

dti

WEIGHTS AND MEASURES

Consultation on reforming the
legislation for average quantity
control of packaged goods

CONSULTATION DOCUMENT

MARCH 2004

dti

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Weights and Measures (Packaged Goods) Regulations 1986 SI1986/2049

This consultation document seeks your views on proposals to simplify the regulation of packaged goods in the UK, and particularly the Weights and Measures (Packaged Goods) Regulations 1986 (as amended). These Regulations cover the average system of quantity control for packaged goods as well as making provision with respect to the making up and checking of packages under the average system. The proposals aim to simplify the legislation, remove unnecessary burdens from packers and importers and rationalise the scope of the Regulations.

The consultation also invites views on the desirability of improving the way the existing EC directives have been implemented to simplify the duties on packers and importers.

The Department is at this stage seeking views on the principle of these proposals, with a view to consulting on draft Regulations, taking account of responses to this consultation, in the latter half of 2004.

A further consultation exercise setting out proposals to consolidate weights and measures controls on foodstuffs will be issued by Summer 2004.

Issued 30 March 2004

Respond by 30 June 2004

Enquiries to Mrs Lynnette Falk, Room 416, 1 Victoria Street, London SW1H 0ET
Tel: 020 7215 0109 Fax: 020 7215 0315
Email: lynnette.falk@dti.gsi.gov.uk

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1. EXECUTIVE SUMMARY

- 1.1 This consultation paper seeks views on the Government's proposals to reform the legislation governing average quantity control for packaged goods.
- 1.2 Legislation on these matters remains necessary to ensure that consumers can rely on the accuracy of quantity indications and are protected against unlawful short measure, whilst recognising that automatic packing lines can give rise to small fluctuations in the quantity contained in any individual package. But the existing Regulations have for some time been recognised as unnecessarily complicated and burdensome for packers and importers. The proposals aim to make the law in this area simpler and easier to understand for all those involved, and will remove unnecessary burdens from packers and importers.
- 1.3 The key proposals are to:
- Revise the existing duties on packers to express more simply the three rules set out in the directives.
 - Replace the complex and lengthy requirements on the use of prescribed equipment, with a simpler requirement for packers to use equipment of any kind that is accurate to a specified level in relation to the nominal quantity of the packages concerned.
 - Consider more uniform application of the average system in the UK with fewer exceptions for special treatment of certain types of goods and packages.
 - Simplify and clarify the rules on e-marking.
 - Restructure the Regulations and simplify them by removing the distinction between Class A and Class B packages to make it clearer which packages the legislation applies to.
 - Remove the statutory effect of parts of the Packers' and Inspectors' Codes and update and simplify the guidance.
- 1.4 Revised Regulations must of course continue to secure compliance with the relevant European Directives, Directives 76/211/EEC and 75/106/EEC. These require Member States to ensure that e-marked packages comply with the average system and require them to permit free access to market, without further metrological control, for e-marked packages originating from other Member States.
- 1.5 The implementation of these directives in UK law, in Part V of the Weights and Measures Act 1985 and the Packaged Goods Regulations, goes further than required by the directives by extending the average system to all packaged

goods (including goods outside the scope of the directive – i.e. those larger than 10 kg or 10 L, or certain products (such as unwrapped bread) which do not fall within the directive's definition of prepackages. Packages which do not fall within the remit of the average system are subject to the "minimum system" provisions of Part IV of the Weights and Measures Act 1985.

- 1.6 The proposals will affect packers and importers of goods that are packed in production runs where all the packages are intended to contain the same quantity of product, which is determined by the packer in advance.
- 1.7 The proposals will also affect the local weights and measures authorities that have a duty to enforce the legislation. They will continue to be responsible for enforcement of the Regulations.
- 1.8 Consumers or retailers of packaged goods will not be directly affected by the proposals. The proposed new Regulations will maintain existing levels of protection for consumers against short measure and will continue to ensure that consumers can rely on quantity indications being accurate, within permitted negative tolerances, to facilitate price and weight or volume comparisons between and across brands.
- 1.9 The main benefit of the proposals should be reduced barriers to entry for packers new to the market. But it is also expected that compliance costs will be reduced for packers and importers of packaged goods. The overall impact of the proposals on enforcement costs is expected to be neutral.
- 1.10 Views are invited on all aspects of the proposals set out in this consultation paper, and a number of specific questions are set out in Section 3. The Department will also welcome views on when the new legislation resulting from this consultation or from a related consultation, to be published by summer 2004, on consolidation of Food Orders under the Act should be implemented.
- 1.11 The Regulations will apply throughout England, Wales and Scotland. The reforms will not affect Northern Ireland, which has its own separate weights and measures legislation.

2. HOW TO REPLY

- 2.1 This consultation seeks views from packers and importers of packaged goods, enforcement authorities, consumer bodies or other interested parties. When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.
- 2.2 We invite comments by 30 June 2004 at the latest. Earlier responses would be very welcome.
- 2.3 Responses should be sent - by email if possible – to the address below. An electronic version of the response form can be found at <http://www.dti.gov.uk/ccp/consultations.htm>
- 2.4 Copies sent by post should be marked “Weights and Measures Consultation” on the envelope.

Mrs Lynnette Falk
Competition and Consumer Policy Directorate
Department of Trade and Industry
Room 416
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 0109
Fax: 020 7215 0315
E-mail: lynnette.falk@dti.gsi.gov.uk

- 2.5 All responses will be acknowledged. Your response may be made public by the DTI. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation’s IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been requested.
- 2.6 We will handle any personal data you provide appropriately in accordance with the Data Protection Act 1998.
- 2.7 This document is available electronically at www.dti.gov.uk/ccp/consultations.htm. You may also photocopy it if you wish, or additional hard copies may be obtained by calling 020 7215 0336. Other versions of the document in Braille, other languages or audiocassette are available on request.

2.8 A list of those organisations and individuals consulted is in Annex 4. We would welcome suggestions of others who may wish to be involved in this consultation process.

Help With Queries

2.9 If you have questions about the issues discussed in this consultation document, please phone Lynnette Falk on 020 7215 0109.

2.10 If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Philip Martin
Consultation Co-ordinator
Department of Trade and Industry
Room 723
1 Victoria Street
London SW1H 0ET
Email: Philip.martin@dti.gsi.gov.uk

2.11 A copy of the Code of Practice on Consultation is at Annex 5.

3. CONSULTATION QUESTIONS

- 3.1 In the light of the discussion in this document, consultees are asked, in particular, to respond to the following questions, giving reasons for their views. Information that provides evidence of the points you are making would also be most helpful.

New Freestanding Regulations

- 3.2 Do you support the proposal to make a new set of freestanding Regulations to implement directives 75/106 and 76/211 and in doing so to replace the duty on packers and importers to pass a reference test with a requirement for compliance with the three packers' rules, underpinned by the reference test? (Paragraph 5.3)
- 3.3 Do you agree with the introduction of a prohibition on the use of the e-mark in inappropriate cases? (Paragraph 5.10)

Scope of the average system

- 3.4 Do you agree that the average system should remain mandatory in the UK, even for packages that do not choose to e-mark or which are not eligible for e-marking? (Paragraph 5.7)
- 3.5 Do you support the introduction of a more straightforward formula to apply the average system to all pre-packages marked with a weight or volume indication above 5 g or 5 ml? Should there be an upper limit? (Paragraph 5.34)
- 3.6 Do you agree with the removal of the distinctions between Class A and Class B packages? (Paragraph 5.32)

Application to specific cases

- 3.7 Should the average system continue to be disapplied to those products listed in section 5.38? (Paragraph 5.38)
- 3.8 Should the average system continue to apply in its existing modified way to bread, milk in returnable containers and packages made up by a retailer and sold from his premises or vehicle? (Paragraph 5.42)
- 3.9 Given improvements in packaging technology, should desiccating products continue to be subject to a time limit for reference testing? (Paragraph 5.44)
- 3.10 Should the average system continue to apply to unwrapped bread and knitting and rug yarn? (Paragraph 5.45)

Measuring Equipment

- 3.11 Do you agree with the proposal to replace the list of specified equipment in Schedule 4 to the Packaged Goods Regulations with a more straightforward duty to use equipment of any kind, which may lawfully be used for trade and is accurate to a specified level? (Paragraph 5.21)
- 3.12 Do you agree that the level of accuracy for new packing equipment should be specified as 1/5 tolerable negative error of the packages being measured or checked? (Paragraph 5.22)
- 3.13 Should a certificate of accuracy be required to show that equipment complies with the required level of accuracy? (Paragraph 5.24)
- 3.14 How should existing equipment be treated by the new Regulations? Should it continue to be subject to the existing requirements in schedule 4 of the Packaged Goods Regulations for the rest of its use or should there be a cut off date to meet the new accuracy criteria? (Paragraph 5.26)

Labelling

- 3.15 Do you support the intended clarification that packages consisting of a single container or enclosure should provide an indication of the total quantity contained, and that this should be the quantity for purposes of enforcement? (Paragraph 5.13)

Guidance

- 3.16 Is the WELMEC guide an appropriate model for UK guidance? (Paragraph 5.51)
- 3.17 Do you consider that any part of the current statutory effect of the Packers' Code and Inspectors' Manual should be incorporated in new Regulations? (Paragraph 5.52)

Implementation

- 3.18 What problems have you experienced with the implementation and enforcement of the existing Regulations which could be addressed in the follow up consultation document?
- 3.19 Are any of the reforms canvassed in this paper of greater urgency than others; and if so, what should be the target date or timescale for these particular reforms? (Paragraph 5.57)

General question

3.20 Do you have any other proposals for simplification of the Regulations, or reduction of burdens, while maintaining consistency with European law?

Costs

3.21 Can you;

- (a) identify any types of costs or benefits for your company or more generally resulting from these proposals?
- (b) quantify those costs or benefits?

3.22 See Annex 2 for details on costs and benefits.

4. BACKGROUND TO THE PROPOSALS

Background to Reform

- 4.1 The Department has recognised for some time that the legislation governing the quantity control of packaged goods is overly complex and difficult to understand. While packers have become accustomed to the complexities of the system, as it has been in place with little change for 25 years, the legislation is not easy for new entrants to the market to understand. The 1999 Consumer White Paper therefore included a commitment to reform the legislation. This reform was originally planned as part of a Consumer Bill and a consultation document "Fair Measure" on the reform of Parts IV and V of the W&M Act 1985 was issued in July 1999. However, pressure on the Parliamentary timetable has meant that it has not been possible to bring forward new primary legislation, nor does this seem likely to be possible in the near future.
- 4.2 The Better Regulation Task Force has highlighted the unnecessary complication and burdens on business in the legislation in their report on consumer affairs in 1998. Both the National Audit Office and the Committee on Public Accounts referred to the complicated and outdated nature of the legislation and recommended prompt reform in their respective reports on the Regulation of Weights and Measures in 2003.
- 4.3 Although a comprehensive reform by primary legislation does not seem a practical possibility for the near future, it would be possible to achieve significant though less wide-ranging reform through other legislative means. Consideration has been given to the possibility of reforming the legislation by means of a Regulatory Reform Order, but in this case, because the implementation of European Directives is involved, it appears that a more flexible and quicker reform would be obtainable by use of the regulation making powers which already exist in Part V, or alternatively by the use of the European Communities Act to revise the implementation of relevant European Directives. (The use of the ECA would affect the timing of possible legislation - see section 5.57 below.)
- 4.4 This consultation document sets out proposals for the reform of the Weights and Measures (Packaged Goods) Regulations SI 1986/2049, as amended by SI 1987/1538, SI 1992/1580, SI 1994/1258 and SI 1994/1852. The Packaged Goods Regulations lay down the coverage of the average system. They also make provision as to the marking, the making up and checking of packages by packers or importers and the testing of packages by inspectors.
- 4.5 It is proposed to replace the existing Regulations with a revised set of shorter and simpler Regulations, which remove any unnecessary burdens from packers and importers, whilst maintaining consumer protection and complying with the requirements of directives 76/211 and 75/106. Views are also sought on a reimplementation of the directives, using the ECA, to express in simpler terms

the duties of packers and importers under the average system, clarify the regulation of the use of the e-mark and generally to make the legislation easier to understand. This would be a more extensive reform but would have the advantage of providing a complete new regime, replacing Part V and Schedule 8 to the 1985 Act as well as the existing Regulations.

- 4.6 A further consultation will be issued shortly on proposals to consolidate weights and measures Regulations dealing with the sale of foodstuffs including quantity labelling. Although the subject matter of these two consultations is in principle distinct, the Department recognises that some stakeholders will have interests in both. The Department will therefore consider the responses to both consultations before bringing forward specific legislative proposals.
- 4.7 The specifics of the Department's proposals are outlined in section 5 below. But the Department would welcome any other suggestions or proposals for simplification of the Regulations, or reductions of burdens, while maintaining consistency with European law.

European Requirements

- 4.8 Weights and Measures controls on certain packaged products are subject to European law. The Weights and Measures Act 1979 implemented into UK law both the "Solids" directive (76/211/EEC) and the quantity control parts of the "Liquids" directive (75/106/EEC). These directives were intended to harmonise quantity control procedures across the Community by allowing for packages that meet certain standards to mark their packages with an "e" mark and for those packages to be allowed free access for metrological control purposes across all other Member States.
- 4.9 The directives provide that Member States may not refuse access to packages which satisfy the requirements of the directives for reasons concerning the marking set out in the directives, the determination of their weight or volume, or the methods by which they have been measured or checked.
- 4.10 The principle behind the directives is to remove potential barriers to the free movement of goods that may have been imposed by differing national weights and measures requirements.
- 4.11 The directives place a duty on packers or importers of e-marked goods to comply with three criteria – known as the three packers rules. These are:
- Actual contents shall not be less, on average, than the nominal quantity;
 - The proportion of packages containing less than a specified amount (the tolerable negative error laid down in the directive) shall be sufficiently small to meet the requirements of the reference test laid down in the directive;

- No package shall be under-weight by more than twice the negative tolerable error (as laid down in the directive).
- 4.12 Under the directives the duty is placed clearly on packers and importers to meet the directives' requirements if they wish to benefit from e-marking.
- 4.13 Under Paragraph 4 of Annex 1 to the directives the responsibility is placed on packers and importers who wish to e-mark their packages, to measure or check by weight or volume the actual contents of their packages. A check may be carried out by sampling. This measurement or check must be carried out using a legal measuring instrument suitable for effecting the necessary operations. Where the actual contents are not measured, the check carried out by the packer must be organised so that the quantity of the contents is effectively ensured.
- 4.14 The above condition is met if the packer carries out production checks in accordance with procedures recognised by the competent department and keeps records of the checks to show that they have been properly and accurately carried out. An importer may, instead of measuring and checking, provide evidence that he is in possession of all the necessary guarantees for him to assume responsibility for the quantity control of the packages.
- 4.15 Checks are then to be carried out by the competent Department in Member States to ensure compliance. The directive sets out in detail the technical requirements of the test that is to be used by enforcement agencies to test whether e-marked packages meet the three packers rules.
- 4.16 In the UK the system of quantity control set out in the directives is known as "the average system". It is relied upon to ensure quantity control for the majority of goods prepacked in predetermined quantities by weight or volume. The fundamental aim of the average system is to ensure that consumers can rely on the accuracy of quantity indications and are protected against unlawful short measure whilst recognising that automatic packing lines can give rise to small fluctuations in the quantity contained in any individual package within a batch of packages made up to the same predetermined quantity.
- 4.17 The average system requires that packers and importers ensure that, within certain tolerances, their packages do not contain less than the labelled quantity. The main difference between the average system and the older "minimum system" is that specified tolerances are permitted for individual packages below the quantity indication of the package, provided that the average actual quantity for a batch of packages as a whole is at least the nominal quantity. The tolerances below nominal quantity permitted by the average system for individual packages, acknowledge that there is inherently some fluctuation in the packing process. Without this flexibility packers would have to over-pack to ensure that each package contained at least the nominal quantity, to compensate for any discrepancies in the filling or packing process.

The minimum approach, which continues to apply to packages made up in variable weights or in constant quantities expressed by length, area or number and to most non-packaged goods, requires that each item contain at least the nominal quantity.

- 4.18 The Commission recently conducted a review of the operation of the directives on Pre-packaged products under the SLIM (Simpler Legislation for the Internal Market) procedure. The review concluded that the average system should remain in place but recognised that there were difficulties in applying the current legislation and identified opportunities for clarification and improvement. In particular the SLIM review identified the need for clarification of definitions, taking account of the work of WELMEC (the European Co-operation in legal metrology) and OIML (the International Organisation of Legal Metrology) and the possibility of extending e-marking to packages up to 25 kg or L. OIML have made provision for applying the average system to packages up to 50 kg or 50 L. Nothing in the review's recommendations conflicts with the proposals being advanced in this consultation.
- 4.19 The Commission will take account of the SLIM review in bringing forward proposals to revise the directives. The Department will continue to work with the Commission and other Member States on proposals for improvement to the directives. It is uncertain at this stage how soon the Commission will bring forward proposals to revise the directives, and what the timetable might be for bringing these proposals into effect. But it seems unlikely that any changes to the directives will take effect earlier than 2006/07.

UK Implementation of European Directives

- 4.20 Directives 76/211/EEC and 75/106/EEC required implementing into UK law to allow for e-marked goods from other Member States to enter the UK without being subject to the existing UK weights and measures legislation that relied upon the minimum system. Without changes to existing legislation many e-marked packages from other Member States would have fallen foul of existing UK legislation. The directives also needed implementing to enable UK packers and importers to benefit from the free access provided for by e-marking should they choose to do so. However, to have merely adapted UK legislation to allow for e-marking within the minimum system would have been unworkable as the two systems of average or minimum weight are largely incompatible.
- 4.21 The directives were implemented into UK law as part of a wider move to the average system in 1979. The average system was first introduced in the UK by the Weights and Measures Act 1979, which was subsequently consolidated as Part V of the Weights and Measures Act 1985. Part V applies primarily to packaged goods, which are goods which are not packed in the presence of the consumer and whose content cannot be altered without opening the container. The legislation applies to packaged goods that are packed in predetermined constant quantity and to some other goods, which are specified in Schedule 7

to the Weights and Measures (Packaged Goods) Regulations 1986. Examples of packaged goods to which the legislation applies, include most packaged food and drink and the majority of packaged non-foodstuffs such as paint and household cleaning products.

- 4.22 The UK applied the average system set out in the directives to a wider range of goods than strictly required by the directives. For example whereas the directives apply to packages where the packer has chosen to e-mark, the UK made the average system mandatory for packaged goods whether or not they are e-marked and for some non-packaged goods. The UK implementation differs from the approach taken by the directive in several other ways. In particular, the duties on packers and importers are formulated largely as a duty to pass a prescribed statistical test (the “reference test”). In the directives, the reference test is a prescribed test procedure available to be used by enforcers to check whether a packer is complying with two of the three rules, which are separately and more simply expressed. The UK legislation also prescribes, to a greater level of detail than other Member States, which equipment packers can use to measure and check their packages whereas the directive merely requires the use of legal equipment suitable for effecting the necessary operations.
- 4.23 The average approach taken by the directives, with its in built tolerances and statistical basis was new to the UK in 1979 and as such the implementation appears to have been cautious in its approach, probably because the system was untried. This contributed towards a regime that is overly complex, not least in that it is spread between three levels of statutory controls – in Part V, in the Packaged Goods Regulations and in statutory provisions included in the guidance document known as the “Packers’ Code”. Since the average system was adopted in 1979, experience has shown that there are unnecessary levels of complexity and burdens that could be removed without diminishing consumer protection.
- 4.24 Enforcement of the average system is carried out by local authority weights and measures inspectors, usually as part of Local Authority Trading Standards Departments. Controls are applied principally at the point of production or importation. Packers and importers have a duty to pass a statistical reference test undertaken by an inspector of weights and measures to show that their packages meet specified standards. To pass the test, packages must contain on average at least the amount stated on the package (the nominal quantity), and the number of packages containing less than the amount prescribed by the Weights and Measures (Packaged Goods) Regulations 1986, must be below a certain threshold.
- 4.25 Packers and importers are also subject to duties in relation to how and when they measure or check their packages to ensure that they would pass the reference test; the equipment they must use to make up packages or to check

their contents; the records they must keep and the length of time that they must keep those records.

5. THE PROPOSALS

Proposal A: Duties of packers or importers

- 5.1 At present, the duties on packers and importers are set out in the Act in a way that differs from the directives (although ultimately the effect is the same). The directives set out three “packers rules” (see paragraph 4.11). It will be noted that the precise meaning of the first and second rules can only be established by referring to the specified metrological controls, in effect, to the reference test set out in Annex II of Directive 76/211/EEC. In the UK legislation, these two rules are condensed into a duty to pass the reference test (the third rule is set out separately as an offence under Section 50(5) of the Act, and has to be traced through a definition to establish its meaning). Although the ultimate effect on packers and importers is the same, it would be simpler and easier to understand if the structure of UK duties followed a similar pattern to that of the directives. Those subject to the duties can then gain a sufficient understanding of what is required of them from the packers rules (which occupy only a dozen lines), together with practical guidance that packing to a tolerance of 2.5% is enough to ensure general compliance with the second rule.
- 5.2 One key option for consideration in reforming the legislation is therefore a revised implementation of the directives. This would entail repealing the current regime in the 1985 Act and the 1986 Regulations and making a separate freestanding set of Regulations that implement the directives, using the powers in the European Communities Act rather than the powers in Part V of the 1985 Act. The new Regulations would set out the entire regime and would replace Part V of the 1985 Act and the Packaged Goods Regulations. Using this approach would allow for a new regime to be set out, based more closely on the directives. (This could however impact on the timetable for implementation, see section 5.57 below.)
- 5.3 The proposal is therefore to repeal the current regime in the 1985 Act and the 1986 Regulations and to make a new set of freestanding Regulations to implement directives 75/106 and 76/211 and in doing so to revise the duty on packers and importers to a requirement for compliance with the three packers’ rules. The reference test would remain as the prescribed means of testing compliance with the first two rules, and in order to establish the precise meaning of those rules. As mentioned, the Regulations would set out the entire regime.

Questions

- 5.4 Do you support the proposal to make a new set of freestanding Regulations to implement directives 75/106 and 76/211 and in doing so to replace the duty on packers and importers to pass a reference test with a requirement for compliance with the three packers’ rules, underpinned by the reference test?

Proposal B: Mandatory or non-mandatory application of the average system

- 5.5 The goods to which the average regime applies (prescribed goods) are those specified in Schedule 1 to the Regulations or goods of any other description contained in a package where the goods were not placed in the package in the presence of the purchaser, cannot be removed without opening the package and where the packages are made up in a predetermined constant quantity. In addition, section 65 of the 1985 Act contains a power to modify the regime in relation to particular packages and a second power to apply the regime in a modified form to goods which are not contained in packages.
- 5.6 The UK average system extends more widely than required by directives 76/211/EEC and 75/106/EEC. It has been made mandatory in the UK for all goods made up in predetermined quantities that are contained in sealed packages that are packed other than in the presence of the purchaser, whether or not the packages are e-marked, and it is also mandatory for some goods that are not contained in packages.
- 5.7 Under present EC law the use of the e-mark is voluntary, and adherence to the average system is mandatory only where packages are e-marked. The UK however has chosen to apply the average system irrespective of whether the e-mark is used. This uniform application of the average system has clear benefits for consumers. It would also appear to have benefits for packers, in that quality control systems can be standardised on the requirements of the average system. In the absence of any case for change, it is proposed to continue with the uniform application of the average system, and this is consistent with the recommendations of the SLIM review (see para. 4.18 above). However, it is proposed to simplify the rules governing the use of the e-mark, see para. 5.9 below.

Question

- 5.8 **Do you agree that the average system should remain mandatory in the UK, even for packages that do not choose to e-mark or which are not eligible for e-marking?**

Proposal C: Clarification of the rules governing e-marking.

- 5.9 At present, the UK legislation does not make clear provision governing the use of the e-mark. Under the directives, the application of the e-mark is a voluntary choice for the packer or importer. It is proposed to introduce a prohibition on using the e-mark in ways which would be incompatible with the directives. The packages on which the e-mark may be applied are those which are intended for sale in constant unit nominal quantities which are:

- a) equal to values predetermined by the packer;
- b) expressed in units of weight or volume;
- c) not less than 5g or 5ml and not more than 10kg or 10L, and;
- d) in which the goods are placed in the package without the purchaser being present and in which the quantity cannot be altered without opening the package.

5.10 It is proposed that a prohibition be placed on e-marking of packages which do not meet these criteria.

Question

5.11 Do you agree with the introduction of a prohibition on the use of the e-mark in inappropriate cases?

Proposal D: Labelling requirements

5.12 At present the Regulations cross refer to the Weights and Measures (Quantity Marking and Abbreviations of Units) Regulations 1987 SI 1987/1538) and a packer subject to the average system would also have to have regard to those Regulations. It is now proposed to include the relevant provisions of those Regulations in the new Regulations. The aim is to make it easier for packers to understand their obligations by including all the relevant provisions applying as part of the average system in one set of Regulations.

5.13 The existing Regulations do not specify how packages marketed with "extra free" product should be treated under the average system. It is currently unclear, where there are two indications of quantity, which is to be treated as the indication of quantity for the purposes of enforcement. It is proposed to clarify the position to the extent necessary. The desirable outcome is that packages consisting of a single container or enclosure should provide an indication of the total quantity contained, and that this should be the quantity for purposes of enforcement. This would not of course apply to multipacks, or to "extra free" offers consisting of a separate container packaged with the principal product.

5.14 Further consideration will be given to the labelling of packages for weights and measures purposes in the further consultation document on consolidation of the food orders, due to be issued by the Summer (see paragraph 5.56).

Questions

- 5.15 Do you support the intended clarification that packages consisting of a single container or enclosure should only include one quantity that is e-marked and that this should be the quantity for purposes of enforcement?

Proposal E: To replace the prescribed equipment listed in Schedule 4 to the Packaged Goods Regulations, with a more simple accuracy requirement

- 5.16 Section 49 of the Weights and Measures Act and the Regulations made under it place duties on packers and importers of regulated packages regarding the equipment they may use to make up or check packages, and the documentation they must keep.
- 5.17 Under section 49, packers currently have two options for complying with their duties with regard to how they make up their packages. They can either use suitable equipment of the prescribed kind in an appropriate manner to make up packages, or they can choose to carry out a check on the packages to ensure that they are able to pass the reference test. If they choose the latter option – to check rather than measure – they must use suitable equipment of the prescribed kind in an appropriate manner in carrying out the check and they must make and keep for a prescribed time an adequate record of the check.
- 5.18 Importers can choose either to carry out a check on their packages, with the same conditions as packers, or they can obtain and keep documents which show that the packages are likely to have been made up in a way that would comply with the duty to pass the test.
- 5.19 Packers and importers are required to use suitable equipment in an appropriate manner but the kind of equipment that can be used to measure or check packages under the average system is limited to that prescribed in Schedule 4 to the Weights and Measures (Packaged Goods) Regulations 1986.
- 5.20 Part I of Schedule 4 deals with interpretation. Parts II and III of Schedule 4 set out detailed requirements on the equipment that can be used for making up and checking packages.
- 5.21 It is proposed to replace this restrictive list with a straightforward requirement that the equipment used by packers to measure or check may be equipment of any kind which can lawfully be used for trade and which is accurate to a specific level in relation to the weight or volume of the packages being measured or checked. Packers will still be subject to the requirement in section 49 to use suitable equipment in an appropriate manner, but would have greater freedom in the kind of equipment that they can use. It is proposed that the level of accuracy be set at 1/5th of the tolerable negative error specified for the relevant packages in Regulation 23 of the Packaged Goods Regulations.

- 5.22 Packers would then be required to ensure that the equipment they use satisfies the accuracy requirement.
- 5.23 WELMEC (the European cooperation in legal metrology) Working Group 6 which works toward the harmonisation of European legislation on pre-packages recommends an accuracy level of 1/5 tne in its guidance on the application of e-marking to pre-packages.
- 5.24 WELMEC also recommends that the packer hold a certificate of accuracy as proof of the accuracy of the equipment at the time the certificate was issued. This certificate could be provided by the supplier or manufacturer of the equipment upon the purchaser's request and would certify that the equipment met the accuracy criteria at the time of delivery or installation. Views are invited on whether the holding of such a certificate should become a requirement for packers' purchasing equipment after a specified date; and, if so, whether this should apply in relation to all equipment or only to equipment that is not subject to other Regulations.
- 5.25 The directives state that the conditions relating to measuring and checking are met if, in relation to products measured by volume, a measuring container bottle is used in accordance with Directive 75/107/EEC. UK legislation will need to allow for packers to continue meeting their requirements by choosing to use such containers.
- 5.26 It is proposed that the new provisions with regard to equipment be introduced gradually to minimise the costs to packers of ensuring existing equipment complies with the new Regulations. As such, it is proposed that the new requirements apply only to equipment purchased after the Regulations come into force. Equipment already in use will continue to be subject to the existing regime. This could be either for the remainder of its use or for a set period, for example 10 years, after the coming into force of the Regulations. Views are sought on the preferred treatment of existing equipment.

Questions

- 5.27 **Do you agree with the proposal to replace the list of specified equipment in Schedule 4 to the Packaged Goods Regulations with a more straightforward duty to use equipment of any kind, which may lawfully be used for trade and is accurate to a specified level?**
- 5.28 **Do you agree that the level of accuracy for new packing equipment should be specified as 1/5 tolerable negative error of the packages being measured or checked?**
- 5.29 **Should a certificate of accuracy be required to show that equipment complies with the required level of accuracy?**

- 5.30 **How should existing equipment be treated by the new Regulations? Should it continue to be subject to the existing requirements in schedule 4 of the Packaged Goods Regulations for the rest of its use or should there be a cut off date to meet the new accuracy criteria?**

Proposal F: Simplification to the structure of Regulations

- 5.31 Under the directive, goods that do not qualify for e-marking are goods that are packed in weights or volumes below 5 g or 5 ml or above 10 kg or 10 L, or which are not contained in packages. The UK applies the average system to all packages above 5 g or 5 ml (with upper limits in some cases) made up in predetermined constant quantities, where the goods were not placed in the package in the presence of the purchaser and cannot be removed without opening the package.
- 5.32 The Packaged Goods Regulations currently classify packages into two classes. Packages that are Class A (i.e. those specified in Parts I, II or III of Schedule 1) and those that are Class B packages – which are defined as any packages which are not Class A packages. Packages that fall outside the weight or volume thresholds set for specific goods in column 3 of Schedule 1 are treated as Class B packages. This puts in place a two-tier system allowing for different treatment of Class B packages, including for the marking and recording of statements of quantity. It is proposed to remove this distinction between Class A and Class B packages and the modifications that have been made for class B packages in Part II of Schedule 3.
- 5.33 In addition, Schedule 1 excludes certain categories of goods (in column 2 of that table) from being treated as Class A packages. It is proposed that as part of this simplification, this distinction will be removed.
- 5.34 Subject to consultation responses it is proposed that Regulations should apply in a more simple formula to all packages marked with an indication of weight or volume made up in predetermined quantities above 5 g or 5 ml. A separate provision is proposed to prohibit the use of the e-mark for packages which don't meet specific e-marking criteria (see para. 5.10)

Questions

- 5.35 **Do you support the introduction of a more straightforward formula to apply the average system to all pre-packages marked with a weight or volume indication above 5 g or 5 ml? Should there be an upper limit?**
- 5.36 **Do you agree with the removal of the distinctions between Class A and Class B packages?**

Proposal G: Special treatment for certain packages/products

- 5.37 The Regulations also provide for the average system to be disapplied or modified in relation to specific packages or products.
- 5.38 The current Regulations disapply the average system to certain cases of packages specified in Schedule 2 of the Regulations. Broadly, these cases are:
- a) Paint consisting of base and colouring agent when mixed by someone other than the person who made up the package of base paint
 - b) Packages not intended to be sold as separate items
 - c) Alcohol stronger than 1.2% alcohol strength by volume, where the packages were made up before, but not imported until on or after, 1/1/1980.
- 5.39 The Department assumes that the last of these is no longer of relevance and that the first is not needed as the product is not made up in a predetermined constant quantity, but would welcome views on whether the average system should continue to be disapplied in the other case.
- 5.40 The current Regulations also modify the application of the average system to certain packages. Part I of Schedule 3 to the Regulations modifies the way the Act and Regulations apply to milk in returnable containers, bread and poultry. It also modifies the way the Act and Regulations apply to returnable containers first marked before 1980 and to packages made up by the retailer and sold on the premises or from his vehicle.
- 5.41 It is proposed to revoke the modification of the average system to poultry and to deal with quantity control of poultry under provisions to be included in the consolidated Food Order. Further detail on this issue will be contained in consultation paper on a consolidated Food Order.
- 5.42 The Department welcomes views on whether the average system should continue to apply in this modified way to bread, milk in returnable containers, and packages made up by a retailer and sold from his premises or vehicle. It is presumed that provision is no longer necessary for returnable containers first marked before 1980.
- 5.43 At present, Regulations 25, 26, 27 and Schedules 6 and 7 set out special provision to apply the average system to certain cases. These are inner packages that are prepacked in outer containers, desiccating products and unwrapped bread and knitting and rug yarn.

- 5.44 In the case of desiccating products, modifications are made to limit the time after the packages were made up in which a reference test can be carried out, to take account of the potential weight or volume loss from evaporation of goods after packaging. For most desiccating products a reference test can not be conducted after the seventh day after the packages were made up, but for cosmetic products this limit is at the end of the day after the packages were made up. The Department would welcome views on whether, given improvements in packaging technology, desiccating products, including cosmetics, should continue to be subject to a time limit for reference testing.
- 5.45 In the cases of unwrapped bread and knitting and rug yarn special provisions are needed to modify the average system to take account of the open nature of the products. The Department would welcome views on whether the average system should continue to apply to unwrapped bread and knitting and rug yarn.

Questions

- 5.46 **Should the average system continue to be disapplied to those products listed in section 5.38?**
- 5.47 **Should the average system continue to apply in its existing modified way to bread, milk in returnable containers, and packages made up by a retailer and sold from his premises or vehicle?**
- 5.48 **Given improvements in packaging technology, should desiccating products continue to be subject to a time limit for reference testing?**
- 5.49 **Should the average system continue to apply to unwrapped bread and knitting and rug yarn?**

Proposal H: Revising the Packers' Code

- 5.50 A guidance document for packers and importers, known as the Packers' Code, was issued when the average system was introduced in 1979 to explain the new system and duties and to give examples of how to comply. Certain provisions in the guide were given statutory effect by Regulation 18 of the Packaged Goods Regulations. These provisions set out in detail the appropriate manner of use of equipment, the suitability of equipment, and the adequacy of checks, records and information required under section 49 of the Act.
- 5.51 It is proposed that the existing guidance document be revised to reflect the proposed changes to the regime. It is also proposed to remove the statutory effect from the guidance and to place any statutory requirements within the Regulations themselves. The aim of this would be to better distinguish between statutory requirements and guidance. It is also proposed that the

new guidance should reflect the model produced by WELMEC Working Group 6. This guidance can be found at <http://www.welmecwg6.org/>.

- 5.52 A guidance document for weights and measures inspectors, known as the Inspectors' Manual, was published in 1979 as a guide to enforcement. Certain provisions in the Manual, relating to the manner of selecting and testing packages, are given statutory force by Regulations 21 and 22 of the Packaged Goods Regulations. It is proposed to remove the statutory nature of these provisions and to include all statutory requirements in the Regulations themselves.

Questions

- 5.53 **Is the WELMEC guide an appropriate model for UK guidance?**
- 5.54 **Do you consider that any part of the current statutory effect of the Packers' Code and Inspectors' Manual should be incorporated in new Regulations?**

General question

- 5.55 **Do you have any other proposals for simplification of the Regulations, or reduction of burdens, while maintaining consistency with European law?**

Implementation

- 5.56 As noted above, this consultation document will be followed by another dealing largely with consolidation of the food orders. As noted in para. 4.6 above, the Department intends to consider the results of both consultations before proposing new Regulations in either area. It seems likely it will be convenient to propose new regulations in two packages, dealing with Part V and Part IV of the Act, respectively. Even if the regulations are made at different dates, however, it might be more convenient for those affected if the resulting Regulations were brought into force on the same date. This issue will be discussed further in the consultation document to be issued a little later this year on a consolidated food order. Views will also be invited on whether the prospect of revision of the EC Directives (see paras 4.18 and 4.19 above) gives reason to defer reform of the UK framework, or whether the reforms are worth going ahead as soon as practicable.
- 5.57 So far as the possible reforms discussed in this document are concerned, it may be noted that most of the reforms can be achieved by the use of regulation-making powers in Part V of the 1985 Act. However, Proposal A, which involves a complete re-implementation of directives 75/106 and 76/211, relies instead only on the powers in the ECA and would consequently add some months to the legislative timetable. The Department's current

assumption is that this should not be a material concern and these reforms should be considered on their merits. However, we would be grateful for views on whether any of the reforms canvassed in this paper are of greater urgency than others; and if so, what the target date or timescale for these particular reforms should be.

Question

- 5.58 **What problems have you experienced with the implementation and enforcement of the existing Regulations which could be addressed in the follow up consultation document?**
- 5.59 **Are any of the reforms canvassed in this paper of greater urgency than others; and if so, what should be the target date or timescale for these particular reforms?**

6. What Happens Next?

- 6.1 The Department proposes to hold a meeting or workshop in April 2004 on the proposals, which would be an opportunity for stakeholders to exchange views or seek further details to assist their consideration of the proposals in this document. If you would be interested in this meeting, please contact Lynnette Falk (details on p.1).
- 6.2 As noted above, a further consultation document on consolidation of the food orders will be published a little later this year. Please indicate in your response if you would like to be consulted on the next document.
- 6.3 The results of this consultation exercise, including a summary of views expressed will be published on the DTI website with paper copies of the summary of responses available on request
- 6.4 Following on from these consultations on the principles of reform, revised Regulations will be drafted and published for consultation, with reasons for the decisions taken. The timing of that second phase of consultation will depend, among other things, on stakeholders' views on the implementation issues noted above. But as a general indication of what might be practicable, the consultations on draft Regulations could take place in the latter half of this year; thereafter, the new Regulations may require pre-notification to Brussels, but (subject to that) could be made in the first half of 2005.

Annex 1: Response Form – see web site: www.dti.gov.uk/ccp/consultations.htm

ANNEX 2: REGULATORY IMPACT ASSESSMENT

Purpose and Intended Effect

Objective

1. The purpose of the reform is to update and simplify the legislation regulating the quantity control of packaged goods whilst reducing burdens on packers and maintaining safeguards for consumers.
2. The Weights and Measures (Packaged Goods) Regulations 1986 determine which goods are regulated for weights and measures purposes by Part V (the average system) of the Weights and Measures Act 1986 and which remain subject to Part IV (the minimum system). It is proposed to consolidate the treatment of packages from different sectors in terms of application and weight or volume thresholds. Views of affected sectors are being sought to determine which should remain subject to Part V.
3. The main deregulatory proposal is to give greater freedom to packers in the equipment that they may use for measuring or checking the quantity of goods in their packages by replacing the existing prescriptive requirements in Schedule 4 of the Weights and Measures (Packaged Goods) Regulations 1986 with a short and straightforward requirement for the equipment which must be used.
4. It is proposed to clarify which packages may benefit from e-marking under directives 75/106 and 76/211/EEC and to set out more clearly the quantity thresholds for packages subject to the average system.
5. It is also intended to simplify the structure of the Regulations to make it easier for those affected by them to understand their duties.

Background

6. Part V of the Weights and Measures Act 1986 implements EU Directives 76/211/EEC and 75/106/EEC which provide that goods sold in packages which have been voluntarily e-marked by the packer, must be marked with a weight or volume indication and the amount of the contents must on average agree with the labelling. Part V extended the regime to packages that were not e-marked in order that there would not be two different regimes for the same product and to allow packers and importers of non-e-marked packages to benefit from the tolerances permitted under the average system.
7. Packers and importers of packaged goods are responsible for ensuring that their packages meet the requirements of the Act with regard to quantity control, marking, equipment, checks and documentation. Local weights and measures

authority inspectors enforce the provisions by conducting checks at the place of production to ensure that packages pass a statistical test as described in the directives. The Weights and Measures (Packaged Goods) Regulations 1986 SI1986/2049, made under Part V of the Weights and Measures Act 1985, determine the scope of the average regime as well as setting out certain details concerning the marking, making up, checking and testing of packages.

8. The UK legislation places restrictions on the equipment packers can use to measure quantity and on how they organise production. It is intended to reduce this burden by giving packers greater freedom to choose the equipment they may use for measuring or checking their packages.
9. At present packers may only use equipment that is included in a list of prescribed equipment in Schedule 4 to the Packaged Goods Regulations. This list prescribes the type of equipment that may be used and goes into a considerable level of detail. It is proposed that this schedule be replaced by a requirement for packers to use equipment that is legal and accurate to a set level in relation to the weight or volume of the packages concerned. Any equipment that is already regulated will be considered legal if it complies with the relevant Regulations. In addition, any measuring or weighing equipment outside of a class that is regulated, such as checkweighers, but which may lawfully be used for trade (as defined by section 7 of the Weights and Measures Act 1985), will be considered legal. Furthermore, we will prescribe that equipment must operate to a level of accuracy of not less than 1/5 of the level of tolerable negative error prescribed in the Regulations for the quantity of goods that the equipment is measuring or checking. It will be the responsibility of packers to ensure that their equipment meets the new standards, but the new criteria should give much greater freedom to a packer in deciding which equipment best meets his needs.
10. It is also proposed to clarify which packages are eligible for e-marking and remove statutory provisions from guidance.
11. There is also the option of re-implementing the directives in primary legislation by reform of Part V of the Weights and Measures Act.

Risk Assessment

12. The existing Regulations were made 18 years ago and are based upon legislation dating from 1979. Since then, technological changes and process innovation have resulted in significant improvements to weighing and measuring equipment. For example 20 years ago there was relatively little computer-controlled equipment, but today it is the norm, allowing for much greater standards of accuracy. Therefore, the list of suitable equipment prescribed in Schedule 4 is increasingly out of date. This may act as a barrier to the adoption of new technology by packers and as such a barrier to innovation.
13. The existing Regulations are complex and, although there is a more comprehensible code of practice for packers, it may be hard for some packers to

understand the extent of the duties placed upon them. This level of complexity in the Regulations may also act as a barrier to entry for companies new to the market. The Better Regulation Task Force identified Part V of the Weights and Measures Act 1985 as unnecessarily burdensome and complex in their report into Consumer Affairs in May 1998. The proposed changes will simplify the Regulations and remove unnecessary burdens from packers and importers in the equipment they may use.

14. There are economic reasons why weights and measures standards are used. In the presence of informational bias they serve to protect consumers and, therefore, help to make markets work more effectively and efficiently.
15. It is costly for consumers to gather information about a product before deciding to make a purchase. Imagine a consumer weighing each package before deciding to buy it. It would be inconvenient and time consuming to do so, which detracts from the overall consumption benefit. A rational consumer will make use of all the information available to them up to the point where the marginal benefit of collecting additional information equals the marginal cost of doing so. The individual's information, therefore, is likely to be less than precise. This is costly for the economy since the informational problems may lead to poor purchasing decisions. Furthermore there is an incentive for unscrupulous traders to exploit the informational problems to their advantage. This is likely to be at the expense of efficient legitimate businesses, which will lead to the economy losing economic benefit.
16. Weights and measures standards, backed by monitoring, enforcement and penalties, provide a solution to these problems because they place a responsibility on, and an incentive for, the company to fill the package with the marked amount on average. The consumer therefore benefits from not having to collect information about the quantity or volume in the package, and similarly does not incur the additional costs of verifying that each label is accurate since they know that on average they will get the right amount. This gives consumers confidence when they make their purchases; gives firms an incentive to behave properly and helps the market allocate resources in a way that maximises economic benefit.

Options

Option 1. No change.

Option 2. Update and simplify the Packaged Goods Regulations and allow packers greater flexibility in the choice of measuring equipment.

Option 3. Update the list of prescribed equipment in Schedule 4 of the Packaged Goods Regulations to allow for changes to equipment that have occurred since the schedule was drawn up in 1979.

Option 4. Reform of Part V, re-implementing the relevant EC directives to simplify the duties on packers and importers.

Option 1

17. No change. This proposal would not address any of the concerns over the complexity of the legislation. The existing regime is increasingly out of date and has not been updated or amended in any substantial way for 25 years. The legislation is widely seen as over complicated and the Better Regulation Task Force, the Committee on Public Accounts and the National Audit Office have all called for reform. There is a risk that this complexity acts as a disincentive to entry into the market of packing or importing pre-packaged goods. This option would not address the concerns of the Better Regulation Task Force, the Committee on Public Accounts or the National Audit Office.

Option 2

18. This option would involve the remaking of the main Regulations made under Part V – the Weights and Measures (Packaged Goods) Regulations 1986 - to update and simplify the current provisions. The main changes would be a consolidation of the application of the regime to all packaged goods above 5 g or 5 ml, the removal of excluded categories of goods, the removal of different treatment for different classes of packages, a clarification of the conditions for e-marking of packages, and a widening of the prescribed kind of measuring equipment that packers may use during production, whilst maintaining standards of measurement accuracy. The main disadvantage is that this option would not address the way in which the duties on packers are expressed.

19. This is the favoured option with views also being invited on the desirability of replacing the primary legislation with a comprehensive set of new Regulations using section 2(2) of the European Communities Act (Option 4).

Option 3

20. This option is to conduct a straightforward update of Schedule 4 to add in any new equipment that has been introduced since the last update to this Schedule in 1986. This would be a very limited reform but would overcome the difficulty of out of date equipment provisions in Schedule 4. The schedule would need to be regularly updated in the future to take into account new equipment. This option would allow the use of some new equipment not currently prescribed in Schedule 4. It would not address the complexity of the rules set out in both the Regulations and statutory guidance regarding its use. Packers would still be limited to using listed equipment.

21. This option does not address the complexity of the Regulations more generally or the inconsistency in the scope of the regime across different sectors and types of product. It does however provide some additional flexibility and updating for

packers if it is decided to postpone wider reform pending the introduction of new EC directives in the light of the SLIM review.

Option 4

22. This option involves a comprehensive reform of the regime by primary legislation to express the primary duties on packers in simpler terms (i.e. to comply with the rules of the average system rather than to pass a test carried out by an inspector). However, given the limits on parliamentary time and the competing demands on that time from other areas, it is unlikely that a slot in the parliamentary timetable for primary legislation could be achieved in the short or medium term.
23. Alternative methods of reform of primary legislation have also been considered, including reform by Regulatory Reform Order. However, this has been rejected as it is considered that a quicker reform can be achieved through the use of existing wide-ranging regulation making powers or the use of section 2(2) of the European Communities Act (see below).
24. Consideration is also being given to the possibility of using section 2(2) of the European Communities Act to achieve wider reform by re-implementing the relevant EC directives, in a separate freestanding set of Regulations. The Regulations would express the duties on packers and importers in simpler terms, clarify the rules governing e-marking and re-implement the relevant directives. Views are invited in the consultation on the desirability of those reforms (Proposals A and C).

Costs and Benefits

Option 1

25. This option maintains the status quo so will have zero impact on costs. There will be no additional benefit for business, consumers or Government.

Option 2

Business

26. The changes proposed under Option 2 mean packers are likely to have greater scope for process innovation. Packers will have a wider choice of legal measuring equipment allowing them greater flexibility in how they organise production.
27. The measuring equipment industry may also benefit from the changes. Manufacturers may be reluctant to develop new ideas because of the need to comply with existing standards. Hence, there may be more innovation in the measuring equipment industry.

28. However, both the effect of process innovation in packaging industries and product innovation in the measuring equipment industry are difficult to quantify *ex ante*. Views are invited, in particular from manufacturers of equipment or from packers affected by the proposals, on the cost impact of the proposed changes to equipment requirements, including the accuracy requirement for new equipment.
29. Increased clarity and simplicity in the Regulations should contribute to an overall reduction in compliance costs. There may also be a cost benefit in terms of the time taken by new entrants to the market in understanding their duties and responsibilities under the Regulations. It is again difficult to estimate any potential cost saving for new entrants.
30. The adoption of a new requirement of equipment accuracy to a prescribed level will not impose any new costs on business, unless they purchase new equipment. It is envisaged that the revised equipment requirements will apply only to new equipment purchased after a certain date or to all equipment in use after a specified period (for example 10 years after the Regulations come into effect). Views are being sought in the consultation document on the preferred transitional arrangements.
31. Packers who purchase new equipment after the revised Regulations are in force may incur new costs in terms of ensuring adequate monitoring of the accuracy of equipment. However, packers already monitor the accuracy of their equipment, partly to ensure they are not overpacking and any additional costs should be at least proportionate to the potential savings from the removal of statutory requirements under current Schedule 4 and the Packers' Code.
32. There may be some small regulatory learning costs incurred by businesses in terms of time taken to familiarise themselves with the new Regulations. These costs will be minimised by the availability of new guidance for packers before the Regulations come into force. The consultation document on the reform seeks views from packers and enforcers on the scope for additional costs or savings as a result of the proposals.

Consumers

33. Consumers are unlikely to gain any significant benefit. It is possible that the packers may pass some of the cost of any savings on to consumers in the form of lower prices, especially those in competitive markets. However, benefits to consumers will be very difficult to quantify in advance of new Regulations being introduced. Furthermore, if some of the benefits to business are passed on to consumers, then it will be a direct transfer of the benefits from business to consumers. The approach adopted above to measure the business cost savings from new Regulations will therefore encapsulate all the benefits that consumers are likely to receive from the cost savings. An alternative approach is to assume

that the consumer receives 10-20% of the total cost savings, with business receiving the rest.

Government

34. It is estimated that there will be no overall change in the costs to Government. There will be negligible one off administrative costs produced by the regulatory re-write. Enforcement of the regime by local authority weights and measures inspectors will be unchanged although there will be a need for inspectors to familiarise themselves with the new Regulations.

Option 3

Business

35. This option allows for the addition of more up to date equipment onto the list of prescribed equipment. In terms of cost savings the freedom to use more up to date equipment as specified in a revised Schedule 4 may result in long term cost savings for those manufacturers who chose to exercise that choice by enabling more accurate filling or measurements and reducing the extent of over-fill necessary to comply with the average quantity requirements. There will be some small regulatory learning costs incurred by businesses in terms of time taken to familiarise themselves with the new list of prescribed equipment. **Views are invited, particularly from equipment manufacturers and packers, on the cost impact of updating Schedule 4. In particular are there cost differences between equipment currently prescribed and the more recent equipment likely to be included in an updated schedule?**

Consumers

36. Consumers are unlikely to gain any significant benefit. It is possible that packers may pass some of the cost of any savings on to consumers in the form of lower prices, especially those in competitive markets.

Government

37. It is estimated that there will be no overall change in the costs to Government. There will be some small administrative costs incurred by the re-write of Schedule 4 plus the need for continued minor administrative costs to keep the schedule updated on a regular basis taking account of further improvements in technology.

Option 4

Business

38. The reform of Part V, re-implementing the relevant EC directives to express in simpler terms the duties on packers and importers and clarifying the rules governing e-marking should contribute to an overall reduction in compliance costs. It is again difficult to estimate the value of potential cost saving in terms of compliance costs. **Views are invited, particularly from packers and importers, on the cost impact of a simpler and clearer regime in Part V.**

Consumers

39. There will be no significant cost benefit or detriment from this proposal for consumers. As with options 2 and 3 there is potential for any savings made by packers to be passed on to consumers.

Government

40. There may also be cost benefits to enforcement through a simpler system of offences and defences. There will be negligible one off administrative costs incurred by the reform.

Business Sectors affected

41. The following business sectors may be affected by the proposals. However, not all manufacturers within these sectors package products in predetermined constant quantity. Therefore only a proportion of manufacturers in any particular sector will be affected by the proposals.

Packagers and Importers

- 15.1 Production, processing and preserving of meat and meat products
- 15.2 Processing and preserving of fish and fish products
- 15.3 Processing and preserving of fruit and vegetables
- 15.4 Manufacture of vegetable and animal oils and fats
- 15.5 Manufacture of dairy products
- 15.6 Manufacture of grain mill products, starches and starch products
- 15.7 Manufacture of prepared animal feeds
- 15.8 Manufacture of other food products
- 15.9 Manufacture of beverages
- 16.0 Manufacture of tobacco products
- 24.2 Manufacture of pesticides and other agro-chemical products
- 24.3 Manufacture of paints, varnishes and similar coatings, printing ink and mastics
- 24.5 Manufacture of soap and detergents, cleaning and polishing preparations, perfumes and toilet preparations
- 24.6 Manufacture of other chemical products
- 74.82 Packaging activities

- 33.2 Measuring equipment manufacturers
Manufacture of instruments and appliances for measuring, checking, testing, navigating and other purposes, except industrial process control equipment

Equity and Fairness

42. The proposals for reform will affect packers and importers of packaged goods. The proposals will not have a disproportionate affect on any particular group. Certain sectors will be affected by proposals to consolidate the weights and volume thresholds for the application of the regime. The Department is seeking views from affected sectors before introducing any changes.

43. Retailers of packaged goods will not be affected (unless they are also packing products in constant predetermined quantities on their premises.) Consumers should not be affected as the proposals aim to maintain the same level of consumer protection as at present.

Small Firms Impact Test

44. The majority of pre-packaged goods for sale in the UK are produced by major packers. Often packing carried out by small firms is of packages that are not produced in constant predetermined quantities and as such is not subject to the average system. However, there are a number of small firms involved in producing pre-packaged goods under the average system. The impact of the favoured option (2) on small firms should be beneficial. Small firms are most likely to suffer from the complexity in the existing regime because they are less likely to have access to specialist or legal advice. Although the existing code of practice attempts to make the regime more easily understandable there is considerable scope for the re-organisation to simplify the duties that a small firm would be subject to. New guidance will be produced to explain the new regime.

45. **The Department would welcome, in particular, comments from small firms on the impact of the proposals.**

Competition assessment

46. Lowering the cost of compliance for all UK based firms, which is essentially a lump-sum sunk cost, exerts a downward pressure on prices. The scope of this may be constrained by foreign imports for non-perishable goods. In addition, by reducing burdens and complexity arising from the UK's implementation of the EC directives, UK exporters may have greater scope to compete on price in other European markets. A further round of pricing benefit may occur as a result of firms seeking to gain a cost advantage as a result of process innovation.

47. Purchasers of measuring equipment may also benefit from better quality, more variety or lower prices as a result of product innovation in the measuring

equipment industry, which may occur because of the Government widening the variety of legal equipment.

Enforcement and Sanctions

48. The average system 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. The methods of enforcement will remain unchanged with the main enforcement tool being a reference test of batches of packages at the place of production.

49. The sanctions for failing to comply with the duties under Part V will remain unchanged.

Monitoring and Review

50. The Regulations will be monitored to ensure that they are operating effectively. Under section 56 of the 1985 Act, the Secretary of State has a duty to keep the operation of Part V under review and quarterly discussions are held between the Department and the weights and measures representatives of the Local Authority Co-ordinators of Regulatory Services (LACORS) to discuss the operation of the system.

Summary and recommendation

51. The recommended course of action is to reform the regime by remaking the Weights and Measures (Packaged Goods) Regulations to update and simplify them and to remove unnecessary burdens on packers with regard to the equipment that they use. Views are also sought on the possibility of a wider reform using powers under section 2(2) of the European Communities Act.

ANNEX 3: DETAILS OF CURRENT LEGISLATION

UK legislation

Hard copies of *The Weights and Measures Act 1985* and *The Weights and Measures (Packaged Goods) Regulations (1986 SI 1986/2049)* and its amending statutory instruments *SI 1987/1538*, *SI 1992/1580*, *SI 1994/1258* and *SI 1994/1852* are available from:

The Stationery Office
PO Box 29
Norwich
NR3 1GN

Tel: 0870 600 5522

Online: <http://www.tso.co.uk/>

European Legislation

Copies of EC directives may be viewed on line at:

The "Solids" directive 76/211/EEC:

http://europa.eu.int/eur-lex/en/consleg/pdf/1976/en_1976L0211_do_001.pdf

The "Liquids" directive 75/106/EEC:

http://europa.eu.int/eur-lex/en/consleg/pdf/1975/en_1975L0106_do_001.pdf

ANNEX 4: LIST OF CONSULTEES

Aberdeenshire Council
Absorbent Hygiene Product Manufacturers' Association
Advertising Association
Advertising Standards Authority
Age Concern Cymru
Age Concern England
Age Concern Northern Ireland
Age Concern Scotland
Agricultural Lime Producers' Council
Alcohol Concern
Alliance of Independent Retailers & Business
Allied Brewery Traders' Association
Allied Domecq Retailing
Aluminium Federation Ltd
Amersham International Plc
Asda Stores Ltd
Association of the British Pharmaceutical Industry
Association of British Preserved Milk Manufacturers
Association of British Solid Fuel Appliance Manufacturers
Association of Building Hardware Manufacturers
Association of Cereal Food Manufacturers Ltd
Association of Cheese Processors
Association of Convenience Stores (London)
Association of Convenience Stores (Farnborough)
Association of Drum Manufacturers
Association of Independent Businesses
Association of Independent Radio
Association of London Government
Association of Makers of Soft Tissues
Association of Manufacturing Chemists
Association of Optometrists
Association of Public Analysts of Scotland
Association of UK Oil Independents
Automatic Vending Association of GB
Automobile Association
B T T Spirit Dispensers
British Shops and Stores Association Ltd
Bakers, Food & Allied Workers Union
Bath Executive Resources
Bedfordshire Trading Standards
Bee Farmers' Association UK
Bernard Matthews Plc
Better Regulation Task Force
Biscuit, Cake, Chocolate and Confectionery Alliance
Body Shop International Plc
Boots Company Plc
Brewers' Association of Scotland
British Adhesives and Sealants Association
British Aerosol Manufacturers' Association
British Agrochemical Association
British Apparel and Textile Confederation
British Association for Chemical Specialities
British Bee Keepers' Association
British Beer & Pub Association
British Carpet Manufacturers' Association
British Cement Association
British Chain Manufacturers' Association
British Chambers of Commerce
British Chemical Distributors' and Traders' Association
British Coatings Federation
British Coffee Association
British Durum Association Ltd
British Egg Industry Council
British Food Importers' & Distributors' Association
British Fragrance Association
British Frozen Food Federation
British Fruit Juice Importers' Association
British Gas Plc
British Glass Manufacturers' Confederation
British Goat Society
British Hand Knitting Confederation
British Hardware Federation
British Hardware and Housewares Manufacturers' Association
British Honey Importers' & Packers' Association
British Hospitality Association
British Importers' Association
British Leather Federation
British Lubricants Federation Ltd

British Meat Manufacturers' Association	Consumer Law Today
British Paper and Board Industry Federation	Consumer and Marketing Law (Publishing Ltd)
British Plastics Federation	Consumers Association
British Potato Marketing Association	Convention of Scottish Local Authorities
British Poultry Council	Cosmetic, Toiletry and Perfumery Association Ltd
British Retail Consortium	Customs and Excise
British Sheep Dairy Association	Dairy Industry Association Ltd
British Shops and Stores Association	De Montfort University
British Soft Drinks Association	Department for Culture, Media and Sport
British Soluble Coffee Packers' and Importers' Association	Department for Environment, Food and Rural Affairs
British Standards Institution	Department of Agriculture for Northern Ireland
British Sugar Plc	Department of Enterprise, Trade & Investment (Northern Ireland)
British Timber Merchants' Association	Dessert & Cake Mixes Association
British Wool Marketing Board	Direct Marketing Association (UK) Ltd
Brunel University	Dromona Quality Foods
Budgens Stores Limited	Electricity Association
Builders Merchants' Federation	English County Cheese
Butterworths - The Editor (University of Dundee)	Equality Commission for Northern Ireland
Butterworths Trading and Consumer Law Cabinet Office	Essex County Council
Cameron Markby Hewitt	Eurobest Associates
Campaign For Real Ale Ltd	European Catering Association (GB)
Campden & Chorleywood Research Association	European Federation of Honey Packers and Distributors
Carlsberg-Tetley Brewing Ltd	FINA T
Catering Equipment Suppliers' Association	Farm Shop and Pick Your Own Association Ltd
Cement and Plaster Committee	Farmers' Union of Wales
Chamber of Commerce	Federation of British Kipperers & Herring Merchants
Chilled Food Association	Federation of British Port Wholesale Fish Merchants
Citizens Advice	Federation of European Honey Packers & Distributors
Citizens Advice Cymru	Federation of Licensed Victuallers' Associations
Citizens Advice Northern Ireland	Federation of Medium and Small Employers
Citizens Advice Scotland	Federation of Oil Seeds & Fats Association
Co-op Group	Federation of Small Businesses
Co-operative Group (CWSI) Ltd	Federation of Small Businesses (Belfast)
Coal Merchants' Federation	Federation of The Retail Licensed Trade
Coffee Trade Federation	Federation of Wholesale Distributors
Cold Storage & Distribution Federation	
Company of Scottish Cheese Makers	
Confederation of British Industry (London)	
Confederation of British Industry (Belfast)	
Confederation of British Wool Textiles Ltd	
Consumer Law Bulletin	
Consumer Law Journal (Sweet & Maxwell Ltd)	

Fertilisers Manufacturers' Association	Institute of Packaging Marketing & Membership
Fishmongers' Company	Institute of Practitioners In Advertising
Food Science & Technology Consultants	Isle of Man Trading Standards Division
Food Standards Agency	J Sainsbury Plc
Food and Drink Federation	Jaylake Ltd
Footprint Tools Ltd	John Artis Ltd
Foreign and Commonwealth Office	John Lewis Partnership
Forum of Private Business	Joint Hospitality Industry Congress
Freight Transport Association	Joint Optical Committee of the European Union
Fresh Produce Consortium (UK) Ltd	Keith Anderson Services
General Consumer Council for Northern Ireland	Kent Scientific Services
Gin & Vodka Association	Knitting Industries' Federation
Glass Mountain Ltd	Kwik Save Stores Ltd
Goat Advisory Bureau	Local Authorities Coordinators of Regulatory Services (LACORS)
Goat Veterinary Society	Law Commission
Government of Gibraltar	Law Laboratories Ltd
Grain and Feed Trade Association	The Law Society (London)
Guinness Plc	The Law Society of Northern Ireland
H Suskin (Textiles) Ltd	The Law Society of Scotland
HP Bulmer Drinks Ltd	Leatherhead Food International
Hairdressing Manufacturers' and Wholesalers' Association	Licensed Victuallers Trade Association (West)
Hampshire County Council	Liquefied Petroleum Gas Industry
Health Food Manufacturers' Association	Liquid Measures
Health and Safety Executive	Local Government Association
Highfield Consultancy Services	London Fish & Poultry Retailers' Association
Historic Houses Association	London Fish Merchants' Association
Home Beer & Wine Manufacturers' Association	London School of Economics & Political Science
Hotel and Catering Institutional Management Association	Made Up Textiles Association
I & D Smallwood Ltd	Malt Distillers' Association of Scotland
IMTA	Manchester University
Ice Cream Alliance Ltd	Marks and Spencer Plc
Ice Cream Federation Ltd	McKenna & Co
Imperial Chemical Industries	Meat Industry Liaison Group
Imported Tobacco Products Advisory Council	Meat and Livestock Commission
Incorporated Society of British Advertisers	Metal Packaging Manufacturers' Association
Independent Family Brewers of Britain	Milk Marque Limited
Independent Food Retailers' Association	National Assembly for Wales
Independent Retail News	National Association of Cider Makers
Industry Council For Packaging	National Association of Goldsmiths
Institute of Directors	National Association of Licensed House Managers
Institute of Environmental Health Officers	National Association of Master Bakers
Institute of Food Science & Technology (UK)	
Institute of Grocery Distribution	
Institute of Independent Business	

National Association of Perrymakers	Prepared Fish Products Association
National Association of Shopkeepers	Proprietary Association of Great Britain
National Association of Speciality Food and Drink	Provision Trade Federation
National Association of Women's Clubs	Ravenhead Company Ltd
National Chamber of Trade	Retail Confectioners' & Tobacconists' Association
National Consumer Council	Rice Association
National Consumer Protection Council	Royal Borough of Kingston upon Thames
National Consumers' Federation	Royal National Institute for the Blind
National Council of Women of Great Britain	Royal Pharmaceutical Society of Great Britain
National Dairy Council	Rural Shop Alliance
National Dried Fruit Trade Association	Rutland Goats
National Farmers' Union of England and Wales	Salmon Net Fishing Association of Scotland
National Farmers' Union of Scotland	Salt Manufacturers' Association
National Federation of Fish Fryers	Scotch Whisky Association
National Federation of Fisherman's Organisations	Scotland Office
National Federation of Fishmongers Ltd	Scottish Association of Master Bakers
National Federation of Inland Wholesale Fish Merchants	Scottish Bee Keepers' Association
National Federation of Meat and Food Traders	Scottish Chambers of Commerce
National Federation of Retail Newsagents	Scottish Co-Operative Milk Trade Association
National Federation of Wholesale Poultry Merchants	Scottish Consumer Council
National Market Traders' Federation	Scottish Corn Trade Association Ltd
National Pharmaceutical Association	Scottish Dairy Association
National Union of Knitwear, Footwear and Apparel Trades	Scottish Federation of Meat Traders' Association
National Union of Townswomen's Guilds	Scottish Federation of Fishmongers
National Weights & Measures Laboratory	Scottish Fish Merchants' Federation
Neath Port Talbot County Borough Council	Scottish Fishermen's Federation
Nestle UK Ltd	Scottish Food & Drink Federation
New College Oxford	Scottish Grocers' Federation
New Spirits Association Producers	Scottish Licensed Trade Association
North of Scotland Milk Co-Op Society Ltd	Scottish Milk Limited
Nottingham Trent College	Scottish Motor Trade Association
Office of Government Commerce	Scottish Parliament Information Centre
Office of the Deputy Prime Minister	Scottish Pelagic Fishermen's Assoc. Ltd
O'Keefe's – The Editor (The Law of W & M)	Scottish Pharmaceutical Association
Office of Gas and Electricity Markets	Scottish Potato Trade Association
Office of Water Services	Scottish Provision Trade Association
Packaging Standards Council	Scottish Seed and Nursery Trade Association
Pet Food Manufacturers' Association	Scottish Wholesale Druggists' Association
Petrol Pump Manufacturers' Association	Scottish Wholesale Grocers' Association
Petrol Retailers' Association	Scottish Women's Rural Institute
Pharmaceutical Society of Great Britain	Sea Fish Industry Authority (Scotland)
Potato Marketing Board	Sea Fish Industry Authority (Humberside)
	Shellfish Association of Great Britain
	Shop & Display Equipment Association
	Silica & Moulding Sands Association

Small Brewers' Association
 Small Business Service
 Snack, Nut & Crisp Manufacturers' Association Ltd
 Society of Licensed Victuallers
 Solid Fuel Association
 Solvents Industries' Association
 Somerfield Stores Ltd
 Somerset County Council /WELMEC
 Soup & Gravy Manufacturers' Association
 Spar Landmark Ltd
 St John's College Oxford
 States of Jersey Trading Standards
 States of Guernsey
 StoreLaw
 Sugar Bureau
 Tate & Lyle Sugars
 Tea Packers' Association
 Tesco Stores Ltd
 The Federation of Bakers
 The Guild of Master Victuallers
 The Lard Association
 The Law School
 Tioxide Europe Ltd
 Townswomen's Guilds
 Trading Standards Institute
 Transport and General Workers' Union
 UK Association of Fish Meal Manufacturers
 UK Association of Frozen Food Producers (UKAFFP)
 UK Cleaning Products Industry Association
 UK Herbal Infusion Association
 UK Petroleum Industry Association
 UK Sugar Merchants' Association
 UK Tea Association
 UK Vineyard Association
 UKASTA Ltd
 Ulster Reform Club
 Union of Independent Companies
 Union of Shop, Distributive and Allied Workers
 United Distillers (UK)
 United Kingdom Dairy Association
 United Kingdom Weighing Federation
 University of Birmingham
 University of Nottingham
 University of Oxford - Somerville College
 University of Sheffield
 University of Wales
 Uppingham Yarns Ltd
 Vinegar Brewers' Federation
 Vodka Trade Association
 WM Low & Co PLC
 Wales Office
 Waitrose Ltd
 Water UK
 Welsh Bee Keepers' Association
 Welsh Consumer Council
 Wholesale Confectionery & Tobacco Alliance Ltd
 Wholesale Traders' Association Ltd
 William Morrison Supermarkets Plc
 Wine & Spirit Association of Great Britain
 Wine Standards Board of The Vintner's Company
 Wine and Spirit Association
 Wine and Spirit Association of Scotland
 Women's National Commission
 Woolworths Plc

ANNEX 5: THE CONSULTATION CODE OF PRACTICE CRITERIA

The six consultation criteria:

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- Ensure that your consultation is clear, concise and widely accessible.
- Give feedback regarding the responses received and how the consultation process influenced the policy.
- Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Further information on the consultation code of practice can be found at:
<http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>.

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to Philip Martin, DTI Consultation Co-ordinator, Room 723, 1 Victoria Street, London SW1H 0ET or telephone him on 020 7215 6206 or email to: Philip.Martin@dti.gsi.gov.uk