The Average and Minimum Quantity Systems

1 The Minimum System

This is the traditional system of weights and measures that has operated for many years, and applies to both pre-packed and non-pre-packed goods. It requires that goods that are sold or offered for supply by quantity must be at least the weight, measure or number as stated by the seller.

Any weighing or measuring equipment used in connection with the minimum system MUST be prescribed and stamped, although there is no compulsion to use any equipment - the amount of goods being offered by the seller may be estimated, and, provided he estimates correctly, he commits no offence. However, if he estimates incorrectly, he has no defence against a charge of short weight or measure.

2 The Average System

The average quantity system of weights and measures, which only applies to packaged goods, has now been in operation since 1980 and is used throughout the United Kingdom and Europe. New Regulations were introduced in 2006 to simplify the previous legislation.

This system takes the emphasis for metrological control from the point of retail sale back to the place of packing, the rationale being that it is better not to produce defective packages - that is, short weight or measure - than to deal with such items when they are already in the retail chain. At the same time, it recognizes that no packing machinery is perfect, so certain deficiencies are tolerated. Provided the average quantity of a group of items is equal to or more than the declared quantity and the degree of deficiency of the individual items is not too great, then the goods are considered to satisfy the legislation.

The system applies to all goods which are normally sold in packages by weight or measure (but not count), and where the goods are:-

- made up in predetermined constant quantities of 5 grams to 25 kilograms or 5 millilitres to 25 litres,
- made up otherwise than in the presence of the purchaser, and
- made up in packages where none of the goods can be removed without opening the package.

All foods and non-foods that satisfy these three requirements are now covered by the Packaged Goods Regulations 2006.

Goods packed to this system may be marked with the “e” mark although there is no requirement that they must be unless they are packed to be distributed elsewhere in the EU.

The "e"-mark is a guarantee, recognized throughout the European Union, that the packages to which it has been applied have been packed in accordance with the relevant EU Directive and have been monitored at the place of packaging or importation by the appropriate metrological authority. It therefore acts throughout the Community as a "metrological passport" when applied to appropriate packages.

Loose bread, yarn and whole poultry have all been brought into the system in this country, and the legislation has been modified in appropriate ways to accommodate these "oddities".

Under the average weight system the packer or importer is responsible for ensuring that the goods they pack are to the three packers' rules.

- The actual contents of all the packages produced shall not be less, on average, than the nominal (marked) quantity.
- The proportion of packages which are short of the stated quantity by a defined amount (the TNE) shall be less than the specified amount.
- No package should be short by more than twice the TNE.

TNE means Tolerable Negative Error, which is an amount prescribed by Regulation, and is related to the nominal quantity of the package. (See Annex A for details).

The packer may satisfy these rules by either one of two means.

He may EITHER:

- Carry out checks that are sufficiently rigorous to ensure that the packages are packed to the above rules using suitable equipment and to make and keep records of those checks together with records of corrections and adjustments that the checks have shown to be necessary.

  OR

- Use suitable equipment to make up each and every package - this implies weighing or measuring every package individually and is equivalent to the traditional minimum system. This approach will probably only be suitable for small volume packers.

  If the packer opts for this approach there is no requirement in the regulations that he should keep records

The Regulations specify that records must be kept until the use by or best before date on the goods or for a period of one year after the date of packing, whichever is the shorter. However, it must be noted that an action for short weight or measure may be taken up to one year after the date of packing so it is advisable for the packer to retain any records for that period to enable him to prove his defence.

The Regulations now specify that equipment used to make checks should be ‘suitable’ for the use to which it is put. Guidance from BIS has specified that equipment that is used for the first time on or after 6 April 2006 for either making up or checking packages must be verified before use, i.e. be ‘stamped’ or ‘stickered’. Equipment such as check-weighers and templates may continue to be used but the packer must be able to demonstrate their accuracy.

The packer or importer must also mark the packages with a quantity declaration and his name and address (or a mark which enables his name and address to be readily ascertained).

The Regulations specify that packages containing liquids must be marked with volume and packages containing other products shall be marked with weight and lay down minimum heights for words and figures used in the quantity declaration:

Not exceeding 50g/50ml	2mm
50g/ml to 200g/ml	3mm
200g/ml to 1kg/l	4mm
Exceeding 1kg/l	6mm

The quantity declaration must be indelible, easily legible and visible in normal conditions of presentation. This has been interpreted to mean that the quantity declaration must be on the face of the packaging that is normally presented to the consumer rather than the back or side of the pack.

An Inspector of Weights and Measures will assess whether the packer has complied with the three packers' rules by carrying out a reference test. The reference test is a formalized test carried out on a sample of packages selected at random from a batch of packages.

When sampled at the end of a packing line a batch is a quantity equal to one hour's production, in all other cases the batch size shall be limited to 10,000, where the batch is made up of less than 100 packages (e.g. at a small baker's premises) the batch will comprise all of the packages produced.

No person other than the packer or importer can be liable for the sale or possession for sale for short weight packages, unless he knows or has reasonable grounds for believing that the package is inadequate, or that he knows comes from a batch of product that has failed a reference test.

The Regulations are supported by a number of codes of practice including the Code of Practical Guidance for Packers and more specific codes for certain sectors including Plant Bakers, Small Bakers, Beer and Cider Packers, Soft Drink Packers, Dairies, Poultry Packers and Biscuit Makers. None of these codes have legal force but simply offer guidance on compliance.

Annex A

Extract from:-
The Weights and Measures (Packaged Goods) Regulations 2006 SI 659

The tolerable negative error shall be the amount set out in the Table below in relation to the nominal quantity on the package.

Table

	Tolerable negative error	
Nominal quantity in grams or millilitres	As a percentage of nominal quantity	g or ml
5 - 50	9	-
50 - 100	-	4.5
100 - 200	4.5	-
200 - 300	-	9
300 - 500	3	-
500 - 1000	-	15
1000 - 10000	1.5	-
10000 - 15000	-	150
above 15000	1	-

(2) In calculating, in units of weight or volume, the amount of a tolerable negative error in the cases shown in the above Table where the error is to be taken as a percentage of nominal quantity, the amount shall be rounded up to the nearest one-tenth of a gram or millilitre as the case may be.

How to contact Worcestershire Regulatory Services

Consumer Advice - regarding issues relating to 'Consumer goods or Services' contact Citizens Advice Consumer Service on 08454 040506, alternatively research your consumer rights on the HM Government, DirectGov website www.direct.gov.uk

Business Advice only - telephone 0845 330 3313, or email wrsenquiries@worcsregservices.gov.uk

General Customer Enquiries - contact the Worcestershire Hub on 01905 822799 (Mon – Fri 8am-8pm, Sat 9am-5pm) or visit your local Customer Service Centre. Opening times and locations can be found at www.whub.org.uk

Postal address – Worcestershire Regulatory Services, PO Box 866, Worcester, WR1 9DP

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