

**dti**

**WEIGHTS AND MEASURES**

**Consultation on draft  
regulations to replace Part V of  
the Weights and Measures Act  
1985 and the Weights and  
Measures (Packaged Goods)  
Regulations 1986**

**8th July 2005**

**URN 05/1372**

**dti**

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We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

**Consultation on draft regulations to replace Part V of the Weights and Measures Act 1985 and the Weights and Measures (Packaged Goods) Regulations 1986**

This consultation document invites views on draft regulations which will replace the Weights and Measures (Packaged Goods) Regulations 1986 together with Part V of the Weights and Measures Act 1985.

These draft regulations set out a complete regime for the average system of quantity control applied to packaged goods. The aim is to simplify the legislation and rationalise its scope as well as removing unnecessary burdens from packers and importers of packaged goods.

A consultation exercise on the principles behind the reform was carried out between March and June 2004. Feedback from that consultation exercise has been taken into account in developing these draft regulations.

The Department is seeking views on the draft regulations and the accompanying guidance, with a view to making new Regulations which could come into force on 6 April 2006.

**Issued** 8 July 2005

**Respond by** 7 October 2005

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## 1. EXECUTIVE SUMMARY

- 1.1 This consultation paper seeks views on draft regulations that will replace Part V of the Weights and Measures Act 1985 and the Weights and Measures (Packaged Goods) Regulations 1986 (SI 1986/2049) which govern average quantity control for packaged goods. These proposals follow on the principles proposed in an earlier consultation paper (March 2004), taking account of responses from stakeholders.
- 1.2 Legislation in this area is aimed at protecting consumers from short measure and ensuring that they can rely on the accuracy of quantity indications, while making reasonable allowances for the small variations in quantity from package to package which are inherent in the use of automatic packing machinery. The UK legislation implements two EC Directives, 75/106/EEC and 76/211/EEC.
- 1.3 The existing legislation, however, has been recognised as overly complex and burdensome, and both the National Audit Office and the Committee on Public Accounts have recommended reform. The new regulations therefore aim to simplify the controls on packaged goods to make them easier to understand and comply with and to remove unnecessary burdens on packers and importers, while maintaining protection for consumers. The main changes in the draft regulations from the existing legislation fall into the following two categories:
- 1.4 Deregulation:
- The removal of the complex and lengthy requirements on the use of prescribed equipment and the introduction of a more straightforward duty for packers to use any legal equipment that is suitable for the operation for which it is being used.
  - Removal of rules on how a packer may dispose of packages that have failed a reference test, replaced by a new offence, with appropriate defences, of selling a package that was part of a failed batch.
  - Removal of detailed requirements for checks made by packers or importers to be carried out in accordance with the statutory provisions of the Packers' Code with a new, straightforward requirement that where checks are made they must be sufficiently rigorous to ensure that packages comply with three packers' rules.
  - Reducing the requirement for exporters of e-marked packages to give notice to local weights and measures authority for each batch of packages to be exported to a requirement for a one off notice.
  - Removal of statutory record keeping requirements for retailers who complete baking process for part baked bread, and who give notice that they will pack to a minimum standard.
  - Reduced period of record keeping for packages marked with a best before date.

Simplification:

- A consolidation of all statutory provisions into a single set of Regulations - including the relevant provisions of the Quantity and Abbreviation of Units Regulations - rather than being spread out in primary legislation, secondary legislation and statutory guidance.
  - The replacement of the existing duty on packers to pass a reference test with a new duty to make up packages in line with the three packers' rules.
  - A more uniform application of the average system to all packages made up in a constant nominal quantity between 5 g or ml and 25 kg or L with fewer modifications or exceptions for special treatment of certain types of goods and packages.
  - Simpler rules on e-marking and on outer containers.
  - Simpler enforcement, including replacement of the time limit for conducting reference tests on desiccating products with a new defence; clarification that nominal quantity must include any additional quantities marked on the package; and a new liability for quantity control for a person who affixes an indication of quantity to a package.
- 1.5 The draft regulations must continue to secure compliance with the relevant European Directives. These require Member States to ensure that e-marked packages comply with the average system and require them to permit free access to the market, without further metrological control, for e-marked packages originating from other Member States.
- 1.6 The changes to the draft regulations will affect packers and importers of packaged goods made up in a constant nominal quantity of between 5 g or ml and 25 kg or L and packers or importers of unwrapped bread and bread sold in open packs.
- 1.7 The changes will also affect local weights and measures authorities who will continue to have a duty to enforce the legislation and who are provided with the powers to do so.
- 1.8 Consumers or retailers of packaged goods will not be directly affected by the new regulations. The draft regulations aim to 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 draft regulations 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 proposed Regulations and draft guidance and a number of specific questions are set out in Section 3. 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 7 October 2005 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 “Packaged Goods Consultation” on the envelope.

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- 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](http://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:

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1 Victoria Street  
London SW1H 0ET  
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2.11 A copy of the Code of Practice on Consultation is at Annex 6.

### 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.
- 3.2 Do you support the new broad criteria for application of the average system which replaces the product specific approach in the current Regulations? (Paragraph 5.3)
- 3.3 Are there any categories of product that you think should be exempt from the average system (thus falling to the minimum requirements under Part IV of the 1985 Act)? (Paragraph 5.7)
- 3.4 Do you agree with the new e-marking provisions? (Paragraph 5.13)
- 3.5 Do you agree with new offence of e-marking other than as permitted by the Regulations? (Paragraph 5.14)
- 3.6 Are the proposed transitional arrangements appropriate for packers affected by the new limits on e-marking packages above 10 kg or L or below 5 g or ml? (Paragraph 5.16)
- 3.7 Do you agree that the restriction on disposal of packages should be removed and a new offence be introduced of selling a package from a failed batch? (Paragraph 5.23)
- 3.8 Do you know of any continued need for special treatment in the cases where it is being removed? (Paragraph 5.27)
- 3.9 Do you have any comments on the treatment of outer containers in the draft Regulations? (Paragraph 5.29)
- 3.10 Do you agree that the provisions of the Quantity and Abbreviation of Units Regulations 1987 that apply to packages made up under the average system should be incorporated into the draft regulations? (Paragraph 5.31)
- 3.11 Do you support the clarification that the nominal quantity that is marked on the package or outer container must include any additional quantity to which any statement on the package or outer container refers? (Paragraph 5.33)
- 3.12 Do you agree with the new liability for labelling? (Paragraph 5.35)
- 3.13 Do you have any comments on the new duty to use equipment that is suitable for the operation for which is being used? (Paragraph 5.38)
- 3.14 Do you have any comments on the requirement to use a system of sampling and tests that is sufficiently rigorous to ensure that the packages are packed in accordance with the three packers rules? (Paragraph 5.46)

- 3.15 Do you have any comments on how packing to the minimum standard should be treated? (Paragraph 5.43)
- 3.16 Do you have any comments on the requirement for importers to obtain sufficient evidence? (Paragraph 5.49)
- 3.17 Do you agree that records should be kept for a year or for the lifespan of the product, whichever is shorter? (Paragraph 5.51)
- 3.18 Do you see a need to keep any parts of sections 56-59 or section 62? (Paragraph 5.54)
- 3.19 Do you support the removal of the time limit for instigating proceedings within 3 months of the notice being served on the person charged with the offence? (Paragraph 5.56)
- 3.20 Do you support reducing the requirement for exporters of e-marked packages to give notice to local weights and measures authority to a requirement for a one off notice? (Paragraph 5.59)
- 3.21 Do you have any comments on the draft defence for desiccating products, as drafted? (Paragraph 5.65)
- 3.22 Do you support the reduction in penalty for certain offences? (Paragraph 5.68)
- 3.23 Are you aware of any equipment that is currently permitted by Schedule 4 of the 1986 Regulations but which would not meet the new standard? (Paragraph 5.76)
- 3.24 Do you think the transitional arrangements proposed are suitable? (Paragraph 5.72)
- 3.25 Do you have any comments on the reference test to be included in the new regulations? (Paragraph 5.79)
- 3.26 Do you have any views on the draft regulation on part-baked bread? (Paragraph 5.81)

#### General questions

- 3.27 Do you have any other comments on the draft Regulations? (Annex 7)
- 3.28 Do you have any comments on the draft guidance? (Annex 8)

#### Costs

- 3.29 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?
- 3.30 See Annex 2 for details on costs and benefits.

## 4. BACKGROUND TO THE PROPOSALS

### Background to Reform

- 4.1 This consultation on the content of draft regulations follows an earlier consultation exercise on the principles behind reform in this area. A copy of the earlier consultation entitled “Consultation on proposed changes to the Weights and Measures (Packaged Goods) Regulations 1986 SI 1986/2049” may be found here <http://www.dti.gov.uk/ccp/archive/consultations.htm>. That document sets out in detail the background to reform in this area.
- 4.2 Forty-seven substantive replies were received in response to the earlier consultation. Those included a total of 22 responses from the enforcement community and 22 responses from the business community, including 5 responses from individual businesses and 17 responses from trade associations. Responses were very positive overall with a substantial majority of respondents supporting the proposed reforms in principle. A summary of responses to that consultation together with the Government response also can be found here <http://www.dti.gov.uk/ccp/archive/consultations.htm>.
- 4.3 Taking account of the responses to the earlier consultation, this document seeks views on draft regulations that would revoke and replace 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. They would also repeal Part V of the Weights and Measures Act 1985.
- 4.4 In effect, the regulations would set out a complete new regime for the average system to replace that set out in Part V of the 1985 Act, the Packaged Goods Regulations and in certain parts of the Packers’ Code and Inspectors’ Manual.

### European Requirements

- 4.5 Weights and Measures controls on certain packaged products are subject to European law. The Weights and Measures Act 1979, (which was subsequently consolidated as Part V of the Weights and Measures Act 1985) 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 Member States by allowing for packages that meet certain standards to be marked with an “e” mark and for those packages to be allowed free access for metrological control purposes across all other Member States. 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.
- 4.6 The Directives require that Member States do not on metrological grounds – for reasons of the determination of weight or volume, the methods by which these are ascertained, or related labelling - refuse access to packages which satisfy their requirements. They also require that Member States put in place a system permitting the e-marking of packages and a system for enforcement.

4.7 The draft regulations re-implement the directives with an approach based more closely on their structure and requirements. A transposition table, setting out how the draft regulations implement the directives is attached at Annex 5.

## 5. THE DRAFT REGULATIONS

5.1 This section explains the main changes from the current legislation.

### Scope

- 5.2 The scope of the draft regulations, that is, what is and is not subject to them is greater than the scope of the existing legislation. The scope of the draft regulations is set out in draft regulation 3.
- 5.3 The draft regulations will apply to packages made up in constant unit nominal quantities determined by the packer, which are made up by weight or volume between 5 g or ml and 25 kg or L. They also apply to bread sold unwrapped or in open packets.
- 5.4 This provides for a much more uniform application than the current legislation, which applies to a list of specific products in a range of individual quantities and with particular exemptions. In providing for a broad application of the average system, some packages will be subject to the average system for the first time (see paragraphs 5.7- 5.10 below).
- 5.5 The extension of the average system should provide benefits to packers of products newly covered by the regulations by allowing them to take advantage of the tolerances below nominal quantity permitted under the average system. Packages not subject to the average system are subject to the minimum rules under Part IV of the Weights and Measures Act 1985, which require that they contain at least the quantity stated. Under the average system, in recognition that automatic packing lines can give rise to small fluctuations in the quantity contained in any individual package, specified tolerances for individual packages below the quantity indication of the package are permitted, provided that the packages comply with the three packers' rules. . 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. However, to ensure that the system operates properly there are certain requirements placed on the packer or importer with regard to equipment, measurements or checks and record keeping.
- 5.6 The new broad scope will also remove the need for descriptions of specific products that date quickly and which adds to the unnecessary complexity of the existing legislation.
- 5.7 Under the current legislation, packages above 10 kg or L are not subject to the average system, except for some specified goods. Therefore, the average system will apply to packages between 10 kg or L and 25 k or L for the first time.
- 5.8 Similarly, packages containing goods that are currently treated by the 1986 Packaged Goods Regulations as class B packages, but where the packer chooses not to e-mark, will also be subject to the average system for the first time. Class B packages are defined in the 1986 Regulations as packages which are not class A

packages (i.e. not a package containing goods listed in Schedule 1 of the Packaged Goods Regulations 1986).

- 5.9 Certain class A packages are currently excluded from the scope of the average system (for example fish pies, poultry pies, certain types of cheese, certain sausage-meat products sold in quantities below 500 g, Easter eggs, rock or barley sugar in sticks or novelty shapes, and shortbread in a piece or pieces in excess of 200 g). Again with the removal of product specific application, all excluded categories will become subject to the draft regulations where they meet the standard criteria.
- 5.10 Packages containing goods previously outside the lower or upper limits for specific Class A packages will also be subject to the average system for the first time where they meet the standard criteria.

### **Questions**

- 5.11 **Do you support the new broad criteria for application of the average system which replaces the product specific approach in the current Regulations?**
- 5.12 **Are there any categories of product that you think should be exempt from the average system (thus falling to the minimum requirements under Part IV of the 1985 Act)?**

### **E-marking**

- 5.13 The use of the e-mark by packers or importers is voluntary but it acts as a metrological passport throughout the EU and as a guarantee that packages have been made up in accordance with the average system. Packages may display the e-mark if they are made up in accordance with the three packers' rules and have a nominal quantity of between 5 g or ml and 10 kg or L. These simple rules are now included in the draft regulations at regulations 5(4) and 6(2).
- 5.14 The draft regulations also include a new offence of e-marking packages other than as permitted by the regulations. This offence is intended to prevent consumers or enforcement bodies being misled by the e-marking of packages that have not been made up in accordance with the regulations or which do not qualify for e-marking.
- 5.15 Under the existing Regulations, some packages above 10 kg or L containing specified goods, as set out in Schedule 1 to the 1986 Regulations, are currently permitted to bear the e-mark (for example edible fats, edible oils, poultry, and soap) and some below 10 kg or L are not permitted to do so (for example tobacco above 1 kg, alcoholic beverages above 5 kg and Portland cement above 5 kg). Under the draft regulations the nominal quantity of packages must be equal to or above 5 g or ml and equal to or below 10 kg or L in order to qualify for e-marking and it will become an offence to e-mark packages above or below those quantity limits.

- 5.16 It is proposed that there should be a transitional period of 6 months from the date of commencement of the new Regulations to allow packers or importers affected by this change to make the necessary adjustments to their labelling.

### **Questions**

- 5.17 **Do you agree with simpler e-marking provisions?**
- 5.18 **Do you agree with new offence of e-marking other than as permitted by the Regulations?**
- 5.19 **Are the proposed transitional arrangements appropriate for packers affected by the new limits on e-marking packages above 10kg or L or below 5 g or ml?**

### **Duty to pack to three packers' rules**

- 5.20 The draft regulations replace the current duty on packers and importers to ensure that their packages pass a statistical test known as "the reference test" with a new duty to ensure that their packages have been made up in line with the requirements of the three packers' rules. These rules form the basis of the average system and the two Directives.
- 5.21 By making the main duty compliance with the three packers' rules, the aim is to make it clearer and simpler for packers or importers to understand what their duty is and how to comply with it.
- 5.22 The three packers' rules are already incorporated into the existing regulations - the first two packers' rules are those that are currently tested by passing the reference test. The third reflects the requirements of the inadequate package offence in section 50(5) of the 1985 Act. In the new regulations compliance with the three packers' rules will be determined by the reference test, but the duty will be to pack to the rules rather than to pass a test. This change in focus was supported by a majority of respondents to the earlier consultation.

### **Disposal of packages**

- 5.23 Part V of the 1985 Act requires that packages from a failed batch may only be disposed of as prescribed in the 1986 Regulations. The aim of this was to ensure that batches of packages that did not pass the reference test, and contained short measure, did not end up on the market where they could be purchased by unknowing consumers. Rather than continue to restrict how such packages may be disposed of, the draft Regulations include a new offence of selling packages in circumstances where the person knows or has reasonable grounds for suspecting that the packages come from a failed batch, unless he has reasonable grounds for believing that corrective action had been taken to bring them up to standard or the actual quantity of the packages exceeds the nominal quantity.

5.24 The benefits of this approach are that it focuses on the objective (that inadequate packages do not find their way back into the market) without unnecessary restrictions on the affected business.

### **Question**

**Do you agree that the restriction on disposal of packages should be removed and a new offence be introduced?**

### **Special Treatment**

5.25 Under the existing legislation there are modifications of the regime to apply or disapply it to certain categories of package or type of goods. The draft regulations replace this with a simpler system that disapplies the regime for specific purposes in the regulation dealing with scope (draft regulation 3).

5.26 In addition the marking requirements in draft regulations 5 and 6 are disappplied to unwrapped bread, and milk sold in returnable containers. The name and address marking requirements are disappplied for packages sold or supplied by the packer from his own premises or vehicle. Again these reflect the current position but in a much clearer way making it more straightforward for packers and importers to find and understand which modifications apply.

5.27 The special treatment currently allowed for the following has been removed:

- Class A or B packages. This has been replaced by the broader scope in draft Regulation 3.
- Paint consisting of base paint with colour added after packaging. This exemption has been removed as paint consisting of base and colouring agent mixed by someone other than the person who made up the package of base paint, would not be caught by the average system where it is made up in the presence of the consumer.
- Poultry. New provisions were introduced by EC Regulations governing the weight labelling of poultry meat that have direct effect in Member States. As the EC Regulation is directly applicable, poultry falling within its scope is excluded from the draft Regulations.
- Returnable containers embossed before 1/1/1980 which, due to the passage of time, is no longer necessary.

### **Question**

**5.28 Do you know of any continued need for special treatment in the cases where it is being removed?**

### **Outer Containers**

- 5.29 The draft regulations contain simpler provisions on outer containers (i.e. a container that contains packages) to replace the existing provisions in regulation 25 and Schedule 6 of the 1986 Regulations. The existing legislation dealing with outer containers is extremely complex, partly because it treats class A and B packages differently. The new draft aims to simplify treatment of outer containers to make it clearer what must be marked on the outer container and in which cases the requirements apply.

**Question**

- 5.30 **Do you have any comments on the treatment of outer containers in the draft Regulations?**

Specific Requirements for quantity marking

- 5.31 The draft Regulations incorporate the provisions of the Quantity and Abbreviation of Units Regulations 1987 (SI 1987/1538) that apply to packages (Regulation 8). The intention is to make it simpler for packers to understand what the labelling requirements are without having to refer to a separate set of Regulations.

**Question**

- 5.32 **Do you agree that the provisions of the Quantity and Abbreviation of Units Regulations 1988 that apply to packages made up under the average system should be incorporated into the draft Regulations?**

"Nominal Quantity" marking to include any additional quantities

- 5.33 The draft Regulations place a duty on packers or importers to mark packages with their nominal quantity, including any additional quantity to which any statement on the package refers. The current Regulations include a requirement for nominal quantity to be marked, but do not state that this must include any additional quantities marked on the package. The new wording is intended to clarify for both consumers and enforcement officers that where packages are marked with special offers that involve a quantity being supplied "free" (for example "20% free" or "100g free") the total nominal quantity should include any additional quantity marked on the package.

**Question**

- 5.34 **Do you support the clarification that the nominal quantity that is marked on the package or outer container must include any additional quantity to which any statement on the package or outer container refers?**

Liability for labelling

- 5.35 Compliance with the three packers' rules is the duty of the packer or importer of the packages. This is unchanged. However, the draft regulations create a new liability for a person who affixes an indication of quantity to a package or outer container. Unless the person is marking the package on behalf of the packer or importer, he

will become liable for ensuring that the package has been made up in line with the three packers' rules.

- 5.36 This new liability ensures that a person who marks a package with an indication of quantity is responsible for ensuring that the packages do, if fact, contain the quantity that he is marking on them, within the tolerances allowed by the three packers' rules.

### **Question**

- 5.37 **Do you agree with the new liability for labelling?**

### **Equipment**

- 5.38 The requirement for packers to use suitable equipment of a kind prescribed by Schedule 4 of the Packaged Goods Regulations has been replaced in the draft regulations with a new duty to use equipment that is suitable for the operation for which is being used. This is a substantial simplification and reduces the burden on packers by giving them freedom to use any equipment that is suitable, rather than be limited to the types of equipment prescribed by the regulations.
- 5.39 This wording also reflects more closely the wording in the Directives that measurements or checks be made using a legal measuring instrument that is suitable for effecting the necessary operations. It is not necessary to include on the face of the Regulations an explicit requirement that measuring instruments be "legal". If there is other legislation that applies to a specific class of measuring instrument being used, then the equipment must comply with that legislation. If there is no legislation dealing with a specific class of measuring instrument, then any such equipment is legal. In both cases the equipment used must also be suitable for the operation for which it is being used.
- 5.40 Measuring Container Bottles marked in accordance with the Measuring Container Bottles (EEC Requirements) Regulations 1977 may be used for making up packages if they are suitable for the operation for which they are being used.
- 5.41 Consequential amendments will be required to certain legislation that deals with specific measuring instruments to take account of the removal of Schedule 4. These amendments are not included in the current draft Regulations.

### **Question**

- 5.42 **Do you have any comments on the new duty to use equipment that is suitable for the operation for which is being used?**

### **Packing to the Minimum Standard**

- 5.43 Section 47(2) of the 1985 Act confirms that packing to the minimum system also meets the requirements of the average system. This may have been useful, or at least reassuring, when the concepts of the average system were new. But it adds

nothing to the law and there is no specific provision, equivalent to section 47(2) included in the new Regulations.

- 5.44 Packers who opt to measure every package are not subject to a requirement to keep records of their measurements, and this may be more convenient in some circumstances, particularly for small production runs. However, packers might nevertheless wish to perform some production checks, and to document them in order to provide evidence of due diligence as a defence against any possible prosecution for short measure offences.

#### **Question**

- 5.45 **Do you have any comments on how packing to the minimum standard should be treated?**

#### **Checks for Packers**

- 5.46 The existing regulations require packers to measure every package made up or to carry out checks on the packages (i.e., to check a sample rather than every package). The checks that the packer or importer uses must be adequate. To be adequate the checks must be made in line with requirements set out in Paragraph 9 of Annex 1 to Chapter 6 and Paragraph 8 of Appendix C of the Packers' Code. These detailed requirements on how checks should be made have been removed and replaced with a general requirement that checks must be made using a system of sampling and tests that must be sufficiently rigorous to ensure that the packages are packed in accordance with the three packers rules.
- 5.47 The Directives state that the packer may meet the requirements for checking by carrying out production checks in accordance with procedures recognised by competent departments. In the new regulations the recognised procedures will be checks that are sufficiently rigorous to ensure that the packages are packed in accordance with the three packers rules.

#### **Question**

- 5.48 **Do you have any comments on the requirement to use a system of sampling and tests that is sufficiently rigorous to ensure that the packages are packed in accordance with the three packers rules?**

#### **Checks for Importers**

- 5.49 For importers, there is still a requirement to either check the packages or to ensure that they have been made up in accordance with the three packers' rules. However, in the current legislation, there is a specific requirement for importers to obtain documents containing adequate information to show that the person making up the packages is likely to have complied with the duty to pass the reference test. In the draft regulations the requirement for documents is replaced by a broader requirement that the importer obtain sufficient evidence to give reasonable grounds for believing that the packages have been packed in accordance with the three packers' rules.

### **Question**

5.50 **Do you have any comments on the broader requirement for importers to obtain sufficient evidence?**

### **Record Keeping**

5.51 Under the existing legislation there is a requirement for packers or importers to keep records of their checks for a period of one year from the time the check was made. The draft regulations require packers to keep records for a year after the packages have left the possession of the packer or importer or until the date, if any, marked on the package which indicates by when the product ought to be consumed, whichever is shorter. For many packers and importers, especially those who pack or import products with short life spans, this will reduce their record keeping obligations, as records may be kept for a period much shorter than the year previously prescribed for all products.

### **Question**

5.52 **Do you agree that records should be kept for a year or for the lifespan of the product, whichever is shorter?**

### **Enforcement**

5.53 There are no changes proposed in the Regulations to the role of Local Weights and Measures Authorities who have responsibility for enforcement of the legislation.

5.54 However, the draft regulations do not repeat the powers and duties of the Secretary of State that are contained in sections 56-59 or section 62 of the 1985 Act. These powers and duties were felt appropriate at the time of the move to the average system in 1979, when a body - the National Metrological Co-ordinating Unit - was created to monitor the performance of the system and its enforcement by Local Weights and Measures Authorities. At that time the average system was untried in the UK and it was anticipated that problems might be encountered. However, no such problems were encountered and the NMCU was abolished in 1988 and its powers and duties were transferred to the Secretary of State. Since the 1980s there have been substantial changes to the role of Trading Standards Departments and the monitoring of their performance with the move towards an agreed performance standards framework. In the light of these changes, the powers and duties of the Secretary of State with regard to enforcement of the average system appear outmoded and inappropriate. Therefore, the draft Regulations do not repeat them.

### **Question**

5.55 **Do you see a need to keep any parts of sections 56- 59 or section 62?**

### **Time limit for instigating proceedings extended**

- 5.56 Proceedings for offences under Part V of the 1985 Act must be instigated within 3 months of the notice being served on the person charged with the offence. A number of responses to the earlier consultation highlighted that this short time limit caused difficulties for Local Weights and Measures Authorities in bringing prosecutions under that Part of the Act and hence hampered effective enforcement. The draft regulations have removed this time limit. Under the draft Regulations the only time limit on instigating proceedings is that they must be instigated within 12 months of the offence being committed.

### **Question**

- 5.57 **Do you support the removal of the time limit for instigating proceedings within 3 months of the notice being served on the person charged with the offence?**

### **Notice of intention to export e-marked packages**

- 5.58 Under section 54(4) of the 1985 Act packers or importers of e-marked packages which are intended for export must notify the local weights and measures authority with information about the packages and the place they were made up or imported. The aim of this provision is to make local enforcement officers aware of an activity taking place (e-marking of packages for export) where, because the packages are not placed on the market in the UK, they might otherwise not be aware of it.
- 5.59 At present packers or importers are required to notify separately each time they are intending to export e-marked packages. Section 54(6) of 1985 Act gives inspectors the power to disapply this requirement to a packer or importer with regard to a specified kind of packages or place. However, this disapplication is given at the inspectors' discretion and its use varies across the country. It is proposed that as a deregulatory measure, this discretion will be removed and the draft regulations will reduce the requirement to notify to a single on-off notification relating to each packer or importer's premises. Any notification already given under the existing regime will be deemed to be a notification in line with the new requirements.

### **Question**

- 5.60 **Do you support reducing the requirement for exporters of e-marked packages to give notice to local weights and measures authority to a requirement for a one off notice?**

### **Offences & Defences**

- 5.61 The new offences and defences under the draft regulations reflect the changes to the main duties. Failure to comply with any of the revised duties relating to compliance with the three packers' rules and marking of packages or outer containers or equipment, checks or documentation will be an offence.
- 5.62 As referred to in paragraph 5.35 there is a new provision at draft Regulation 7 that provides that offences relating to compliance with the three packers' rules may be

committed by a person, other than the packer or importer, marking a package with a quantity indication if he is not acting on behalf of the packer or importer.

- 5.63 There is also a new offence, (see paragraph 5.23) of knowingly having for sale, agreeing to sell or selling a package which comes from a batch that failed a reference test and where the seller cannot show that corrective action was taken or that the actual quantity in the package exceeds its nominal quantity.
- 5.64 As mentioned in paragraph 5.14 the draft regulations include a new offence of e-marking packages other than as permitted by the regulations.
- 5.65 There is an additional defence that where a person is charged with an offence of failing to pack to the three packers rules, he may prove that the packages were made up in accordance with the rules and that their failure to pass a test was due entirely to the desiccation of the product in the packages after they were packed. Under the existing legislation there is a time limit after which reference tests may not be carried out on products that desiccate after packing. This time limit has been removed, as it hampered effective enforcement and the new defence has been added for cases where any deficiency can be shown to be due entirely to desiccation. However the defence is limited to packages where the quantity is deficient by less than twice the tolerable negative error for the packages concerned.
- 5.66 These changes will provide additional protection for consumers, because under the existing Regulations it was very difficult to provide effective enforcement for desiccating products.

### **Question**

- 5.67 **Do you have any comments on the defence for desiccating products as drafted?**

### **Penalty for certain offences reduced to 3 months**

- 5.68 The new regulations are being made using order making powers contained in section 2(2) of the European Communities Act. These powers enable European laws to be implemented (or re-implemented) into UK law. However, the powers contain a limit on the penalties that may be imposed in legislation that is made under them. The limit, for offences on summary conviction, is imprisonment not exceeding 3 months and/or a fine not exceeding the statutory maximum.
- 5.69 Under existing legislation the maximum penalty for the offences of making a false record, referring to a document a person knows is false and altering a record or document with intent to deceive is on summary conviction a fine not exceeding level 5 on the Standard scale or to imprisonment for a term not exceeding six months or to both. Under the new Regulations the maximum penalty that could be imposed on summary conviction would be a fine not exceeding level 5 on the Standard scale or to imprisonment for a term not exceeding three months or to both.
- 5.70 An alternative might be to make these offences subject to Crown Court, rather than Magistrates Court jurisdiction, in which case the penalty for the offences on

conviction on indictment could be increased to imprisonment for a period of six months.

### **Question**

#### **5.71 Do you support the reduction in penalty for these offences?**

#### **Transitional Arrangements**

- 5.72 The draft regulations include a general transitional provision that any packages made up under the existing 1986 Regulations, before the time that they are revoked (at commencement of the new regime), will continue to be subject to the rules set out there. This will prevent the requirements of the new regulations applying to any packages made up before they were commenced.
- 5.73 The draft regulations also include a transitional provision to permit packages made up, up to 6 months after the new regulations are commenced, to be packed or labelled according to the rules of Part IV of the Act, where goods or packages will become subject to the average system for the first time. This six month transitional period will apply to:
- Packages above 10 kg or L and equal to or below 25kg or L where they were not subject to specific quantity limits in this range under Schedule 1 to the 1986 Regulations;
  - Packages containing goods that were previously class B packages but where the packer chose not to e-mark;
  - Packages containing goods previously in an excluded category (i.e. those listed in column 2 of Schedule 1 to the 1986 Regulations);
  - Packages containing goods previously outside the lower or upper limits for Class A packages;
- 5.74 In each of these cases the packages would have been subject to the minimum rules under Part IV of the 1985 Act (rather than exempt from any form of control). However, it seems reasonable to permit packers or importers of such packages a period of time to allow them to make any adjustments needed to ensure that their quantity control systems and labelling would comply with the new requirements
- 5.75 In addition, some packages containing quantities above 10 kg or L are currently permitted to bear the e-mark under UK law. Under the draft regulations it will become an offence to e-mark such packages. The draft regulations allow for a transitional period of 6 months from commencement, for such packages to continue to be permitted to be made up and e-marked as under the existing 1986 Regulations. Again, this would give packers time to change their labels to comply with the new requirements.
- 5.76 The earlier consultation document addresses whether a transitional period should be put in place for equipment which currently complies with the prescriptive requirements of Schedule 4 of the 1986 Regulations, but which would not comply with the new requirements to be suitable for the operation for which is being used. On reflection, the new requirements are considered to be a basic minimum

standard that any equipment should be able to meet if it is being used to pack to the average system. Therefore, the draft regulations do not include any transitional arrangements for equipment.

### **Questions**

- 5.77 **Are you aware of any equipment that is currently permitted by Schedule 4 of the 1986 Regulations but which would not meet the new standard?**
- 5.78 **Do you think the transitional arrangements proposed are suitable?**

### **Reference Test**

- 5.79 The reference test included in Schedule 1 is that specified in Directive 76/211 with the inclusion of the single sampling plan that was developed in 1979.

### **Question**

- 5.80 **Do you have any comments on the reference test?**

### **Bread**

- 5.81 Draft regulation 20 and Schedule 6 deal with the treatment of bread and include a new provision to give retailers of bread which is part-baked on their premises, the option of packing to the minimum requirements under Part IV rather than the average system. The case of part-baked bread that is finished on the retailer's premises is considered to be a special case, because the nature of the finishing process (the final baking) can affect the weight of the final loaf but the pieces of dough are quantity controlled when delivered by the supplier.
- 5.82 If a retailer chooses to pack his part-baked bread under the minimum system, he would not be required to weigh every loaf or to use a system of checks and maintain records of those checks. This would reduce his recordkeeping requirements.
- 5.83 However, he would be required to ensure that every loaf contained a minimum quantity of at least its net weight. In order to exercise this option, retailers would be required to write to their local weights and measures authority to inform them of their intention to pack to a minimum standard. The local weights and measures authority would when appropriate then test the packages against the minimum standard.
- 5.84 This proposal formed part of the consultation on Consolidating and Simplifying the Food Orders that was published in October 2004, and a majority of those commenting on this point favoured allowing this option. However, it is being included in the Packaged Goods Regulations because it involves a modification of application of the average system for part-baked bread.

### **Question**

- 5.85 **Do you have any views on the draft regulation on part-baked bread?**

## 6. What Happens Next?

- 6.1 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.
- 6.2 Once the consultation process is completed and any amendments made to the regulations, they must be notified to the European Commission under the Technical Standards and Regulations Directive 98/34/EC. Member States are obliged to notify the Commission, in draft, of proposed technical regulations and to observe a three-month standstill period before the regulation is made or brought into force. This is to provide an opportunity for the Commission and other Member States to comment if they consider that the proposed regulation has the potential to create a technical barrier to trade.
- 6.3 The regulations must then be submitted for Parliamentary scrutiny in the UK before they can be brought into force.
- 6.4 All new regulations affecting business must be commenced on one of two dates, either 1 October or 6 April. The earliest practicable date for implementation of the envisaged new Regulations is likely to be 6 April 2006.
- 6.5 The Commission has recently conducted a consultation on a working paper discussing possible amendments to simplify and modernise the two Directives in the light of the SLIM (Simpler Legislation for the Internal Market) review in 2000. The Commission expects to bring forward its proposals for new legislation early next year. Allowing for consideration by the European Council and Parliament, and UK implementation, it is likely that any resulting amendments would not be introduced into UK law until Spring 2008, at the earliest. We expect that the envisaged new Regulations are likely to be broadly consistent with any new EC legislation which may flow from the Commission's proposals. Nevertheless, it is likely that the Commission's proposals will require further implementation, probably in the form of amendments to the UK legislation, at some point in 2008 or 2009.
- 6.6 There is a case for delaying legislative change until it can take full account of any revision of the Directives. However, the Department's present view is that it would be better to carry through the reforms outlined in this paper as soon as possible, which is likely to be Spring 2006, and to accept that further, probably minor, revisions might be necessary within a few years. This appears, to date, to be the preference of stakeholders also, but we would welcome your views on whether the new regulations should be made as soon as possible or whether they should wait to incorporate the outcome of the Commission's consultation and future proposals.
- 6.7 Stakeholders may like to note that a separate consultation exercise setting out proposals to consolidate UK weights and measures controls on foodstuffs was issued in October 2004. Subsequently, the European Commission published its proposals to simplify EU law in relation to specified quantities for pre-packed foods. As these may become law at EC level relatively soon (2006), a majority of business stakeholders consulted favoured a delay to the consolidated Food Order to take

account of the Commission's proposals on specified quantities. The Department therefore aims to carry forward the revision of the food orders as soon as practical once the Commission's proposals have been enacted.

## **ANNEX 1: RESPONSE FORM**

SEE SEPERATE DOCUMENT

## **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.
3. The main deregulatory proposal is to give greater freedom to packers over the equipment that they may use for measuring or checking the quantity of goods in their packages. The draft regulations replace the existing prescriptive requirements in Schedule 4 of the Weights and Measures (Packaged Goods) Regulations 1986 with a short and straightforward requirement that equipment should be suitable for the operation for which is being used and should comply with any other legislation that applies to it.
4. The draft regulations also clarify which packages may benefit from e-marking under directives 75/106 and 76/211/EEC and create a new offence of applying the e-mark to a package other than as permitted by the regulations. This is intended to give consumers greater confidence that the e-mark is being applied only to packages that have been made up in accordance with the average system and that the quantity, within permitted tolerances, is accurate.
5. The draft regulations apply to all packages that meet set criteria and which are made up in quantities between 5 g and ml and 25 kg or L. This replaces the complex application of the current regime which took a product specific approach and for which there were specific product quantity ranges and exemptions. This significantly simplifies to what the regulations apply as well as extending the benefits of the average system to a wider range of packages.
6. The structure and content of the draft regulations is much shorter and simpler than the legislation that it will replace, and all the provisions are included in a single set of Regulations, rather than being spread between primary and secondary legislation and statutory guidance. This should make the legislation easier to understand for all those affected by it.

#### Background

7. Part V of the Weights and Measures Act 1986 (together with the 1986 Regulations and the Packers Code) 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 of the Weights and Measures Act 1985 extended the regime, in the UK, 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.
8. Under the average system 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 Act, determine the scope of the average regime as well as setting out certain details concerning the marking, making up, checking and testing of packages.

#### Risk Assessment

9. The existing Regulations were made 19 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.
10. 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. Both the Committee on Public Accounts and the National Audit Office recommended reform in their respective reports in weights and measures in 2003. The proposed changes will simplify the Regulations and remove unnecessary burdens from packers and importers in the equipment they may use.
11. 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.
12. 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.

13. 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. Repeal and revoke Part V of the Weights and Measures Act and the Packaged Goods Regulations and replace them with a new simpler regime.

### Option 1

14. 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

15. 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 disadvantages are that this option would not address the way in which the duties on packers are expressed and it would still require equipment the types of permitted equipment to be prescribed.

16. At the time of the first consultation on the principles of reform, this was the Department's favoured option. However, following that consultation exercise, and taking account of the views from consultees, the Department now proposes to make a more comprehensive reform and favours option 4.

### Option 3

17. 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.
18. 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.

### Option 4

19. This option involves a comprehensive reform of the regime, by replacing both the primary and secondary legislation with a new set of Regulations made under section 2.2 of the European Communities Act 1972. This option has the advantage of addressing all the complexities and unnecessary burdens in the current regime.

## Costs and Benefits

### Option 1

20. 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*

21. 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.

22. 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.
23. However, both the effect of process innovation in packaging industries and product innovation in the measuring equipment industry are difficult to quantify *ex ante*.
24. 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.
25. The new simpler duty on packers to use equipment which is suitable and meets any legal requirements that apply to it, should give packers much greater freedom over the equipment that may be used.
26. 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 seeks views from packers and enforcers on the scope for additional costs or savings as a result of the proposals.

#### *Consumers*

27. 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*

28. 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*

29. 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.

#### *Consumers*

30. 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*

31. 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*

32. 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 and benefits of in the new regime the draft regulations attached at Annex 7.**

#### *Consumers*

33. 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*

34. 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

35. 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

#### Measuring equipment manufacturers

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

#### Equity and Fairness

- 36. 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.
- 37. 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

- 38. 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 (4) 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 provided, (draft attached at Annex 8) to explain the new regime.

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

Competition Assessment

40. 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.
41. 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

42. 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.

Monitoring and Review

43. The Regulations will be monitored to ensure that they are operating effectively. Quarterly discussions are held between the Department and the weights and measures representatives of the Local Authority Co-ordinators of Regulatory Services (LACORS) and the National Weights and Measures Laboratory to discuss the operation of the system. The European Commission is currently developing its proposals for new legislation in this area and expects to publish its proposal early next year. Once agreed, any proposals would not be introduced into UK law until Spring 2008, at the earliest. Although the new Regulations are likely to be broadly consistent with any new EC legislation which may flow from the Commission's proposals it is likely that the Commission's proposals will require further implementation, probably in the form of amendments to the UK legislation at some point in 2008 or 2009.

Summary and recommendation

44. The recommended course of action is to reform the regime by setting out a complete new regime to replace Part V of the 1985 Act and the Weights and Measures (Packaged Goods) Regulations 1986. The draft regulations attached at Annex 7 aim to update and simplify the regime and to remove unnecessary burdens on packers.

## 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:

TSO  
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](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](http://europa.eu.int/eur-lex/en/consleg/pdf/1975/en_1975L0106_do_001.pdf)

## ANNEX 4: LIST OF CONSULTEES

Association of Cereal Food Manufacturers	Hampshire County Council
Association of Greater Manchester Authorities	Institute of Directors
Bakers, Food and Allied workers' Union	Interbrew UK
Bedfordshire County Council	Justices' Clerks' Society
Bee Farmers' Association Of The U.K.	Kelloggs Europe Trading Limited
Biscuit Cake Chocolate & Confectionery Association	Kent County Council
British Aerosol Manufacturers' Association	LACORS
British Cement Association	Lancashire County Council
British Chambers of Commerce	London Trading Standards Authorities
British Chemical Distributors & Trade Assoc	Magistrates' Association
British Coatings Federation Ltd	Manchester Business School
British Frozen Food Federation	Margarine & Spreads Association
British Hospitality Association	Marks & Spencer plc
British Lubricants Federation Ltd	MH Foods Ltd
British Potato Council	Midlands Co-ordinating Group on Trading Standards
British Precast	Milton Keynes Trading Standards
British Retail Consortium	Mitchells & Butlers
Builders Merchants Federation	Montpeliers (Edinburgh) Limited
City of Edinburgh Council	Napier Brown & Co Ltd
Cleaning & Hygiene Suppliers Association	National Association of British and Irish Millers
Co-operative Group	National Association of Master Bakers
Cosmetic, Toiletry & Perfumery Association Ltd	National Weights and Measures Laboratory
Crossing Boundaries Partnership	Newham Trading Standard & Consumer Protection
Dairy UK	North East Thames Trading Standards
Del Monte International Inc	North West London Metrology Group/Trading Standard
Doncaster Trading Standards	Northumberland County Council
East Midlands Co-ordinators of Regulatory Services	Oldham MBC Trading Standards
Equality Commission for Northern Ireland	Peterborough City Council Trading Standards
Eversheds LLP	Premier Foods
Federation of Bakers	Provision Trade Federation
Federation of Licensed Victuallers Associations	Redcar & Cleveland Borough Council
Food and Drink Federation	Royal Borough of Kensington and Chelsea T S
Food Processors Association	Royal National Institute of the Blind (RNIB)
Gin And Vodka Association Of Great Britain	Rural Payments Agency
Gloucestershire County Council	

Sapori D'Italia (UK) Limited
Scotch Whisky Association
Scotland Office
SCOTSS
Scottish Association of Master Bakers
Scottish Beekeepers Association
Scottish Grocers' Federation
Scottish Licensed Trade Association
Small Business Service
Snack, Nut & Crisp Manufacturers Association
Somerset Trading Standards Service
South Eastern Metrology Group
Stoke-on-Trent City Council
SWERCOTS
Tesco Stores Ltd
Trading Standards Institute
UK Baking Industry Consultative Committee
UK Cleaning Products Industry (UKCPI)
UK Metric Association
UK Tea Association
UK Travel Retail Forum
United Kingdom Weighing Federation
Univar Limited
Uppingham Yarns Ltd
Wales Office
West Sussex County Council
Which
Whyte & Mackay Ltd
Wine Standards Board
Yorkshire and Humber T S Technical Metrology Group

## ANNEX 5: TRANSPOSITION TABLE

Transposition Table for Directive 76/211/EEC on the approximation of the laws of the Member States relating to the making up by weight or volume of certain pre-packaged products.

Articles	Objectives	Implementation
Article 1	This article sets out the scope of the directive, limiting it to packages that are: a) packages intended for sale in constant unit nominal quantities b) which are equal to values predetermined by the packer, c) expressed in units of weight or volume and d) are not less than 5 g or ml and not more than 10 kg or L. Therefore the directive only applies to packages that meet these criteria and only these packages may be e-marked.	Regulation 3(1) applies the Regulations to packages meeting the first three criteria set out in Article 1 of the directive. The Regulations have a wider scope than the Directive, and also apply to outer containers, bread and to packages up to 25 kg or L. However, packages that may apply the e-mark are limited by Regulation 5(4) to those are not less than 5 g or ml and not more than 10 kg or L.
Article 2	Article 2 defines “pre-package” and “pre-packed” for the purposes of the directive.	The definition of “package” in Regulation 2 reflects the requirements of Article 2.
Article 3	Article 3 limits the packages that may bear the e-mark to those that meet the requirements of the Directive.  It also provides that they should be subject to metrological control under the conditions defined in Annex I, section 5 and Annex II.	Regulation 5(4) limits packages that may apply the e-mark to those that meet requirements equivalent to those contained in the Directive.  Regulation 10 places a duty on Local Weights and Measures Authorities to enforce the Regulations.  The procedures for the reference method for statistical checking of batches of packages set out in Annex II to the Directive are included at Schedule 2 to the Regulations.
Article 4	Article 4 requires a) all e-marked packages to be marked with nominal weight or volume b) liquids to be marked by volume and other products to be marked by weight, except where trade practice or national regulations provide otherwise and are identical in all other MS,	Regulation 5 requires packages to be marked with an indication of nominal quantity or if it isn't marked when the package is made up, for statement of nominal quantity to be made and kept until the package has been marked.  Regulation 8 requires that for

	if not the same in all MS, packages must at least display the metrological information corresponding to requirements in the country of destination, c) supplementary indications in imperial measurements may be given in the UK and ROI if those MS desire.	packages that are intended for export to another Member State where the national regulations differ from those in the UK, the metrological information displayed must at least meet the requirements of the destination State.  Supplementary indications are permitted under section 8(5)(A) of the Weights and Measures Act 1985.
Article 5	Article 5 prohibits MS from refusing, prohibiting or restricting the placing on the market of packages that satisfy the requirements of the Directive, for reasons concerning the marking, determination of volume or weight or the methods of checking or measuring.	Regulation 3(3) exempts e-marked imports from other MS from the main requirements of the Regulations.  This has the effect of removing such packages from metrological control in the UK.
Annex I: 1.Objectives	This paragraph sets out the requirement that prepackages covered by the Directive be made up to satisfy three rules.	Regulation 4 places a duty on packages to which the Regulations apply to be made up in a way to satisfy the three rules.
Annex I: 2.Definitions and Basic Provisions	This paragraph defines the terms “nominal quantity” “actual contents” and “tolerable negative error” and provides that the “tolerable negative error” be fixed in accordance with values set out in the table provided.	Regulation 2 defines “nominal quantity” and “tolerable negative error” in line with the Directive’s definitions. The level of tolerable negative error permitted is set out in Schedule 3 and reflects that contained in the Directive.
Annex I: 3. Inscriptions and Markings	This paragraph sets out the markings that must be included on a pre-package and how they should be presented. The markings required are a) the nominal quantity, b) a mark or inscription identifying the packer or importer established in the Community, c) the e-mark.	Regulation 5 requires packages to be marked with their nominal quantity and the name and address or i.d. mark of the packer or importer.  In addition Regulation 5(4) permits packages meeting certain criteria to apply the e-mark.  Regulation 8 sets out how the marking should be displayed.
Annex I: 4. Responsibility of the Packer or Importer	Paragraph 4 places responsibilities on the packer or importer of e-marked packages to ensure that their packages meet the requirements of the	Regulation 9 places a duty on packers to measure or check their packages and to keep records of the check, using equipment that is suitable for effecting the operation for

	<p>Directive. Packers and/or importers are responsible for measuring or checking the quantity of product in their prepackages using a legal measuring instrument suitable for effecting the necessary operations.</p> <p>Where packages are not measured, the check must be carried out so that the contents of the packages is effectively ensured and that condition is fulfilled if the packer carries out production checks in accordance with procedures recognised by the Competent Department and he makes records available of the checks and any corrective actions. For imports from non-MS, the importer may instead of measuring or checking, show that he has evidence of all necessary guarantees allowing him to take responsibility. For packages made up by volume, one way of meeting the measuring or checking requirements is to use Measuring Container Bottles under the conditions set out in Directive 75/105/EEC.</p>	<p>which it is being used.</p> <p>If packages are checked, the system of sampling and tests used must be sufficiently rigorous to ensure compliance with the three rules set out in Regulation 4. This condition is, in effect, the “recognised procedures” required by the Directive.</p> <p>Regulation 9(3) places a duty on importers to check the packages or to obtain sufficient evidence to give reasonable grounds for believing that the packages have been made up in accordance with the three rules under regulation 4.</p>
<p>Annex I: 5. Checks to be carried out by the Competent Departments On the Premises of the Packer or Importer or of his agent established in the Community</p>	<p>Paragraph 5 requires Competent Departments to carry out checks at packers’ premises or at the premises of the importer or agent, to ensure that prepackages comply with the Directive.</p> <p>The method of checking must be statistically equivalent to that provided in Annex II.</p>	<p>Regulation 10 places a duty on Local Weights and Measures Authorities to enforce the Regulations. Schedule 5 provides powers for inspectors and local weights and measures authorities for this purpose.</p> <p>Regulation 4(2) provides that compliance with the three rules set out in regulation 4(1) shall be determined by the reference test set out in Schedule 2 which is that set out in Annex II to the Directive with the addition of an equivalent single sample plan.</p>
<p>Annex I: 6.</p>	<p>This paragraph clarifies that the</p>	<p>Schedule 5 provides powers for</p>

Other Checks Carried out by the Competent Departments	Directive does not prevent other checks at any stage in the marketing process, from being carried out by the competent departments to verify that prepackages meet the requirements of the Directive.	inspectors and weights and measures authorities to conduct checks on packages at any stage.
Annex II	This Annex sets out the statistical procedure for checking batches of prepackages.	Schedule 2 to the Regulations sets out the procedures of the reference test, which is that set out in Annex II to the Directive with the addition of an equivalent single sample plan.

## **ANNEX 6: 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 Nick Van Benschoten, DTI Consultation Co-ordinator, Room 321, 1 Victoria Street, London SW1H 0ET or telephone him on 020 7215 6206 or email to: [Nick.VanBenschoten@dti.gsi.gov.uk](mailto:Nick.VanBenschoten@dti.gsi.gov.uk)

### **ANNEX 7: DRAFT REGULATIONS**

SEE SEPARATE DOCUMENT

### **ANNEX 8: DRAFT GUIDANCE**

SEE SEPARATE DOCUMENT

End