



Department
for Business
Innovation & Skills

**WEIGHTS AND MEASURES
(FOOD) (AMENDMENT)
REGULATIONS 2014**

Annex D: Draft Guidance

SEPTEMBER 2014

ANNEX D: DRAFT GUIDANCE ON 2014 REGULATIONS

Guidance on the Weights and Measures (Food) (Amendment) Regulations 2014

Introduction

1. The following guidance has been produced by the National Measurement Office of the Department for Business Innovation and Skills to assist all affected by the Weights and Measures (Food) (Amendment) Regulations 2014 (the 2014 Regulations).
2. This guidance is not intended to be an exhaustive explanation of the law and has no legal force, though it may be helpful in understanding the 2014 Regulations.
3. The 2014 Regulations revoke any provisions in national law that conflict or overlap with the directly applicable EU requirements under Regulation (EU) No 1169/2011 on the provision of food information to consumers (FIC) (unless directly derived from other specific EU laws or permitted in accordance with Article 42 FIC which allows for certain national provisions to be maintained) and provide for enforcement of quantity labelling aspects of FIC under the Weights and Measures Act 1985. The law will continue to be enforced by Local Weights and Measures Authorities as part of Local Authorities Trading Standards Services. Further assistance and advice on the law in this area can be obtained from Trading Standards. Consumers can obtain help and advice from the Citizens Advice Consumer Service here: www.adviceguide.org.uk/consumer.

Background

The existing law

4. The 2014 Regulations amend national weights and measures laws that apply to foods, in order to take account of changes agreed at European level. The national laws were made under Part IV of the Weights and Measures Act 1985 and consist of the Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruit and Vegetables, Meat and Poultry) Order 1984 (SI1984/1315) as amended; the Weights and Measures (Miscellaneous Foods) Order 1988 (SI1988/2040) as amended and the Weights and Measures (Intoxicating Liquor) Order 1988 (SI1988/2039) as amended. In addition changes are made to the Weights and Measures (Packaged Goods) Regulations 2006 (SI2006/653), the Weights and Measures (Quantity Marking and Abbreviations of Units) Regulations 1987 (SI1987/1538) as amended, and the Weights and Measures Act 1985. The main purpose of this legislation is to ensure consumers are provided with information on quantity and that they can have confidence that the quantity is accurate, and that the market is fair for businesses.

FIC

5. FIC was agreed by all Member States and will be directly applicable in the UK from 13th December 2014. FIC applies to all food business operators, and requires that certain mandatory food information be provided for consumers and mass caterers. This mandatory information includes the net quantity of the food (Article 9(1)(e)). Under FIC, packaged foods sold to consumers or mass caterers, or

intended for supply to consumers or mass caterers, must be labelled with net quantity. In addition, food business operators that supply food not intended for sale to consumers or mass caterers must provide certain information when supplying other food business operators (Article 8(8)). FIC also sets out rules for how the quantity information should appear on the packaging (Article 12), how it should be presented (Article 13), how it applies to distance selling (Article 14), when it can be omitted (Article 16) and further detailed requirements that apply to the quantity information (Article 23 and Annex IX). The purpose is to ensure consumers have sufficient information on quantity and that the rules are the same across the EU, making it easier for businesses to trade.

6. There is no scope under FIC for the UK to maintain its national rules in areas which overlap or conflict with FIC after 13th December 2014, except where such requirements are derived from more specific EU provisions on weights and measures or where national provisions provide for quantity to be expressed in a different manner and are permitted in accordance with Article 42 FIC. The 2014 Regulations therefore revoke any provisions in national law that conflict or overlap with the directly applicable EU requirements under FIC and which are not directly derived from separate EU law or permitted under Article 42. In addition the 2014 Regulations extend the application of the existing enforcement regime under Part IV of the Weights and Measures Act 1985 to ensure that the quantity requirements under FIC can be enforced in the same way as the national rules that they are replacing.

Main changes

Weights and Measures Food Orders

7. The main changes are that the scope of the national weights and measures legislation for foods is reduced to remove any pre-packed foods subject to directly applicable FIC quantity labelling rules. The Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruit and Vegetables, Meat and Poultry) Order 1984 (SI1984/1315) and the Weights and Measures (Miscellaneous Foods) Order 1988 (SI1988/2040) are amended so that they will only apply to foods packaged for direct sale, foods sold loose, foods sold in open containers and relevant wholesale transactions (which excludes the sale or supply of food intended for consumers or mass caterers or any other sales regulated under FIC; and any other supply of food that is made up in advance ready for retail sale in an open container).
8. These categories can be maintained as they are not subject to the directly applicable mandatory requirements under FIC. The Orders will only apply to foods in these categories in circumstances where they already apply to those foods. There is no extension of application to any new foods or new categories of foods. This will maintain the status quo pending a review of the remaining requirements, to be held in 2015.
9. The scope of the Weights and Measures (Intoxicating Liquor) Order 1988 is amended so that the volume labelling requirements no longer apply to pre-packed foods subject to the directly applicable FIC quantity labelling requirements.

Packaged Goods Regulations

10. The Weights and Measures (Packaged Goods) Regulations 2006 (**PGR**) are amended to exclude any non e-marked packages from the quantity labelling requirements that apply under PGR (except that Article 42 FIC should apply to permit the rule under Regulation 8(1) PGR to be maintained, whereby liquid products may be marked with nominal quantity by weight and packages containing other products may be marked with nominal quantity by volume, where so provided by trade practice). Such packages will instead be subject to FIC quantity labelling rules. However, e-marked packages will continue to be subject to the labelling requirements under PGR to ensure compliance with Directive 76/211/EEC relating to the making up by weight or volume of certain pre-packaged products. Any packer who would prefer for their packages to continue to be subject to the quantity labelling requirements of PGR may apply an e-mark to their packages, provided that the packages comply with the “Three Packers Rules” (in Regulation 4 PGR) and are within the quantity range of 5 g or ml to 10 kg or L, as required under PGR.
11. In addition, the 2014 Regulations make two further amendments to reflect separate European law. These allow for e-marking of fruits and vegetables and remove an exemption for frozen poultrymeat.

The Weights and Measures (Quantity Marking and Abbreviations of Units) Regulations 1987

12. These Regulations are amended to clarify that the requirements of Part II of those Regulations (quantity marking of containers and units of measurement to be used in marking) do not apply to pre-packed foods subject to FIC.

Weights and Measures Act 1985

13. The Weights and Measures Act 1985 is amended to bring the requirements relating to quantity under FIC into the existing weights and measures enforcement regime. There will be no changes to the substance of the existing regime, only to its scope. In relation to packaged food, therefore, the enforcement regime will apply in respect of products covered by FIC and the residual categories of products to which FIC does not apply.

The Regulations

Citation and Commencement

14. Regulation 1 sets out the date that the Regulations will come into force. This date is the 13th December 2014 and will coincide with the entry into force of FIC.

Amendment to the Weights and Measures Act 1985

15. Regulation 2 provides that the Act is amended as set out in Regulations 3 to 11.
16. Regulation 3 amends Section 27 to exempt any goods that are subject to FIC from the requirement for the quantity to be stated in writing.
17. Regulation 4 amends Section 30 to ensure that products subject to FIC are within the scope of the offence for possessing for sale any goods in a quantity less than stated.

18. Regulation 5 inserts a new Section 31A which makes it an offence for a food business operator to fail to meet any requirements relating to quantity under Article 8 (Responsibilities), Article 9(1)(e) (mandatory indication of net quantity) or Chapter V (voluntary food information) of FIC. It also provides that no offence is committed where the business is acting in accordance with any exception contained in Chapter IV of FIC, national measures under Articles 40 or 42 FIC, or transitional measures for foods placed on the market before 13th December 2014 under Article 54(1). The exceptions in Chapter IV include exemptions for foods which are subject to losses in volume or mass but are sold by number or weighed in the presence of the purchaser; foods (except herbs and spices) with a net quantity less than 5 g or 5 ml; or foods which are normally sold by number, provided that either the number is indicated on the packaging or the number of items can be clearly seen and counted from the outside.
19. Regulation 6 amends Section 32 to disapply it from new Section 31A.
20. Regulation 7 amends Section 35(3) to disapply the defence for subsequent deficiency to foods labelled in line with FIC.
21. Regulation 8 amends Section 37(1)(b) to apply the defence that other articles of the same kind were available for testing and that a reasonable number of those articles should also be tested and an average result used.
22. Regulation 9 amends Section 38 to extend to FIC the powers for inspectors of weights and measures to weigh, measure or break open goods.
23. Regulation 10 amends Section 42 to extend the powers of Local Weights and Measures Authorities to make test purchases for assessing compliance with FIC.
24. Regulation 11 amends Section 94 (Interpretation) to define “FIC Regulation” as Regulation EU 1169/2011.

Amendment to the Weights and Measures (Miscellaneous Foods) Order 1988

25. Regulation 12 provides that the Order is amended as set out in Regulations 13 to 25.
26. Regulation 13 amends the Interpretation of the Order by inserting new definitions for “container”, “the FIC Regulation”, “mass caterer”, “pre-packed” and “relevant wholesale” and “loose”. The purpose is to limit the application of the Order to those foods not covered by the mandatory requirements of FIC. In addition, the definitions of “fancy chocolate product”, “coffee”, “chocolate confectionery”, “condensed milk and dried milk”, “flour confectionery” and “sugar confectionery” and references to food legislation are updated to reflect current food law.
27. “FIC Regulation” means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers.
28. “Mass caterer” is defined in line with the definition under FIC.
29. “Pre-packed” is defined to exclude any pre-packed foods subject to the directly applicable requirements of FIC. Therefore, pre-packed in this Order only applies to

foods which are made up for direct sale for retail (within the meaning of Article 2(2)(e) FIC) and/or made up in advance for retail sale in an open container. **The effect of this is to limit the scope of the Order so that it no longer applies to any sales of pre-packed foods subject to the requirements of FIC.**

30. “Relevant Wholesale” is defined to exclude any sales to mass caterers; any supply of pre-packed foods (within the FIC definition) intended for sale to the final consumer or a mass caterer or any other supply of food that is made up in advance ready for retail sale in an open container; or any supply of food which Article 8(8) FIC applies (where food is supplied to another food business operator, any relevant quantity information needed for subsequent compliance with FIC must be provided). **The effect of this is to limit the scope of the Order so that the provisions of this Order which apply to relevant wholesale do not apply to any transactions subject to FIC or to sales which are subject to separate rules under the Order on open packs made up in advance for retail sale.**
31. It is clarified that references to “loose” include items packed at the request of the customer.
32. Regulation 14 substitutes a new Article 3 to make it easier to understand the remaining provisions.
33. New Article 3(1)(a) now requires only the pre-packed foods (i.e. by direct sale and/or in open containers) listed in Schedule 1 to be marked with net weight (excluding milk). New Article 3 (1)(b) requires net weight marking for cocoa products and chocolate products, solid and paste coffee and chicory products and sugar, when made up in a container for relevant wholesale (i.e. excluding any transactions subject to FIC). Both are subject to the exemptions in column 2 of Schedule 1.
34. New Article 3(2) requires all honey (unless sold loose or in a quantity of less than 5 g) to be marked with net weight. **This is the only provision of this Order that applies to pre-packed foods subject to FIC** and is a national rule permissible under Article 42 of FIC, which allows Member States to retain provisions for the expression of net quantity to be made in a manner other than that specified in FIC. The retention of this rule avoids doubt over whether honey should be expressed in units of weight or volume (when it is in liquid form) and continues to allow for traditional UK practice of selling honey by weight. There is nothing to prevent units of volume being used in addition to weight.
35. New Article 3(3) and (4) deal with foods sold loose. This does not make any changes to the existing rules, it merely re-writes them to make them easier to understand. The requirement remains that the foods specified in Schedule 1 (except biscuits when sold in a quantity of eight or less (unless they are wafer biscuits which are not cream filled); bread; chunk honey; comb honey; or milk) must be sold by net weight if they are being sold loose by retail.
36. Regulation 15 amends Article 4 (which allows for quantity to be given in accompanying documents), to limit the scope so that it only applies to pre-packed foods (i.e. for direct sale or in open containers) or relevant wholesale foods (as defined).

37. Regulation 16 amends Article 5 (Biscuits and shortbread) to make a consequential change as a result of changes to Article 3. It also replaces a reference in Article 5(5) to “not pre-packed” with “loose” to clarify that this is all that is now caught by this provision. By virtue of Article 2 “loose” includes foods made up at the request of the consumer. It also substitutes a new paragraph 6 to clarify that this applies to foods sold “loose”.
38. Regulation 17 substitutes a new Article 7 (Caseins and caseinates) to limit the scope of the application of this provision to foods sold pre-packed (i.e. by direct sale or in open containers) or by relevant wholesale (as defined).
39. Regulation 18 amends Article 8 (Cocoa and chocolate products) to limit the scope of the application of paragraph 1 to foods sold pre-packed (i.e. by direct sale or in open containers) or by relevant wholesale (as defined) and paragraph 3 to foods sold loose.
40. Regulation 19 amends Article 9 (Coffee and chicory products) to limit the scope of the application of paragraphs 1 and 2 to foods sold pre-packed (i.e. by direct sale or in open containers) or by relevant wholesale (as defined).
41. Regulation 20 amends paragraph 1 of Article 11 (Milk) to limit its application to foods sold loose or made up in a container for relevant wholesale (as defined).
42. Regulation 21 substitutes a new Article 12 (Preserved Milk) to limit the scope of its application only to foods sold pre-packed (i.e. by direct sale or in open containers) or by relevant wholesale (as defined).
43. Regulation 22 amends Article 14 (Potatoes) to limit its application to foods sold loose.
44. Regulation 23 amends Article 17 (Multipacks) to clarify that this only applies to pre-packed (i.e. direct sale and open containers) foods and foods sold by relevant wholesale (as defined).
45. Regulation 24 amends Article 18 (application of Section 25 of the Act as modified in relation to certain foods) to clarify that paragraphs 1 and 2 only apply to pre-packed (i.e. direct sale and open containers) foods and foods sold by relevant wholesale (as defined).
46. Regulation 25 substitutes a new Schedule 1 to make it clearer to understand the remaining requirements.

Amendment to the Weights and Measures (Intoxicating Liquor) Order 1988

47. Regulation 26 provides that the Weights and Measures (Intoxicating Liquor) Order 1988 is amended as set out in Regulation 27.
48. Regulation 27 amends Article 6 by substituting a new Paragraph 1 to clarify that the requirement in Schedule 1 to mark quantity by volume only applies to foods sold pre-packed for direct sale in a closed container or, for spirits only, made up in

a container for relevant wholesale. It also amends Article 6(2) to limit its scope to foods pre-packed for direct sale. Regulation 27 also includes definitions of “mass caterer” and “relevant wholesale” that apply only to this Article. The result is to exclude from the scope of the labelling requirements in this Order any foods subject to the directly applicable quantity labelling provisions of FIC. There are no changes to specified quantities or any other requirements under the Order.

Amendment to the Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruits and Vegetables, Meat and Poultry) Order 1984

49. Regulation 28 provides that the Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruits and Vegetables, Meat and Poultry) Order 1984 is amended as set out in Regulations 29 to 31.
50. Regulation 29 amends Article 2 on the Interpretation of the Order by inserting new definitions for “FIC Regulation”, “mass caterer”, “pre-packed” and “relevant wholesale” and “loose”.
51. “FIC Regulation” is defined as Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers.
52. “Mass caterer” is defined in line with the definition under FIC.
53. “Pre-packed” is defined to exclude any pre-packed foods subject to the directly applicable requirements of FIC. Therefore, pre-packed in this Order only applies to foods which are made up for direct sale for retail (within the meaning of Article 2(2)(e) FIC) and/or made up in advance for retail sale in an open container. **The effect of this is to limit the scope of the Order so that it no longer applies to retail sales of any pre-packed foods subject to the requirements of FIC.**
54. “Relevant wholesale” is defined as a sale by wholesale but which excludes the sale or supply of food intended for consumers or mass caterers or any other sales regulated under FIC; and any other supply of food that is made up in advance ready for retail sale in an open container. Therefore relevant wholesale in this Order does not apply to sales to the final consumer or to a mass caterer; supply of food intended for sale to the final consumer or to a mass caterer, and packaged as such; or a supply to which Article 8(8) FIC applies (where food is supplied to another food business operator, that any relevant quantity information needed for subsequent compliance with FIC is provided). **The effect of this is to limit the scope of the Order so that the provisions of this Order that apply to relevant wholesale do not apply to any transactions subject to FIC.**
55. It is clarified that references to “loose” include items packed at the request of the customer.
56. Regulation 30 amends Article 4 (Cheese, fish, meat and poultry) to clarify that paragraph 2 only applies to food sold loose and that paragraph 3 only applies to foods sold pre-packed when sold otherwise than by retail, foods sold to a mass caterer when sold loose, or any foods sold by relevant wholesale (as defined).
57. Regulation 31 amends Article 5 (Fresh fruits and vegetables other than potatoes) to clarify that paragraphs 4 and 6 only apply to food sold loose and paragraph 5

only applies to foods sold pre-packed (i.e. by direct sale or in open packs) or loose.

Amendment to the Weights and Measures (Quantity Marking and Abbreviations of Units) Regulations 1987

58. Regulation 32 provides that these Regulations are amended as set out in Regulation 33.
59. Regulation 33 amends Regulation 2(1) (quantity marking of containers and units of measurement to be used in marking) to clarify that it does not apply to pre-packed foods subject to FIC.

Amendment to the Weights and Measures (Packaged Goods) Regulations 2006

60. Regulation 34 provides that PGR is amended as set out in Regulations 35 to 37.
61. Regulation 35 amends Regulation 2 on the Interpretation of PGR by inserting new definitions for “food”, “labelling requirements”, “mass caterer” and “pre-packed” and amends the definition of “nominal quantity” to include net quantity as required by FIC.
62. “Food” has the same meaning as in EC Regulation 178/2002.
63. “Labelling Requirements” means any requirements under PGR that require labelling to be carried out (Regulations 5(1)(a), 5(2), 6(1)(a), 6(1)(b), 6(2), 7 and 8(1)).
64. “Mass caterer” and “Pre-packed food” have the same definition as in FIC.
65. The definition of “nominal quantity” is amended to clarify that marking net quantity under FIC meets the requirement for marking nominal quantity under these Regulations.
66. Regulation 36 amends Regulation 3 to revoke subparagraph (4)(g) which gave effect to Schedule 6.
67. Regulation 36 also substitutes a new Regulation 3(6) which has the effect of revoking exemptions that applied to frozen or quick frozen poultry meat or fruits and vegetables. Those exemptions are no longer compatible with EU law. The system of weight classification under Council Regulation (EEC) 1906/90 was repealed by Council Regulation 1047/2009 so the exemption no longer has any effect and can be revoked. The exemption for fruits and vegetables listed in Annex I to Council Regulation 2200/96 was intended to ensure compatibility between the Regulation and the e-marking regime. However, Council Regulation 2200/96 is not considered to be incompatible with e-marking and this exemption can be revoked. This will ensure that packers of fruit and vegetables can choose to apply an e-mark if they meet the requirements.
68. New Article 3(6) limits the application of the labelling requirements under the PGR to those packages which are marked with the e-mark. This recognises that for e-

marked packages the more specific EU rules on weights and measures under Directive 76/211/EEC will continue to apply, but that those rules cannot apply to packages which are not e-marked and are therefore not within the scope of that Directive. The effect is that packages to which the PGR applies, but which are not e-marked will continue to benefit from the average system but will be subject to the quantity labelling rules under FIC, rather than PGR. The only exception is that Regulation 8(1) PGR, whereby liquid products may be marked with nominal quantity by weight and packages containing other products may be marked with nominal quantity by volume, where so provided by trade practice, will continue to apply where relevant to packages subject to the Regulations. In this case Article 42 of FIC applies which permits retention of such existing rules.

69. Regulation 37 revokes Schedule 6 which contained exemptions from the PGR for small quantities of specific products. These national exemptions are not compatible with FIC and cannot be retained.

Schedule

70. The Schedule comprises a new Schedule 1 to the Weights and Measures (Miscellaneous Foods) Order 1988 substituted by Regulation 25. This is intended to make it clearer to understand the remaining requirements.

Crown copyright 2014

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. Visit www.nationalarchives.gov.uk/doc/open-government-licence, write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email psi@nationalarchives.gsi.gov.uk.

This publication is available from www.gov.uk/bis

Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.