

**RESPONSES**

Consultation on: Draft Weights and  
Measures (Food) (Amendment)  
Regulations 2014 and Guidance

NOVEMBER 2014

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

## Response form

The closing date for this consultation is 20/10/2014

Name: **Ian Turner**

Organisation (if applicable): **UKWF**

Address: [Redacted]

Please return completed forms to:

Fiona Birchall

National Measurement Office

Department for Business, Innovation and Skills

Stanton Avenue

Teddington

TW11 0JZ

Telephone: 020 8943 7214

Email: [fiona.birchall@nmo.gov.uk](mailto:fiona.birchall@nmo.gov.uk)

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	Other (please describe)

**Question 1: Do you consider that there are any provisions which do not work or are unclear?**

Yes

If yes, please explain your reasons.

I am concerned as to why “Biscuits, other than wafer biscuits which are not cream-filled “ is exempted from quantity marking below 50g rather than 5g

**Question 2: Do you have any comments on the draft guidance?**

Yes       No

If yes, please provide details below.

**Do you have any other comments that might aid the consultation process as a whole?**

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

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

## Response form

The closing date for this consultation is 20/10/2014

Name: Mark Strain

Organisation (if applicable): CEnTSA (Central England Trading Standards Authorities). CEnTSA represents Local Authority Trading Standards Services and its Heads of Services throughout the West Midlands region. **CEnTSA consists of the following Local Government authorities, Birmingham, Coventry, Dudley, Herefordshire, Sandwell, Shropshire, Solihull, Staffordshire, Stoke-on-Trent, Telford and Wrekin, Walsall, Warwickshire, Wolverhampton and Worcestershire.**

Address: [Redacted]

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	Other (please describe)
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**Question 1: Do you consider that there are any provisions which do not work or are unclear?**

Yes                       No

If yes, please explain your reasons.

The way that the proposed legislative changes are being introduced (which we appreciate is in the normal format) by way of cross referencing the proposed amendments to a number of existing Orders and Regulations makes the consultation complicated and difficult to follow. Would consolidating into a single Statutory Instrument covering the sale of loose food be more straightforward? This would serve the purpose of simplifying and reducing the number of pieces of legislation as well as removing burdens on business of still dealing with six separate Statutory Instruments.

The definition of 'meat' as used in the Weights and Measures Act 1963 (Fish, Fresh Fruits and Vegetables, Meat and Poultry) Order 1984 (as amended) seems to remain unchanged in the proposals. Although the 1984 Order covers poultry as aware the definition of meat only covers cattle, sheep and swine. There are is now a much broader range meats sold in the market place. Should the definition of meat be extended many meats including venison, alligator etc. will fall outside of the definition of meat and will not be required to be sold by weight when sold loose. This may not of course be welcome by some as it will extend the scope of the legislation. However extending the definition of meat will reflect what is currently being sold in the market place.

The list of fruits and vegetables that are permitted to be sold by count or by the bunch is similarly out-dated. Modern trends mean that new types of produce are now on the market that are not able to take advantage of this provision of selling by count or bunch. Should the list be extended – or made more general?

We are not clear why the word 'loose' has been included to replace the wording of 'non pre-packed' in the proposed amendments to the Weights and Measures Act 1963 (Fish, Fresh Fruits and Vegetables, Meat and Poultry) Order 1984 (as amended).

**Question 2: Do you have any comments on the draft guidance?**

Yes                       No

If yes, please provide details below.

**Do you have any other comments that might aid the consultation process as a whole?**

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

No

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

## Response form

The closing date for this consultation is 20/10/2014

Name:

Organisation (if applicable): The Society of Chief Officers of Trading Standards in Scotland

Address:

Please return completed forms to:

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**Question 1: Do you consider that there are any provisions which do not work or are unclear?**

Yes  No

If yes, please explain your reasons.

There are several issues in the proposed draft Regulations that will cause unintended confusion. Two are listed below as examples.

Weights and measures law uses a definition of “pre-packed” (and therefore not “pre-packed”) that is different from that used by food law. The legal metrology definition has been used for many years, supported by decided cases and guidance from central Government and local government representatives (such as the former LACoRS, which sought to ensure uniformity and consistency of enforcement by Inspectors of Weights and Measures for businesses).

The implementation of EU Regulation 1169/2011 on Food Information for Consumers is designed to ensure harmonisation and approximation of laws within EU Member States in relation to food information for consumers. It seeks to remove conflicting national measures in relation to food information.

The draft implementing Regulations make a number of amendments to existing sections within the Weights and Measures Act 1985, various Orders and Regulations. They miss an opportunity to fundamentally review weights and measures laws regulating transactions in all goods by not considering the manner of sale of non-foodstuffs alongside foodstuffs. Regulators, businesses and consumers will be left in the anomalous situation where the law on the manner of sale of foodstuffs will be changed to reflect modern trading practices, whilst the law on the manner of sale of non-foodstuffs remains the same as it has been for several decades.

Another example relates to minimum font sizes for marking quantity information. If average quantity packages are considered, e-marked packages will continue to be subject to the Weights and Measures (Packaged Goods) Regulations 2006. The minimum font sizes for quantity marking under these Regulations is larger than that which will apply to non e-marked packages controlled by the draft Weights and Measures (Food) (Amendment) Regulations 2014. This defeats the purpose of the EU Regulation 1169/2011 and will make it difficult for consumers, particularly vulnerable consumers to understand quantity information.

**Question 2: Do you have any comments on the draft guidance?**

Yes  No

If yes, please provide details below.

The draft guidance is not helpful for regulators, businesses or consumers. Guidance should explain, illustrate and use practical examples to assist understanding. The draft guidance fails to do this. Rather, it lists the changes to



existing weights and measures laws. This is a missed opportunity to provide clarity for regulators, businesses and consumers.

**Do you have any other comments that might aid the consultation process as a whole?**

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

EU Regulation 1169/2011 was published in the Official Journal on 12<sup>th</sup> December 2011. It requires to be implemented by Member States by 13<sup>th</sup> December 2014. It is unfortunate and regrettable that the consultation, draft Regulations and associated guidance were not published until 11<sup>th</sup> September 2014, leaving little more than a month for regulators, businesses, consumer organisations and consumers to comment on such significant change to weights and measures law.

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

## Response form

The closing date for this consultation is 20/10/2014

Name: Angus Mackay

Organisation (if applicable): Northamptonshire County Council

Please return completed forms to:

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National Measurement Office  
Department for Business, Innovation and Skills  
Stanton Avenue  
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Please select a box from a list of options below that best describes you as a respondent.

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Charity or social enterprise
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<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

**Question 1: Do you consider that there are any provisions which do not work or are unclear?**

Yes

No

If yes, please explain your reasons.

**Draft Regulations**

**Regulations 13(j) & 29(b)** give a definition of ‘pre-packed’ which differs from those contained in both Section 94 Weights & Measures Act 1984 and Article 2(2)(e) FIC. It is recognised that this is necessary to achieve a ‘status quo’ but clarity and ease of interpretation do suffer as a result. If the intention is to disapply from the Orders prepacked foods that are subject to the directly applicable FIC quantity labelling requirements, then it should be clearer to just say the scope is ‘food x which is not *pre-packed food* as defined in FIC and/or Section 94, rather than create a new definition of ‘prepacked’ for the Orders? At present the S94 definition is used when interpreting the meaning of the word ‘pre-packed’ in SI 1984/1315 & SI 1988/2040.

We also observe that the words “Article 2(2)(e) of” are omitted in Regulation 29(b).

**Regulations 13(j) & 27(a)** ‘Direct sale’ is not given meaning in Art 2(2)(e) FIC. This gives unnecessary interpretative ambiguity to the proposed substitutions – for example are internet sales ‘direct sales’? Currently ‘prepacked for direct sale’ only has definition in the Food Labelling Regulations 1996 but that will soon be revoked, therefore Guidance from Government should clarify what is meant by ‘direct sale’.

**Regulation 13(h)** gives a definition of ‘container’ which is almost identical to that in S94 Weights & Measures Act 1984 apart from the clarification of ‘crimp cases and use of the more specific term ‘wire band’ in place of ‘confining band’. The rationale behind the wire/confining word swap is not given but would appear potentially not to maintain the status quo – for example if ribbon/string were used.

Given that FIC Annex IX 1(c) exempts *food normally sold by number* (provided the items are either visible & countable or labelled) from mandatory net quantity indication, we query the need to retain **Article 15 of the Miscellaneous Foods Order** SI 1988/2040. We believe the Article 15 items would now be considered to be ‘normally sold by number’. There is however a strong argument for keeping Article 15 as it gives clarity and avoids businesses & enforcement officers having to source historical revoked legislation to justify items being sold by number.

**Article 16 of the Miscellaneous Foods Order** SI 1988/2040 appears to be unchanged? We were under the impression that there would be an end of UK National exemptions for specific pre-packed foods in scope, small packages, gross weight, (*products including: biscuits, shortbread, cocoa and chocolate*

*products, liquid oil, fruit loaves, freeze drinks, herbs, water ices, milk, potato crisps and similar snack foods, soft drinks in a syphon, sugar confectionery, chocolate confectionery, sugar).*

The FIC Regulation does not appear to be given legal definition in the **Weights & Measures (Intoxicating Liquor) Order 1988** ?

**Articles 4(1), 4(4), 4(5), 4(6), 4(7), 4(8), 5(3), 5(7), 5(8), 5(9) of the Cheese, Fish etc Order SI 1984/1315** appears to be unchanged in respect of UK National exemptions for specific pre-packed foods in scope such as *dripping, lard, fish and meat paste, cheese, soft fruit and mushrooms, mixtures of vegetables, by the bunch etc.* Again, we were under the impression that these would be ended.

## Question 2: Do you have any comments on the draft guidance?

Yes

If yes, please provide details below.

It would be useful if guidance on Regulation 4 could state the 2 definitions of 'pre-packed' so they can be read together:

- S94 Weights & Measures Act 1984; *“made up in advance ready for retail sale in or on a container”*
- Art 2(2)(e) FIC: *“any single item for presentation as such to the final consumer and to mass caterers, consisting of a food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging; ‘prepacked food’ does not cover foods packed on the sales premises at at the consumers request or prepacked for direct sale”*

Perhaps some clarification could be given on whether items such as whole cucumber or broccoli which are over-wrapped for protection are considered prepacked or not.

## Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

No other comments

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

### Response form

Name: Sue Powell

Organisation (if applicable):

Address:

Please return completed forms to:  
Fiona Birchall  
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Email: [fiona.birchall@nmo.gov.uk](mailto:fiona.birchall@nmo.gov.uk)

Please select a box from a list of options below that best describes you as a respondent.

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	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe)

**Question 1: Do you consider that there are any provisions which do not work or are unclear?**

Yes  No

If yes, please explain your reasons.

In regulations 13 and 29 you set out a new definition of 'prepacked' to be inserted in the Weights & Measures (Miscellaneous Foods) Order 1988 and the Weights & Measures Act 1963 (Cheese, Fish, Fresh Fruits and Vegetables, Meat and Poultry) Order 1984. This definition states:

*'pre-packed', in relation to food to which this Order applies, means either or both of-*

- a. made up for direct sale (within the meaning of Article 2(2)(e) of the FIC Regulation) by way of retail;*
- b. made up in advance ready for retail sale in an open container.*

This definition appears unclear. I am assuming that because you have said in the draft guidance that the effect of this definition of 'prepacked' is to limit the scope of the Order so that it no longer applies to any sales of prepacked foods subject to the requirement of FIC's, that it will apply on to food which is packed on the sales premises at the consumer's request or prepacked for direct sale. If this is the case, I would advise that the revised definition is amended so that it more accurately reflects the exemptions to the definition of 'prepacked' as given in the FIC's. This will reduce confusion and aid clarity for enforcement officers giving advice to businesses on the new legal requirements.

**Question 2: Do you have any comments on the draft guidance?**

Yes  No

If yes, please provide details below.

The draft guidance doesn't seem to provide much guidance, but instead concentrates on reiterating the provisions of the legislation. Both businesses and local authority enforcement officers would find it more useful to have clear and practical guidance on the new legislation and how this can be practically implemented. This will ensure consistency and clarity.

## Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Whilst the draft Regulations, in regulations 34 – 37, make amendments to the Weights & Measures (Packaged Goods) Regulations 2006, including making an amendment to the definition of ‘nominal quantity’, these Regulations make no change to regulation 8(2) of the 2006 Regulations, which has been held by NMO to be ultra vires.

The amended definition of ‘nominal quantity’ refers back to Regulation 1169/2011 (The Food Information to Consumers Regulations [FIC]), where Annex IX sets out the requirements relating to the net quantity declaration for prepacked foods. This Annex indicates, in paragraph 2, that where the indication of a certain type of quantity is required by Union provisions or where there are no Union provisions, by national provisions, this quantity shall be regarded as the net quantity. Directive 76/211/EEC sets out that the e-mark indicating average quantity can only be applied to the nominal quantity. ‘Nominal quantity’ is defined in Annex I paragraph 2.1 as weight or volume indicated on the prepackage ie. the quantity of product which the prepackage is deemed to contain, which will include the liquid medium.

Therefore, specific Union provisions set out requirements for the nominal quantity, which can be shown also to be the net quantity of the product. The drained net weight is shown to be a separate additional provision in Annex IX of the FIC, which must also be indicated where a solid food is presented in a liquid medium. However, regulation 8(2) of the Weights & Measures (Packaged Goods) Regulations 2006 states:

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

This is clearly in conflict with Directive 76/211/EEC, the Directive which those Regulations implemented, and this was noted back in 2009 when guidance was sent out to local authority enforcement officers through LACORS to advise that LACORS had:

*raised this formally with NMO who have stated that the UK interpretation of Reg 8(2), of the interaction between Directives 76/211/EEC and 2000/13/EC with regard to drained net weight, is not that currently held by the European Commission. Therefore, NMO have agreed to amend the legislation to bring it into line with the European interpretation and intend to do so at the next opportunity. This would amend the legislation so that that where both net weight and drained net weight are marked then the net weight should be treated as the nominal quantity for the purposes of the Regulations. Having said that, NMO have advised us that this is linked to the discussions relating to the Food Information Regulations, which will replace Directive 2000/13/EC are completed and this is unlikely to become law before 2012 at the earliest.*

The commitment to changing regulation 8(2) of the Weights & Measures (Packaged Goods) Regulations 2006 was confirmed by Lynette Falk in an email to me dated 4<sup>th</sup> September 2013, this email stating:

'NMO intends to amend the PGR next year to bring it into line with FIC, including amending the provision at Reg.8.2 relating to the drained net weight to clarify that the net weight and not the drained net weight should be treated as the nominal quantity for the purpose of those Regulations.'

This was again reiterated in a mini-theatre session at the TSI Conference in Harrogate at the end of June.

It is therefore disappointing to see that this issue has not been addressed and that the provision in regulation 8(2) which has been held to be ultra vires remains so. This causes difficulty for enforcement officers where some local authorities are following the LACORS guidance and viewing the drained net weight as a minimum quantity declaration, and others are maintaining that regulation 8(2) stands as valid law and that it is permissible for the drained net weight to be an average quantity declaration. This leads to inconsistency and challenges around providing effective and accurate advice to businesses.



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

### Response form

The closing date for this consultation is 20/10/2014

Name: **The Trading Standards Institute Joint Lead Officers for Metrology**  
Organisation (if applicable): **Trading Standards Institute**

Please return completed forms to:  
Fiona Birchall  
National Measurement Office  
Department for Business, Innovation and Skills  
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<input checked="" type="checkbox"/>	Professional Body (please see next page for description)

## About The Trading Standards Institute

The Trading Standards Institute is the UK national professional body for the trading standards community working in both the private and public sectors. It was founded as the British Association of Inspectors of Weights and Measures in 1881 by Weights and Measures Inspectors seeking to influence legislation and to achieve common action upon how the law on weights and measures should be administered.

The range of duties of Weights and Measures Inspectors increased considerably as society became more sophisticated and the broader term "Trading Standards Officer" appeared in the 1960s. But weights and measures were, and continue to be, at the core of the profession and its duties, and the post of Chief Inspector of Weights and Measures continues to be a statutory appointment.

Trading Standards Officers play an important role in advising on and enforcing a wide range of food standards duties and legislation. These duties impact upon all food business, from food manufacturers to retail and catering establishments.

We are taking on greater responsibilities as the result of the government's announcement in October 2010 that trading standards is one of the two central pillars of the new consumer landscape (the other being Citizens Advice).

We have taken over responsibility for business advice and education, and the role of local authority trading standards services in the promotion of public health gained in importance when, as part of its health reforms, the government repositioned public health back into English local government.

The TSI Consumer Codes Approval Scheme, established at the request of the government to take over from the OFT scheme, went live in April 2013 and was formally launched in June 2013.

TSI is a member of the Consumer Protection Partnership which was set up by the government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena. TSI is also a forward-looking social enterprise delivering services and solutions to public, private and third sector organisations in the UK and in wider Europe.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement which deliver consistent curriculum, content, knowledge outcomes and evaluation procedures, with the flexibility to meet local authority, business and operational needs.

In compiling this response, TSI has canvassed the views of its members and advisers and has received input from a TSI expert panel on metrology and the TSI Lead Officers for Food and Nutrition. The response has been composed by the team of TSI Lead Officers for Legal Metrology, spearheaded by Gerry Dutton. If you require clarification on any of the points raised in the response or wish to contact TSI about it, please do not hesitate to contact the metrology team at email [lometrology@tsi.org.uk](mailto:lometrology@tsi.org.uk).

TSI does not regard this response to be confidential and is happy for it to be published.

**Question 1: Do you consider that there are any provisions which do not work or are unclear?**

**YES**

We acknowledge that there is difficulty implementing the regulations as there is conflict between the provisions of EC Regulation 1169/2011 and Directive 76/211/EEC.

In its basic form the requirement to quantity label goods (to enable purchasers to understand what they are receiving and allow fair price comparison) is sound and worthy of credence; to do this by weight, liquid measurement or number is also appropriate.

There is no historical problem with that principle.

The complication with goods has always been associated with the exemptions allowed from that simple principle. The amendment regulations which have become necessary due to the implementation of 1169/2011 further complicate exemptions because quantity marking was exclusively the remit of weights and measures legislation, but has now in part become a component of the remit of food information. Two masters are unlikely to be in agreement at all times.

The main perceived difficulty occurs where there are differences between the interpretation/definitions used.

Weights and measures law uses a definition of “prepacked” (and therefore “not “prepacked””) that is different from that used by food law. The legal metrology definition has been used for many years, supported by decided cases and guidance from central Government and local government representatives (such as the former LACoRS, which sought to ensure uniformity and consistency of enforcement by Inspectors of Weights and Measures for businesses).

Use within the regulations of the words ‘loose’, ‘not prepacked’ and ‘prepacked for direct sale’ in food law is not always followed in W&M law.

In relation to Bread, which is dealt with in the Miscellaneous Food Order 2011/2231 which is unchanged by the current draft under discussion, a further definition appears, being “unwrapped”, which refers to packages made up under the Average rules which are neither prepacked nor “e” marked.

The term ‘Wrapped’ is used in the Food information for Consumers (FIC) Regulations in relation to catering and wholesale transactions where food is wrapped to transfer from one outlet to another; in practice of course bread which is made to the unwrapped rules may be transferred thus and wrapped to keep it clean. The established practice of considering goods which were “Hygiene wrapped” as “not prepacked” does not seem to sit comfortably within the FIC Regs.

The implementation of EU Regulation 1169/2011 on Food Information for Consumers is designed to ensure harmonisation and approximation of laws within EU Member States in relation to food information for consumers. It seeks to remove conflicting national measures in relation to food information.

The draft implementing Regulations make a number of amendments to existing sections within the Weights and Measures Act 1985 and various Orders and Regulations. They miss an opportunity to fundamentally review Weights and Measures laws regulating transactions in all goods by not considering the manner of sale of non-foodstuffs alongside foodstuffs.

Regulators, businesses and consumers will be left in the anomalous situation where the law on the manner of sale of foodstuffs will be changed to reflect modern trading practices, whilst the law on the manner of sale of non-foodstuffs remains the same as it has been for several decades.

Had the definitions in question been placed into the 1985 Act, rather than into each set of the amended regulations they could have been applied across the board to all subsequent secondary legislation.

Another example relates to minimum font sizes for marking quantity information. If average quantity packages are considered, e-marked packages will continue to be subject to the Weights and Measures (Packaged Goods) Regulations 2006 (PGR 2006). The minimum font sizes for quantity marking under these Regulations is larger than that which will apply to non e-marked packages controlled by the draft Weights and Measures (Food) (Amendment) Regulations 2014.

This seems to defeat the purpose of the EU Regulation 1169/2011 and will make it difficult for consumers, particularly vulnerable consumers, to understand quantity information.

That a larger font is required for e-marked packages than for those to which the FIC Regulations apply may be lost on consumers and the trade alike.

Discussions in forums for enforcement staff have included comments around the differing descriptions within the FIC Regulations and the Weights and Measures orders and regulations which are being amended for the same state of goods: prepacked for direct sale and not prepacked, packages and loose foods, wrapped and unwrapped.

It seems clear that it will be necessary to consider interpretation, in cases other than those which are e-marked prepackages which automatically fall into the PGR 2006, almost product by product.

Where there is industry consistency in approach this will be straightforward, but it is unclear how such matters can be consistently applied where there is no consistency in industry approach.

**Question 2: Do you have any comments on the draft guidance?**

**YES**

The draft guidance is not helpful for regulators, businesses or consumers.

Guidance should explain, illustrate and use practical examples to assist understanding. The draft guidance fails to do this. Rather, it lists the changes to existing Weights and Measures laws which can be determined by using the regulation itself. This is a missed opportunity to provide clarity for regulators, businesses and consumers.

A simple way to make the guidance more useful would be to include the amended text of the whole changed provision available in the guidance, then follow that with the intended meaning or effect the provision has.

As there are different provisions for varying goods, it would be useful to have a hierarchy of statutes, so that each type of product can be considered in a structured manner to decide which regulation or order decides the requirements for that product. A flowchart solution is one method of achieving this.

### **Do you have any other comments that might aid the consultation process as a whole?**

EU Regulation 1169/2011 was published in the Official Journal on 12 December 2011. It is required to be implemented by Member States before 13 December 2014. It is unfortunate and regrettable that the consultation, draft Regulations and associated guidance were not published until 11 September 2014, leaving little more than a month for regulators, businesses, consumer organisations and consumers to comment on such significant change to weights and measures law.

Opportunity to correct the requirements for the disclosure of drained weight for goods in liquid medium in the PGR 2006 and to clarify the position of the quantity declaration on front of pack (*visible in normal conditions of presentation, Packaged Goods Regulations 5(2)*) required by Directive 76/211/EEC., appears to have been missed, even though as issues they have been under scrutiny for some time.

There are 3 further matters which are unclear.

a) Coffee Extracts and Chicory Extracts (England) Regulations 2000

The amending Regs seem to be transferring the coffee and chicory definitions from the Coffee and Coffee Products Regulations 1978 to these regulations and seem to remove some definitions in the earlier Regs (coffee mixtures for example), which are UK wide.

b) Condensed Milk and Dried Milk (England) Regulations 2003

As above, definitions from an England statutory instrument seem to transfer to a UK wide one.

c) It appears that we retain the lower limit for cocoa and chocolate products at 50g which does not seem to fit with the spirit of the FIR and the PGR.

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

## Email: treated as response

**RE: Consultation on the draft Weights and Measures (Food) (Amendment) Regulations 2014**

On behalf of the members of the Health Food Manufacturers' Association, an association which represents 125 member companies, the majority of which are small and medium enterprises and which operate within the food supplement industry, we are writing to you concerning a particularly pressing issue that does not appear to be covered by the above and which is of great importance to suppliers of food supplements to the UK market.

Point 1(c) of Annex IX of EU Regulation on Food Information to Consumers (No 1169/2011) indicates that the net quantity declaration as stipulated by EU FIC Article 23 shall not be mandatory for foods 'normally sold by number, provided that the number of items can be clearly seen and easily counted from the outside or, if not, is indicated on the labelling'.

Throughout the years of negotiation between Member States and the European Commission regarding the content of the proposed EU FIC Regulation, the HFMA had received verbal reassurances from the UK negotiating team that the EU Regulation would allow national measures relating to the expression of quantity current at the time of introduction of the EU FIC to continue to apply.

We were assured that the UK national measure permitting food supplements in tablet and capsule form to be sold by number, as provided by The Weights and Measures (Miscellaneous Foods) Order 1988 (SI 1988/2040), Regulation 15(1)(f), would continue to apply once the EU FIC Regulation came into effect.

Regretfully we find the consultation proposal and draft guidance documents confusing and unclear and we are unable to ascertain from the documents if the proposed revised legislation will have an impact on the current provision indicated above after 13 December 2014.

We are therefore writing to seek your confirmation that the current status quo, which permits food supplements presented in tablet and capsule form to be sold by number, will continue after 13 December 2014 and that the European Commission will be informed.

Please do not hesitate to contact us if you have any queries.

## **FDF Response to BIS Consultation on the draft Weights and Measures (Food) (Amendment) Regulations 2014 and Draft Guidance**

This submission is made by the Food and Drink Federation, the trade association for food and drink manufacturing. Food and drink is the largest manufacturing sector in the UK (accounting for 15% of the total manufacturing sector) turning over £78.7bn per annum; creating GVA of £20bn and employing up to 400,000 people.

FDF has not received any specific comments from members in response to the BIS consultation on the draft Weights and Measures (Food) (Amendment) Regulations 2014 and accompanying guidance. However, in FDF's view, it is not helpful to amend the definition of "pre-packed" to limit its application to foods for direct sale and/or foods made up in advance in open containers. Pre-packed is defined in Regulation (EU) no 1169/2011 on the provision of food information to consumers. It is a well understood term and amending it for the purposes of these Regulations will lead to confusion.

In addition, FDF had expected that this consultation would include guidance on the requirements for net quantity declaration for pre-packed food as set out in Regulation (EU) no 1169/2011 on the provision of food information to consumers. We receive a number of queries from members regarding the net quantity declaration for multipacks and the exemption from the net quantity declaration for foods normally sold by number particularly in relation to the implications of the loss of the small pack exemption under the UK Weights and Measures (Packaged Goods) Regulation 2006. It would therefore be particularly helpful to have practical industry guidance on this which could form part of the Defra technical guidance on the EU FIC.

Furthermore, existing NWML guidance on the UK Weights and Measures (Packaged Goods) Regulation 2006 will need to be amended to reflect these changes.

## The UK Food and Drink Manufacturing Industry

The Food and Drink Federation (FDF) represents the food and drink manufacturing industry, the largest manufacturing sector in the UK, employing 400,000 people. The industry has an annual turnover of over £78.7bn accounting for 15% of the total manufacturing sector. Exports amount to over £12bn of which 76% goes to EU members. The industry buys two-thirds of all UK's agricultural produce.

The following Associations actively work with the Food and Drink Federation:

ABIM	Association of Bakery Ingredient Manufacturers
ACFM	Association of Cereal Food Manufacturers
BCA	British Coffee Association
BOBMA	British Oats and Barley Millers Association
BSIA	British Starch Industry Association
BSNA	British Specialist Nutrition Association
CIMA	Cereal Ingredient Manufacturers' Association
EMMA	European Malt Product Manufacturers' Association
FCPPA	Frozen and Chilled Potato Processors Association
FOB	Federation of Bakers
PPA	Potato Processors Association
SMA	Salt Association
SN	Sugar Nutrition UK
SNACMA	Snack, Nut and Crisp Manufacturers' Association
SPA	Soya Protein Association
SSA	Seasoning and Spice Association
UKAMBY	UK Association of Manufacturers of Bakers' Yeast
UKTIA	United Kingdom Tea & Infusions Association Ltd

FDF also runs specialist sector groups for members:

BCCC	Biscuit, Cake, Chocolate and Confectionery Group
FF	Frozen Food Group
MG	Meat Group
ORG	Organic Group
SG	Seafood Group



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

## Online response

### Q1: Please provide your name

Howard Burnett

### Q2: Please provide the name of your organisation

Howard Burnett Consultants Ltd

### Q3: Please provide your contact details (including email address)

[Redacted]

### Q4: Which one of the following would you describe yourself as?

Micro business (up to 9 employees)

### Q5: Do you consider that there are any provisions in the draft Weights and Measures (Food) (Amendment) Regulations 2014 that do not work or are unclear?

Yes\*

#### \*If yes explain your reasons

Changing definitions may cause problems in the short term. Schedule 7 of the Weights & Measures Act 1985 specifies requirements for composite goods (mixtures) and collections (multipacks), which as it is at present will include foods. This may confuse/conflict with the requirements in FIR Annex IX, paragraph 3.

### Q6: Do you have any comments on the draft Weights and Measures (Food) (Amendment) Regulations 2014 guidance?

Yes\*

#### \*If yes explain your reasons

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. This should refer on the second line to "... exclude any non e-marked packages OF FOOD from the quantity ...", to clarify that packages containing non-foods which are not e-marked still have to comply with the labelling requirements in the PGR. (See also paragraph 68) 10 (contd) "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." There is no need for a packer to e-mark packages of food in order to apply the PGR labelling requirements, as the height requirements are MINIMUM (and so he can still have larger print) and there is no prohibition from putting the name & address on the package. A suggestion is instead to refer to paragraph 34 of the guidance for PGR (URN 07/1343) for guidance on legibility.

### Q7: Do you have any other comments that might aid the consultation process as a whole?

No thank you.

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

## Online response

### Q1: Please provide your name

Tim Gass

### Q2: Please provide the name of your organisation

Primary Authority Supermarkets Group (BRDO Expert panel for supermarkets) (please note that this response represents the views of several members of the Supermarkets group rather than a response endorsed by all members. Should you require a list of those that contributed their thoughts, please let me know)

### Q3: Please provide your contact details (including email address)

[Redacted]

### Q4: Which one of the following would you describe yourself as?

Other

#### Other (please specify)

The Primary Authority Supermarkets Group has membership from both enforcers and retailers. It is made up of Primary Authority Officer for each of the Supermarkets (TSOs and EHOs) and industry contacts which cover regulatory law for their businesses.

### Q5: Do you consider that there are any provisions in the draft Weights and Measures (Food) (Amendment) Regulations 2014 that do not work or are unclear?

Yes\*

#### \*If yes explain your reasons

On the whole the draft Regulations are clearly worded and their effect is clear. However, one member commented on the following: The new Weights and Measures (Food) (Amendment) Regulations 2014 seem to revoke Schedule 6 of PGR 2006 and chocolate less than 50g. Yet Weights and Measures (Miscellaneous Foods) Order 1988 article 16 still keeps the exemption in if I am reading this correctly. There could be a clear explanation for this, but it was not clear through the legislation.

### Q6: Do you have any comments on the draft Weights and Measures (Food) (Amendment) Regulations 2014 guidance?

Yes\*

#### \*If yes explain your reasons

The guidance largely reiterates directly what is written in the legislation. Though it is clear for those already well versed in weights and measures legislation it does little to educate those that are new to the area. What it fails to do, in one place, is to tell businesses which items can be sold by net weight and which items can be sold by number and the requirements around both those areas. An "idiots guide", free of technical jargon, would be useful for both businesses and regulators alike. For those that have all ready looked at the legislation, the guidance adds very little. It could be that an annex to this guide could be added or perhaps a further document produced to draw things together.

### Q7: Do you have any other comments that might aid the consultation process as a whole?

The Group had understood that these legislation updates would deal with the issue found in PGR relating to drained net weight. As the consultations' authors will know the PGR states that the drained net weight should be considered the "nominal quantity" for the purposes of the Regulations, which appears to conflict with Directive 76/211/EC that states a prepackage consists of the product and the individual packaged within which it is prepacked. This conflict has left the PA Officers in PASG in a difficult position regarding advising the businesses that

they are in partnership with and difficulty with business members of the group which represent supermarkets that trade across Europe. It seems that an opportunity to resolve this conflict has been missed if the draft Regulations are implemented without consideration of the issue.