STATUTORY RULES OF NORTHERN IRELAND

2011 No. 331

WEIGHTS AND MEASURES

The Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011

Made - - - -	*22nd September 2011*
Coming into operation	*1st November 2011*

The Department of Enterprise, Trade and Investment (**1**) ("the Department") makes the following Regulations, in exercise of the powers conferred by Article 13(1) of the Weights and Measures (Northern Ireland) Order 1981 (**2**) and now vested in it (**3**) and section 2(2) of the European Communities Act 1972 (**4**).

The Department is designated (**5**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the regulation, labelling and control of packages and products made up to a pre-determined constant nominal quantity.

Citation and commencement

1. These Regulations may be cited as the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 and shall come into operation on 1st November 2011.

Interpretation

2. In these Regulations—

"batch" means a group of packages selected in accordance with the provisions of Schedule 2 for the purposes of conducting a reference test;

"bread" means bread in the form of single loaves (whether or not sliced);

"cosmetic product" has the meaning given by regulation 3 of the Cosmetic Products (Safety) Regulations 2008 (**6**);

"credentials" in relation to an inspector, means written authority, given by the Department , for the inspector to exercise the powers conferred on inspectors by these Regulations;

(**1**) Formerly known as the Department of Economic Development; see S.I. 1999/283 (N.I. 1), Art. 3(5)
(**2**) S.I. 1981/231 (NI 10) as amended by 2000 c. 5 (N.I)
(**3**) By S.I. 1982/846 (N.I. 11), Art. 4
(**4**) 1972 c. 68.
(**5**) S.I. 2005/2766
(**6**) S.I. 2008/1284

"customs seal" means—

(a) an official customs seal used to secure or identify any goods for any of the purposes of the customs and excise Acts; or

(b) a seal which a trader has been authorised by Her Majesty's Revenue and Customs to use to secure or identify any goods for any of the purposes of the customs and excise Acts in place of an official customs seal;

"customs and excise Acts" has the same meaning as in the Customs and Excise Management Act 1979 (**7**);

"the E-mark" means a letter 'e', at least 3 mm high, having the form shown in Schedule 4;

"importer" means, in relation to a package or outer container, the person by whom, or on whose behalf, the package or outer container is brought into the United Kingdom;

"inspector" has the same meaning as in the "1981 Order";

"knitting yarn" means knitting yarn consisting of natural fibres (whether animal, vegetable or mineral), chemical fibres, or a mixture of such fibres;

"Member State" means a member State, Norway, Iceland or Liechtenstein;

"negative error" means the quantity by which the contents of a package are less than the nominal quantity;

"nominal quantity" means the weight or volume marked on or in respect of a package pursuant to regulation 5(1)(a) or 6(1)(a), or entered in a record made under regulation 5(2) or 6(2);

"outer container" means a container which contains two or more items, at least one of which is a package to which these Regulations apply, provided that:

(a) the items were placed in the container without the purchaser being present;

(b) the items cannot be removed from the container without the container being opened or undergoing a perceptible modification; and

(c) the container is intended, or would normally be regarded as appropriate, for sale to an ultimate consumer as the outermost layer of packaging;

"package" means the combination of a product and the individual package in which it is packed, provided that:

(a) the product is placed in the package without the purchaser being present; and

(b) except in the case of knitting yarn, the quantity of the product in the package cannot be altered without the package being opened or undergoing a perceptible modification;

"packer" means the person who placed the product in the package or the packages in the outer container;

"reference test" means the tests set out in Schedule 2;

"the 1981 Order" means the Weights and Measures (Northern Ireland) Order 1981;

"the 1990 Regulations" means the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 1990 (**8**);

"tolerable negative error" means the amount set out in the table in Schedule 3 in relation to the nominal quantity of the package.

(2) The Interpretation Act (Northern Ireland) 1954 (**9**) shall apply to these Regulations as it applies to an Act of the Assembly.

(**7**) 1979 c.2
(**8**) S.R. 1990 No.410 as amended by S.R. 1992 No. 485, S.R. 1994 No.321 and S.R. 1995 No.229
(**9**) 1954 c.33 (N.I.)

Scope of application

3.—(1) Subject to paragraphs (2) to (6), these Regulations apply to:

(a) packages intended for sale in constant unit nominal quantities which are:

(i) equal to values predetermined by the packer;

(ii) expressed in units of weight or volume; and

(iii) of not less than 5 grams or 5 millilitres and not more than 25 kilograms or 25 litres;

(b) outer containers.

(2) These Regulations also apply to bread which is sold either unwrapped or in open packets if:

(a) it has been made up to a pre-determined constant quantity; and

(b) it is intended for sale in constant unit nominal quantities expressed in units of weight, which are not less than 300 grams per loaf and not more than 10 kilograms per loaf.

(3) Schedule 5 sets out modifications in the application of these Regulations to bread.

(4) These Regulations do not apply to packages which are not marked with the E-mark and which:

(a) contain a product which is intended solely for use in, or in connection with, a process or treatment in the course of a trade or business;

(b) contain a product which is:

(i) intended, and which would normally be regarded as appropriate, for sale to an ultimate consumer; and

(ii) made up in quantities of less than 5 grams or 5 millilitres;

where the packages are not intended, or would not normally be regarded as appropriate, for sale to an ultimate consumer;

(c) contain a single application of a cosmetic product;

(d) are intended for despatch outside the United Kingdom;

(e) are intended for use by Her Majesty's forces or by a visiting force within the meaning of any of the provisions of Part I of the Visiting Forces Act 1952 (**10**);

(f) are intended for use as stores within the meaning of the Customs and Excise Management Act 1979 (**11**) in a ship, aircraft or hovercraft on a voyage or flight to an eventual destination outside Northern Ireland; or

(g) contain a product listed in Schedule 6 in a quantity less than the predetermined constant quantity there shown against that product.

(5) Regulations 4, 5, 6, 8, and 9 shall not apply to a package or an outer container which has been:

(a) packed in, or imported into, a Member State other than the United Kingdom;

(b) marked with the E-mark in accordance with the law of that Member State; and

(c) marked with the name and address of the person in that Member State who packed or imported the package or outer container, or who arranged for the package or outer container to be packed,

if, after the package or outer container has left that Member State, at least one of the following conditions is satisfied in relation to it:

(d) it has not entered a country which is not a Member State;

(e) it has been sealed at all times in a container bearing a customs seal;

(**10**) 1952 c.67
(**11**) 1979 c. 2

(f) there has been no reasonable opportunity for any person to alter the quantity of the product contained within it.

(6) These Regulations do not apply to:

(a) a package of frozen or quick frozen poultry meat which is classified by weight category in accordance with Article 9(1) of Commission Regulation (EC) No. 543/2008(**12**);

(b) a package containing a product listed in Annex I to Council Regulation (EC) No. 2200/96(**13**).

Duty to comply with the three packers' rules

4.—(1) It shall be the duty of the packer or importer of packages to ensure that they are made up in such a way as to satisfy the following rules—

(a) the contents of the packages shall be not less on average than the nominal quantity;

(b) the proportion of packages having a negative error greater than the tolerable negative error shall be sufficiently small for batches of packages to satisfy the requirements specified in Schedule 2;

(c) a package shall not have a negative error greater than twice the tolerable negative error.

(2) Compliance with the rules in paragraphs (1)(a) and (b) shall be determined by the reference test.

Duty of packers and importers to mark packages

5.—(1) It shall be the duty of the packer or the importer of a package to ensure that the package is marked, in such a manner as to be indelible, easily legible and visible in normal conditions of presentation, with the following—

(a) the nominal quantity, being the predetermined constant quantity in which that package is made up (including any additional quantity to which any statement on the package refers) in accordance with regulation 8; and

(b) the name and address of a person established in the United Kingdom who is either—

(i) the packer or the importer of the package, or

(ii) the person who arranged for the packer to make up, or the importer to import, the package,

or a mark which enables the name and address of such a person to be readily ascertained by the Department.

(2) If at the time when a package is made up or imported the package is not marked with the nominal quantity as mentioned in paragraph (1)(a), it shall be the duty of the packer or the importer of the package—

(a) to decide what the packer or importer proposes to mark on the package in pursuance of that sub-paragraph, and

(b) to make at that time, and to maintain until such time as the package is so marked, a record of the same.

(3) A packer or importer may mark a package which—

(**12**) Commission Regulation (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat, as corrected by Article 9(9) of Commission Regulation (EC) No. 936/2008

(**13**) Council Regulation (EC) No. 2200/96 of 28 October 1996 on the common organization of the market in fruit and vegetables (O.J. L297, 21/11/1996, p.1)

(a) is made up to comply with the requirements in regulation 4; and

(b) has a nominal quantity not exceeding 10 kilograms or 10 litres,

(c) with the E-mark, in which case the mark shall be indelible, easily legible and visible in normal conditions of presentation and be placed in the same field of vision as the indication of nominal quantity required by paragraph (1)(a).

(4) Paragraphs (1) and (2) shall not apply to milk which is sold or supplied to a consumer in a returnable container.

(5) Where a package is sold or supplied to a consumer by a packer from the packer's own premises, or from a vehicle used solely by the packer, paragraph (1)(b) shall only apply to that package if it is marked with the E-mark.

(6) A packer or importer is not obliged to mark a package which is contained within an outer container and which is not intended, and would not normally be regarded as appropriate, for sale to an ultimate consumer as a separate item.

(7) Where regulation 12(1)(a) of the Cosmetic Products (Safety) Regulations 2008 requires a package to be marked with information about the manufacturer or supplier established in a member State then the requirement in paragraph (1)(b) to mark the name and address of a packer or importer who is established in the United Kingdom shall not apply.

Duty of packers and importers to mark outer containers

6.—(1) It shall be the duty of the packer or the importer of an outer container, to ensure that an outer container is marked, in such a manner as to be indelible, easily legible and visible in normal conditions of presentation, with the following—

(a) the nominal quantity of the packages contained in the outer container, being the predetermined constant quantity in which those packages are made up (including any additional quantity to which any statement on the package or outer container refers), or where the packages have different nominal quantities, each distinct nominal quantity, marked in accordance with regulation 8;

(b) the number of packages contained in the outer container, or where the packages have different nominal quantities, the number of packages corresponding to each nominal quantity; and

(c) the name and address of a person established in the United Kingdom who is either—

(i) the packer or the importer of the packages contained in the outer container, or

(ii) the person who arranged for the packer to make up, or the importer to import, those packages,

(iii) or a mark which enables the name and address of such a person to be readily ascertained by the Department.

(2) If at the time when an outer container is packed or imported the outer container is not marked with the nominal quantities and number of packages as mentioned in paragraphs (1)(a) and (b), it shall be the duty of the packer or the importer of the outer container—

(a) to decide what the packer or the importer proposes to mark on the outer container in pursuance of those sub-paragraphs, and

(b) to make at that time, and to maintain until such time as the outer container is so marked, a record of the same.

(3) If an outer container contains one or more packages which are, or could lawfully be, marked with the E-mark, then the outer container may also be marked with the E-mark, provided the E-mark—