

GUIDANCE NOTE ON UK IMPLEMENTATION OF A EUROPEAN DIRECTIVE DEREGULATING SPECIFIED QUANTITIES (FIXED PACK SIZES)

Introduction

1. This guidance has been produced by the National Weights and Measures Laboratory, an Executive Agency of the Department for Innovation, Universities and Skills. This guide will be reviewed in January 2010. It follows the coming into force of a new law which implements European Directive 2007/45/EC on nominal quantities for pre-packaged products which governs the pack sizes in which pre-packaged goods can be sold. The Directive will be implemented into UK law by the Weights and Measures (Specified Quantities)(Pre-packed Products) Regulations 2009 which will come into force on 11th April 2009.

2. The new law will amend Schedules 4, 5, 6 and 7 to the Weights and Measures Act 1985, the Weights and Measures (Miscellaneous Food) Order 1988 and the Weights and Measures (Intoxicating Liquor) Order 1988 to the extent needed to implement Directive 2007/45/EC. The implementing legislation will have the same scope as the Directive and it should be noted that the Directive definition of "pre-packed" is broader than the statutory definition and that when we refer to "pre-packed" products in the Guidance we are referring to the "pre-packed" products within the meaning of the Directive.

3. The guidance is not an exhaustive explanation of the Regulations nor does it have legal force. It should, however, assist understanding of what the changes will mean in practice for businesses and consumers. The law will continue to be enforced by Inspectors of Weights and Measures employed by local authority trading standards departments. If you require further advice on the law you should contact your local trading standards department. Ultimately, only a court of law can provide a definitive interpretation of the law.

What are specified quantities?

4. Specified quantities, that is, the fixed sizes in which certain goods must be sold (known in the UK as "prescribed quantities"), formerly applied to around 30 types of pre-packaged goods in the UK and to some 40 categories

of goods at EU level, mainly foodstuffs. The purpose behind them was to protect consumers from being misled or confused by foods being presented in similar quantities, or by marginal reductions in quantity, and also to facilitate price comparisons. Prescribed quantities have their origins in the 1960s when protection for the shopper was less comprehensive than today and retail practices, in any case, were rather less sophisticated than now.

What are the main changes to the law?

5. The main changes to the law from 11th April 2009 are:

For all products apart for wines and spirits:

- All pre-packaged goods (except for wines and spirits) which were previously required to be packed only in a prescribed quantity, are now free to be packed in any size. A full list of all products affected by this change is attached at Annex A.

For pre-packaged spirit drinks:

- A reduction in the range of sizes of pre-packaged spirits subject to specified quantities so that those outside the range 100 ml to 2000 ml will no longer be regulated.
- The addition of the 1750 ml size for pre-packaged spirits.

For pre-packaged wines:

- A reduction in the range of sizes of pre-packaged still wines subject to specified quantities so that those outside the range 100 ml to 1500 ml will no longer be regulated. The range applicable to sparkling wine is 125ml -1500ml
- The removal of the restriction on the use of the 187 ml size for pre-packaged still wines, which limited its use to duty free sales.

For aerosols:

- Removal of the requirement for aerosols to be marked only by weight. As a result, aerosols may be marked either by weight or volume

6. It is important to note that the removal of the requirements to pack in specified quantities do not preclude the continued use of those sizes in which products have traditionally been packed. Although the deregulation of the market means that goods may now be packed to any size, packers and manufacturers are at liberty to continue packing their goods in existing pack sizes if they wish to do so. As such, there is no requirement for business to adopt any new size or incur any additional costs unless they determine that it is in their commercial interests to do so.

What about the optional extended transitional periods for butter, dried pasta, coffee, milk and white sugar?

7. Directive 2007/45/EC provides for Member States to retain specified quantities for white sugar until October 2013 and for butter, milk, dried pasta and coffee until October 2012. One of the key questions in consultation on specified quantities was, should the UK opt to make use of these optional extended transitional periods. There was a consensus view that the UK should deregulate specified quantities for coffee, butter, milk and dried pasta from 11th April 2009. For milk the responses were mixed, but on balance the Government has decided to deregulate the specified quantities for pre-packaged milk from 11th April 2009, along with all other pre-packaged goods (apart from wines and spirits).

What are the remaining specified quantities?

8. From 11th April 2009 the only pre-packaged products required to be made up in specified quantities are certain wines and spirits. The new specified quantities and ranges for wines and spirits are set out below:

RANGE OF NOMINAL QUANTITIES OF CONTENTS OF PREPACKAGES

Products sold by volume (quantity in ml)

Still wine: On the interval from 100 ml to 1,500 ml only the following eight nominal quantities:

ml: 100 — 187 — 250 — 375 — 500 — 750 — 1,000 — 1 500

Yellow wine: On the interval from 100 ml to 1,500 ml only the following nominal quantity:
ml: 620

Sparkling wine: On the interval from 125 ml to 1,500 ml only the following five nominal quantities:
ml: 125 — 200 — 375 — 750 — 1,500

Liqueur wine: On the interval from 100 ml to 1 500 ml only the following seven nominal quantities:
ml: 100 — 200 — 375 — 500 — 750 — 1,000 — 1,500

Aromatised wine: On the interval from 100 ml to 1 500 ml only the following seven nominal quantities:
ml: 100 — 200 — 375 — 500 — 750 — 1,000 — 1,500

Spirit drinks: On the interval from 100 ml to 2,000 ml only the following nine nominal quantities:
ml: 100 — 200 — 350 — 500 — 700 — 1,000 — 1,500 — 1,750 — 2,000

Background to the changes

Why does the UK need to introduce these changes to existing law?

9. The changes are necessary to implement a new European Directive (2007/45) which came into force in September 2007. With the exception only of certain wines and spirits, together with a limited number of goods to which extended transitional periods apply, the Directive deregulates mandatory fixed (standard) pack sizes for all pre-packaged goods made up in constant unit nominal quantities. It also prevents Member States from restricting the placing on the market of deregulated products on the basis that they do not conform to standardized national ranges. The Directive will be implemented into the national law of all European Member States with effect from 11 April 2009.

What prompted these changes in the first place?

10. In 2004 the European Commission began a review of the European legislation governing the quantities in which a range of goods may be pre-packaged. The fundamental aim of the review was to consider how best to

modernize and simplify legislation which had become increasingly complex and out of step not only with modern shopping and retailing practices but also with other consumer protection law. Following consultation on its proposals the Commission decided to repeal or amend relevant European law and to replace it with Directive 2007/45. As a consequence Directives 75/106/EEC and 80/232/EEC (which specify the quantities and capacities in which certain goods, both liquid and solid, may be pre-packaged) have been repealed. The resulting proposals were therefore aimed primarily at increasing competitiveness in the market place and to opening up more freedom of choice for consumers by removing unnecessary restrictions, in this case on the sizes in which a wide range of goods can be pre-packaged.

So what does this mean in practical terms for businesses and consumers?

11. The extent to which change in the market place becomes apparent over time will depend in part on the extent to which businesses introduce new pack sizes. This will also directly influence the degree to which consumers are afforded greater freedom of choice in the range of sizes in which goods become available. In any case, levels of protection for consumers will be undiminished. Modern consumer protection law requires, for example, that most pre-packaged goods shall be marked with their net weight or volume and that they also be unit priced. Comparison between products of a whole range of different sizes and brands is therefore no longer dependent on standard sizes but still enables value for money judgements to be made with confidence.

12. The changes to the law will afford businesses the opportunity to innovate as regards pack sizes but the extent to which they opt to do so must be a commercial decision.

13. Directive 2007/45/EC can be accessed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:247:0017:0020:EN:PDF>

14. A copy of the UK implementing legislation will be available from the OPSI website (<http://www.opsi.gov.uk/legislation/uk>) in due course.

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ANNEX A

PRE-11 APRIL 2009 UK SPECIFIED QUANTITIES FOR PRE-PACKAGED GOODS

SPECIFIED QUANTITIES BY VOLUME (in litres unless otherwise specified)

- Wine of fresh grapes; fresh grape must with fermentation prevented or arrested by the addition of alcohol including wine made of unfermented grape juice blended with alcohol, grape must in fermentation or with fermentation arrested otherwise than by the addition of alcohol, of subheadings 22.04 21 21 to 2204 21 39 inclusive, 2204 29 21 to 2204 29 39 inclusive and 2204 30 10: 0.10 – 0.187 (for consumption on aircraft, ships and trains only) -

0.25 – 0.375 – 0.50 – 0.75 – 1 – 1.5 – 2 – 3 – 4 – 5 – 6 – 8 - 9 - 10.

- “Yellow” wines entitled to use the following designations of origin: “Cotes du Jura”, “Arbois”, “L’Etoile” and “Chateau-Chalon”: 0.62.

- Sparkling wine and wine in bottles with “mushroom” stoppers held in place by ties or fastenings, and wine otherwise made up with an excess pressure of not less than one bar but less than three bar, measured at a temperature of 20 C, of subheadings 2204 10 11, 2204 10 19, 2204 10 90, 2204 21 10 and 2204 29 10: 0.125 – 0.20 – 0.375 – 0.75 – 1.5 – 3 – 4.5 – 6 – 9.

- Spirits, liqueurs and other spirituous beverages and compound alcoholic preparations of a kind used for the manufacture of beverages, of subheadings 2208 10 10 to 2208 90 79 inclusive: 0.02 – 0.03 – 0.04 – 0.05 – 0.071 - 0.10 – 0.20 – 0.35 - 0.50 – 1 – 1.125 (for non-retail sale only) - 1.5 – 2 – 2.5 – 3. – 4.5 – 5 (for non-retail sale only) – 10 (for non-retail sale only).

- Milk in a returnable container: one third of a pint – half a pint – multiples of half a pint.
Exempt: 50 ml or less.

- Milk other than in a returnable container:

189 – 200 – 250 – 284 – 500 – 750 – multiples of 284 and 500. Exempt: 50 ml or less.

- **Ballast:**

a multiple of 0.2 cubic metres. Exempt: any quantity of both more than 1 tonne and more than one cubic metre and any quantity sold by net weight.

- **Ready mixed cement mortar and ready mixed concrete:** in a multiple of 0.1 cubic metres.

Exempt: less than 1 cubic metre.

SPECIFIED QUANTITIES BY WEIGHT (in grams)

- **Barley kernels, pearl barley, rice (including ground rice and rice flakes), sago, semolina and tapioca:** 125 – 250 – 375 – 500 – multiples of 500. Exempt: 75 g or less and more than 10 kg.

- **Biscuits other than wafer biscuits which are not cream-filled:** 100 – 125 – 150 – 200 – 250 – 300 – multiples of 100. Exempt: 85 g or less and more than 5 kg.

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- **Bread in the form of a whole loaf:** 400 – multiples of 400. Exempt: 300g or less and 25 kg or more for non-retail sales.

- **Cereal breakfast foods in flake form, other than cereal biscuit breakfast foods:** 125 – 250 – 375 – 500 – 750 – 1 kg – 1.5 – multiples of 1 kg. Exempt: 50 g or less and more than 10 kg.

- **Chocolate products:** 85 – 100 – 125 – 150 – 200 – 250 – 300 – 400 – 500. Exempt: less than 85 g and more than 500 g.

- **Cocoa products:** 50 – 75 – 125 – 250 – 500 – 750 – 1 kg. Exempt: Less than 50 g and more than 1 kg.

- Coffee, coffee mixtures and coffee bags: 57 – 75 – 113 – 125 – 227 – 250 – 340 – 454 – 500 – 680 – 750 – multiples of 454 and 500. Exempt: less than 50 g and more than 1 kg.
- Coffee extracts and chicory extracts: 50 – 100 – 200 – 250 (for mixtures of coffee extracts and chicory extracts only) – 300 (for coffee extracts only) – 500 – 750 – 1 kg – 1.5 – 2 – 2.5 – 3 – multiples of 1 kg. Exempt: 25 g or less and more than 10 kg.
- Dried fruits: 125 – 250 – 375 – 500 – 1 kg – 1.5 – 7.5 – multiples of 1 kg. Exempt: 75 g or less and more than 10 kg.
- Dried vegetables: 125 – 250 – 375 – 500 – 1 kg – 1.5 – 7.5 – multiples of 1 kg. Exempt: 100 g or less and more than 10 kg.
- Edible fats in solid form (including butter, margarine and low fat spreads): 50 – 125 – 250 – 500 – multiples of 500 up to 4 kg – multiples of 1 kg up to 10 kg. Exempt: 25 g or less and more than 10 kg.
- Flour: 125 - 250 – 500 – multiples of 500. In addition: 375 and 750 for corn flour. Exempt: 50 g or less and more than 10 kg.
- Honey: 57 - 113 - 227 - 340 - 454 - 680 - multiples of 454. Exempt: Less than 50 g.
- Jam and marmalade other than diabetic jam or marmalade: 57 – 113 – 227 – 340 – 454 – 680 – multiples of 454. Exempt: Less than 50 g.
- Jelly preserves: 57 – 113 – 227 – 340 – 454 – 680 – multiples of 454. Exempt: less than 50g.
- Molasses, syrup and treacle: 57 – 113 – 227 – 340 – 454 – 680 – multiples of 454. Exempt: Less than 50 g.

- Oat products, namely flour of oats, oat flakes and oatmeal: 125 – 250 – 375 – 500 – 750 – 1 kg – 1.5 – multiples of 1 kg. Exempt: 50 g or less.
- Pasta: 125 – 250 – 375 – 500 – multiples of 500. Exempt: 50 g or less.
- Potatoes: 500 – 750 – 1 kg – 1.5 – 2 – 2.5 – multiples of 2.5 up to and including 15 – 20 – 25. Exempt: Less than 5 g and more than 25 kg. Any quantity where the net weight of each potato is not less than 175 g.
- Salt: 125 – 250 – 500 – 750 – 1 kg – 1.5 – multiples of 1 kg to 10 – 12.5 – 25 – 50. Exempt: 100 g or less.
- Sugar: 125 – 250 – 500 – 750 – 1 kg – 1.5 – 2
- Solid fuel – 50 kg or a multiple of 50 kg. Exempt 30 kg or less.
- Tea in a tea bag: 50 – 125 – 250 – 500 – 750 – 1 kg – 1.5 – 2 – 2.5 – 3 – 4 – 5. Exempt: 25 g or less.
- Tea other than in a tea bag: 50 – 125 – 250 – 500 – 750 – 1 kg – 1.5 – 2 – 2.5 – 3 – 4 – 5. In addition: 100 – 200 – 300 for tea packed in tins or glass or wooden containers. Exempt: 25 g or less or more than 5 kg.