



## Department of Enterprise, Trade and Investment

# Consultation on the draft Weights and Measures (Food) (Amendment) Regulations (Northern Ireland) 2015

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this consultation paper in  
a different format format i.e.  
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# Consultation on the draft Weights and Measures (Food) (Amendment) Regulations (Northern Ireland) 2015

The EU Regulation on Food Information to Consumers (1169/2011) ("FIC") took effect from 13 December 2014. It includes directly applicable requirements for mandatory quantity labelling for pre-packed foods intended for supply to consumers or mass caterers. As a result, all overlapping or conflicting provisions in national weights and measures law must be revoked to ensure compliance with EU law. In addition, FIC does not include enforcement provisions and there is an obligation on Member States to ensure that the new EU requirements can be enforced effectively in national law.

It is proposed to make only the minimum level of changes necessary to existing NI weights and measures law to take account of FIC. It is intended that this will be achieved by revoking any overlapping or conflicting national rules that apply to pre-packed foods that are subject to FIC from 13 December 2014, and by bringing enforcement of the weights and measures requirements of FIC within the existing weights and measures enforcement framework.

A full review and public consultation on the remaining national requirements that apply to loose foods, foods for wholesale (excluding sales to mass caterers and any other wholesale regulated by FIC), and packaged foods that fall outside the scope of FIC (broadly, foods for direct sale and/or made up in an open container) will take place at a later date.

The draft Statutory Rule also includes two further minor amendments to NI weights and measures legislation to ensure compliance with separate EU laws on poultrymeat and fruit and vegetables.

This consultation seeks views on whether the draft Weights and Measures (Food) (Amendment) Regulations (Northern Ireland) 2015 and the corresponding amendments to national law are clear and workable, and seeks comments on draft guidance. The consultation is not intended to reopen the policy decisions behind the directly applicable rules under FIC, which were agreed at EU level.

Issued: 12 June 2015

Respond by: 24 July 2015

Enquiries to:  
Philip McClenaghan  
Consumer Affairs Branch  
Department of Enterprise, Trade and Investment  
176 Newtownbreda Road  
BELFAST  
BT8 6QS  
Email: [Philip.McClenaghan@detini.gov.uk](mailto:Philip.McClenaghan@detini.gov.uk)

This consultation is relevant to all food business operators and consumer groups.

## 1. Executive Summary

1.1 The draft Statutory Rule removes from the scope of existing NI weights and measures legislation any provisions that apply to pre-packed foods sold to consumers or mass caterers, unless those provisions are directly implementing separate EU rules on weights and measures, or where NI provisions provide for quantity to be expressed in a different manner and are permitted in accordance with Article 42 FIC. This will involve amendments to six NI laws: the Weights and Measures (Various Foods) Order (Northern Ireland) 1988 (as amended); the Weights and Measures (Miscellaneous Foods) Order (Northern Ireland) 1989 (as amended); the Weights and Measures (Intoxicating Liquor) Order (Northern Ireland) 1989 (as amended); the Weights and Measures (Quantity Marking and Abbreviations of Units) Regulations (Northern Ireland) 1999 (as amended); the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011; and the Weights and Measures (Northern Ireland) Order 1981.

1.2 There is no scope under FIC for the UK to maintain any conflicting or overlapping requirements since 13 December 2014, except where such requirements are derived from more specific EU provisions on weights and measures, or where national (GB and NI) provisions provide for quantity to be expressed in a different manner and are permitted in accordance with Article 42 FIC. These Regulations therefore revoke any provisions in NI law that conflict or overlap with the directly applicable EU requirements under FIC and which are not directly derived from separate EU law or permitted under Article 42. In addition the Regulations amend the application of the existing enforcement regime under Part V of the Weights and Measures (Northern Ireland) Order 1981 to ensure that the quantity requirements under FIC can be enforced in the same way as the national rules that they are replacing.

1.3 There will be no cost implications for business, consumers or enforcers arising as a result of the Statutory Rule as FIC is directly applicable in national law and overrides the existing national provisions. The extension of the existing enforcement regime under the Weights and Measures (Northern Ireland) Order 1981 to the quantity requirements which apply to pre-packed foods under FIC is balanced by an equivalent reduction in the scope of that enforcement regime through the reduced application of the existing national rules on quantity labelling (that is, to the extent that those national rules apply to products that will be regulated by FIC).

1.4 A full consultation and review of the remaining national requirements that apply to loose foods, certain wholesale transactions and packaged foods that fall outside the scope of FIC (broadly, foods for direct sale and/or made up in an open container) will take place at a later date. The draft Statutory Instrument also includes two further minor amendments to weights and measures legislation to ensure compliance with separate EU laws on poultrymeat and fruit and vegetables.

1.5 Draft guidance has been produced to accompany the draft Regulations to explain how the amendments work in practice.

1.6 This consultation seeks views on whether the draft Weights and Measures (Food) (Amendment) Regulations (Northern Ireland) 2015 and the amendments to national law are clear and workable. It also seeks views on the guidance to accompany the draft Regulations. The consultation is not intended to reopen the policy decisions behind the directly applicable rules under FIC, which were agreed at EU level.

## 2. How to respond

**When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form (Annex A below) and, where applicable, how the views of members were assembled.**

**The consultation response by email or by letter to:**

Dennis Cunningham  
Consumer Affairs  
Department of Enterprise, Trade & Investment  
176 Newtownbreda Road Belfast  
BT8 6QS  
Telephone: 028 90253902  
Email: Dennis.Cunningham@detini.gov.uk

### **3. Confidentiality & Data Protection**

**3.1 Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998. If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.**

**3.2 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.**

## 4. Help with queries

**Questions about the policy issues raised in the document can be addressed to:**

Philip McClenaghan  
Consumer Affairs  
Department of Enterprise, Trade & Investment  
176 Newtownbreda Road  
Belfast BT8 6QS  
Tel: 028 90253909  
Email: Philip.McClenaghan@detini.gov.uk

## 5. The proposals

5.1 The draft Statutory Rule removes from the scope of existing national weights and measures legislation any provisions that apply to pre-packed foods sold to consumers or mass caterers, unless those provisions are directly implementing separate EU rules on weights and measures, or where national provisions provide for quantity to be expressed in a different manner and are permitted in accordance with Article 42 FIC. This will involve amendments to six national laws: the Weights and Measures (Various Foods) Order (Northern Ireland) 1988 (as amended); the Weights and Measures (Miscellaneous Foods) Order (Northern Ireland) 1989 (as amended); the Weights and Measures (Intoxicating Liquor) Order (Northern Ireland) 1989 (as amended); the Weights and Measures (Quantity Marking and Abbreviations of Units) Regulations (Northern Ireland) 1999 (as amended); the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011; and the Weights and Measures (Northern Ireland) Order 1981.

5.2 There is no scope under FIC for the UK to maintain any conflicting or overlapping or requirements after 13 December 2014, except where such requirements are derived from more specific EU provisions on weights and measures, or where national provisions provide for quantity to be expressed in a different manner and are permitted in accordance with Article 42 FIC. These Regulations therefore revoke any provisions in national law that conflict or overlap with the directly applicable EU requirements under FIC and which are not directly derived from separate EU law or permitted under Article 42. In addition the Regulations amend the application of the existing enforcement regime under Part V of the Weights and Measures (Northern Ireland) Order 1981 to ensure that the quantity requirements under FIC can be enforced in the same way as the national rules that they are replacing.

### **Weights and Measures Food Orders**

5.3 The main changes are that the scope of the national weights and measures legislation for foods is reduced to remove any pre-packed foods subject to directly applicable FIC quantity labelling rules. The Weights and Measures (Various Foods) Order (Northern Ireland) 1988 (S.R. 1988 No. 408) and the Weights and Measures (Miscellaneous Foods) Order (Northern Ireland) 1989 (S.R. 1989 No. 69) are amended so that they will only apply to foods packaged for direct sale, foods sold loose, foods sold in open containers and relevant wholesale transactions (which excludes the sale or supply of food intended for consumers or mass caterers or any other sales regulated under FIC; and any other supply of food that is made up in advance ready for retail sale in an open container). These categories can be maintained as they are not subject to the directly applicable mandatory requirements under FIC. This is achieved by amending the definition of pre-packed to limit its application to foods for direct sale and/or foods made up in advance in open containers, and inserting a definition to explain what is covered by relevant wholesale transactions. The Orders will only apply to foods in these categories in circumstances where they already apply to those foods. There is no extension of application to any new foods or new categories of foods. This will maintain the status quo pending a review of the remaining requirements to be held at a later date.

5.4 Article 4(2) of the Weights and Measures (Miscellaneous Foods) Order (Northern Ireland) 1989 requires all honey (unless sold loose or in a quantity of less than 5 g) to be marked with net weight. This is the only provision of this Order that will apply to pre-packed foods subject to



FIC and is a national rule permissible under Article 42 of FIC, which allows Member States to retain provisions for the expression of net quantity to be made in a manner other than that specified in FIC. The retention of this rule avoids doubt over whether honey should be expressed in units of weight or volume (when it is in liquid form) and continues to allow for the traditional UK practice of selling honey by weight. There is nothing to prevent units of volume being used in addition to weight.

5.5 The scope of the Weights and Measures (Intoxicating Liquor) Order (Northern Ireland) 1989 is amended so that the volume labelling requirements no longer apply to pre-packed foods subject to the directly applicable FIC quantity labelling requirements.

### **Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (“PGR”)**

5.6 These Regulations are amended to exclude any non e-marked packages from the quantity labelling requirements that apply under PGR (except that Article 42 FIC should apply to permit the rule under Regulation 8(1) PGR to be maintained, whereby liquid products may be marked with nominal quantity by weight and packages containing other products may be marked with nominal quantity by volume, where so provided by trade practice). Such packages will be subject to FIC quantity labelling rules. However, e-marked packages will continue to be subject to the labelling requirements under PGR to ensure compliance with Directive 76/211/EEC relating to the making up by weight or volume of certain pre-packaged products. Any packer who would prefer for their packages to continue to be subject to the quantity labelling requirements of PGR may apply an e-mark to their packages, provided that the packages comply with the “Three Packers Rules” and are within the quantity range of 5 g or ml to 10 kg or L, as required under PGR.

5.7 In addition the Regulations make two further minor amendments needed as a result of separate changes to European law. Regulation 38 substitutes a new Regulation 3(6) which has the effect of revoking exemptions that applied to frozen or quick frozen poultry meat or fruits and vegetables. Those exemptions are no longer compatible with EU law. The system of weight classification under Council Regulation (EEC) 1906/90 was repealed by Council Regulation 1047/2009 so the exemption no longer has any effect and can be revoked. The exemption for fruits and vegetables listed in Annex I to Council Regulation 2200/96 was intended to ensure compatibility between the Regulation and the e-marking regime. However, Council Regulation 2200/96 is not considered to be incompatible with e-marking and this exemption can be revoked. This will ensure that fruit and vegetables can be e-marked if they meet the requirements.

### **The Weights and Measures (Quantity Marking and Abbreviations of Units) Regulations (Northern Ireland) 1999**

5.8 These Regulations are amended to clarify that the requirements of Part II of those Regulations (quantity marking of containers and units of measurement to be used in marking) do not apply to pre-packed foods subject to FIC.

### **The Weights and Measures (Northern Ireland) Order 1981**

5.9 The Weights and Measures (Northern Ireland) Order 1981 is amended to bring the requirements relating to quantity under FIC into the existing weights and measures

enforcement regime. There will be no changes to the substance of the existing regime, only to its scope. In relation to packaged food, therefore, the enforcement regime will apply in respect of products covered by FIC and the residual categories of food products to which FIC does not apply.

5.10 Additional information on each provision can be found in the attached draft guidance at Annex C.

**Question 1:**

Do you consider that there are any provisions which do not work or are unclear? Yes/No

If yes, please explain your reasons.

## 6. The Guidance

6.1 Draft guidance on the Statutory Instrument is attached at Annex C.

6.2 This is intended to clarify the effect of each provision of the draft Statutory Rule and how the amendments to existing legislation will work in practice. We would welcome comments on how this guidance could be improved.

### **Question 2:**

Do you have any comments on the draft guidance?

Yes/No

If yes, please provide details.

## 7. Consultation questions

### Question 1:

Do you consider that there are any provisions which do not work or are unclear?

Yes/No

If yes, please explain your reasons.

### Question 2:

Do you have any comments on the draft guidance?

Yes/No

If yes, please provide details.

## **9. What happens next?**

**This consultation will close on 24 July 2014 and the Department will publish the consolidated regulations as soon as possible after that date.**

## Annex A: Weights and Measures (Food) (Amendment) Regulations (Northern Ireland) response form

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 24 July 2015

Name:

Organisation (if applicable):

Address:

Please return completed forms to:

Consumer Affairs Branch  
Department of Enterprise, Trade and Investment  
176 Newtownbreda Road  
Belfast  
BT8 6QS

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

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

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

Yes

No

If yes, please explain your reasons.

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

Yes

No

If yes, please provide details below.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

Yes

No



## **Annex B: Draft Weights and Measures (Food) (Amendment) Regulations (Northern Ireland) 2015**

**Please follow the link:**

[Draft on The Weights and Measures \(Food\) \(Amendment\) Regulations 2015](#)

**for a copy of the draft Weights and Measures (Food)(Amendment) Regulations (Northern Ireland) 2015.**

## **Annex C: Draft Guidance on the 2015 Regulations**

**Please go to:**

[Draft guidance on the Weights and Measures \(Food\) \(Amendment\) Regulations 2015](#)

**for a copy of the draft guidance on the 2015 Regulations.**

