EXPLANATORY MEMORANDUM TO

THE PRICE MARKING (AMENDMENT) ORDER 2024

2024 No. 1055

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Justin Madders MP, Minister for Employment Rights, Competition and Markets at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 David Marshall, Deputy Director for Consumer Policy, at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Andrew Powell at the Department for Business and Trade email: Andrew.Powell@businessandtrade.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Price Marking (Amendment) Order 2024 (PMO) amends the Price Marking Order 2004[1] which sets out the pricing information that a trader must include on price labels for the 'goods' that the trader is selling. The Price Marking Order 2004 does not apply to services. The pricing information a that trader must display includes the 'selling price' which is the price that a consumer pays for an item (this includes any relevant taxes), and a 'unit price' which is the price which would be charged for a particular weight or volume of the goods. This is to aid price comparison, for example per litre or per kilogram.

4.2 The purpose of the Order is to make it easier for a consumer to identify and compare selling prices and unit prices.

4.3 The 2004 Order applies to online as well as physical shops. 'Small shops', which in the Price Marking Order 2004 are described as having a 'relevant' floorspace (the size of the area used for selling goods) of up to 280 square metres are partially exempt from having to apply unit pricing to all the products they sell. The reason for the small shops' exemption is to reduce unnecessary burdens on small businesses. DBT consulted on whether to review the small shops exemption, remove it entirely, or to retain it as is. There was no compelling evidence to remove or review the exemption, so it will remain as it currently is. From a practical point of view, smaller shops often carry fewer products, so consumers do not have as much choice of products to

[1] The Price Marking Order 2004 (S.I. 2004/102). https://www.legislation.gov.uk/uksi/2004/102

compare on cost. Requiring small shops to unit price all their products in the same way as larger ones, would therefore be disproportionate as the benefits to consumers are far more limited.

4.4 The purpose of the unit price is to enable consumers to compare similar items based on their cost. For example, if the selling price for a container of cereal A is £3.00 and the packaged quantity which is for sale weighs 500 grams then the unit price per kilogram is £6. If the selling price for a container of cereal B is £3.00 and the packaged quantity for sale weighs 1 kilogram, the unit price is £3 per kilogram. If the shopper wanted to purchase the cheapest cereal, they could use the unit price information to compare the cost easily and as a result possibly purchase cereal B recognising the cheaper unit price, regardless of the packaged quantity and the selling price.

4.5 Under separate legislation, to be produced by DEFRA and the devolved administrations, and to be commenced at some date in the future, some items, such as plastic drink bottles, will also attract a separate 'deposit' as well. The deposit will be returnable subject to satisfying certain conditions. The information about the deposit will be governed by the DEFRA legislation and will be required to be displayed separately from the selling price and the unit price. For example, if a bottle of water has a returnable 'deposit' of 20 pence, that will be collected at the till on top of the drink's selling price. Then, when the consumer takes the empty water bottle to a return point, such as the shop where they bought the drink, subject to satisfying various conditions, they will be reimbursed the 20 pence deposit. The Order will exclude the deposit from the definition of "selling price" and "unit price", this is as the "deposit" will be an extra returnable payment, to be made in addition to the price and which will not necessarily depend upon the weight or volume purchased.

Where does the legislation extend to, and apply?

4.6 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Great Britain. Consumer policy is devolved to Northern Ireland, where they have their own but similar version of the Price Marking Order.

4.7 The territorial application of this instrument is Great Britain

5. Policy Context

What is being done and why?

5.1 The Price Marking Order 2004 has not kept up with new business practices and product development. The amendments to be made by this Order revise and simplify the Price Marking Order 2004 so that it is simpler for businesses to apply and comply with. It is anticipated that Trading Standards will be able to enforce the 2004 Order, in its amended form, more easily and effectively, and consumers will benefit from being able to compare items based on unit price more easily.

5.2 In July 2023, the Competition and Markets Authority reviewed the Price Marking Order 2004[2] and set out a number of recommendations to reform the PMO so that the display of 'unit pricing' is more helpful to consumers; the pricing information is clearer and legible; and unit pricing is required where products have more than one price due to reductions (this might be because of loyalty schemes where members of a

[2] The Competition and Markets Authority's report on unit pricing (20 July 2023) can be found here: https://www.gov.uk/government/publications/unit-pricing.

particular scheme can pay a lower price for certain goods, or due to 'promotions' where a price might be reduced if consumers are buying in bulk, for example, buy three pay for two).

5.3 The Department for Business and Trade (DBT) consulted on potential reforms to the PMO between September and October 2023. In January 2024, DBT published its response to the consultation, having analysed the responses received from a variety of businesses of all sizes, consumers and consumer groups, enforcement bodies, and other public sector bodies. DBT announced in 2024 that it would reform the PMO to make it simpler and easier to comply with, and to improve information transparency so it benefits consumers. In the reformed PMO, DBT will mandate the consistency of units used for unit pricing (by requiring that the unit price is displayed for a kilogram or litre), improve the requirements on legibility so price information is clearer, mandate that loyalty scheme prices and items which are bought in bulk are required to be unit priced, and make provision for the deposit return schemes so the deposit is displayed separately from the selling price.

5.4 The order will commence from 1st October 2025.

What was the previous policy, how is this different?

5.5 The Price Marking Order was last made in 2004. With household budgets being stretched it is important we empower consumers to make informed decisions. We are reforming the Price marking Order 2004 so that it is simpler for business to comply with whilst improving pricing information transparency for consumers. The updates to the PMO introduce consistent measurements for unit pricing, improving legibility and requiring certain types of multi-buy and promotional products to be unit priced. A lack of consistent unit pricing, or in some circumstances the absence of unit pricing exposes consumers to paying over the odds for good. Fixing this will help with the cost of living.

6. Legislative and Legal Context

How has the law changed?

6.1 The Order will amend the Price Marking Order 2004 in a targeted way to update the definitions of "selling price" and "unit price", repeal Article 14 (units of quantity) and Schedule 1 (Relevant units of quantity for specified products for the purpose of the definition of "unit price").

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes which could not be achieved by issuing guidance on the Price Marking Order 2004.

7. Consultation

Summary of consultation outcome and methodology

7.1 The proposed reforms to the PMO were consulted on in September – October 2023, and the consultation response was published in January 2024.

7.2 214 respondents answered questions relating to the display of pricing information. The respondents were comprised of a mixture of consumers, businesses (of all sizes), consumer representative bodies, enforcement bodies, and local and national government bodies and agencies. Most of the consultation responses were supportive of the proposals to amend the Price Marking Order 2004.

8. Applicable Guidance

8.1 A guidance document will be published ahead of the legislation coming into force in October 2025. This will be publicly available on the Department for Business and Trade's website (on Gov.UK).

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is minimal. The PMO primarily concerns the display of pricing in grocery stores which are over a certain size. These changes are therefore unlikely to affect charities or voluntary bodies.

9.3 Retailers are expected to incur one-off costs in implementing new shelf label prices in accordance with the changes to the PMO legislation. A cost estimate of £250,000 per retailer has been made which covers costs relating to changes to ticketing systems, IT systems and branch communications as required. These costs total £5.8 million (2024/25 prices). There will be minor familiarisation costs for retailers to understand the legislation (<£0.01 million). Improved price transparency in the groceries sector means consumers could be expected to reduce their total spend on groceries, due to being better placed to assess value. This would reduce retailer revenues, and reduce retailer business profits, with an estimated overall impact of reducing retailer profits by £1.3m (2024/25 prices).

9.4 The legislation does not impact the majority of small or micro shops. Following the consultation, ministers decided the small shop exemption should continue to apply, which exempts small shops from having to unit price all products they sell (unit price is the price of the item per measure, for example per kilogram). The small shop exemption applies to businesses with a 'relevant floor space' of 280 square metres the 'relevant floor space' is the space where retailers sell their products (this does not include storage space, for example a 'stockroom' or a storage basement). This approach has been taken is to minimise the impact of the requirements on small or micro businesses (employing up to 50 people). While it is not possible to confirm that there are no grocery shops within the UK with less than 280sqm floor space, employing more than 50 people we believe these to be in the minority.

9.5 The impact on the public sector is neutral because although there will be a cost for implementation, the simplified legislation will be easier to understand and enforce.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is the Government will monitor how the amended requirements of the Price Marking Order 2004 work in practice.

10.2 The instrument does not include a statutory review clause as the Order amends the Price Marking Order 2004 which predates the Small Business, Enterprise, and Employment Act 2015.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister for Employment Rights, Competition and Markets has made the following statement regarding Human Rights:

"In my view the provisions of The Price Marking (Amendment) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").