercise of the powers conferred by sections 22, 24 (1) and 86 (1) of the Weights and Measures Act 1985. It is subject to the affirmative resolution procedure. The Weights and Measures (Miscellaneous Foods) Order 1988 (SI 1988/2040) imposes restrictions on the quantities in which various foods (including chocolate and cocoa products) may be packaged for sale (“specified quantities”). These restrictions were imposed in conformity with EC law, in particular with Directives 75/106/EEC and 80/232/EEC, which are concerned with indications of weight or volume on packages and the different weights and volumes in which products are or may be packed.

4.2 The European Court of Justice however decided in case C-3/99 (Cidrerie Ruwet SA v Cidre Stassen SA and HP Bulmer Limited) that Member States must give free access to their markets, as regards package sizes, to imports from another Member State, provided that the product has been marketed within the exporting State in conformity with its own legislation. This “mutual recognition” is required even if the importing State has imposed restrictions which are allowed by the Directives.

4.3 Article 7 of Directive 2000/36/EC abolished specified quantities for chocolate and cocoa products.

5. Extent.

5.1 The Order applies to Great Britain.

6 European Convention on Human Rights

6.1 The Minister for Employment Relations and Consumer Affairs, Mr Gerry Sutcliffe, has made the following statement regarding Human Rights:

In my view the provisions of the Weights and Measures (Miscellaneous Foods)(Amendment) Order 2005 are compatible with the Convention rights.

7. Policy Background

7.1 The purpose of legislation on package sizes is generally to make it easier for the consumer to make price comparisons. In particular sectors, fixed sizes may also offset disproportionate buyer pressure from large purchasers, such as supermarkets, on small and medium enterprises engaged in packaging, which might incur excessive costs if package sizes are not restricted.

7.2 The Order is necessary to give effect in UK law to the two developments at European level which are noted in section 4. The mutual recognition aspect however has no practical effect, because the enforcement authorities are aware of the ECJ judgement and have already observed its requirements.

7.3 There has been no formal consultation on this Order because of its limited effects and mandatory character. But the Department has explained the need for the Order to stakeholders in the course of ongoing consultations on modernising weights and measures legislation, and no adverse comments have been received.

8. Impact

8.1 A RIA for this Order is available from Lynnette Falk, details below.

8.2 The impact on the public sector is neutral. The legislation will continue to be enforced by the Trading Standards Departments of local authorities.

9. Contact

Lynnette Falk at the Department of Trade and Industry, 'phone 020 7215 0109 or e-mail lynnette.falk@dti.gsi.gov.uk, can answer any queries regarding this Order.

FINAL REGULATORY IMPACT ASSESSMENT FOR MUTUAL RECOGNITION OF PACK SIZES AND DEREGULATION OF PRESCRIBED QUANTITIES FOR CHOCOLATE AND COCOA PRODUCTS

Purpose and Intended Effect

Objective

1. The purpose of the draft Order is to allow for mutual recognition for pack sizes (i.e., quantity contained) of packages from other Member States which are not made up in the prescribed quantities required in the UK, but which are legally manufactured and marketed in another Member State.
2. This will bring the UK law formally into line with the current interpretation of Directives 75/106/EEC and 80/232/EEC following a European Court of Justice judgment in 2000. The Order will have little practical effect as Trading Standards, who have responsibility for enforcement have been issued with guidance to permit the placing on the market of imports from other Member States in any pack size.
3. The draft Order also includes a deregulatory provision to remove the requirement that chocolate in bar or tablet form and cocoa powder products may only be packaged in prescribed quantities. This implements in UK law a provision of Article 7 of Directive 2000/36/EC which repealed the requirement for prescribed quantities for these products at European level.

Background

4. The UK requires that certain foods be made up only in prescribed quantities. The purpose being to make it easier for consumers to make quantity and price comparisons between products and brands and to protect consumers from marginal reductions in quantity that they may not notice.
5. Prescribed quantities are subject to European law. Directives 75/106/EEC and 80/232/EEC require certain products to be made up in mandatory prescribed quantities in all Member States. However for some 50 other categories of products the Directives set out optional quantity ranges which all Member States must permit. Therefore, any package made up in a quantity falling within one of the optional ranges may not be refused access to a Member State on the basis of pack size. The UK has made some of these optional ranges mandatory and it has also created mandatory ranges for some other products not covered by the EU Directive. In total there are some 30 categories of product which are covered by mandatory prescribed quantities in the UK.

Rationale for government intervention

6. The rationale for the first amendment made in the Order is to take account of a European Court of Justice judgement in Case C-3/99 Ciderie Ruwet SA -v- Cidre Stassen, which reversed the previous understanding that Member States could make the non-mandatory ranges in the two Directives mandatory, including for imports from another Member State.

In July 2000 the European Court of Justice ruled that a Member State must permit the import of packaged products in a quantity not listed as a non-mandatory quantity, if the quantity was lawfully manufactured and marketed in another Member State. The draft Order amends the Weights and Measures (Miscellaneous Foods) Order 1988 to provide that the requirement for certain foods to be pre-packed only in prescribed quantities does not apply to a pre-packed food which is not made up in a prescribed quantity, provided the package was brought into the United Kingdom from another Member State in which a package made up in such a quantity could lawfully be marketed.

7. There is a risk if the government does not take action that the UK will be in breach of its European obligations and may be open to infraction proceedings taken by the European Commission.
8. In addition, the order includes a deregulatory provision which removes prescribed quantities for chocolate in bar or tablet form and cocoa powder products. This reflects the removal of the prescribed quantities for chocolate and cocoa products at European level by Directive 2000/36/EC which repealed Directive 73/241/EEC in which those requirements were included.
9. If the UK does not remove prescribed quantities for these products there is a risk that UK manufacturers would be disadvantaged compared with manufacturers in other Member States, where the restrictions on pack sizes have already been removed.

Consultation

10. The public consultation paper on Consolidating and Simplifying the Weights and Measures Food Orders published in October 2004, highlighted the need to make the amendment to allow for mutual recognition of pack sizes and invited views on the future of prescribed quantities. That consultation paper was circulated to businesses, trade associations and enforcement bodies. Some 58 responses were received, including 32 from businesses or trade associations. No respondents raised concerns over the proposed inclusion of mutual recognition for pack sizes.
11. The intention to deregulate and bring UK legislation into line with the EU with regard to prescribed quantities for chocolate and cocoa products was discussed at a meeting with stakeholders in January 2005. Representatives from the chocolate sector supported deregulation of pack sizes in their sector.

Options

Option 1. No change.

Option 2. Make an order to allow for mutual recognition of pack sizes and remove prescribed quantities for chocolate and cocoa.

Option 1

12. No change. This proposal would not bring UK law in line with the revised interpretation of Directives 75/106/EEC and 80/232/EEC following the European Court of Justice

judgment. The UK would be in breach of its European obligations and would be open to infraction proceedings taken by the European Commission.

Option 2

13. This option would bring the UK law into line with the revised interpretation of the prescribed quantity Directives and remove prescribed quantities for chocolate and cocoa products in line with Directive 2000/36/EC.

Costs and Benefits

Costs and Benefits - Option 1

14. The costs to the UK government could be significant if infraction proceedings were to be taken and the UK were found to be in breach of its obligations.
15. There are no benefits to maintaining the current situation as in practice packages from other Member States made up in non-prescribed quantities are already being permitted on the market in the UK.
16. There may be some continuing benefit to consumers from the retention of prescribed quantities for chocolate and cocoa products. However, comprehensive requirements on quantity labelling and unit pricing should permit consumers to gather all the quantity information needed prior to purchase without the need to rely on products only being sold in certain sizes.

Costs and Benefits - Option 2

17. There would be no new costs for business or enforcement bodies arising from the mutual recognition clause. Trading Standards, who have responsibility for enforcement have been issued with guidance to permit the placing on the market of imports from other Member States in any pack size. In effect the draft Order will bring the legislation into line with what is already being practised.
18. No new costs will be imposed on business as a result of the deregulation of prescribed quantities for chocolate and cocoa products. Manufacturers, packers and importers of chocolate or cocoa products may benefit from the removal of prescribed quantities for their products by having greater freedom to respond to consumer demand and greater opportunity for innovation and specialisation. It is difficult to estimate the potential benefits to business of deregulation of pack sizes in this market, as the benefits depend upon the extent to which businesses take advantage of their greater freedom to change package sizes.
19. Consumers of chocolate and cocoa products may benefit from greater choice in pack size and from manufacturers' innovation. However, consumers who do not refer to quantity labelling or unit pricing indications may be vulnerable to marginal reductions in quantity.

Business Sectors affected

20. Manufacturers and packers of chocolate or cocoa products will be affected by the Order. The UK market for chocolate confectionery was estimated to be worth some £2.5 billion in 2003 with an annual growth rate of 5%. However, only chocolate in bar or tablet form and cocoa powder products will be affected by the proposed deregulation of prescribed quantities.
21. Manufacturers, packers and importers of other foods subject to prescribed quantities would be affected by Order, but the Order brings the legislation into line with what is already being practised. There will be no new burdens on business created by the Order.

Small Firms Impact Test

22. These regulations do not place any new burdens on business, including small business. We have consulted trade associations, which include small firms in their membership, and none have expressed any concerns over the impact on small firms of these regulations.

Competition assessment

23. The removal of prescribed quantities for chocolate and cocoa products is a deregulatory measure that should encourage greater competition between manufacturers who utilise their freedom to respond to consumer demand for different pack sizes. This competition is likely to spur product innovation. The Order should affect all firms within the market equally and should not affect market structure in any way. New and existing firms will benefit equally from the removal of the restriction on pack sizes.

Enforcement and Sanctions

24. Prescribed quantities will continue to be subject to enforcement carried out by local weights and measures authorities, which are usually part of local authorities trading standards departments. Guidance has already been issued by LACORS (the Local Authorities Co-ordinators of Regulatory Services) to Trading Standards Departments and they are already permitting the placing on the market of pack sizes from other Member States that are not made up in prescribed quantities. As a result no additional costs to enforcers (either ongoing, or one-off in training / adaptation costs) will be incurred because the change is consistent with current enforcement practice.

Monitoring and Review

25. The operation of prescribed quantities will be monitored and is to be subject to a wide scale reform, following the UK government's own consultation on this issue and a proposal that has now been put forward by the European Commission. However, a revised regime is unlikely to be implemented into UK law until 2007/08.

Summary and recommendation

The recommended course of action is to make the Order to allow for mutual recognition of pack sizes and to remove prescribed quantities for chocolate and cocoa products.

26. Declaration

I have read this Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Parliamentary Under-Secretary of State for Employment Relations and Consumers

Gerry Sutcliffe MP

Date: 19th July 2005

For further information please contact:

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Transposition Note

The Weights and Measures (Miscellaneous Foods)(Amendment) Order 2005

This Transposition Note identifies a provision of Directive 2000/36/EEC which is implemented by this Order. The Directive is in general concerned with marketing standards for cocoa and chocolate products, and has for the most part been transposed by the Cocoa and Chocolate Products (England) Regulations 2003 (SI 2003/1659) and similar regulations affecting Wales, Scotland and Northern Ireland.

EC provision	Transposition
Art. 7 of Directive 2000/36/EC abolishes specified quantities with respect to cocoa and chocolate products.	Para. 4 of the Order.

Note:

There is no formal instrument which requires to be transposed in order to reflect the *Cidrerie Ruwet* judgement, but the European Commission has advised Member States that they should amend national legislation, where necessary, in the light of the judgement. Para. 3 of the Order effects this amendment.