

### UK metric association

Campaigning for a **single** rational system of measurement

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Mr Paul Cole Consumer and Competition Policy Department of Trade and Industry Room B007 1 Victoria Street London SW1H 0ET

Dear Mr Cole

### Weights and Measures Consolidated Food Order – Consultation Response

I refer to your Consultation Paper dated 12 October 2004 and to our exchange of emails on 31 January 2005. I also refer to Ms Falk's letter of 2 December 2004, on which I comment at the end of this letter.

Thank you for agreeing to consider a late submission from the UK Metric Association.

The UK Metric Association (UKMA) is an independent, non-party political, single issue organisation which advocates the full adoption of the international metric system ("Système International" - SI) for all official, trade, legal, contractual and other purposes in the United Kingdom as soon as practicable. We also campaign for better consumer protection through accurate and consistent use of metric units of measurement in order to achieve price transparency. UKMA is financed entirely by membership subscriptions and personal donations.

May I firstly re-iterate our surprise and concern that the Department should consider that "the issues covered by the consultation document do not include metrication" (your e-mail of 31 January). It should be obvious that units of measurement are an integral part of quantity indications, prescribed quantities and price marking; moreover, the failure to address problems of quantity indication and prescribed quantities has seriously hampered progress toward the full adoption of SI units as the primary system of weights and measures in the UK (which, at least ostensibly, is the Department's declared policy, as set out in its report "The adoption of the International System of Units as the primary system of measurement in the United Kingdom").

In our submission we attempt to answer those questions from the consultation paper which are relevant to our concerns, but we would initially make the following points.

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- 1. We recognise that there may some benefit in consolidating the Food Orders in so far as they relate to quantity indication. However, in the light of the European Commission's draft Directive (2004/0248(COD)), we question the value of a general consolidation of the existing Food Orders in so far as they affect prescribed quantities. Moreover, there seems little point in prescribing quantities for UK producers when UK retailers are free to import and display similar products from other Member States but packaged in different quantities. However, we would strongly support amendments of the Orders in two limited but important respects:
  - (a) We feel that, for the reasons given at point (3) below, it would be advantageous if "irrational" metric quantities (such as 454 g and 568 ml) could be phased out before any general deregulation of prescribed quantities as a result of the proposed Directive. Our reasoning is that if UK manufacturers are required to standardise on rational metric quantities in advance of deregulation, they are less likely to revert to irrational quantities afterwards.
  - (b) In so far as the Food Orders affect prescribed quantities for non-packaged goods (notably draught beer and cider), which are not affected by the proposed Directive, we would wish to see the relevant Order(s) amended as soon as practicable in the ways we describe in response to Question 16 below
- 2. However, for the purposes of this submission we have assumed that, notwithstanding the Commission's proposals, the Department will nevertheless proceed with its intention of consolidating the existing Orders.
- 3. We believe that public familiarisation with and acceptance of metric units has been seriously hampered by the retention of prescribed quantities which, although expressed in grams or millilitres, are in fact thinly disguised imperial quantities (e.g. 454 g, 568 ml). Such "irrational" metric quantities should be phased out as soon as practicable and replaced by rational metric quantities that is rounded to a convenient number, which would normally be a multiple of 100 g or 100 ml (exceptionally 50 g or 50 ml).
- 4. Other things being equal, we can see some advantage in standardising on the "1-2-5" principle rather than the "halving" principle that is, the sequence "100 g, 200 g, 500 g, 1 kg" is to be preferred to the sequence "125 g, 250 g, 500 g, 1 kg". However, we accept that, where such a change would be particularly disruptive (e.g. packaged dairy products), it may not be worth pursuing.
- 5. We believe that consumers should be enabled easily to see the difference between sizes of packages (whether they are mandatory or deregulated). If the "1-2-5" principle is followed, as above, there will be no difficulty in this. However, we are opposed to the co-existence of sizes which are within 25% of each other e.g. a 200 ml jar alongside a 250 ml jar and would prefer a minimum of 50%. In the event that package sizes are deregulated, we would also favour the concept of "exclusion zones" that is, a requirement that any changes from an established package size should be by a minimum margin.

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This would serve to prevent manufacturers and retailers from "downsizing" by small amounts in order to disguise underlying price increases.

6. We are concerned that, in a deregulated regime, consumers may have difficulty in comparing the prices of goods in similar but not identical-sized packages. While we acknowledge that, where unit prices are displayed on shelf labels, this affords the consumer some protection, we are concerned that public knowledge of how to apply this is limited.

Our responses to the specific questions posed are given below.

#### **Questions on Proposals**

Q1. Do you agree that it would be desirable to consolidate and simplify the UK implementation of Directive 2000/13/EC and the other EC legislative provisions listed in Annex D?

We agree that there would be some benefit in consolidating those provisions which relate to quantity indication. However, in the light of the Commission's proposal to deregulate prescribed quantities on most packaged foods and to prohibit Member States from imposing their own rules, we can see little benefit (except as noted at points 1(a) and (b) above) in consolidating the provisions within the legislation which relate to prescribed quantities and which are likely to be superseded within a comparatively short time.

However, since the Commissions proposals do not affect dispensing of beer and cider, we would very much welcome amendment of the Weights and Measures (Intoxicating Liquor) Order 1988 (SI 1988/2039) along the lines which we have described in our response to Question 16 below.

Q2. Do you agree that the main requirement of the new Order should be a general requirement for pre-packaged foods to be labelled with an indication of the net quantity by volume in the case of liquids and by weight in the case of other products?

Yes – provided that where quantities are specified they are rational metric amounts, and not conversions from obsolete imperial quantities.

Q3. Do you agree that the nominal quantity of ice cream should be expressed in volume irrespective of the quantity in which it is packed?

No comment.

Q4. Do you agree that foods that are normally sold by number, where the number of items can be easily seen and counted without opening the package or the number of items is indicated on the labelling, should be exempt from quantity indications?

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No. We are strongly opposed to this exemption which we believe conflicts with the principle that consumers should be able to compare value for money of the contents of packages of different sizes on a like-for-like basis.

It is essential to price transparency that, regardless of whether the number of items within a package can be seen and counted, consumers should be able to see the unit price (that is, price per kg, litre, metre or other approved SI unit) of packaged goods offered for sale. The exemption therefore conflicts with the intention of the Price Marking Order that, subject to certain exceptions in respect of "small shops" (defined as having <280 m² floorspace) and market and itinerant traders, retailers must display the unit price. Indeed, if the quantity is not marked on the package (and in the absence of scales or other measuring devices) then it is not even possible for customers to calculate the unit price for themselves (for example, in an exempt "small shop").

Thus, it is not uncommon for large supermarkets to display prices per kg for loose fruit or vegetables alongside similar goods priced per packet without any indication of quantity. Where customer scales are not provided, then unless the customer carries their own spring balance and pocket calculator, it is not possible to compare value for money. We believe this is an example of what the Consumers' Association has termed "confusion marketing" – designed to prevent the customer from making fair comparisons.

Given that natural products such as fruit and vegetables do not come in standard sizes, the only reliable indicator of the quantity being offered for sale is their weight. We therefore believe that <u>all</u> food packaging should bear an indication of the quantity of the contents – regardless of whether the produce can be counted.

Q5. Do you agree that the new Order should provide an exception from an indication of quantity for all foods except for herbs and spices in quantities of less than 5 g or 5 ml, and for all sugars in quantities of less than 20 g?

We do not object to this.

Q6 Would it be appropriate to include in the new Order any exemptions from indications of quantity, in relation to foods which are subject to considerable losses by weight or volume?

We are not qualified to offer an opinion.

Q7 Should the new food Order offer any exemptions for foods presented in fancy packaging such as figurines or souvenirs?

No comment.

Q8. Do you agree that the existing rules on open containers strike a reasonable balance between simplicity and ensuring the consumer is adequately informed, and

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can you provide information on the treatment of such packages in other Member States?

We are concerned at the exception to the general rule which permits traders to sell countable fruit and vegetables in open containers without giving their weight. As we have commented at Question 4 above, this makes it difficult or impossible to calculate the unit price and hence to compare value for money with similar goods sold loose (or in sealed containers if the contents are not countable).

We believe that the option to avoid indicating the weight of the contents should be removed. This can be achieved by requiring produce sold in open containers to be priced per kg and, if necessary, weighed at the point of sale (in the same way as loose produce). (The weight of the container can easily be deducted from the total weight, as happens already with the sale of loose olives, prawns, etc in open containers which are sealed after being weighed and priced at the deli counter).

Q9. Are there any particular foods for which multipacks containing packages which are not regarded as units of sale, could usefully be exempted from the requirement to declare the number of packages?

No comment.

Q10. Do you agree that the UK legislation should simply transpose the relevant EC requirements, and the provisions of Schedule 7 of the Weights and Measures Act 1985 on aerosols should be removed?

No comment.

Q11. Do you agree that mixed packs should continue to be subject to a requirement to indicate the number of individual packages contained and their quantities, and can you provide information on the treatment of such packages in other Member States?

No comment.

Q12. Do you agree that net quantity indications should continue to be required on all pre-packaged foods, and can you provide information on the treatment of such foods in other Member States?

Yes, we do agree but have no authoritative information on the practice in other Member States.

Q13. Do you have any views on the existing EC requirements for specified quantities, either for or against change?

We feel there is little point in commenting on existing requirements which are about to be superseded.

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Q14. Do you agree that existing UK specified quantities should be maintained in relation to the sale of milk and bread when prepackaged?

We have no comment to make about bread but would make the following comments in relation to milk.

We are concerned that the current Order specifies both rational metric quantities and quantities which are simply direct conversions of imperial pints and fractions of a pint. The retention of the specified quantities of 189 ml, 284 ml, 568 ml, and multiples of 284 ml and 568 ml, for pre-packaged milk in non-returnable containers invites confusion with the similar rational metric quantities of 200 ml, 250 ml, 500 ml and multiples of 500 ml. For example, the difference between the popular 1 L size and the 1.136 L size (i.e. 2 pints) is less than 14% of the smaller size (or <12% of the larger size), and we believe that, even where the quantities are correctly indicated, consumers may easily be misled into thinking they are purchasing the larger size when they have in fact selected the 1 L size. This is especially a problem in "small shops", which are not required to display the unit price (per litre).

With regard to milk delivered in returnable containers ("doorstep milk"), we note that according to the Milk Development Council's "Dairy Facts and Figures 2003" this market has now declined to only 17% of total household milk purchases, and that this decline is continuing. We therefore think that there is no longer a strong case for retaining different prescribed quantities for returnable containers as distinct from those for non-returnable packaging. We feel it would benefit price transparency and hence consumer protection if milk were packaged in the same prescribed quantity on the doorstep as in the shop.

Most modern British recipes are based on rational metric quantities. This fits well with most ingredients such as flour, margarine and oil which are packaged in rational metric quantities. Unfortunately the persistence of imperial-based sizes for dairy products means that there is an incompatibility between available sizes and the requirements of modern recipes.

We recommend that, in the interests of price transparency and hence of consumer protection, the specified quantities, 189 ml, 284 ml, 568 ml and multiples of 284 ml and 568 ml should be deleted and a wider range of rational metric sizes permitted.

Q15. Do you agree that the new Order should require foods that are not pre-packaged to be sold by volume in the case of liquids and by weight in the case of other foodstuffs, except for foodstuffs that are normally sold by number?

Yes. We welcome this proposal and would be particularly pleased to se the end of the anomaly whereby certain goods such as prawns may be sold either by weight or by volume – thus rendering price comparison impossible.

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However, we believe that in the case of foods sold by number, there should still be a requirement to weigh the goods and price them according to their unit price (that is, per kg). We believe that <u>all</u> loose goods should be sold by volume or weight respectively, regardless of whether they are selected for purchase in small numbers. For example, loose fruit or vegetables (such as avocados, Bramley apples, baking potatoes) should not be priced "per each" but should always be weighed and priced at the point of sale. The reason why this is desirable is that it enables consumers to compare the price of such loose goods with the price of similar packaged goods – thus aiding price transparency and consumer protection.

Q16. Do you agree that existing UK provisions for specified quantities should be maintained in relation to sales of unpackaged bread and alcoholic drinks for consumption on licensed premises?

No. We have no comment to make about unpackaged bread, but we are most concerned at the anomalous position in regard to the sale of draught beer and cider for consumption on licensed premises. There are a number of concerns.

- We can see no good reason why the specified quantities for wines and spirits should be rational metric quantities whereas those for beer and cider are imperial pints and fractions of a pint. While we acknowledge that there are strong albeit sentimental feelings that the traditional pint should be retained, we can see no valid grounds for actually <u>banning</u> the use of rational metric quantities such as 300 ml, 500 ml, 600 ml and 1 L. This is particularly a problem for theme pubs or restaurants which wish to promote a "continental" ambience, such as a German or Austrian Bierkeller or a Spanish tapas bar, or to dispense stronger, continental beers and lagers in smaller quantities.
- A consequence of the retention of the imperial pint for draught beer and cider is that the consumer cannot easily compare the price of draught beer in the pub with the price of bottled beers and lagers in the same establishment, or with supermarket prices, where the unit price (i.e. price per litre) must be displayed (unless it is an exempt shop). This is an example of how the relevant Food Order (in this case, the Weights and Measures (Intoxicating Liquor) Order) fails to interact consistently with the Price Marking Order to the detriment of the consumer.
- We can see no reason why the range of specified quantities of draught beer and cider should be restricted to only three sizes. At other points in this consultation questionnaire, comments have been sought on the practice in other EU Member States. We can inform the Department that in a number of other Member States (including Germany, Finland and Sweden), the range of specified quantities either is much wider or is completely deregulated.

We therefore recommend that, in addition to the existing prescribed quantities, it should be permitted to dispense draught beer and cider in any multiple of 100

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ml up to 600 ml, and in multiples of 500 ml. Quantities below 100 ml could then be deregulated (e.g. as "tasters" for customers wishing to sample different beers without becoming intoxicated).

Alternatively, we would have no objection to complete deregulation – provided that the quantity dispensed is clearly indicated in some way (e.g. by an etched line on a glass).

In any case, we believe that the unit price (per litre) should always be displayed (with the option of a supplementary indication of price per pint for as long as this measure is retained).

[NOTE: We also attach. for your information, correspondence which we have had with the British Beer and Pub Association (BBPA), in which we amplify and illustrate the above arguments. We particularly draw attention to the BBPA's statement that they "would be pleased to discuss in greater detail an extension to current size options or full deregulation." We endorse this approach and would wish to be involved in any such discussions.]

Q17. Do you agree that retailers of bread from in-store bakeries should have the option of compliance with the minimum system rather than the average system?

We do not feel qualified to offer an opinion.

Q18. Do you agree that the commencement date for new weights and measures legislation should be 1<sup>st</sup> April or 1<sup>st</sup> October, or are there alternative dates which should be considered?

We assume that these dates refer to the current year, 2005. If so, we feel that the first date is far too soon for the responses to this consultation to be properly considered and taken into account. The second date could be achievable if the intention were simply to re-enact existing Orders unchanged in a consolidated form.

However, we would comment that if the Department is minded to consider favourably any of our proposals (or indeed any other proposals which differ from the Department's own initial proposals), they may wish to publish and consult on revised proposals – which clearly would set back the whole process. Moreover, it can be anticipated that the packaging industry will need time to adjust and re-equip where necessary, and it would be reasonable to allow the industry an appropriate length of time in order to make these changes. We therefore think that both of the proposed dates are unrealistic and would suggest that either 1 April 2006 or, more probably, 1 October 2006 would be more reasonable.

Q19. Do you agree that the weights and measures legislation should be reformed as soon as practical, rather than awaiting the completion of the European Commission's review?

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This question is difficult to answer without knowing the timetable for the completion of the Commission's review, the formal adoption of any resulting Directive, and its translation into UK legislation. However, as the Commission has already published a draft Directive with a view to its adoption in 2006, we would assume (based on the timetable set out in Article 9 of the draft) that the UK's legislation to implement the Directive will need to be in force by the first half of 2008 or earlier.

This means that, in so far as the new Orders concern packaged goods, even on the most optimistic timetable, they would have a life of less than three years. We are not aware of any urgency (other than the desirability of phasing out irrational metric quantities such as 454 g and 568 ml in advance of deregulation) that would justify bringing forward such short-lived legislation.

However, in so far as the Orders concern specified quantities of non-packaged foods and drinks (which are not affected by the European Commission's proposals) we believe that it would greatly benefit consumers if the reforms we have proposed in our response to Question 16 were to be enacted as soon as possible. As this would be an additional option (rather than imposing a new requirement) we can see no reason why it should not be brought into force immediately.

Q20. Do you have any other comments on the content of the proposed new Food Order?

No.

Q21. Are there any other aspects of weights and measures legislation which you think could be improved or made easier to comply with?

Yes. On a broad interpretation of "weights and measures legislation" to include units of measurement and price marking, we believe that inter *alia* the following require attention:

- We feel that the Weights and Measures Act 1985, which is essentially a consolidation and re-enactment of the 1963 Act, is in need of general revision to reflect developments over the last 40 years.
- Following from this we feel that the Units of Measurement Regulation 1985 (as amended) need to be strengthened in order to make their provisions enforceable. The Department appears to have done the bare minimum to comply with Directive 80/181/EEC (as amended), with the result that the Regulations are simply declaratory and are ineffective since no offences are created.
- The Price Marking Order also needs to be strengthened. In particular, it should be clarified that from 1 January 2010, the <u>only</u> information which may appear on a price label will be the (metric) unit price. Notwithstanding the

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reply dated 4 October 2004 from the Permanent Secretary of the Department, there is nothing in the current Price Marking Order which would prevent additional information (including a price per pound) from being placed on a price label. Failure to deal with this omission is likely to lead to futile litigation and difficulties in enforcement.

- We are concerned at an apparent loophole in the law which has enabled some retailers (including some major superstores) to advertise goods exclusively in imperial measures. As a result of this problem, less sophisticated or observant customers may be misled into believing that the goods are cheaper than they are. However, as the goods are priced in metric units at the checkout, they are unable to check whether they have been charged the advertised price. We feel that advertising and product description should be brought fully and unmistakably within the scope of Weights and Measures legislation, and that the primary measurement units to be used in any advertisement or product description should be metric (with the option of a supplementary indication until the end of 2009).
- We believe that the definition of "small shops" within the Price Marking Order is too widely drawn. While we accept that, for a small, individual trader, the requirement to display the unit price (per kg or L) of packaged goods for every item may be onerous, the threshold of 280 m<sup>2</sup> net sales space exempts medium sized shops such as some high street supermarkets. With the rapid expansion of major supermarkets into convenience stores we see no reason why such large chains should be exempt from unit pricing requirements. We therefore feel that a threshold of 100 m<sup>2</sup> would be more reasonable.

#### Proposed Directive 2004/0248(COD)

In her letter of 2 December 2004, Ms Falk invited comments on the Commission's proposal for a new Directive which would effectively deregulate prescribed quantities on most packaged goods. We do not wish to take a general view on the principle of such deregulation, but would make the following points of detail:

- If prescribed quantities are deregulated generally, we would nevertheless wish to ensure that package sizes are rational metric quantities and not simply conversions from obsolete imperial measures (such as 454 g and 568 ml). By this we mean that quantities should normally be multiples of 100 g or ml, or where the quantities are smaller, multiples of 50 g or ml.
- We are concerned that complete deregulation would enable manufacturers and retailers to change packaging sizes without notice and in ways which disadvantage consumers. In particular, it would allow package sizes to be reduced by small marginal amounts while maintaining the same price per package – thus achieving a disguised increase in the unit price. This is of course especially a problem in those cases where there is no requirement to display the unit price (i.e. in "small shops" and market stalls). In order to combat this problem, we favour the concept of "exclusion zones" - that is, a requirement that any change in package sizes should be by a minimum amount, which we suggest should be 25%. We would like to see such a provision included in the new Directive.

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Yours Sincerely

Roddy Urquhart, Secretary