
STATUTORY INSTRUMENTS

2000 No. 3236

The Non-automatic Weighing Instruments Regulations 2000

PART I

PRELIMINARY

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Non-automatic Weighing Instruments Regulations 2000 and shall come into force on 1st January 2001.

(2) The Non-automatic Weighing Instruments (EEC Requirements) Regulations 1995(1), the Non-automatic Weighing Instruments (EEC Requirements) (Amendment) Regulations 1997(2) and the Non-automatic Weighing Instruments (EEC Requirements) (Amendment) Regulations 1998(3) are hereby revoked.

Interpretation

2.—(1) In these Regulations—

- (a) “the NAWI Directive” means Council Directive [90/384/EEC](#) of 20th June 1990 on the harmonisation of the laws of the Member States relating to non-automatic weighing instruments (4) as amended by Council Directive [93/68/EEC](#)(5); provided that in the text of Schedules 1 and 2 (which reproduce Annexes III and I to the NAWI Directive respectively) that Directive is referred to as “the Directive”;
- (b) except for the references to the European Communities in the definition of “the Commission” and in relation to the Official Journal, a reference to the Community includes a reference to the EEA, and a reference to a member State includes a reference to an EEA State; and for this purpose—
 - (i) the “EEA” means the European Economic Area;
 - (ii) an “EEA State” means a State which is a Contracting Party to the EEA Agreement(6); and
 - (iii) the “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(7).

(2) In these Regulations, unless the context otherwise requires, the following expressions have the following meanings—

(1) [S.I.1995/1907](#).
(2) [S.I. 1997/3035](#).
(3) [S.I. 1998/2994](#).
(4) OJNo. L189, 20.7.90, p. 1 as corrected by the corrigendum published in OJ No. L258, 22.9.90, p. 35.
(5) OJ No. L220, 30.8.93, p. 1 as corrected by the corrigendum published in OJ No. L216, 8.8. 97, p. 99.
(6) The EEA Agreement came into force in relation to Liechtenstein on 1st May 1995 (OJ No. L86, 20.4.95, p. 58).
(7) The application of the NAWI Directive was extended to the EEA by Article 23 of, and paragraph 27 of section IX of Annex II to, the EEA Agreement.

“the 1981 Order” means the Weights and Measures (Northern Ireland) Order 1981⁽⁸⁾;

“the 1985 Act” means the Weights and Measures Act 1985;

“approved body” means—

(a) a body which is designated by the Secretary of State under regulation 9(1) for the purpose of carrying out one or more of the tasks referred to in Article 8 of the NAWI Directive; or

(b) a body which is designated for that purpose by another member State,

and whose name is notified to the Commission and the member States under Article 9 of the NAWI Directive; and where the context so requires—

(i) a reference to an approved body includes a reference to another approved body which has taken over the first approved body’s functions under regulation 9(7) or the equivalent provisions of the law of another member State; and

(ii) a reference to an action of either approved body (however expressed) includes a reference to an action of the other approved body;

“approved quality system” means a quality system approved under regulation 13 or under a corresponding provision of the law of another member State, and cognate expressions shall be construed accordingly;

“approved type” means a type in respect of which an EC type-approval certificate is in force;

“authorised person” means an inspector, or some other person employed by a local weights and measures authority, who is authorised by the chief inspector of weights and measures of that authority to exercise functions under these Regulations in its area;

“authorised representative”, in relation to a manufacturer, means his authorised representative established in the Community;

“CE marking” has the meaning assigned to it in regulation 18(5); and, where the context so permits, references in these Regulations to the CE marking include references to the EC mark of conformity affixed under the Non-automatic Weighing Instruments (EEC Requirements) Regulations 1992⁽⁹⁾ and to the CE marking, or EC mark of conformity, affixed under provisions of the law of another member State corresponding to these Regulations;

“the Commission” means the Commission of the European Communities;

“the Community” means the European Community;

“design documentation” means the documentation referred to in Annex III to the NAWI Directive which is set out in Schedule 1;

“disqualification sticker” means—

(a) a sticker the design of which is published in the United Kingdom by the Secretary of State; or

(b) a sticker, symbol or other device the design of which is approved in another member State by the competent authority,

and which indicates that an instrument to which it is affixed does not satisfy the requirements of regulation 5 or of corresponding provisions under the law of another member State;

“EC declaration of type conformity” means the declaration of type conformity referred to in regulation 13(7);

“EC surveillance” means the procedure whereby an approved body ensures that a manufacturer who makes an EC declaration of type conformity in respect of instruments manufactured by

⁽⁸⁾ S.I. 1981/231 (N.I. 10) and see S.I. 1982/846 (N.I. 11) and 1999/283 (N.I. 1).

⁽⁹⁾ S.I. 1992/1579, which was revoked by S.I. 1995/1907.

him properly fulfils the obligations arising out of the approved quality system specified in paragraph 2 of Annex II to the NAWI Directive;

“EC type-approval certificate” means a certificate issued by the Secretary of State under regulation 10 or by an approved body designated by another member State, as the case may be;

“EC type-examination” means the procedure whereby the Secretary of State or approved body designated by another member State verifies and certifies that a type conforms with the provisions of the NAWI Directive which apply to it;

“EC unit verification” means the procedure whereby the manufacturer or his authorised representative ensures and declares that an instrument generally intended for a specific application, in respect of which a certificate referred to in paragraph 4.2 of Annex II to the NAWI Directive has been issued (that is to say, in the case of an instrument in respect of which application for the appropriate examinations and tests referred to in regulation 12(3) is made to the Secretary of State, a certificate referred to in regulation 12(4)(a)(ii) conforms with the requirements of the NAWI Directive which apply to it;

“EC verification” means the procedure whereby the manufacturer or his authorised representative ensures and declares in accordance with paragraph 3 of Annex II to the NAWI Directive that an instrument—

- (i) has been checked in accordance with paragraph 3.3 (that is to say, in the case of an instrument subject to these Regulations, in accordance with regulation 11(4) under which the approved body carries out examinations and tests);
- (ii) is, where appropriate, in conformity with the type described in the EC type approval certificate; and
- (iii) satisfies the requirements of the NAWI Directive which apply to it;

“essential requirements” means the requirements in Annex I to the NAWI Directive which are set out in Schedule 2;

“harmonised standard” means a technical specification adopted by one or both of the European Committee for Standardisation and the European Committee for Electrotechnical Standardisation upon a remit from the Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22nd June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services⁽¹⁰⁾ (as amended by Directive 98/48/EC⁽¹¹⁾) or the Directives and Decisions repealed by Article 13 thereof;

“identification number” means the number assigned by the Commission to the Secretary of State or to the approved body in question, as the case may be; and, where the context so permits, references in these Regulations to the identification number include references to an identification symbol so assigned before these Regulations come into force;

“inscription” means, as the case may require, an inscription referred to in regulation 18(3)(c) or (d);

“instrument” means a non-automatic weighing instrument (including ancillary equipment) which—

- (a) requires the intervention of an operator during weighing; and
- (b) serves to determine the mass or weight of any thing by using the action of gravity on that thing (whether or not it may also determine related matters such as price, quantity or magnitude on the basis of mass or weight);

⁽¹⁰⁾ OJ No. L204, 21.7.98, p. 37.

⁽¹¹⁾ OJ No. L217, 5.8.98, p. 18.

“load receptor” means a part of an instrument on which loads are placed for the purpose of their being weighed;

“quality system” means all the elements, requirements and provisions adopted by the manufacturer to ensure conformity of instruments with the approved type and the requirements of the NAWI Directive which apply to them and includes, in particular,—

- (a) the quality objectives and the organisational structure, responsibilities and powers of the managerial staff with regard to product quality;
- (b) the manufacturing process, the quality control and assurance techniques and the systematic measures that will be used during manufacture;
- (c) the examinations and tests that will be carried out before, during and after manufacture and the frequency with which they will be carried out; and
- (d) the means to monitor the achievement of the required product quality and the effective operation of the quality system;

“relevant national standard” means a standard which is applicable to the instrument in question and of which the reference number is published—

- (a) in the United Kingdom, by the Secretary of State in such manner as he considers appropriate; or
- (b) in another member State, by the competent authority,

and which corresponds to a harmonised standard the reference number of which is published in the Official Journal of the European Communities;

“re-qualification sticker” means a sticker the design of which is published by the Secretary of State and which indicates that an instrument to which it is affixed satisfies the requirements of regulation 5;

“Schedule 3 application”, in relation to an instrument, means an application described in Schedule 3;

“sticker”, except in references to “disqualification sticker” and “re-qualification sticker”, means a green sticker measuring at least 12.5 mm by 12.5 mm square bearing a capital letter “M” printed in black and referred to in paragraph 1 of Annex IV to the NAWI Directive; and

“type” has the meaning given by regulation 10(2);

and other expressions used in these Regulations have the same meanings as in the 1985 Act or, in Northern Ireland, the 1981 Order.

(3) In these Regulations, references to instruments of a numbered Class shall be construed in accordance with paragraph 2 of Annex I to the NAWI Directive which is set out in Schedule 2.

(4) For the purposes of these Regulations, the expressions “maximum capacity”, “minimum capacity” and “weighing range” shall be construed in accordance with the terminology of the International Organisation for Legal Metrology⁽¹²⁾.

Application of Regulations

3.—(1) Subject to paragraph (2) below, these Regulations apply to any instrument.

(2) These Regulations do not apply to—

(a) an instrument—

- (i) in respect of a pattern of which EEC pattern approval was granted or extended before 1st January 1993 under the Measuring Instruments (EEC Requirements) Regulations

(12) See “Non-automatic weighing instruments Part 1: Metrological and technical requirements—Tests”, OIML R 76-1, Edition 1992 (E), published by the International Organisation for Legal Metrology.

- 1988(13) (in this regulation referred to as “the MI Regulations”) or by any member State other than the United Kingdom and which is in force; and
- (ii) which bears a mark of EEC initial verification or of EEC partial verification which is first affixed before 1st January 2003 under the MI Regulations or by any member State other than the United Kingdom; or
- (b) an instrument which—
- (i) does not require EEC pattern approval; and
- (ii) bears a mark of EEC initial verification or of EEC partial verification which is first affixed before 1st January 2003 under the MI Regulations or by any member State other than the United Kingdom; or
- (c) an instrument—
- (i) of a pattern in respect of which pattern approval is granted or extended under section 12 of the 1985 Act and which is in force; and
- (ii) which is first passed as fit for use for trade and stamped before 1st January 2003 under the Weighing Equipment (Non-automatic Weighing Machines) Regulations 1988(14) (in this regulation referred to as “the 1988 NAWM Regulations”) or the Weighing Equipment (Non-automatic Weighing Machines) Regulations 2000(15) (in this regulation referred to as “the 2000 NAWM Regulations”); or
- (d) an instrument which—
- (i) does not require pattern approval under section 12 of the 1985 Act; and
- (ii) was first passed as fit for use for trade and stamped before 4th April 1989, under the 1988 NAWM Regulations; or
- (e) an instrument which—
- (i) is not required to comply with either the MI Regulations or the 2000 NAWM Regulations;
- (ii) does not comply with regulation 5 or with regulation 6, as the case may require; and
- (iii) is first put into service before 1st January 2003.
- (3) For the avoidance of doubt it is hereby declared that the 1985 Act, the MI Regulations and the 2000 NAWM Regulations continue to apply to instruments to which these Regulations do not apply by virtue of paragraph (2) above.
- (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 MI Regulations 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(16), as amended by Commission Directives 76/696/EEC(17) and 82/622/EEC(18), and
- (b) the affixing of an EEC mark of partial verification shall be in accordance with the relevant provisions of the MI Regulations or, in the case of any other member State, in accordance with the relevant provisions of measures in force which implement Council Directive

(13) S.I. 1988/186 amended by S.I. 1988/1128.

(14) S.I. 1988/876 amended by S.I. 1988/2120, 1991/2019, 1992/3037, 1994/1851 and 1995/428.

(15) S.I. 2000/932; these Regulations revoked the instruments referred to in footnote (c) above on 2nd May 2000.

(16) OJ No. L335, 5.12.73, p. 1.

(17) OJ No. L236, 27.8.76, p. 26.

(18) OJ No. L252, 27.8.82, p. 2.

71/316/EEC(19) as amended by Council Directives 72/427/EEC(20), 83/575/EEC(21), 87/354/EEC(22), 87/355/EEC(23) and 88/665/EEC(24).

Placing on the market, putting into service and use of instruments

4.—(1) No person shall place on the market any instrument unless it meets the requirements of regulation 5 or regulation 6, or the corresponding requirements of the NAWI Directive as implemented in the law of a member State other than the United Kingdom, as the case may require.

(2) No person shall put any instrument into service for any Schedule 3 application unless it meets the requirements of regulation 5, or the corresponding requirements of the NAWI Directive as implemented in the law of a member State other than the United Kingdom.

(3) No person shall—

- (a) use any instrument for any Schedule 3 application; or
- (b) have any instrument in his possession for such use,

unless the requirements of regulation 5, or the corresponding requirements of the NAWI Directive as implemented in the law of a member State other than the United Kingdom, are complied with in relation to it.

(4) Any person who fails to comply with paragraph (1), (2) or (3) above shall be guilty of an offence and any instrument to which the offence relates shall be liable to be forfeited.

(5) Without prejudice to the liability of any instrument to be forfeited, it shall be a defence for any person charged with an offence under paragraph (4) above to show—

- (a) that he used the instrument only in the course of his employment by some other person; and
- (b) that he neither knew, nor might reasonably have been expected to know, nor had any reason to suspect, that the requirements referred to in paragraph (1), (2) or (3) above, or the corresponding requirements of the NAWI Directive as implemented in the law of a member State other than the United Kingdom, as the case may be, were not satisfied in relation to the instrument.

(6) If any fraud is committed in the using of an instrument for a Schedule 3 application, the person committing the fraud and any other person party to it shall be guilty of an offence and the instrument shall be liable to be forfeited.

Instruments used for Schedule 3 applications to satisfy the essential requirements

5.—(1) Instruments to which these Regulations apply which are used for any Schedule 3 application shall satisfy the essential requirements:

Provided that this obligation shall not apply to devices—

- (a) which are included in, or connected to, an instrument but which are not themselves used for any Schedule 3 applications; or
- (b) to which the restrictive use symbol referred to in paragraph 3 of Annex IV to the NAWI Directive has been affixed in accordance with regulation 18(7).

(2) An instrument shall not be taken to satisfy the essential requirements—

- (a) unless—

(19) OJ No. L202, 6.9.71, p. 1, OJ/SE 1971(II) p. 707.

(20) OJ No. L291, 28.12.72, p. 156, OJ/SE 1972, 28-30 Dec., p. 71.

(21) OJ No. L332, 28.11.83, p. 43.

(22) OJ No. L192, 11.7.87, p. 43.

(23) OJ No. L192, 11.7.87, p. 46.

(24) OJ No. L382, 31.12.88, p. 42.

- (i) save in the case of an instrument which does not use electronic devices and of which the load measuring device does not use one or more springs to balance the load, an EC type-approval certificate has been issued in respect of the relevant type and is in force; and
 - (ii) one of the conditions set out in paragraph (3) below is satisfied in relation to it; or
- (b) unless EC unit verification has been carried out and the instrument bears the CE marking, inscriptions, sticker and identification number which have been affixed in the manner provided for in regulations 12 and 18 or under corresponding provisions of the law of a member State other than the United Kingdom.
- (3) The conditions referred to in paragraph (2)(a)(ii) above are—
- (a) a condition that an EC declaration of type conformity has been made, and an EC conformity marking, inscriptions, sticker and identification number have been affixed to the instrument, by the manufacturer in the manner provided for in regulations 13 and 18 or under corresponding provisions of the law of a member State other than the United Kingdom;
 - (b) a condition that an EC verification has been carried out and the instrument bears the CE marking, inscriptions, sticker and identification number which have been affixed in the manner provided for in regulations 11 and 18 or under corresponding provisions of the law of a member State other than the United Kingdom.
- (4) Neither of the conditions mentioned in sub-paragraph (a)(ii), nor the requirements of sub-paragraph (b), of paragraph (2) above shall be satisfied in relation to an instrument at any time when—
- (a) any conformity marking, inscription, sticker, re-qualification sticker or identification number affixed to the instrument has been defaced, destroyed or removed otherwise than by fair wear and tear; or
 - (b) a disqualification sticker has been affixed to the instrument, the effect of which has not been cancelled by a re-qualification sticker affixed to it.
- (5) The documents relating to procedures, and any connected correspondence, relating to EC type-examination, EC declaration of type conformity, EC verification and EC unit verification shall be drafted in an official language of the member State where those procedures are to be carried out or in a language accepted by the Secretary of State or approved body, as the case may require.

Information to be borne by instruments not subjected to EC verification, EC unit verification or EC declaration of type conformity

6.—(1) An instrument to which these Regulations apply which has not been subject to EC verification, EC unit verification or EC declaration of type conformity shall bear the following inscriptions affixed in a clearly visible, easily legible and indelible form—

- (a) the manufacturer’s mark or name; and
- (b) the maximum capacity of the instrument in the form “Max...”.

(2) The instruments referred to in paragraph (1) above may not bear the stickers provided for in paragraph 1(1)(b) of Annex IV to the NAWI Directive.

Instruments conforming with relevant national standards

7. An instrument to which these Regulations apply which is used for a Schedule 3 application and which bears the CE marking and complies with the relevant national standards applicable to the instrument shall be presumed to conform with the essential requirements.

Appropriate equipment for tests

8.—(1) Subject to paragraph (2) below, for the purposes of regulations 11(4), 12(4), 13(7) and 38(1) an instrument shall be tested by the use of weights as set out in the following Table or by the equivalent equipment provided for in sub-paragraph (3)(a) below.

TABLE

<i>Accuracy Classification of Instruments</i>	<i>Weights to be used</i>
Class I	Weights conforming to the requirements of the 1974 directive (other than class F1, F2 and M1 weights therein referred to)
Class II	<p>Local standard weights, working standard weights which fall within the prescribed limits of error relating to the equivalent local standard weights, test weights not greater than 20 kg which fall within the prescribed limits of error relating to the equivalent local standard weights or test weights greater than 20 kg which fall within 0.15 of the prescribed limits of error for the test weights in question</p> <p>Northern Ireland local standard weights, Northern Ireland working standard weights which fall within the limits of error relating to the equivalent local standard weights, Northern Ireland test weights not greater than 20 kg which fall within the limits of error relating to the equivalent local standard weights or test weights greater than 20 kg which fall within 0.15 of the limits of error for the test weights in question</p> <p>Weights conforming to the requirements of the 1974 directive (other than class M1 weights therein referred to)</p>
Class III and having more than 5,000 scale intervals	<p>Local standard weights, working standard weights, test weights not greater than 20 kg or test weights greater than 20 kg which fall within half the prescribed limits of error for the test weights in question</p> <p>Northern Ireland local standard weights, Northern Ireland working standard weights, Northern Ireland test weights not greater than 20 kg or test weights greater than 20 kg which fall within half the limits of error for the test weights in question</p> <p>Weights conforming to the requirements of the 1974 directive</p>

<i>Accuracy Classification of Instruments</i>	<i>Weights to be used</i>
Class III and having no more than 5,000 scale intervals and Class IIII	Local standard weights, working standard weights or test weights Northern Ireland local standard weights, Northern Ireland working standard weights or Northern Ireland test weights Weights conforming to the requirements of the 1974 directive

- (2) For the purposes of the table in paragraph (1) above—
- (a) the error in the weights to be used in any particular case shall not exceed the amount specified in the relevant national standard; and
 - (b) the quantities of weights to be used in any particular case shall be ascertained in accordance with the relevant national standard.
- (3) In this regulation—
- (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);
 - (b) “local standard weights”, “working standard weights” and “test weights” shall be construed in accordance with the Weights and Measures (Local and Working Standard Weights and Testing Equipment) Regulations 1986⁽²⁵⁾,
 - (c) “Northern Ireland local standard weights”, “Northern Ireland working standard weights” and “Northern Ireland test weights” shall be construed in accordance with the 1981 Order; and
 - (d) “the 1974 directive” means Council Directive 74/148/EEC⁽²⁶⁾ on the approximation of laws of the Member States relating to weights of from 1 mg to 50 kg of above-medium accuracy.

Designation of bodies to exercise functions under the Regulations

9.—(1) On application made by the body, the Secretary of State may, for the purposes of Article 8 of the NAWI Directive, designate one or more bodies of persons (“approved bodies”) which appear to him to satisfy the criteria set out in Annex V to the NAWI Directive to carry out in respect of instruments all or any of the functions to be carried out by approved bodies—

- (a) under regulations 11 and 14 relating to EC verification; and
 - (b) under regulations 13, 15 and 17 relating to quality systems and EC surveillance.
- (2) Any such approval—

⁽²⁵⁾ S.I. 1986/1685 as amended by S.I. 1991/1775 and 1994/1851.

⁽²⁶⁾ OJ No. L84, 28.3.1974, p. 3.

- (a) may be given for an unlimited period, or for a specified period, or for specified purposes; and
 - (b) may be given subject to conditions (including conditions which are to apply upon or following withdrawal of the approval).
- (3) The Secretary of State may withdraw an approval if—
- (a) the body so requests; or
 - (b) the body ceases to satisfy the criteria specified in the said Annex V to the NAWI Directive; or
 - (c) the body ceases to comply with any such condition.
- (4) The Secretary of State may vary an approval if—
- (a) the body so requests; or
 - (b) having regard to these Regulations and to the NAWI Directive, it appears to him necessary or expedient.
- (5) The Secretary of State may from time to time carry out inspections of the functions of an approved body with a view to verifying that it complies with any conditions subject to which the approval is granted and with the provisions of these Regulations and the NAWI Directive but, unless it appears to him that there are circumstances which make it necessary or expedient to do so, he shall not carry out such an inspection within two years from the date of approval of the body or, if later, of his last inspection under this paragraph.
- (6) In a case where the Secretary of State—
- (a) refuses an application for designation under paragraph (1) above or imposes any condition more onerous than those proposed by the body;
 - (b) withdraws an approval under paragraph (3)(b) or (c) above; or
 - (c) varies an approval pursuant to paragraph (4)(b) above;
- he shall inform the body of the grounds for the decision.
- (7) If for any reason an approved body ceases to be an approved body under this regulation, the Secretary of State may designate another approved body to take over its functions in respect of such cases as he may specify.

PART II

APPROVAL AND CERTIFICATION OF NON-AUTOMATIC WEIGHING INSTRUMENTS

Examination and Supervision

EC type-examination

- 10.**—(1) An application for EC type-examination shall be made in writing by the manufacturer or by his authorised representative to the Secretary of State or to an approved body designated by another member State for the purpose of EC type-examination.
- (2) An application made to the Secretary of State shall include—
- (a) the name and address of the manufacturer and, if the application is lodged by the authorised representative, his name and address;
 - (b) a declaration that no other application for EC type-examination in respect of the instrument has been made to the Secretary of State or to any approved body; and

(c) the design documentation,

and the person making the application shall, when requested by the Secretary of State, provide an instrument which is representative of the production envisaged (in this regulation referred to as “the type”).

(3) On an application made to him under this regulation the Secretary of State shall—

- (a) examine the design documentation and check that the type has been manufactured in conformity with that documentation;
- (b) agree with the applicant the places where the examinations and tests shall be carried out;
- (c) carry out, or have carried out, examinations and tests to check—
 - (i) where the manufacturer has chosen to apply the relevant national standards, whether the instrument has been manufactured wholly in conformity with those standards in such a manner that it satisfies the essential requirements; or
 - (ii) if it has not been so manufactured, whether the instrument nevertheless satisfies the essential requirements.

(4) Where the Secretary of State, after carrying out his functions under paragraph (3) above, is satisfied that the type complies with the provisions of the NAWI Directive which apply to it, he shall grant to the applicant an EC type-approval certificate in respect of that type.

(5) Subject to paragraph (7) below and to any restrictions imposed by paragraph (6) below, an EC type-approval certificate issued under paragraph (4) above shall be valid for a period of ten years and its validity may be extended for successive periods of ten years:

Provided that its validity shall not be extended after the date of the entry into force of any amendment to the NAWI Directive if it could not have been granted on the basis of the NAWI Directive as so amended.

(6) Where new techniques are employed or other fundamental changes are made to the design of an approved type, a further application may be made under this regulation and a further EC type-approval certificate may be issued in respect of the type for a specified period; and—

- (a) the initial period for which a certificate is issued under this paragraph shall be restricted to a period of two years; and
- (b) only one extension of that period, for a period of three years, may be issued:

Provided that its validity shall not be extended after the date of the entry into force of any amendment to the NAWI Directive if it could not have been granted on the basis of the NAWI Directive as so amended.

(7) Where an EC type approval certificate granted by the Secretary of State under paragraph (4) above, not being a certificate to which paragraph (6) above applies, has expired not having been extended for any period or further period of ten years under paragraph (5) above, the certificate shall remain in force in respect of any instrument which was first put into service at a time when the certificate was in force otherwise than by virtue of this paragraph; and an EC type approval certificate which remains in force by virtue of this paragraph may be withdrawn under regulation 25(6)(a).

(8) Any EC type-approval certificate issued by the Secretary of State shall—

- (a) state the conclusions of the EC type-examination carried out by the Secretary of State;
- (b) indicate any conditions subject to which the certificate is granted; and
- (c) be accompanied by the data and descriptions necessary for identification of the approved type,

and there shall be annexed to the certificate all relevant drawings and layouts.

(9) Where the Secretary of State, after carrying out his functions under paragraph (3) above, refuses to issue an EC type-approval certificate or to extend its period of validity, he shall inform the applicant in writing of his decision and the grounds for his decision.

(10) Where—

(a) an EC type-approval certificate granted under this regulation is in force in respect of an approved type; and

(b) it is proposed that any modifications or additions should be made to the approved type, the manufacturer or his authorised representative (instead of making an application under this regulation for an EC type-approval certificate) shall notify the Secretary of State in writing of all such proposed modifications or additions to the approved type.

(11) On receipt of a notification under paragraph (10) above, the Secretary of State shall consider whether the proposed modifications or additions might influence the conformity of the approved type with the essential requirements or with any conditions for use indicated in the EC type-approval certificate, and if it appears to him that those modifications or additions might have that effect, he shall conduct an examination of the approved type with those modifications or additions; and, in a case where—

(a) he is satisfied that the approved type with those modifications or additions complies with the provisions of the NAWI Directive that apply to it, the Secretary of State shall—

(i) subject to the provisions of this regulation, approve the modifications or additions; and

(ii) issue an addition to the original EC type-approval certificate in respect thereof; or

(b) he is not so satisfied, the Secretary of State shall notify the person who gave the notification of his decision and of the grounds for it.

(12) No person shall make an application under this regulation if—

(a) he has previously made an application; or

(b) he has reasonable cause to believe that an application has previously been made by any other person,

in respect of the same type to any approved body.

(13) The Secretary of State shall not consider an application which appears to him to contravene paragraph (12) above.

(14) The Secretary of State shall periodically send to the other member States a list of—

(a) applications received by him for EC type-examination;

(b) EC type-approval certificates issued by him;

(c) refusals by him to issue EC type-approval certificates; and

(d) additions and amendments relating to documents already issued,

and, on request, shall send to other member States a copy of any EC type-approval certificates that he has issued.

EC verification

11.—(1) 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 NAWI Directive which apply to them.

(2) The manufacturer or his authorised representative shall—

- (a) affix the CE marking and the sticker to each instrument (by way of confirmation that the instrument may be used for a Schedule 3 application) in accordance with regulation 18; and
- (b) draw up a written declaration of conformity that the instrument conforms with the requirements of the NAWI Directive which apply to it.

(3) Subject to paragraphs (6) and (7) below, an application for the carrying out of the appropriate examinations and tests with a view to EC verification shall be made to an approved body by the manufacturer or his authorised representative; and each application shall, if the approved body so requests, be accompanied—

- (a) in the case of instruments manufactured in conformity with an approved type, by a copy of the EC type-approval certificate in respect of that approved type; or
- (b) in the case of an instrument which does not use electronic devices and of which the load measuring device does not use one or more springs to balance the load, by the design documentation relating to that instrument.

(4) Where the approved body is satisfied, on application made to it under paragraph (3) above and after carrying out, or after having had carried out, the appropriate examinations and tests, that the instruments (if properly installed and used for the purposes for which they are intended)—

- (a) where appropriate, have been manufactured in conformity with the approved type; and
- (b) satisfy the provisions of the NAWI Directive which apply to them,

the approved body shall affix or cause to be affixed to each instrument the identification number of the approved body in accordance with regulation 18, and shall provide to the manufacturer or his authorised representative a written certificate of conformity relating to the tests carried out; and the manufacturer or his authorised representative shall ensure that he is able to provide the certificate to any person entitled to see it.

(5) Where the approved body is not so satisfied, it shall decline to affix its identification number to the instrument and to provide to the manufacturer or his authorised representative a written certificate of conformity under paragraph (4) above; and it shall in writing inform the applicant of its decision and of the grounds for its decision.

(6) In the case of an instrument—

- (a) to which the CE marking, identification number and sticker have been affixed; and
- (b) either—
 - (i) to which a disqualification sticker has been affixed under regulation 23, 24 or 27 or under any corresponding provision in the law of a member State other than the United Kingdom; or
 - (ii) which, having ceased to satisfy the essential requirements, has been subjected to any adjustment, alteration, addition, repair or replacement, notwithstanding that a disqualification sticker had not been affixed,

the foregoing provisions of this regulation shall have effect as modified under paragraph (7) below.

(7) In a case to which paragraph (6) above applies an application under paragraph (3) above may be made by any person established in the Community and—

- (a) in paragraph (3) above, the words after the first semi-colon shall not have effect; and
- (b) in paragraph (4) above, for the words “the approved body shall affix” to the end there shall be substituted the words “the approved body shall affix or cause to be affixed to each instrument the identification number of the approved body and the re-qualification sticker in accordance with regulation 18.”.

EC unit verification

12.—(1) The manufacturer or his authorised representative shall ensure that instruments intended for EC unit verification conform with the requirements of the NAWI Directive which apply to them.

(2) Where the manufacturer or his authorised representative is satisfied that the requirements of the NAWI Directive that apply to an instrument are satisfied in relation to it, he may—

- (a) affix the CE marking and the sticker to the instrument (by way of confirmation that it may be used for a Schedule 3 application) in accordance with regulation 18; and
- (b) draw up a written declaration of conformity that the instrument conforms with the requirements of the NAWI Directive which apply to it.

(3) Subject to paragraphs (6) and (7) below, an application for the carrying out of the appropriate examinations and tests with a view to EC unit verification shall be made by the manufacturer or his authorised representative in writing to the Secretary of State or to an approved body designated for the purpose of EC unit verification by another member State; and each application shall be accompanied by the design documentation relating to the instrument.

(4) Where the Secretary of State is satisfied, on application made to him under paragraph (3) above and after carrying out, or after having had carried out, the appropriate examinations and tests, that the instrument (if properly installed and used for the purposes for which it is intended) satisfies the provisions of the NAWI Directive that apply to it—

- (a) the Secretary of State shall in accordance with regulation 18—
 - (i) affix, or cause to be affixed, his identification number to the instrument; and
 - (ii) provide to the manufacturer or his authorised representative a written certificate of conformity relating to the tests carried out; and
- (b) the manufacturer or his authorised representative shall ensure that he is able to provide the certificate to any person entitled to see it.

(5) Where the Secretary of State is not so satisfied, he shall decline to affix his identification number to the instrument and to provide to the manufacturer or his authorised representative a written certificate of conformity under paragraph (4) above; and he shall in writing inform the applicant of his decision and of the grounds for his decision.

(6) In the case of an instrument—

- (a) to which the CE marking, identification number and sticker have been affixed; and
- (b) either—
 - (i) to which a disqualification sticker has been affixed under regulation 23, 24 or 27 or under any corresponding provision in the law of a member State other than the United Kingdom,
 - (ii) which, having ceased to satisfy the essential requirements, has been subjected to any adjustment, alteration, addition, repair or replacement, notwithstanding that a disqualification sticker had not been affixed,

the foregoing provisions of this regulation shall have effect as modified under paragraph (7) below.

(7) In a case to which paragraph (6) above applies an application under paragraph (3) above may be made by any person established in the Community and—

- (a) in paragraph (3) above, the words after the first semi-colon shall not have effect; and
- (b) in paragraph (4) above, for sub-paragraphs (a) and (b) there shall be substituted the words “the Secretary of State shall in accordance with regulation 18 affix, or cause to be affixed, to the instrument his identification number and the re-qualification sticker.”.

Quality system approval and EC declaration of type conformity

13.—(1) An application for approval of a quality system as provided in paragraph 2.3 of Annex II to the NAWI Directive shall be made in writing to an approved body; and each application shall be accompanied by an undertaking by the manufacturer—

- (a) to carry out the obligations arising from the approved quality system; and
- (b) to maintain the approved quality system to ensure its continuing suitability and effectiveness.

(2) The manufacturer shall make available to the approved body all relevant information including in particular—

- (a) the documentation of the quality system presented in a systematic and orderly manner in the form of written rules, procedures and instructions with a view to ensuring a proper understanding of the quality programmes, plans, manuals and records; and
- (b) the design documentation of the instruments.

(3) On application made to it under paragraph (1) above, the approved body shall evaluate the quality system to determine whether it satisfies the requirements referred to in paragraph 2.3.2 of Annex II to the NAWI Directive and, if it conforms with the relevant national standard, it shall be taken to conform to those requirements.

(4) Where the approved body is satisfied, on application made to it under paragraph (1) above and after examining and evaluating the quality system, that the system satisfies the requirements referred to in paragraph 2.3.2 of Annex II to the NAWI Directive it shall grant to the manufacturer an approval of the quality system; and accordingly the manufacturer shall have authority to make EC declarations of type conformity in accordance with paragraph (7) below.

(5) The approved body shall—

- (a) include in the approval the conclusions of the examination and evaluation carried out by it; and
- (b) inform the Secretary of State of the granting of the approval with a view to his notifying the other member States.

(6) Where the approved body, after carrying out its duties under paragraph (3) above, refuses to grant an approval of the quality system it shall in writing inform the manufacturer and the Secretary of State of its decision and the grounds for its decision.

(7) Where the manufacturer makes an EC declaration of type conformity, that is to say—

- (a) he has adequately implemented an approved quality system;
- (b) 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
- (c) he is satisfied that the instruments concerned, where appropriate, have been manufactured in conformity with the approved type and satisfy the provisions of the NAWI Directive that apply to them,

the manufacturer or his authorised representative shall, in accordance with regulation 18, affix to each such instrument—

- (i) the CE marking;
- (ii) the inscriptions;
- (iii) the sticker by way of confirmation that the instrument may be used for a Schedule 3 application; and
- (iv) the identification number of the approved body which approved the manufacturer's quality system,

and shall draw up a written declaration of conformity.

(8) In the case of an instrument—

- (a) to which the CE marking, identification number and sticker have been affixed; and
- (b) either—
 - (i) to which a disqualification sticker has been affixed under regulation 23, 24 or 27 or under any corresponding provision in the law of a member State other than the United Kingdom;
 - (ii) which, having ceased to satisfy the essential requirements, has been subjected to any adjustment, alteration, addition, repair or replacement, notwithstanding that a disqualification sticker had not been affixed,

the foregoing provisions of this regulation shall have effect as modified under paragraph (9) below.

(9) In a case to which paragraph (8) above applies, in paragraph (7) above for the words “the manufacturer or his authorised representative shall affix” to the end there shall be substituted the words

“the manufacturer or his authorised representative shall affix to each such instrument—

- (a) the re-qualification sticker; and
- (b) the identification number of the approved body which approved the manufacturer’s quality system if that number is different from the number already fixed to the instrument.”.

Provisions supplemental to regulations 11, 12 and 13

14.—(1) Subject to paragraphs (2) and (3) below, the procedures referred to in regulations 11(4), 12(4) and 13(7) (“the procedures”) shall be carried out at the place of use of the instrument unless—

- (a) the instrument does not have to be dismantled for transport or any such dismantling is not likely to affect its performance; or
- (b) before the instrument is taken into service, no work is required which is likely to affect its performance,

in which case they may be carried out at any place.

(2) In the case of an instrument the performance of which is sensitive to differences in gravity, either—

- (a) any difference between the gravity at the place where the procedures are carried out and that at the place where the instrument is to be used shall be taken into account in carrying out the procedures; or
- (b) the procedures shall be carried out in two stages in accordance with paragraph (4) below.

(3) In the case of an instrument the performance of which is not sensitive to differences in gravity and if the manufacturer so desires, the procedures may be carried out in two stages in accordance with paragraph (4) below.

(4) The two stages referred to in paragraphs (2) and (3) above are—

- (a) a first stage (“the first stage”) which shall comprise all examinations and tests not within the second stage and which may be carried out at any place; and
- (b) a second stage (“the second stage”) which—
 - (i) in the case of an instrument whose performance is sensitive to differences in gravity, shall comprise all examinations and tests of which the outcome is gravity dependent and which shall be carried out at the place of use of the instrument or, if gravity

zones⁽²⁷⁾ have been established, elsewhere within the gravity zone in which that place is situated; and

(ii) in the case of any other instrument, may be carried out at any place.

(5) Where the manufacturer has made an EC declaration of type conformity under regulation 13 in relation to an instrument and the procedures in the first stage are carried out under that regulation, those carried out in the second stage shall be those specified in regulation 11 or 13.

(6) Where an approved body carries out the procedures in the first stage under regulation 11, that body or another approved body may carry out the procedures in the second stage.

(7) Where in pursuance of paragraph (5) or (6) above, the procedures in the first stage are carried out by the manufacturer or an approved body (“the first party”) and the procedures in the second stage are carried out by a different manufacturer (being a manufacturer having the authority to make the relevant EC declaration of type conformity) or approved body (“the second party”)—

(a) the first party shall issue a certificate to the second party identifying the instrument in question and specifying the procedures it has carried out and shall affix, or cause to be affixed, its identification number; and

(b) the second party—

(i) shall carry out the examinations and tests not carried out by the first party; and

(ii) shall be responsible for completion of whichever of the procedures is appropriate.

(8) For the purposes of regulations 11(4) and 12(4), the appropriate examinations and tests shall include those specified in the relevant national standard or equivalent tests.

EC surveillance

15.—(1) Where a manufacturer has made an EC declaration of type conformity under regulation 13, the approved body to which the manufacturer made an application for approval of the quality system shall carry out EC surveillance and in particular—

(a) shall periodically carry out audits in order to ensure that the manufacturer is maintaining and applying the quality system and provide the manufacturer with an audit report; and

(b) shall, from time to time, carry out visits at the places of manufacture, inspection, testing and storage and—

(i) check whether the manufacturer is maintaining and applying the quality system, and

(ii) at its discretion, carry out full or partial audits,

and shall provide the manufacturer with a report on each such visit and on any such audit.

(2) For the purpose of assisting the approved body to carry out the audits and checks specified in paragraph (1) above the manufacturer shall, in respect of each instrument, keep available for inspection by the approved body all necessary information, including—

(a) the documentation of the quality system;

(b) the design documentation of the instrument; and

(c) all related quality records,

and shall inform the approved body of any changes in its quality system.

Suspension of authority to make EC declarations of type conformity

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 or the

(27) The United Kingdom has not established gravity zones within its territory.

corresponding provisions of the law of another member State, 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 declarations of type conformity in question (either generally or in relation to particular areas and 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 took 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) the right to apply for a review of the decision to issue the notice as provided for in regulation 20.

(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.

Withdrawal of approval of quality system

- 17.—(1) If it appears to an approved body, in relation to any quality system approved by it, that—
- (a) an undertaking given pursuant to regulation 13(1) has not been complied with; or
 - (b) by reason of the refusal or neglect of the manufacturer, it is not able to carry out its functions under regulation 15(1); or
 - (c) regulation 15(2) has not been complied with; or
 - (d) the Secretary of State has informed the approved body under regulation 25(7)(a) that he is of the opinion that consideration should be given to withdrawal of any relevant quality system approval,

it may, after giving the manufacturer the opportunity of making representations as to why it should not be withdrawn, by notice given to the manufacturer withdraw approval of the quality system.

- (2) A notice under paragraph (1) above shall be in writing and shall—
- (a) specify the date on which it is to take effect; and
 - (b) specify the grounds for the decision.

(3) The approved body shall send to the Secretary of State a copy of any notice given by it under paragraph (2) above with a view to his notifying the other member States.

Affixing of CE marking etc

18.—(1) The CE marking and each sticker, inscription or identification number mentioned in paragraph (3) below shall be affixed on—

- (a) each instrument to which it relates; or
- (b) on a data plate attached to the instrument in such a way that the plate—
 - (i) cannot be removed without being destroyed, or
 - (ii) is capable of being sealed with a control mark,and shall satisfy the requirements of paragraph (2) below and, as the case may require, of paragraph (3) below.

(2) The requirement of this paragraph is that each CE marking, identification number, sticker or inscription shall be clearly visible, easily legible and indelible.

(3) The requirements of this paragraph, in the case of—

- (a) the CE marking, are those specified in sub-paragraphs (a), (c) and (d) of paragraph (4) below;
- (b) the identification number, are those specified in sub-paragraph (a) of paragraph (4) below;
- (c) all inscriptions referred to in paragraph 1.1(c) of Annex IV to the NAWI Directive, are those specified in sub-paragraphs (c) and (d) of paragraph (4) below; and
- (d) the inscriptions “Max”, “Min”, “e” and “d” referred to in paragraph 1.4 of Annex IV to the NAWI Directive, are those specified in sub-paragraphs (b), (c) and (d) of paragraph (4) below.

(4) The requirements referred to in paragraph (3) above in relation to the CE marking, identification number or inscription are—

- (a) a requirement that it be grouped together with all other such information;
- (b) a requirement that it be placed near the display of the result of the operation of the instrument;
- (c) a requirement that it be impossible to remove without damaging the marking or inscription;
- (d) a requirement that it be clearly visible when the instrument is in its regular operating position.

(5) The CE marking consists of the symbol “CE” of which a form is shown for purposes of illustration in Schedule 4.

(6) Each load measuring device which is connected, or can be connected, to one or more load receptors shall also bear the inscriptions which apply to each such load receptor.

(7) Where the manufacturer or his authorised representative affixes a CE marking and sticker under paragraph (1) above to an instrument which—

- (a) is used for a Schedule 3 application; and
- (b) includes or is connected to any device exempted from the essential requirements by virtue of the Preliminary observation in Annex I to the NAWI Directive which is set out in Schedule 2,

each such device shall bear the restrictive use symbol referred to in paragraph 3 of Annex IV to the NAWI Directive.

(8) Any person who—

- (a) gives information in connection with an instrument, by means of a misleading mark or inscription or otherwise, which is likely to be confused with the CE marking; or

(b) affixes any other mark to the instrument which obscures the visibility or legibility of the CE marking,

shall be guilty of an offence.

(9) Where a re-qualification sticker is affixed to an instrument in accordance with—

- (a) regulation 11(4) as modified by regulation 11(7)(b);
- (b) regulation 12(4) as modified by regulation 12(7)(b); or
- (c) regulation 13(7) as modified by regulation 13(9),

then the sticker shall be so affixed so that it—

- (i) is clearly visible when the instrument is in its regular operating position; and
- (ii) obliterates as far as possible any disqualification sticker.

Conformity with other directives

19.—(1) Subject to paragraph (2) below, where a CE marking is affixed to an instrument, the affixing of that marking shall indicate that the instrument conforms also with any directive other than the NAWI Directive which provides for the affixing of the CE marking.

(2) Where, during a relevant transitional period specified in any such other directive a manufacturer chooses not to apply provisions adopted pursuant to the directive in question, paragraph (1) shall not apply if that fact and particulars of that directive as published in the Official Journal of the European Communities are stated in the documents, notices or instructions required to accompany the instrument.

Review of decisions

Review of decisions of authorised persons under Part II

20.—(1) A person who is aggrieved by a decision given by an authorised person under regulation 16(1) or 25(2) (“the aggrieved person”) may, in accordance with paragraphs (2) and (3) below, apply to the Secretary of State to review the decision; and on such application the Secretary of State may—

- (a) hold an inquiry in connection therewith; and
- (b) appoint an assessor for the purposes of assisting him with his review or any such inquiry.

(2) An application under paragraph (1) above shall be made by notice to the Secretary of State, and shall be sent to him not later than twenty-one days after the date when notice of the decision in respect of which the application for review is sent to the aggrieved person.

(3) A notice of application for review under this regulation shall state the grounds on which the application is made.

(4) The Secretary of State, within a reasonable time, shall in writing inform the aggrieved person and the authorised person of his decision whether to uphold the decision of the authorised person and,—

- (a) in a case where he upholds the decision of the authorised person, shall also state the grounds for his decision; and
- (b) in a case where he does not uphold the decision of the authorised person, may,—
 - (i) where the review relates to regulation 16, instruct the authorised person to withdraw the notice given by him under paragraph (1) of that regulation; or
 - (ii) where the review relates to regulation 25, instruct the authorised person to withdraw the notice given by him under paragraph (2) of that regulation,

as the case may require.

Provision of information

21. A person aggrieved by a decision—

- (a) of the Secretary of State under regulation 9(6), 10(9) or (11)(b), 12(5) or 20(4); or
- (b) of an approved body under regulation 11(5) or 13(6),

shall, at the same time as he is notified of the decision, be given information about the judicial remedies available to him.

Enforcement

Unauthorised application of CE marking etc

22.—(1) Subject to paragraph (2) below, any person who, in the case of any instrument—

- (a) save in accordance with regulation 11, 12 or 13, affixes any CE marking, inscription, identification number or sticker referred to in the regulation in question to any instrument; or
- (b) affixes a CE marking in contravention of regulation 18; or
- (c) forges or counterfeits or in any manner alters or defaces any such mark, inscription, identification number, sticker, disqualification sticker or re-qualification sticker; or
- (d) removes any such mark, inscription, identification number or sticker affixed to an instrument under regulation 11, 12 or 13 or re-qualification sticker and affixes it to any other instrument; or
- (e) makes any alteration to the instrument after any such mark, inscription, identification number, sticker or re-qualification sticker has been affixed to it in accordance with these Regulations so that the instrument no longer complies with the requirements of the NAWI Directive which apply to it,

shall be guilty of an offence.

(2) 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.

(3) Any person who places on the market, puts into service or uses for any Schedule 3 application any instrument which to his knowledge—

- (a) bears any CE marking, inscription, identification number, sticker, or re-qualification sticker which is a forgery or counterfeit, or which has been transferred from another instrument, or which has been altered or defaced otherwise than in accordance with these Regulations; or
- (b) does not comply with the essential requirements by reason of any alteration made to it after any CE marking, inscription, identification number, sticker or re-qualification sticker was affixed to it in accordance with these Regulations,

shall be guilty of an offence.

(4) Any instrument in respect of which an offence under this regulation has been committed, and any implement used in the commission of the offence, shall be liable to be forfeited.

(5) 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.

Disqualification stickers (instruments not complying with these Regulations etc)

23.—(1) Subject to paragraph (2) below, an authorised person may affix a disqualification sticker to an instrument if he is satisfied that the instrument—

- (a) falls outside the limits of error referred to in paragraph 4.2 of Annex I to the NAWI Directive which is set out in Schedule 2; or
- (b) otherwise does not fully comply with the requirements which apply to it,

and a disqualification sticker shall be so affixed as to be clearly visible when the instrument is in its regular operating position.

(2) Save in a case where regulation 24 has effect, where an instrument does not fully satisfy the requirements of regulation 5 which apply to it but it appears to the authorised person that the nature or degree of non-compliance is not such that a disqualification sticker should be immediately affixed to it, he may give to any person in possession of the instrument a notice requiring him to ensure that the instrument is brought within the limits of error mentioned in paragraph (1)(a) above, or made to comply with the requirements which apply to it, before the expiry of twenty-eight days or such shorter period as may be specified in the notice.

(3) If a notice given under paragraph (2) above is not complied with, the authorised person shall affix a disqualification sticker to the instrument in such a position that the sticker is clearly visible when the instrument is in its regular operating position.

Disqualification stickers and re-qualification stickers (instruments which have been altered etc)

24.—(1) If it appears to an authorised person that, since the sticker was affixed (or, where the re-qualification sticker has been affixed, since that sticker was last affixed) to an instrument, the instrument has been subject to any alteration or addition by reason of which a re-qualification sticker could not be affixed to it in accordance with this Part, an authorised person shall affix a disqualification sticker to it.

(2) Subject to paragraph (3) below, if it appears to an authorised person—

- (a) in the case of any instrument, that since the sticker was affixed (or, where the re-qualification sticker has been affixed, since that sticker was last affixed) to an instrument, the instrument has been subjected to any adjustment, alteration, addition, repair or replacement, which could affect its accuracy or functioning; or
- (b) in the case of an instrument whose performance is sensitive to differences in gravity, that since the sticker was affixed (or, where the re-qualification sticker has been affixed, since that sticker was last affixed) the instrument has been moved to a different location,

the authorised person shall affix a disqualification sticker to it.

(3) Where—

- (a) an instrument has been subjected to any of the occurrences mentioned in paragraph (2) above; and
- (b) the chief inspector of weights and measures for the area where the instrument is located has been furnished in writing with details of the occurrence,

an authorised person may affix a disqualification sticker to it.

(4) A disqualification sticker shall be so affixed as to be clearly visible when the instrument is in its regular operating position.

Immediate enforcement action

25.—(1) Where an authorised person has reasonable grounds for considering that 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, due to—

- (a) failure to meet the essential requirements;
- (b) incorrect application of the relevant national standards; or
- (c) shortcomings in the relevant national standards,

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 the market;
- (ii) prohibit or restrict the placing on the market or taking into service of instruments of that type; 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 or any approval of a quality system 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 20.

(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.

Compliance notice procedures

26.—(1) Save as provided in regulation 25 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, 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 instrument 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 of these Regulations concerning the CE marking 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 the 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 the CE marking has been correctly affixed; 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 sub-paragraph (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 placed on the market or put into service 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; and
- (b) be varied or withdrawn by a further notice under this regulation.

(6) 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.

(7) 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.

Unsuitable use of instrument used for trade

27. If it appears to an authorised person that an instrument is used for trade—
- (a) for a purpose for which it is unsuitable; or
 - (b) in circumstances where it is subject to any extraordinary environmental or operating conditions which—
 - (i) may prevent it operating consistently or accurately; or
 - (ii) are likely prematurely to degrade its metrological characteristics,
- the authorised person may affix a disqualification sticker to the instrument; and any such sticker shall be affixed in such a position that it is clearly visible when the instrument is in its regular operating position.

PART III

USE FOR TRADE OF NON-AUTOMATIC WEIGHING INSTRUMENTS

Restrictions on use of instruments for trade

28.—(1) An instrument marked with a weighing range may be used for trade for determining the weight of any item by ascertaining the difference between two weights (both of which fall within the weighing range), that is to say, the weight of that item and another item or items and the weight of that other or those other items only.

(2) Save in accordance with paragraph (1) above, a person shall not use for trade an instrument marked with a weighing range for determining a weight outside that range in relation—

- (a) to, or to articles made from, gold, silver or other precious metals, including gold or silver thread or fringe;
- (b) to precious stones or pearls; or
- (c) to drugs or other pharmaceutical products.

(3) A person shall not use for trade any instrument other than an instrument of accuracy classification Class I or Class II in any transaction relating—

- (a) to, or to articles made from, gold, silver or other precious metals, including gold or silver thread or fringe;
- (b) to precious stones or pearls.

(4) A person shall not use for trade an instrument carrying a marking in accordance with the EC type-approval certificate, or to which the restrictive use symbol referred to in paragraph 3 of Annex IV to the NAWI Directive applies, for a purpose which does not accord with the marking or the symbol.

(5) A person shall not use a Class III instrument for trade for any purpose other than for weighing—

- (a) any of the materials to which the expression “ballast” applies in Schedule 4 to the 1985 Act;

- (b) any material the disposal of which constitutes a landfill disposal as defined in paragraph (2) of section 70 of the Finance Act 1996⁽²⁸⁾, whether or not the disposal amounts to a taxable disposal as defined in section 40 of that Act; or
- (c) household, industrial or commercial waste.

(6) A person shall not use for trade any instrument for the purpose of multiple weighing, that is to say, determining the mass of a load by totalling the results of more than one static weighing operation during each of which the load is only partially supported by the load receptor.

(7) For the purposes of this regulation, the terms “household waste”, “industrial waste” and “commercial waste” shall be construed in accordance with section 75 of the Environmental Protection Act 1990⁽²⁹⁾, provided that “waste” shall include any waste disposed of for reprocessing or recycling purposes but shall not include any radioactive waste as defined in section 2 of the Radioactive Substances Act 1993⁽³⁰⁾.

Manner of erection of instruments

29. Where an instrument is fitted with one or more level-indicating devices, a person shall not use the instrument for trade unless each such device indicates that it has been set to its reference position.

Instruments marked with temperature range

30. Where an instrument is marked with a temperature range, a person shall not use the instrument for trade at temperatures outside that range.

Instruments marked with manner of use

31. Where an instrument is marked with the manner of use, a person shall not use the instrument for trade in a manner which does not accord with the marking.

Instruments fitted with printing devices

32. Where an instrument is fitted with a weight or any other printing device, a person shall not use the instrument for trade unless it is so erected and used that the printing device, when used, produces a legible and durable printout.

Load receptors

33.—(1) A person shall not use any instrument for trade unless it is erected and used in such a manner that, during a weighing operation, the load being weighed is stationary relative to the load receptor and supported only by the load receptor.

(2) A person shall not use for trade an instrument for the purpose of sales by retail—

(a) unless—

- (i) the load receptor is not less than 10 mm above any adjacent surface; or
- (ii) where the load receptor is less than 10 mm above any adjacent surface, the boundary of the top surface of all adjacent surfaces is durably marked in a distinctive and contrasting manner with a band at least 15 mm in width; or

(b) if the load receptor is below the level of any adjacent surface.

⁽²⁸⁾ 1996 c. 8.

⁽²⁹⁾ 1990 c. 43.

⁽³⁰⁾ 1993 c. 12.

Operation of instrument

34. Except as specified in the EC type-approval certificate, a person shall not use an instrument for trade unless it is erected in such a manner that the operator can, notwithstanding the nature of the instrument or its surroundings, readily take up a single position from which he can—

- (a) see directly or with the aid of mirrors, closed-circuit television or other permanently installed facilities, the whole of the unladen load receptor;
- (b) operate the instrument's controls; and
- (c) obtain a weight reading from the instrument.

Weights marked with EEC initial verification marks to be used

35.—(1) Subject to paragraph (2) below, a person shall not use for trade a Class I or Class II instrument which is used in association with any weight or weights to determine the value of any load in terms of metric units of mass other than carat (metric) units, save in association with weights which bear the mark of EEC initial verification in accordance with—

- (a) the provisions of—
 - (i) in the case of Class II instruments, Council Directive [74/148/EEC](#) on above-medium accuracy weights⁽³¹⁾; or
 - (ii) in the case of Class I instruments, the said Directive except for those provisions relating to weights of Class F2 or Class M1; and
- (b) the provisions of paragraph 5 of Schedule 1 to the Measuring Instruments (EEC Requirements) Regulations 1988⁽³²⁾.

(2) The requirements of this regulation shall not apply to any instrument for use for trade in any transaction in drugs or other pharmaceutical products before 1st January 2003.

Instruments using decimal parts of pound

36. No person shall use for trade an instrument having weight scale intervals expressed in decimal parts of a pound save by way only of a supplementary indication of the weight of the goods.

Instruments to be set to zero or to be balanced before use

37.—(1) Subject to paragraph (2) below, a person shall not use an instrument for trade unless it is properly balanced or set to zero immediately prior to use.

(2) Paragraph (1) above shall not apply in the case of an instrument of an approved type if, in the EC type-approval certificate, it is described as not being so constructed as to balance when unloaded.

PART IV

GENERAL

Powers of inspection and entry

38.—(1) Subject to the production if so requested of his credentials, an authorised person may for the purposes of these Regulations, within the area of the local weights and measures authority by which he is appointed, at all reasonable times—

⁽³¹⁾ OJ No. L84, 28.3.1974, p. 3.

⁽³²⁾ S.I. [1988/186](#).

- (a) inspect and test any instrument in such manner as he considers appropriate;
 - (b) inspect and take copies of any document relating to an instrument and of the documentation of any relevant quality system; and
 - (c) enter any premises at which he has reasonable cause to believe there to be any instrument or such document, not being premises used only as a private dwelling house.
- (2) Subject to the production if so requested of his credentials, an authorised person may, at any time, within the area of the local weights and measures authority by which he is appointed, seize and detain—
- (a) any instrument or implement which he has reasonable cause to believe is liable to be forfeited under regulation 4(4) or (6), 16(4) or 22(4); and
 - (b) any document, implement or goods which the authorised person has reason to believe may be required as evidence in proceedings for an offence under Part I or Part II.
- (3) If a justice of the peace, on information on oath—
- (a) is satisfied that there is reasonable ground to believe that any such instrument, implement, goods or document as is mentioned in paragraph (1) or (2) above is on any premises, or that any offence under Part I or Part II has been, is being or is about to be committed on any premises; and
 - (b) is also satisfied either—
 - (i) that admission to the premises has been refused, or a refusal is apprehended, and that notice of intention to apply for a warrant has been given to the occupier, or
 - (ii) that an application for admission, or the giving of such a notice would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent,
 the justice may by warrant under his hand, which shall continue in force for the period of one month, authorise an authorised person to enter the premises, if need be by force.
- (4) In the application of paragraph (3) above to Scotland, “justice of the peace” includes a sheriff.
- (5) An authorised person entering any premises by virtue of this regulation may take with him such other persons and such equipment as may appear to him to be necessary; and on leaving any premises which he has entered by virtue of a warrant under paragraph (3) above, being premises which are unoccupied or the occupier of which is temporarily absent, he shall leave them as effectively secured against trespassers as he found them.
- (6) If any authorised person or other person who enters any work-place by virtue of this regulation discloses to any person any information obtained by him in the work-place with regard to any secret manufacturing process or trade secret, he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.
- (7) Nothing in this regulation shall authorise any person to stop any vehicle on a highway.
- (8) In this regulation, “credentials” means authority in writing from a local weights and measures authority for the exercise by an authorised person of the powers conferred on him by this regulation.

Obstruction of authorised person etc

39.—(1) Any person who—

- (a) wilfully obstructs an authorised person in the execution of any of his duties or functions under any provision of these Regulations; or
- (b) without reasonable cause fails to give an authorised person acting as aforesaid any assistance or information which the authorised person may reasonably require of him for

the purpose of the performance by the authorised person of his functions under these Regulations,

shall be guilty of an offence.

(2) If any person, in giving an authorised person any such information as is mentioned in paragraph (1)(b) above, gives any information which he knows to be false, he shall be guilty of an offence.

(3) Nothing in these Regulations shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

Offences and penalties

40.—(1) Any person guilty of an offence under regulation 4(4) or (6), 16(4)(a), 17(4), 18(8), 22(1) or (3), 38(6) or 39(1) or (2) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(2) Where the commission by any person of an offence under the provisions mentioned in paragraph (1) above is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

Offences by corporations

41.—(1) Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed guilty of the offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Prosecutions

42. Proceedings for any offence under these Regulations shall not, in England and Wales, be instituted save by or on behalf of a local weights and measures authority or the chief officer of police for a police area.

Adaptations for Northern Ireland

43. In their application to Northern Ireland, these Regulations shall have effect subject to Schedule 5.

Amendment

44.—(1) In Schedule 4 to the Weights and Measures (Packaged Goods) Regulations 1986~~(33)~~—

(a) for the definition of “the 1992 Regulations” in paragraph 1(1)(aa)~~(34)~~, there is substituted the following definition—

““the 2000 Regulations” means the Non-automatic Weighing Instruments Regulations 2000;” and

(33) S.I. 1986/2049; there are amendments which, save as mentioned in footnote (b) below, are not relevant to these Regulations.

(34) Sub-paragraph (aa) was inserted by regulation 2 of S.I. 1992/1580.

- (b) for a reference to “the 1992 Regulations”, on each occasion that it occurs, there is substituted a reference to “the 2000 Regulations”.
- (2) For the reference to the Non-automatic Weighing Instruments (EEC Requirements) Regulations 1992(35) in the proviso to article 2 (in each case) of—
- (a) the Weights and Measures (Isle of Man) Order 1992(36);
 - (b) the Weights and Measures (Jersey) Order 1992(37);
 - (c) the Weights and Measures (Northern Ireland) Order 1992(38); and
 - (d) the Weights and Measures (Guernsey and Alderney) Order 1995(39),
- there is substituted a reference to the Non-automatic Weighing Instruments Regulations 2000.
- (3) In the Measuring Instruments (EEC Requirements) (Fees) Regulations 1998(40)—
- (a) for the definition of “the 1995 principal Regulations” in regulation 2(1), there is substituted the following definition—

““the 2000 principal Regulations” means the Non-automatic Weighing Instruments Regulations 2000;” and
 - (b) for a reference to “the 1995 principal Regulations”, on each occasion that it occurs, there is substituted a reference to “the 2000 principal Regulations”.
- (4) In regulation 3(5) of the Weighing Equipment (Non-automatic Weighing Machines) Regulations 2000(41), for the reference to the Non-automatic Weighing Instruments (EEC Requirements) Regulations 1995(42), there is substituted a reference to the Non-automatic Weighing Instruments Regulations 2000.

Kim Howells,
Parliamentary Under-Secretary of State for
Consumers and Corporate Affairs,
Department of Trade and Industry

11th December 2000

(35) S.I. 1992/1579, as amended by S.I. 1995/428 and extended by section 2(1) of the European Economic Area Act 1993 (c. 51). S.I. 1995/1579 was revoked by regulation 1(2) of S.I. 1995/1907, and S.I. 1995/428 was revoked by regulation 1(2) of, and Schedule 4 to, S.I. 2000/932.

(36) S.I. 1992/1591.

(37) S.I. 1992/1592.

(38) S.I. 1992/1593.

(39) S.I. 1995/1011.

(40) S.I. 1998/1177, as amended by S.I. 1999/861 and 2000/689.

(41) S.I. 2000/932.

(42) S.I. 1995/1907.