
STATUTORY INSTRUMENTS

1997 No. 3035

WEIGHTS AND MEASURES

The Non-automatic Weighing Instruments (EEC Requirements) (Amendment) Regulations 1997

<i>Made</i>	- - - -	<i>17th December 1997</i>
<i>Laid before Parliament</i>		<i>19th December 1997</i>
<i>Coming into force</i>	- -	<i>1st February 1998</i>

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the regulation of specifications, construction, placing on the market and use of equipment intended for weighing, measuring or testing or for purposes ancillary thereto, in exercise of the powers conferred on her by that section, and all other powers enabling her in that behalf, hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Non-automatic Weighing Instruments (EEC Requirements) (Amendment) Regulations 1997 and shall come into force on 1st February 1998.

(2) In these Regulations the “principal Regulations” means the Non-automatic Weighing Instruments (EEC Requirements) Regulations 1995⁽³⁾.

Amendment of the Principal Regulations

2. The principal Regulations shall be amended as follows—

(a) for sub-paragraph (2)(b) of regulation 2 there shall be substituted—

“in references to the supply of an instrument under a hire-purchase agreement, conditional sale agreement or credit-sale agreement, where credit facilities are made available by a third party (“the ostensible supplier”) and where as a result of such agreement the instrument is supplied by the ostensible supplier, it shall be deemed that the supply is made by the person who, in the case of a supply by way of sale, would be the supplier of the instrument (“the effective supplier”);

(b) in regulation 3—

(1) S.I.1975/1427.
(2) 1972 c. 68.
(3) S.I. 1995/1907.

(i) in sub-paragraph (2)(d)(i) by the insertion after “approval” of “under section 12 of the 1985 Act”;

(ii) by the addition after paragraph (3) of—

“(4) For the purposes of this regulation—

(a) a grant of EEC pattern approval, an exemption from such approval or the affixing of a mark of EEC initial verification shall be in accordance with the relevant provisions of the Measuring Instruments (EEC Requirements) Regulations 1988 or, in the case of any other member State, in accordance with the relevant provisions of measures in force which implement Council Directive [73/360/EEC\(4\)](#), as amended by Commission Directives [76/696/EEC\(5\)](#) and [82/622/EEC\(6\)](#); and

(b) the affixing of an EEC mark of partial verification shall be in accordance with the relevant provisions of the Measuring Instruments (EEC Requirements) Regulations 1988 or, in the case of any other member State, in accordance with the relevant provisions of measures in force which implement Council Directive [71/316/EEC\(7\)](#), as amended by Council Directives [72/427/EEC\(8\)](#), [83/575/EEC\(9\)](#), [87/354/EEC\(10\)](#), [87/355/EEC\(11\)](#) and [88/665/EEC\(12\)](#).”;

(c) in regulation 8—

(i) in paragraph (1) by substituting “12(4)” for “12(3)” and by substituting “Table or by the equivalent equipment provided for in sub-paragraph (3)(a) below.” for “Table.”;

(ii) in paragraph (2) by the insertion between “of” and “paragraph” of “the table in”;

(iii) in paragraph (3) by the insertion of the following sub-paragraph at the beginning of the paragraph—

“(a) “equivalent equipment” shall be—

(i) any weighing or measuring equipment;

(ii) any other metrological equipment; or

(iii) any article for use in connection with such equipment,

which has been accepted by the Secretary of State for testing as to accuracy or compliance with any specification in pursuance of section 6(1) of the 1985 Act and which has been approved by him as being appropriate equipment for use in accordance with regulations 11(4), 12(4), 13(7) and 38(1);”

and by the consequent re-numbering of the subsequent sub-paragraphs;

(d) for paragraph (1) of regulation 11 there shall be substituted—

“The manufacturer or his authorised representative shall take all necessary measures to secure that the manufacturing process for instruments intended for EC verification shall ensure conformity with the approved type, where appropriate, and with the requirements of the Directive which apply to them.”;

(4) O.J. No. L335, 5.12.73, p. 1.

(5) O.J. No. L236, 27.8.76, p. 26.

(6) O.J. No. L252, 27.8.82, p. 2.

(7) O.J. No. L202, 6.9.71, p. 1, O.J./S.E. 1971 (II) p. 707.

(8) O.J. No. L291, 28.12.72, p. 156, O.J./S.E. 1972, 28-30 Dec., p. 71.

(9) O.J. No. L332, 28.11.83, p. 43.

(10) O.J. No. L192, 11.7.87, p. 43.

(11) O.J. No. L192, 11.7.87, p. 46.

(12) O.J. No. L382, 31.12.88, p. 42.

- (e) in regulation 12—
 - (i) for paragraph (1) there shall be substituted—

“The manufacturer or his authorised representative shall ensure that instruments intended for EC unit verification conform with the requirements of the Directive which apply to them.”;
 - (ii) in paragraph (2) by substituting “Where” for “After the procedures set out in paragraphs (4) and (5) below have been completed” and by substituting “is satisfied that the requirements of the Directive that apply to an instrument are satisfied in relation to it, he may” for “shall”;
- (f) for sub-paragraph (7)(b) of regulation 13 there shall be substituted—

“he has carried out such examinations and tests as are consistent with his obligations in sub-paragraph (a) above (and where appropriate with such frequency as is consistent with those obligations); and”;
- (g) in paragraph (8) of regulation 14 by the substitution of “11(4) and 12(4)” for “11(4), 12(4) and 13(7)”;
- (h) for regulation 16 there shall be substituted—

“**16.**—(1) If it appears to an authorised person that there are instruments to which CE markings or stickers have been, or are being, affixed otherwise than in conformity with these Regulations, he may give to the manufacturer or his authorised representative a notice suspending the manufacturer’s or his authorised representative’s authority to make the EC declaration of type conformity in question (either generally or in relation to particular areas or places) for a period not exceeding twenty-eight days.

(2) Where an authorised person gives a notice under paragraph (1) above he shall forthwith—

- (a) inform the approved body which approved the quality system of the effect of the notice;
- (b) send a copy of the notice to the Secretary of State; and
- (c) inform the manufacturer or his authorised representative in writing of—
 - (i) the circumstances which have led to the issuing of the notice;
 - (ii) the date on which the notice takes effect;
 - (iii) the manufacturer’s or his authorised representative’s right to apply to the authorised person for the early removal of the notice as provided for in paragraph (3) below; and
 - (iv) a right to apply for a review of the decision to issue the notice as provided for in regulation 21.

(3) Where the manufacturer or his authorised representative can demonstrate that steps have been taken which adequately rectify the position described in paragraph (1) above he may apply to the authorised person who gave the notice under paragraph (1) above for its removal before the expiry of the period of suspension provided for in it and the authorised person shall decide whether it is appropriate in all the circumstances to take steps for the removal of the notice before the expiry of the said period.

(4) If the manufacturer or his authorised representative contravenes a notice under paragraph (1) above—

- (a) he shall be guilty of an offence; and
- (b) all instruments to which the offence relates shall be liable to be forfeited.”;

- (i) in sub-paragraph (1)(d) of regulation 17 by the substitution of “26(7)(a)” for “20(6)(a)”;
- (j) regulation 20 shall be deleted;
- (k) in regulation 21—
 - (i) in paragraph (1) by the substitution of “26(2)” for “20(1)”; and
 - (ii) in sub-paragraph (b)(ii) of paragraph (4) by the substitution of “26” for “20”;
- (l) in regulation 22—
 - (i) by the substitution of “Provision of information” for “Judicial review of decisions under Part II”; and
 - (ii) by the deletion of paragraph (2);
- (m) for paragraph (2) of regulation 23 there shall be substituted—

“Where the alteration, defacement or removal of any mark, inscription, identification number, sticker, disqualification sticker or re-qualification sticker is occasioned solely in the course of the adjustment or repair of any instrument by a manufacturer of instruments regularly engaged in the business of repair of instruments, by his duly authorised agent, by a person (other than a manufacturer) regularly engaged in the business of repair of instruments or by his duly authorised agent, that person shall not be guilty of an offence under sub-paragraph (c), provided that the said alteration, defacement or removal does not amount to forging or counterfeiting as described in that sub-paragraph, or under sub-paragraph (e) of paragraph (1) above.”;
- (n) for regulation 26 there shall be substituted—

“Immediate Enforcement Action

- 26.—(1)** Where an authorised person has reasonable grounds for considering that—
- (a) instruments to which these Regulations apply and which bear the CE marking do not meet all the appropriate requirements of these Regulations when properly installed and used for the purposes for which they are intended; and
 - (b) it is appropriate to take immediate steps to withdraw those instruments from use or to prohibit or restrict their being supplied or offered for supply,

the following provisions of this regulation shall have effect.

(2) The authorised person shall give notice to the manufacturer or his authorised representative sufficiently describing the instruments to which the notice applies and specifying the respects in which the requirements of the Regulations have not been satisfied.

- (3) A notice under this regulation may—
- (a)
 - (i) require instruments of the type in question to be withdrawn from supply;
 - (ii) prohibit or restrict the supply or offering for supply of such instruments;
 and
 - (b) specify that unless steps are taken which ensure—
 - (i) that the instrument or any instrument of the same type does so conform or comply, or
 - (ii) that the manufacturer or his authorised representative does so act, as the case may require,
 any EC type-approval certificate granted under regulation 10(3) or any approval of a quality system granted under regulation 13(4) may be withdrawn.

- (4) A notice under paragraph (2) above shall be in writing and shall—

- (a) specify the date on which it is to take effect;
 - (b) specify the grounds for the decision; and
 - (c) inform the manufacturer of his right to apply for a review of the decision under regulation 21.
- (5) Where an authorised person gives a notice under paragraph (2) above, he shall forthwith send a copy of the notice to the Secretary of State.
- (6) If the Secretary of State—
- (a) in the case of an EC type-approval certificate which he has granted, after giving the manufacturer the opportunity of making representations as to why it should not be withdrawn, decides that the EC type-approval certificate should be withdrawn, he shall immediately—
 - (i) give notice of the decision to the manufacturer, and
 - (ii) inform the other member States and the Commission of the decision; or
 - (b) in the case of an EC type-approval certificate granted under the law of another member State, is of the opinion that consideration ought to be given to whether the EC type-approval certificate should be withdrawn, he shall immediately inform the relevant competent authority of that fact.
- (7) If the Secretary of State is of the opinion that consideration should be given to withdrawal of any relevant quality system approval—
- (a) in the case of an approval granted by an approved body under these Regulations, he shall inform the approved body of that fact; and
 - (b) in the case of an approval granted under the law of another member State, he shall immediately inform the relevant competent authority of that fact.
- (8) The Secretary of State shall publish, in such manner as he may consider appropriate particulars of any notice under paragraph (6) above withdrawing an EC type-approval certificate.”;
- (o) the following regulation shall be inserted after regulation 26—

“Compliance Notice Procedures

- (1) Save as provided in regulation 26 above, where an authorised person has reasonable grounds for suspecting that the affixing of the CE marking to an instrument to which these Regulations apply involves a contravention of these Regulations the following provisions of this regulation shall have effect.
- (2) The authorised person—
 - (a) shall consider the matter; and
 - (b) unless he considers it not practicable to do so or that urgent action is required in the public interest (in which case the provisions of regulation 26 above may be utilised), after giving any person appearing to him to be interested in the instrument in question the opportunity of making representations, may serve a notice (a “compliance notice”) on the manufacturer or his authorised representative under this regulation in accordance with paragraph (4) below and in such a case as described in paragraph (1) above no further enforcement action shall be taken until such a notice has been so served and the person upon whom it has been served has failed to comply with its requirements.
- (3) Where an authorised person gives a notice under paragraph (2) above, he shall forthwith send a copy of the notice to the Secretary of State.

- (4) A notice under this regulation shall be in writing and shall—
- (a) sufficiently describe the instruments to which it applies;
 - (b) state that the authorised person suspects that the affixing of the CE marking to the instrument involves a contravention of a provision or provisions of these Regulations and the reason for that suspicion;
 - (c) specify the provision or provisions referred to in paragraph (b) above;
 - (d) require the person upon whom the notice is served—
 - (i) to secure that any instrument to which the notice relates conforms as regards the provisions concerning CE marking, and to end the infringement within such period as may be specified by the notice; or
 - (ii) to provide evidence within that period to the satisfaction of the authorised person that all the provisions of these Regulations have been complied with; and
 - (e) warn the person upon whom the notice is served that if the non-conformity continues (or if satisfactory evidence has not been produced under subparagraph (ii) of paragraph (d) above within the period specified in the notice), further action may be taken under these Regulations in respect of that instrument or an instrument of the same type supplied by that person.
- (5) A notice under this regulation may—
- (a) include directions as to the measures to be taken by the person upon whom it is served to secure conformity of that instrument with the provisions of these Regulations including different ways of securing conformity;
 - (b) be expressed to impose obligations on named or identified persons or persons generally; and
 - (c) be varied or withdrawn by a further notice under this regulation.
- (6) A notice under this regulation (including a notice varying or withdrawing a previous notice)—
- (a) if any person is named in the notice as a person upon whom an obligation is imposed (or upon whom an obligation was imposed by such a previous notice), shall be given to any such person, and may be published in such manner as the Secretary of State may think fit; and
 - (b) in any other case, shall be published in such manner as the Secretary of State may think fit.
- (7) Any person who fails to end the non-conformity specified in the compliance notice within the time limits laid down in that notice shall be subject to such enforcement action as may be appropriate having regard to the provisions of these Regulations.
- (8) References in this regulation to other provisions of these Regulations include references to corresponding provisions under the laws of a member State other than the United Kingdom.”;
- (p) the following regulation shall be inserted after regulation 27—

“Re-qualification Stickers

27A. If it appears to an authorised person that an instrument to which a disqualification sticker has been affixed fully complies with all the requirements of these Regulations which are applicable to it, he shall affix to the instrument a re-qualification sticker which

should as far as possible obliterate the disqualification sticker and be clearly visible when the instrument is in its regular operating position.”;

- (q) in sub-paragraph (2)(a) of regulation 38 by the substitution of “16(4)” for “16(3)”;
- (r) in sub-paragraph (1)(a) of regulation 40 by the substitution of “16(4)(a)” for “16(3)(a)” and by the deletion of “26(5),”.

17th December 1997

Nigel Griffiths
Parliamentary Under-Secretary of State for
Competition and Consumer Affairs,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the [Non-automatic Weighing Instruments \(EEC Requirements\) Regulations 1995 \(S.I. 1995 No. 1907\)](#) (“the principal Regulations”) which implement Council Directive [90/384/EEC](#) (OJNo. L189, 20.7.90, p. 1 as corrected by the corrigendum published in OJ No. L258, 22.9.90, p. 35) (as amended by Council Directive [93/68/EEC](#)) (O.J. No. L220, 30.8.93, p. 1) (“the Directive”) on the harmonisation of the laws of the member States relating to non-automatic weighing instruments.

The Regulations make the following changes to the principal Regulations—

1. regulation 2(2) is amended to clarify the role of the “ostensible” and “effective supplier” in respect of the supply of an instrument (regulation 2(a));
2. regulation 3 which provides for the application of the principal Regulations is amended in respect of certain of the definitions used therein (regulation 2(b));
3. regulation 8 is amended to provide that, for testing purposes, in addition to the weights set out in the Table in regulation 8(1), “equivalent equipment” (as defined in the amended regulation 8) may also be used (regulation 2(c));
4. regulations 11 and 12 are amended to achieve a closer alignment with those provisions of the Directive which they implement. In the latter case the chronological order to be followed when applying the CE marking in the case of EC unit verification is prescribed (regulations 2(d) and (e));
5. regulation 13(7)(b) is amended to provide a more detailed explanation of the examinations and tests which a manufacturer in making an EC declaration of type conformity indicates he has carried out (regulation 2(f));
6. regulation 16 is replaced by a new regulation which enables an authorised person to suspend an EC declaration of type conformity (either generally or in relation to particular areas or places) in an extended range of circumstances and against a manufacturer’s authorised representative as well as against a manufacturer. Provisions also permit the manufacturer or his authorised representative to apply for the early removal of a suspension notice in certain circumstances (regulation 2(h));
7. regulation 20 is deleted (regulation 2(j));
8. regulation 23(2) is amended to clarify the scope of the exemption from the offence provision in regulation 23(1) in cases of alteration, defacement or removal of any mark (regulation 2(m));
9. regulation 26 is deleted and replaced by a new provision which enables an authorised person to take immediate enforcement action to restrict the use and availability of instruments in certain circumstances. The new provision lays down the procedures to be followed by the authorised person and the steps which may be taken by the Secretary of State (regulation 2(n));
10. a new regulation 26A is introduced into the principal Regulations. This provides for compliance notice procedures which are to be followed in circumstances where the affixing of the CE marking to an instrument involves a contravention of the principal Regulations but there is no need for immediate enforcement action as provided for in regulation 26 (regulation 2(o));
11. a new regulation 27A is introduced into the principal Regulations dealing with the affixing to instruments of re-qualification stickers (regulation 2(p));

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12. certain minor typographical or consequential amendments are made to the principal Regulations (regulations 2(g), (i), (k), (l), (q) and (r)).