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## STATUTORY INSTRUMENTS

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# 2006 No. 1259

## The Measuring Instruments (Beltweighers) Regulations 2006 (revoked)

### PART I

#### PRELIMINARY

##### Citation and commencement

1.—(1) These Regulations may be cited as the Measuring Instruments (Beltweighers) Regulations 2006.

(2) This regulation, regulations 2, 7, 9 and 10 and Part 1 of Schedule 2 shall come into force on 30th May 2006.

(3) The remaining regulations shall come into force on 30th October 2006.

##### Interpretation

2.—(1) In these Regulations—

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

“accuracy class” means the classification of a beltweigher as set out in paragraph 16 of Schedule 1;

“authorised representative” means a person who is established in a member State and is authorised by a manufacturer, in writing, to act on his behalf;

“automatic weighing instrument” means an instrument that determines the mass of a product without the intervention of an operator and follows a predetermined programme of automatic processes characteristic of the instrument intended to determine the mass of a body by using the action of gravity on that body;

“beltweigher” means an automatic weighing instrument that continuously determines the mass of a bulk product on a conveyor belt without systematic subdivision of the product and without interrupting the movement of the conveyor belt;

“CE marking” means the CE marking referred to in regulation 12;

“the Commission” means the European Commission;

“compliance notice” means a notice served in accordance with regulation 19(2);

“conformity assessment procedure” means any procedure referred to in regulation 6;

“the Directive” means Directive [2004/22/EC](#) of the European Parliament and of the Council of 31st March 2004 on measuring instruments <sup>MI</sup>;

“disqualification sticker” means a sticker the design of which is published by the Secretary of State and which is affixed to a beltweigher in accordance with regulation 22;

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“enforcement authority” means any person who is, pursuant to regulation 18, authorised to enforce these Regulations;

“enforcement notice” means a notice served in accordance with regulation 20(2);

“enforcement officer” means—

- (a) an inspector; or
- (b) a person appointed by the Secretary of State to act on his behalf to enforce Part II of these Regulations;

“essential requirements” means the requirements set out in Schedule 1;

“harmonised standard” means a technical specification adopted by the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) or the European Telecommunications Standards Institute (ETSI) or jointly by two or all of these organisations, at the request of the Commission pursuant to 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<sup>M2</sup>, as amended by Directive 98/48/EC<sup>M3</sup>, and prepared in accordance with the General Guidelines agreed between the Commission and one or more of CEN, CENELEC and ETSI;

“instrument” has the same meaning as beltweigher;

“in writing” includes text that is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference;

“M marking” means the M marking referred to in regulation 12;

“manufacturer” means a person responsible for the conformity of a beltweigher with these Regulations with a view to either placing it on the market under his own name or putting it into use for his own purposes, or both;

“maximum capacity” means the maximum instantaneous net load that the weighing unit is intended to weigh on the portion of the conveyor belt representing the weigh length;

“maximum permissible error” means, in the case of a beltweigher—

- (a) when it is placed on the market or put into use, the limit of error in accordance with paragraph 18 of Schedule 1; and
- (b) when it is in use for trade, the limit of error in accordance with Schedule 5;

“normative document” means a document containing technical specifications adopted by the Organisation Internationale de Métrologie Légale, subject to the procedure stipulated in Article 16.1, the reference of which is published by the Commission in the Official Journal of the European Union pursuant to Article 16.1(b);

“notified body” means—

- (a) the Secretary of State; or
- (b) a United Kingdom notified body; and
- (c) for the purposes of regulation 4(1)(c), 20(1)(b), 22(1)(c) and 25(6), a person designated by another member State,

who has been notified to the Commission and the other member States pursuant to Article 11.1;

“notified body criteria” means the criteria set out in Part 1 of Schedule 2;

“place on the market” means making available for the first time in a member State an instrument intended for an end user, whether for reward or free of charge;

“put into use” means the first use of an instrument intended for the end user for the purposes for which it was intended;

“relevant national standard” means a standard applicable to a beltweigher—

- (a) implementing a harmonised standard that has been published in the Official Journal of the European Union C series; and
- (b) the reference of which is published—
  - (i) in the United Kingdom by the Secretary of State; or
  - (ii) in another member State by the competent authority pursuant to the third sub-paragraph of Article 13.1;

“relevant normative document” means a normative document applicable to a beltweigher, the reference of which is published—

- (a) in the United Kingdom by the Secretary of State; or
- (b) in another member State by the competent authority pursuant to the third sub-paragraph of Article 13.2;

“re-qualification sticker” means a sticker the design of which is published by the Secretary of State and which is affixed to a beltweigher in accordance with regulation 23;

“United Kingdom notified body” means a person designated under regulation 7; and

“weighing unit” means the part of a beltweigher providing information on the mass of the load to be measured.

(2) Other expressions used in these Regulations have the same meanings as in the 1985 Act.

(3) In these Regulations, a reference to a member State includes Norway, Iceland and Liechtenstein<sup>M4</sup>.

(4) References in these Regulations to an Article, Annex or a part of an Annex are references to an Article, Annex, or a part of an Annex, to the Directive.

#### Marginal Citations

**M1** OJ No. L135, 30.4.04, p.1.

**M2** OJ No. L204, 21.7.98, p.37.

**M3** OJ No. L217, 5.8.98; p.18.

**M4** The application of the Directive was extended to the European Economic Area by Decision No. 31/2005 (OJ No. L198, 28.7.05, p.20).

#### Application

3.—(1) Subject to paragraphs (2), (3) and (4), these Regulations apply to a beltweigher which is—

- (a) for use for trade; and
- (b) first placed on the market or put into use on or after 30th October 2006.

(2) These Regulations do not apply to a beltweigher—

- (a) in respect of which a certificate of approval has been granted before 30th October 2006 and is in force; and

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- (b) which is first passed as fit for use for trade and stamped under the Weighing Equipment (Beltweighers) Regulations 1983 or the Weighing Equipment (Beltweighers) Regulations 2001 .
- (3) These Regulations do not apply to a beltweigher—
  - (a) in respect of a pattern of which EEC pattern approval was granted before 30th October 2006 and is in force; and
  - (b) which bears a mark of EEC initial verification or of EEC partial verification.
- (4) These Regulations do not apply to a beltweigher which is not compliant with the essential requirements and which is displayed or presented at a trade fair, exhibition or demonstration, if a sign displayed visibly on or near the instrument clearly indicates that the instrument—
  - (a) is not compliant with those requirements; and
  - (b) cannot be acquired or used until it is made compliant with those requirements by the manufacturer.
- (5) For the purposes of paragraph (3)—
  - (a) a grant of EEC pattern approval or the affixing of a mark of EEC initial verification shall be in accordance with the Measuring Instruments (EEC Requirements) Regulations 1988 (the “1988 Regulations”) or, in the case of any other member State, in accordance with the measures in force which implement Council Directive [75/410/EEC](#); and
  - (b) the affixing of a mark of EEC partial verification shall be in accordance with the 1988 Regulations or, in the case of any other member State, in accordance with the measures in force which implement Council Directive [71/316/EEC](#), as amended by Council Directives [72/427/EEC](#), [83/575/EEC](#), [87/354/EEC](#), [87/355/EEC](#) and [88/665/EEC](#).

## PART II

### PLACING ON THE MARKET AND PUTTING INTO USE OF BELTWEIGHERS

#### Requirements for placing on the market and putting into use

4.—(1) No person shall place on the market or put into use a beltweigher unless the following requirements, or the corresponding requirements of the Directive as implemented under the law of another member State, are met—

- (a) the instrument is compliant with the essential requirements;
- (b) the manufacturer has demonstrated its compliance with the essential requirements in accordance with regulation 5; and
- (c) the instrument has affixed to it the CE marking, the M marking and the identification number of the notified body which carried out the conformity assessment procedure in respect of the instrument.

(2) A person who fails to comply with the requirements of paragraph (1) shall be guilty of an offence and any beltweigher to which the offence relates shall be liable to be forfeited.

#### Compliance with the essential requirements

5.—(1) A manufacturer may demonstrate that a beltweigher is compliant with the essential requirements by—

- (a) using any technical solution that is compliant with the essential requirements;
- (b) correctly applying solutions set out in the relevant national standard; or

(c) correctly applying solutions set out in the relevant normative document, and selecting and following one of the conformity assessment procedures.

(2) A beltweigher which is compliant with the relevant national standard or relevant normative document shall be presumed to be compliant with the essential requirements.

(3) Where the instrument is compliant only in part with the relevant national standard or relevant normative document, it shall be presumed to be compliant only with that part of the essential requirements which corresponds to the element of the relevant national standard or relevant normative document with which the instrument is compliant.

(4) Where a beltweigher includes or is connected to a device which is not used for trade—

(a) that device shall not be subject to the essential requirements; and

(b) the instrument may be considered to be compliant with the essential requirements notwithstanding that the compliance of that device with the essential requirements has not been established.

### **Conformity assessment procedures**

6.—(1) The conformity assessment procedures are the procedures as follows—

(a) for mechanical systems—

(i) B and D;

(ii) B and E;

(iii) B and F;

(iv) D1;

(v) F1;

(vi) G; or

(vii) H1;

(b) for electromechanical instruments—

(i) B and D;

(ii) B and E;

(iii) B and F;

(iv) G; or

(v) H1; and

(c) for electronic systems or systems containing software—

(i) B and D;

(ii) B and F;

(iii) G; or

(iv) H1.

(2) The manufacturer or his authorised representative shall provide to the notified body carrying out the relevant conformity assessment procedure the technical documentation set out in Schedule 3.

(3) In this regulation—

(a) “B” means type examination, set out in Annex B;

(b) “D” means declaration of conformity to type based on quality assurance of the production process, set out in Annex D;

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- (c) “D1” means declaration of conformity based on quality assurance of the production process, set out in Annex D1;
- (d) “E” means declaration of conformity to type based on quality assurance of final product inspection and testing, set out in Annex E;
- (e) “F” means declaration of conformity to type based on product verification, set out in Annex F;
- (f) “F1” means declaration of conformity based on product verification, set out in Annex F1;
- (g) “G” means declaration of conformity based on unit verification, set out in Annex G; and
- (h) “H1” means declaration of conformity based on full quality assurance plus design examination, set out in Annex H1.

### **Designation of United Kingdom notified bodies**

7.—(1) The Secretary of State may, on the application of a person, designate that person to be a United Kingdom notified body.

(2) The Secretary of State shall not make a designation under paragraph (1) unless he is satisfied that the person meets the notified body criteria.

(3) A person who meets the criteria laid down in a national standard shall be presumed to meet that part of the notified body criteria which corresponds to the criteria in the national standard.

(4) A designation under paragraph (1)—

- (a) shall be in writing;
- (b) may be made subject to such conditions as may be specified in the designation, which may include conditions which—
  - (i) are to apply upon or following termination of the designation;
  - (ii) require the use of test equipment for the purpose of conformity assessment appropriate to the beltweigher being assessed; and
  - (iii) limit the description of any beltweigher for which the person is designated;
- (c) subject to regulation 10, may last for such period as may be specified in the designation;
- (d) shall specify the conformity assessment procedures and specific tasks (which may be framed by reference to any circumstances) which the person has been designated to carry out; and
- (e) may include a requirement to publish from time to time the scale of fees which the person charges pursuant to regulation 11 or such information about the basis of calculation of such fees as may be specified.

(5) In exercising the power conferred on him by paragraph (1), the Secretary of State may (in addition to the matters of which he is required to satisfy himself pursuant to paragraph (2)) have regard to any matter appearing to him to be relevant.

(6) For the purposes of paragraph (3), “national standard” means a standard applicable to the designation of notified bodies—

- (a) implementing a harmonised standard that has been published in the Official Journal of the European Union; and
- (b) the reference of which is published—
  - (i) in the United Kingdom by the Secretary of State; or
  - (ii) in another member State by the competent authority pursuant to Article 11.2.

## Functions of notified bodies

8. A notified body shall carry out the functions set out in Part 2 of Schedule 2.

## Provisions supplemental to regulation 7

9.—(1) The Secretary of State shall, from time to time, publish a list of notified bodies indicating, in the case of each United Kingdom notified body, the description of any beltweigher in respect of which that notified body is designated; and such a list may include information concerning any condition to which the designation of any United Kingdom notified body is subject.

(2) The Secretary of State shall, from time to time, carry out an inspection of each United Kingdom notified body with a view to verifying that it—

- (a) meets the notified body criteria;
- (b) complies with any condition to which its designation is subject; and
- (c) complies with these Regulations,

but, unless it appears to him that there are circumstances which make it necessary or expedient to do so, he shall not carry out an inspection within two years from the date of designation under regulation 7 or of any later inspection under this paragraph.

## Variation and termination of designations

10.—(1) The Secretary of State may vary a designation made under regulation 7 if—

- (a) the United Kingdom notified body so requests; or
- (b) it appears to him necessary or expedient to do so.

(2) The Secretary of State may terminate a designation made under regulation 7—

- (a) on the expiry of 90 days' notice in writing at the request of the United Kingdom notified body;
- (b) if it appears to him that any condition of the designation is not complied with; or
- (c) if in his opinion the United Kingdom notified body ceases to satisfy the notified body criteria.

(3) Where the Secretary of State is minded to—

- (a) vary a designation pursuant to paragraph (1)(b); or
- (b) terminate a designation pursuant to paragraph (2)(b) or (c),

he shall—

- (i) give notice in writing to the United Kingdom notified body of his reasons; and
- (ii) give that notified body the opportunity to make representations within a period of 21 days from the date of that notice and consider any representations made to him within that period.

(4) If a designation is terminated under paragraph (2), the Secretary of State may—

- (a) give such directions (either to the United Kingdom notified body the subject of the termination or to another United Kingdom notified body) for the purposes of making arrangements for the determination of outstanding applications as he considers appropriate; and
- (b) notwithstanding sub-paragraph (a), authorise another United Kingdom notified body to take over the functions of the United Kingdom notified body the subject of the termination in respect of such cases as he may specify.

## **Fees**

**11.**—(1) A United Kingdom notified body may charge such fees in connection with, or incidental to, the carrying out of conformity assessment procedures or specific tasks as it may determine.

(2) The fees referred to in paragraph (1) shall not exceed the following—

- (a) the costs incurred or to be incurred by the United Kingdom notified body in performing the relevant function; and
- (b) an amount on account of profit which is reasonable in the circumstances having regard to—
  - (i) the character and extent of the work done or to be done by that notified body on behalf of the applicant; and
  - (ii) the commercial rate normally charged on account of profit for that work or similar work.

(3) The power in paragraph (1) includes the power to require the payment of fees or a reasonable estimate of such fees in advance of carrying out the work requested by the applicant.

(4) Where any fees payable to a United Kingdom notified body pursuant to this regulation remain unpaid 28 days after either the work has been completed or payment of the fees has been requested in writing, whichever is the later, that notified body may by 14 days' notice in writing provide that, unless the fees are paid before the expiry of the notice, the certificate or notification appropriate to the relevant conformity assessment procedure may be suspended until payment of the fees has been received.

## **Marking and identification requirements**

**12.**—(1) Where a beltweigher is compliant with the essential requirements—

- (a) the manufacturer shall affix the CE marking and the M marking to the instrument; and
- (b) the notified body which carries out the conformity assessment procedure in respect of that instrument shall affix its identification number to the instrument, or may agree that the manufacturer shall do so on its behalf.

(2) Any other marking may be affixed to the instrument provided that the visibility and legibility of the CE marking, the M marking and the identification number of the notified body are not reduced.

(3) For the purposes of paragraph (1)—

- (a) the CE marking means the symbol “CE” which shall be compliant with the requirements of paragraphs 1, 4 and 5 of Schedule 4;
- (b) the M marking means the capital letter “M” which shall be compliant with the requirements of paragraphs 2, 4 and 5 of Schedule 4; and
- (c) the identification number of the notified body shall be compliant with the requirements of paragraphs 3, 4 and 5 of Schedule 4.

## **Conformity with other directives**

**13.**—(1) Where a beltweigher falls within the scope of other directives which provide for the affixing of the CE marking, the affixing of the CE marking under these Regulations shall indicate that the instrument is also presumed to be compliant with the requirements of those other directives.

(2) Where paragraph (1) applies, the publication reference of such other directives in the Official Journal of the European Union must be given in the documents, notices or instructions required to accompany the instrument.



## PART III

### USE FOR TRADE OF BELTWEIGHERS

#### Requirements for use for trade

14. No person shall use for trade a beltweigher unless—
- (a) it is compliant with the essential requirements, other than the provisions relating to maximum permissible errors referred to in paragraph 18 of Schedule 1;
  - (b) the requirements of regulations 15 and 16 are complied with;
  - (c) it has been erected and installed in accordance with the requirements of regulation 17; and
  - (d) in the case of a beltweigher of an accuracy class set out in column 1 of the Table in Schedule 5, it is within the maximum permissible error for that accuracy class as set out in column 2 of that Table.

#### Manner of use

15.—(1) Where a beltweigher is marked with a temperature range, it shall not be used for trade in temperatures outside that range.

(2) Where a beltweigher bears a mark which signifies the manner and purpose of use, it shall not be used for trade in a manner or for a purpose which does not accord with that marking.

(3) A beltweigher of accuracy class 2 shall only be used for trade for weighing any of the materials to which the expression “ballast” applies in Schedule 4 to the 1985 Act.

(4) A beltweigher shall not be used for trade in such a manner as to cause—

- (a) spillage of material from the belt; or
- (b) loading of the weighing unit above its maximum capacity.

(5) A beltweigher shall not be used for trade in circumstances—

- (a) in which it may be prevented from operating consistently or accurately; or
- (b) which are likely prematurely to degrade its metrological characteristics.

#### Position of the operator

16. Every beltweigher shall be erected in such a manner that the operator can readily take up a position from which he can—

- (a) read any indication of zero totalisation;
- (b) operate any zero-setting control; and
- (c) see whether the belt passing over the weighing unit is empty.

#### Manner of erection and installation

17.—(1) Every beltweigher shall be so positioned as to facilitate cleaning and testing.

(2) The installation of a beltweigher shall be so designed that an automatic weighing operation will be the same for testing as for a transaction.

(3) Every beltweigher shall be erected in such a way that it is possible to carry out a material test in the place where it is to be used, including in particular the depositing on or removal from the belt of material test loads in a reliable and easy manner, without disrupting the normal operation of the beltweigher.

(4) If any special equipment for a beltweigher, as referred to in paragraph 9(5) of Schedule 1, is not a permanent fixture of the instrument it shall be kept in the vicinity of the instrument.

## PART IV

### ENFORCEMENT

#### **Enforcement authority**

**18.**—(1) It shall be the duty of every local weights and measures authority to enforce these Regulations within its area.

(2) The Secretary of State may enforce Part II of these Regulations and for that purpose may appoint any person to act on his behalf.

(3) No proceedings for an offence under these Regulations may be instituted in England and Wales except by or on behalf of an enforcement authority.

(4) Nothing in these Regulations shall authorise an enforcement authority to bring proceedings in Scotland for an offence.

#### **Compliance notice procedure**

**19.**—(1) Where an enforcement authority establishes that, in the case of a beltweigher that has been placed on the market or put into use, the CE marking or the M marking has, or both have, been affixed unduly, the following provisions of this regulation shall have effect.

(2) The enforcement authority shall serve a compliance notice on the manufacturer or his authorised representative which shall—

- (a) be in writing;
- (b) describe the beltweigher to which it relates in a manner sufficient to identify that instrument;
- (c) state that the enforcement authority is of the opinion that the CE marking or the M marking has, or both have, been affixed unduly to the instrument and give reasons for its opinion;
- (d) require the person on whom the notice is served to end the infringement under conditions specified in the notice;
- (e) specify the date, being not less than 21 days from the date of the notice, by which the infringement must be ended; and
- (f) warn that person that, where the non-conformity continues beyond the date specified in sub-paragraph (e), the enforcement authority may take further action under regulation 20 in respect of that instrument.

(3) For the purposes of paragraph (1)—

- (a) the CE marking shall be considered to have been affixed unduly if it is not compliant with the requirements of regulation 12(3)(a); and
- (b) the M marking shall be considered to have been affixed unduly if it is not compliant with the requirements of regulation 12(3)(b).

(4) Where a compliance notice is served by an enforcement authority other than the Secretary of State, it shall, at the same time as it serves that notice, send a copy to the Secretary of State.

#### **Immediate enforcement action**

**20.**—(1) Where an enforcement authority has reasonable grounds for considering that—

- (a) the manufacturer or his authorised representative has failed to comply with a compliance notice;
- (b) a beltweigher, which is placed on the market or put into use, does not bear one or more of the CE marking, the M marking and the identification number of the notified body which carried out the conformity assessment procedure in respect of that instrument; or
- (c) a beltweigher which bears the marking and identification requirements referred to in subparagraph (b) does not meet the essential requirements when placed on the market, or properly installed and put into use in accordance with the manufacturer's instructions,

the following provisions of this regulation shall have effect.

(2) The enforcement authority shall serve an enforcement notice on the manufacturer or his authorised representative which shall—

- (a) be in writing;
- (b) describe the beltweigher to which it relates in a manner sufficient to identify that instrument;
- (c) specify, with reasons, the respects in which, in the opinion of the enforcement authority, the requirements of these Regulations have not been complied with;
- (d) specify the date, being not less than 21 days from the date of the notice, by which the person to whom the notice is given is required to comply with it; and
- (e) inform that person of the judicial remedies available to him and of the time limits to which those remedies are subject.

(3) A notice under paragraph (2) may—

- (a) require the instrument to be withdrawn from the market; or
- (b) prohibit or restrict the placing on the market or putting into use of the instrument; and
- (c) specify that unless steps are taken which ensure—
  - (i) that the instrument is compliant with the requirements of these Regulations; or
  - (ii) that the manufacturer or his authorised representative acts as required under subparagraph (a) or (b),

any certificate or notification, issued by a notified body in accordance with the relevant conformity assessment procedure applicable to the instrument that the instrument satisfies the essential requirements, may be withdrawn by that notified body.

(4) Where an enforcement notice is served by an enforcement authority other than the Secretary of State, it shall, at the same time as it serves that notice, send a copy to the Secretary of State.

(5) In the case of a certificate or notification referred to in paragraph (3)—

- (a) which is granted by a United Kingdom notified body, if the Secretary of State is of the opinion that consideration ought to be given to whether the certificate or notification should be withdrawn, he shall inform that notified body of that fact; and
- (b) which is granted under the law of another member State, if the Secretary of State is of the opinion that consideration ought to be given to whether the certificate or notification should be withdrawn, he shall inform the relevant competent authority of that fact.

### **Review by the Secretary of State**

**21.**—(1) Where a person is aggrieved by a compliance notice or an enforcement notice served by an enforcement authority other than the Secretary of State, that person may apply to the Secretary of State to review such notice.

(2) An application under paragraph (1) shall—

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- (a) be in writing;
  - (b) state the grounds on which the application is made; and
  - (c) be sent to the Secretary of State within 21 days from the date of the notice referred to in paragraph (1).
- (3) The Secretary of State may—
- (a) hold an inquiry in connection with the notice which is the subject of his review; and
  - (b) appoint an assessor for the purposes of assisting him with his review.
- (4) The Secretary of State shall, within a reasonable time, inform the aggrieved person and the enforcement authority referred to in paragraph (1) in writing of his decision whether to uphold the notice served by that authority, together with reasons for his decision.
- (5) Where the Secretary of State does not uphold any notice referred to in paragraph (1) he shall give instructions for the withdrawal of that notice.

### **Disqualification**

- 22.**—(1) If it appears to an inspector that a beltweigher which bears—
- (a) the CE marking;
  - (b) the M marking; and
  - (c) the identification number of the notified body which carried out the conformity assessment procedure in respect of the instrument,
- is used for trade in circumstances where—
- (i) the instrument is no longer compliant with one or more of the requirements of regulation 14; or
  - (ii) by reason of any adjustment, alteration, addition, repair or replacement it is likely that the instrument has ceased to be compliant with one or more of the requirements of regulation 14,
- the inspector may affix a disqualification sticker to the instrument.
- (2) Where one or more of the markings and identification requirements referred to in paragraph (1) is not affixed to a beltweigher, the inspector may affix a disqualification sticker to the instrument.
- (3) Where it appears to the inspector that the nature or degree of non-compliance of the beltweigher under paragraph (1) 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 that person to rectify the non-compliance before the expiry of a stated period not less than 14 days and not exceeding 28 days from the date of the notice.
- (4) If a notice given under paragraph (3) is not complied with, the inspector shall affix a disqualification sticker to the beltweigher.
- (5) A disqualification sticker which is affixed to a beltweigher shall be affixed in such a position that it is clearly visible when the instrument is in its regular operating position.
- (6) A person shall be guilty of an offence if he uses for trade a beltweigher to which there is affixed a disqualification sticker, unless a re-qualification sticker has been affixed to the instrument in accordance with regulation 23.

### **Re-qualification**

- 23.**—(1) Where—
- (a) a disqualification sticker has been affixed to a beltweigher in accordance with regulation 22(1), 22(2) or 22(4);

- (b) a notice has been served under regulation 22(3); or
- (c) a beltweigher is intended to be used for trade in the circumstances referred to in regulation 22(1)(i) or (ii), or 22(2), but a disqualification sticker has not been affixed to the instrument,

a person requiring a re-qualification sticker to be affixed to the instrument shall submit it, in such manner as may be directed, to an inspector or approved verifier and provide such assistance as the inspector or approved verifier may reasonably require.

(2) An inspector or approved verifier may affix a re-qualification sticker to that beltweigher if satisfied that the instrument is compliant with—

- (a) the essential requirements; and
- (b) the requirements of regulation 14(b) and (c)

(3) For the purposes of being satisfied that a re-qualification sticker may be affixed to a beltweigher, an inspector or approved verifier may take such steps as he considers appropriate, including testing the instrument by means of such test equipment as he considers appropriate and suitable for the purpose.

(4) There may be charged in respect of any steps taken under paragraph (3)—

- (a) by an inspector, such reasonable fees as the local weights and measures authority may determine; and
- (b) by an approved verifier, such reasonable fees as he may determine,

having regard to the character and extent of the work done or to be done.

(5) The inspector or approved verifier shall keep a record of any test carried out under paragraph (3).

(6) Where a re-qualification sticker is affixed to a beltweigher pursuant to paragraph (2) it shall be affixed in such a position that it obliterates as far as possible any disqualification sticker.

### Testing of beltweighers

24.—(1) Where an inspector considers that a test of a beltweigher is necessary, otherwise than for the purposes of regulation 23(3), he may require the person who has control of the instrument, or whom he has reasonable cause to believe has control of it, to provide to him such equipment, materials, qualified personnel or other assistance as the inspector may reasonably require.

(2) Every beltweigher submitted for testing shall be in a clean condition.

### Unauthorised application of authorised marks

25.—(1) Subject to paragraph (2), a person shall be guilty of an offence if, in the case of a beltweigher, he—

- (a) affixes an authorised mark to the instrument otherwise than in accordance with these Regulations;
- (b) alters or defaces an authorised mark affixed to the instrument;
- (c) removes an authorised mark affixed to the instrument; or
- (d) affixes any other marking to the instrument which is likely to deceive any person as to the meaning or form, or both, of an authorised mark.

(2) Where the alteration or defacement of an authorised mark is occasioned solely—

- (a) in the course of the adjustment or repair of a beltweigher by a person regularly engaged in the business of repair of such instruments, or by his authorised agent; or

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- (b) by an enforcement officer or approved verifier in the carrying out of any of his functions under these Regulations,

that person or his authorised agent, enforcement officer or approved verifier shall not be guilty of an offence under paragraph (1)(b).

(3) A person shall be guilty of an offence if he places on the market, puts into use or uses for trade a beltweigher—

- (a) which, to his knowledge, bears—
- (i) an authorised mark affixed otherwise than in accordance with these Regulations;
  - (ii) an authorised mark that has been altered or defaced otherwise than in the circumstances referred to in paragraph (2); or
  - (iii) any marking which is likely to deceive any person as to the meaning or form, or both, of an authorised mark; or
- (b) from which, to his knowledge, an authorised mark has been removed.

(4) A beltweigher in respect of which an offence under this regulation has been committed and any implement used in the commissioning of the offence shall be liable to be forfeited.

(5) A reference in this regulation to other provisions of these Regulations includes a reference to corresponding provisions under the laws of other member States.

(6) In this regulation, “authorised mark” means the CE marking, the M marking, the identification number of the notified body which carried out the conformity assessment procedure in respect of the instrument, disqualification sticker or re-qualification sticker.

### **Powers of entry and inspection**

**26.**—(1) Subject to the production if so requested of his credentials, an enforcement officer may for the purposes of these Regulations, at all reasonable times—

- (a) inspect and test any beltweigher in such manner as he considers appropriate;
- (b) inspect and take copies of any document relating to a beltweigher; and
- (c) enter any premises at which he has reasonable cause to believe there to be a beltweigher, not being premises used only as a private dwelling house.

(2) Subject to the production if so requested of his credentials, an enforcement officer may, at any time, seize and detain—

- (a) a beltweigher which he has reasonable cause to believe is liable to be forfeited under these Regulations; and
- (b) any document or goods which he has reason to believe may be required as evidence in proceedings for an offence under these Regulations.

(3) If a justice of the peace, on written information on oath—

- (a) is satisfied that there are reasonable grounds to believe that any beltweigher or document as is mentioned in paragraph (1) or (2) is on any premises, or that an offence under these Regulations has been, is being or is about to be committed on any premises; and
- (b) is also satisfied either that—
  - (i) admission to the premises has been or is likely to be refused, and that notice of intention to apply for a warrant has been given to the occupier; or
  - (ii) 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 is temporarily absent,

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise the enforcement officer to enter the premises, if need be by force.

(4) In the application of paragraph (3) to Scotland, “justice of the peace” includes a sheriff and references to written information on oath shall be construed as references to evidence on oath.

(5) An enforcement officer entering any premises by virtue of this regulation may take such other persons and such equipment as may appear to him necessary, and on leaving such premises which he has entered by virtue of a warrant under paragraph (3), being premises which are unoccupied or the occupier of which is temporarily absent, he shall leave them as effectively secured against a trespasser as he found them.

(6) If an enforcement officer 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) It shall not be an offence under paragraph (6) for a person to disclose information in circumstances where—

- (a) the person from whom the information was received has consented to its disclosure; or
- (b) the information is disclosed more than 50 years after it was received.

(8) Nothing in this regulation shall authorise any person to stop any vehicle on a highway.

(9) In this regulation, “credentials” means evidence of appointment or designation as an enforcement officer.

### **Obstruction of enforcement officer**

27.—(1) A person shall be guilty of an offence if he—

- (a) wilfully obstructs an enforcement officer in the execution of any of his functions under these Regulations; or
- (b) without reasonable cause fails to give that officer any assistance or information which the officer has reasonably required of him for the purpose of the performance by the enforcement authority of its functions under these Regulations.

(2) A person shall be guilty of an offence if, in giving an enforcement officer such information as is mentioned in paragraph (1)(b), that person gives any information which he knows to be false.

### **Penalties for offences**

28. A person guilty of an offence under Part II or Part IV shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

### **Defence of due diligence**

29.—(1) Subject to the following provisions of this regulation, in proceedings against a person for an offence under these Regulations, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where, in proceedings against a person for such an offence, the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) reliance on information given by another,

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that person shall not, without the leave of the court, be entitled to rely on the defence, unless, not less than seven clear days before the hearing of the proceedings (or, in Scotland, the trial diet), he has served a notice in accordance with paragraph (3) on the person bringing the proceedings.

(3) A notice under this regulation shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows it was reasonable in all the circumstances for him to have relied on the information, having regard in particular to—

- (a) the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) whether he had any reason to disbelieve the information.

### **Liability of persons other than the principal offender**

**30.**—(1) Where the commission by a person of an offence under these Regulations is due to the act or default of another person in the course of any business of his, that other person shall be guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person.

(2) Where a body corporate commits an offence and it is proved that the offence was committed—

- (a) with the consent or connivance of an officer of the body corporate; or
- (b) as a result of the negligence of an officer of the body corporate,

the officer, as well as the body corporate, shall be guilty of the offence.

(3) In paragraph (2), a reference to an officer of a body corporate includes a reference to—

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b) a person purporting to act as a director, manager, secretary or other similar officer; and
- (c) if the affairs of the body corporate are managed by its members, a member.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland, and in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

## **PART V**

### **MISCELLANEOUS AND SUPPLEMENTAL**

#### **Service of documents**

**31.**—(1) Any document required or authorised by these Regulations to be served on a person may be so served—

- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address;
- (b) if the person is a body corporate, by serving it in accordance with sub-paragraph (a) on the secretary or clerk of that body corporate; or
- (c) if the person is a partnership, by serving it in accordance with sub-paragraph (a) on a partner or on a person having control or management of the partnership business.



(2) For the purposes of paragraph (1), and for the purposes of section 7 of the Interpretation Act 1978 (which relates to the service of documents by post) in its application to that paragraph, the proper address of any person on whom a document is to be served in accordance with these Regulations shall be his last known address except that—

(a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate; and

(b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership,

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

### **Savings for certain privileges**

**32.**—(1) Nothing in these Regulations shall be taken as requiring a person to produce any documents or records if he would be entitled to refuse to produce those documents or records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, that they contain a confidential communication made by or to an advocate or solicitor in that capacity, or as authorising a person to take possession of any documents or records which are in the possession of a person who would be so entitled.

(2) Nothing in these Regulations shall be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person's spouse or civil partner.

(3) Sub-section (1) of section 14 of the Civil Evidence Act 1968 (which relates to the privilege against self-incrimination) shall apply to the right conferred by paragraph (2) as it applies to the right described in sub-section (1) of that section: but this paragraph does not extend to Scotland.

### **Adaptation for Northern Ireland**

**33.** In their application to Northern Ireland, these Regulations shall have effect subject to Schedule 6.

Department of Trade and Industry  
28th April 2006

*Barry Gardiner*  
Parliamentary Under Secretary of State for  
Competitiveness

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