

**EXPLANATORY MEMORANDUM TO
THE MEASURING INSTRUMENTS (NON-PRESCRIBED INSTRUMENTS)
REGULATIONS**

2006 No. 1270

1. This explanatory memorandum has been prepared by the National Weights and Measures Laboratory, an Executive Agency of the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations implement Directive 2004/22/EC (the Measuring Instruments Directive) (“MID”) and apply to the following measuring instruments:

- a) automatic weighing instruments other than those to which the Measuring Instruments (Automatic Gravimetric Weighing Instruments) Regulations 2006, the Measuring Instruments (Automatic Catchweighers) Regulations 2006, the Measuring Instruments (Automatic Rail-weighbridges) Regulations 2006, the Measuring Instruments (Beltweighers) Regulations 2006 or the Measuring Instruments (Discontinuous Totalisers) Regulations 2006 apply;
- b) dimensional measuring instruments including length measuring instruments, area measuring instruments and multi-dimensional measuring instruments;
- c) heat meters for residential, commercial and light industrial use;
- d) material measures, other than those to which the Measuring Instruments (Material Measures of Length) Regulations 2006 or the Measuring Instruments (Capacity Serving Measures) Regulations 2006 apply;
- e) measuring systems for the continuous and dynamic measurement of quantities of liquids other than water, other than those to which the Measuring Instruments (Liquid Fuel from Road Tankers) Regulations 2006 or the Measuring Instruments (Liquid Fuel and Lubricants) Regulations 2006 apply;
- f) volume conversion devices intended for residential, commercial and light industrial use; and
- g) water meters intended for residential, commercial and light industrial use, other than those to which the Measuring Instruments (Cold Water Meter) Regulations 2006 apply,

where such measuring instruments must satisfy the essential requirements in order to be placed on the market or put into use in another member State.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The Regulations are being made to implement the MID insofar as it relates to the instruments listed in Para 2, which are not prescribed for use for trade in the UK. They are made under section 2(2) of the European Communities Act.

The MID was adopted in March 2004 and covers a number of different devices and systems, including gas and electricity meters; petrol pumps and automatic weighing instruments. The optionality of the Directive enables member States to choose whether to regulate instruments and to prescribe specific measurement tasks for which they must be used. This means that different member States may regulate different instruments and for different purposes than is the case in the UK. A manufacturer wishing to export an instrument not prescribed in the UK to a member State where such instruments are prescribed would need to have the instrument assessed for conformity. These Regulations allow for the setting up of UK notified bodies to carry out the necessary conformity assessment tasks for these non-UK prescribed instruments.

No specific undertakings have been given to Parliament that relate to this instrument, in the course of debate, Parliamentary Question or Committee appearance.

The following is a list of the Regulations, including the one mentioned in this Memorandum, that to date have been prepared to implement the MID:

SI 2006/1270 The Measuring Instruments (Non-Prescribed Instruments) Regulations 2006

SI 2006/1258 The Measuring Instruments (Automatic Gravimetric Filling Instruments) Regulations 2006

SI 2006/1259 The Measuring Instruments (Beltweighers) Regulations 2006

SI 2006/1264 The Measuring Instruments (Capacity Serving Measures) Regulations 2006

SI 2006/1257 The Measuring Instruments (Automatic Catchweighers) Regulations 2006

SI 2006/1268 The Measuring Instruments (Cold Water Meters) Regulations 2006

SI 2006/1255 The Measuring Instruments (Automatic Discontinuous Totalisers) Regulations 2006

SI 2006/1266 The Measuring Instruments (Liquid Fuel and Lubricants) Regulations 2006

SI 2006/1269 The Measuring Instruments (Liquid Fuel delivered from Road Tankers) Regulations 2006

SI 2006/1267 The Measuring Instruments (Measures of Length) Regulations 2006; and

SI 2006/1256 The Measuring Instruments (Automatic Rail-weighbridges) Regulations 2006

Transposition

The SIs implement Directive 2004/22/EC on measuring instruments. The transposition note is attached at Annex A.

Scrutiny Committee History:

An explanatory memorandum (to Parliament) covering the opinion of the Commission on the European Parliament's amendments at second Reading (5788/04) to the common position of the Council regarding the proposal for a Directive of the European Parliament and Council Directive on Measuring Instruments was submitted by DTI on 17 February 2004. The Commons European Scrutiny Committee did not consider the text to be legally or politically important and cleared it from scrutiny on

25 February 2004 (Report 11 Session 03/04). The Lords Select Committee on the EU in its Progress of Scrutiny sift of 24 February 2004 did not report on the content.

The amendments proposed by the European Parliament at second Reading did not change any of the provisions of the Directive in respect of matters which were of earlier concern to the Commons Scrutiny Committee and did not introduce any new technical provisions. The main focus of the amendments was to provide for greater transparency in relation to those areas in which the Member State may choose not to regulate, greater clarity in the presentation and drafting of the text, and an invitation to the Commission to more widely review the arrangements of the Directive particularly in relation to conformity assessment.

The previous explanatory memorandum covering the amended proposal following the Commission's response to amendments of the European Parliament at first Reading (6121/02) was submitted by DTI on 12 March 2003. This was considered by the Commons European Scrutiny Committee to be legally or politically important was not therefore, cleared from scrutiny, and a request was made for further information (Report 32, Session 01/02). The Lords Select Committee on the EU in its Progress of Scrutiny sift of 01 April 2002 did not report on the content. Following this the key issues were resolved and a supplementary explanatory memorandum was presented for consideration. This again was regarded by the Commons European Scrutiny Committee to be legally or politically important and cleared (Report 4, Session 02/03). The Lords Select Committee on the EU in its Progress of Scrutiny sift of 09 December 2002 again did not report on the content.

5. Extent

5.1 This SI applies to all of the United Kingdom.

6. European Convention on Human Rights

As the SI is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1

Policy Objective of Directive

The primary aim of the MID is to create a single market in measuring instruments for the benefit of manufacturers and consumers across Europe. The MID specifies the essential requirements that a product covered by the Directive must meet before it can be placed on the market and put into use. These requirements are both general (the essential requirements that apply to all measuring instruments) and instrument specific. The MID requires manufacturers to follow a conformity assessment procedure to ensure that the product satisfies the requirements of the MID, but gives them a wide choice of assessment procedures from which to choose. These procedures may be specific to instrument types.

Under the optionality provisions of the MID, Member States can choose which measuring instruments to regulate and can also choose the measurement tasks to be regulated.

The MID has been implemented in the UK on the basis of 'status quo' i.e. maintaining the current scope of regulatory control, by only regulating those measuring instruments that are currently regulated and regulating the purpose of use i.e. use for

trade. By doing so we aim to maintain the current levels of consumer protection, bring the benefits of the single market to business and avoid any further regulatory burdens on business. This means that, as is currently the case, different member States may regulate different measuring instruments and for different purposes than is the case in the UK.

All instruments intended for use for a prescribed purpose, whether in the UK or another member State, must be assessed for conformity. For instruments which are prescribed for use for trade in the UK the provisions to allow an organisation to become a notified body in order to be able to provide a conformity assessment service are included within the instrument-specific regulations.

We are therefore making these Regulations in order to allow a notified body in the UK to provide the same conformity assessment service for those instruments that are not prescribed in the UK. This will enable manufacturers wishing to export an instrument that is not prescribed in the UK, to a member state where it is regulated to apply to a UK notified body for conformity assessment of such instruments.

The size and nature of the problem it is addressing

The MID will create a single market providing opportunities for UK manufacturers to innovate and to export their new products much more easily to the other Member States, Norway, Iceland and Liechtenstein. The costs and time needed to get a product to market will reduce significantly. The single market will result in greater competition and improved choice for customers which, in turn, will help promote innovation. At the same time, barriers to trade will be removed and the market will become freer and fairer.

The MID is a 'New Approach' Directive, which means only the essential requirements are specified. Therefore, businesses have greater scope and choice about how to comply.

The optionality provisions of the MID will provide an opportunity for the UK to deregulate or regulate other measuring instruments if this is considered appropriate in the course of time. Deregulation would provide manufacturers with an even greater scope for innovation and would enable products to get to market more quickly and cheaply. However, measuring instruments are generally controlled in order to protect the customer from fraud or short measure – these measurements are important because they provide the basis for about £2bn of legal transactions on goods in the UK every week. The decision to maintain the status quo was supported in consultation.

There is generally no media attention and a low public interest in the policy.

The change is neither politically nor legally important.

Who has been consulted?

We have held two consultations: A Consultation on the approach to implementation in November 2004, followed by a Consultation on the draft Regulations implementing the Directive in August 2005. In addition, various stakeholder meetings were held during both consultation periods, along with visits and meetings with individual and regional groupings of Local Authorities, manufacturers and trade associations. The consultees were NWML Stakeholders including manufacturers, consumers, enforcement officers, trade associations, government organisations, consumer

organisations and individual businesses. For a full list of organisations consulted please see Annex B.

What was the outcome?

Outcome from 1st consultation:

Responses were very positive overall with a substantial majority of respondents supporting the proposed approach to implementation. Therefore it was decided that the Government would:

- Implement on the basis of status quo i.e. maintaining the current scope of regulatory control;
- Produce a self-contained Statutory Instrument for each type of instrument to be regulated;
- Issue a further consultation document to include the draft regulations themselves.

Outcome from 2nd consultation:

Varied comments were made in response to the list of instrument specific questions. In addition, stakeholders raised a significant number of other issues and their own questions, provoked by the original consultation questions and the discussions at the stakeholder meetings. All comments have been considered, and changes made to the legislation where necessary to accommodate concerns raised. Comprehensive notes for guidance on all of the Regulations will be produced by NWML, and there will be a consultation on these in the summer of 2006.

Detailed analysis of the 2nd consultation responses (entitled 'Government response to consultation on the draft regulations implementing the MID November 2005') can be found on the NWML website, using the link below: -

<http://www.nwml.gov.uk/Docs/MID/MID%202nd%20Consultation%20Government%20Response.pdf>

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum at Annex C.

8.2 The impact on the public sector is detailed in the Regulatory Impact Assessment attached to this memorandum.

9. Contact

Peter Edwards at the National Weights and Measures Laboratory, Tel: 020 8943 7298 or e-mail: peter.edwards@nwml.gov.uk can answer any queries regarding the instrument.

Final Regulatory Impact Assessment (RIA) on the Regulations implementing the Measuring Instruments Directive (MID)

This RIA is one of ten¹ relating to the implementation of the MID, is relevant to notified bodies for measuring instruments that are either (i) not prescribed for any purpose or (ii) not prescribed for any purpose other than for use for trade, in the UK, and pertains to the following Statutory Instrument:

- **The Measuring Instruments (Non-Prescribed Instruments) Regulations 2006**

The Issue and Objective:

1. Issue: The impact of the transposition of the Measuring Instruments Directive (MID) into UK legislation, on the basis of maintaining status quo for regulatory control.

2. Objective: To implement the MID, which aims to harmonise essential requirements on measuring instruments across the member States². The objective of the implementation is to open markets to competition; provide opportunities to innovate and export; improve choice for consumers; remove barriers to trade and reduce the regulatory burden for those instruments, through this deregulatory measure.

Risk Assessment

3. The regulations for non-UK prescribed instruments are permissive – they simply permit an organisation to apply to become a notified body for any instruments which are covered by the MID but not prescribed within the UK, for example checkweighers, hot water meters, length measures for a non ‘use for trade’ purpose. In doing this we are taking advantage of the optionality of the Directive, which enables member States to choose whether to regulate instruments and to prescribe specific measurement tasks for which they must be used. This means that, as is currently the case, different member States may regulate different instruments and for different purposes than is the case in the UK. If these regulations are not made then UK manufacturers of these instruments could be at a disadvantage by virtue of being unable to demonstrate compliance with the essential requirements for instruments to be supplied elsewhere.

4. A manufacturer wishing to export an instrument not prescribed in the UK to a member State where such instruments are prescribed would need to have the instrument assessed for conformity, and there could, therefore, be a market opportunity for an organisation wishing to provide this service in the UK. For instruments which are prescribed within the UK the provisions to allow an organisation to become a notified body are included within the appropriate instrument-specific regulations. A separate provision is included in these regulations for those instruments for which there is otherwise no national prescription to enable this to be done in the UK.

5. There is nothing within the regulations to force an organisation to become a notified body, nor is there a requirement for there to be a notified body somewhere in the UK for every instrument covered by the MID. These regulations, therefore, simply provide an opportunity for an organisation to provide a service should they wish to do so.

¹ For a full list of all RIAs relating to the implementation of the MID see Annex 1

² A reference to a member State includes Norway, Iceland and Liechtenstein.

Identify Options

6. There are two options – to legislate to permit a UK organisation to apply to become a notified body for non-UK prescribed instruments, or not to legislate to permit this.

Option 1

7. Do nothing.

8. Deprive those UK organisations wishing to be designated as notified bodies for non-UK prescribed instruments of the opportunity of doing so.

9. Deprive UK manufacturers of the potential benefit of being able to apply to a UK notified body for conformity assessment of those instruments not prescribed in the UK thereby obliging them to seek approval for their instruments in another member State.

Option 2

10. Provide the opportunity for UK organisations wishing to be designated as notified bodies for non-UK prescribed instruments with the opportunity of doing so.

11. Provide UK manufacturers with the potential benefit of being able to apply to a UK notified body for conformity assessment of those instruments not prescribed in the UK.

Results of Consultation

12. An initial consultation document was issued in November 2004. Forty one responses were received, but no specific comments were received in relation to these regulations.

13. A second consultation document, on the draft Regulations themselves, was issued in August 2005. Twenty nine responses were received, again, none of these made any comment on these regulations.

Issue of Equity and Fairness

14. There are no problems with issues of equity and fairness.

Identify the Benefits

Option 1

15. There are no benefits associated with option 1.

Option 2

16. The benefit of option 2 is that it provides a business opportunity to become a notified body in relation to those instruments not prescribed in the UK.

Quantifying and Valuing the Benefits

Option 1

17. There are no benefits associated with option 1.

Option 2

18. There is a potential income of up to £10k per instrument type dependant on the complexity of the instrument. The amount of income per year will depend, amongst other things, on the costs and service provided as well as the competition in the market place. If UK notified bodies are designated for non UK-prescribed instruments there may be potential savings for UK manufacturers who will not be required to go outside the UK to obtain the relevant conformity assessment for their instruments.

Costs

Option 1

19. There are no costs associated with option 1.

Option 2

20. In relation to option 2, if an organisation decided to become a notified body in respect of a specific instrument, then that would be a business decision for them. The cost of setting up to become a notified body, from scratch, for any instrument is estimated to be up to approximately £70,000. The cost to a notified body of extending the scope of its existing designation to cover other instruments would be considerably less.

Opportunities and Threats

21. Option 2 provides an opportunity for any UK business or any other person, who meets the requirements, to become a notified body. There are no threats associated with this proposal.

Conclusion on Costs and Benefits

22. As the proposal is permissive and there are no costs imposed, the benefits outweigh the costs.

Business Sectors Affected

23. Business sectors affected are those manufacturing the types of weighing and measuring equipment not regulated in the UK, but regulated in other member States.

Small Firms Impact Test

24. There is no disproportionate impact on small firms, as this proposal provides a business opportunity that is equally available to small firms.

Identify Any Other Costs

Options 1 and 2

25. None

Competition Assessment

26. In the light of the above comments, it is not anticipated that implementation of the proposed Directive will have significant impact on competition within any affected markets.

Rural Proofing

27. Please see Annex 2.

Summary and Recommendation

28. This proposal provides an opportunity and does not impose any costs. We therefore recommend that the Regulations are implemented.

Enforcement, Sanctions, Monitoring and Review

29. These activities will be carried out as part of the monitoring conditions of designation as a notified body by the appropriate regulatory authorities within the UK. There will be no effect on the compliance regime, following the Hampton Review.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by the responsible Minister

Barry Gardiner

Parliamentary Under Secretary of State for Competitiveness
Department of Trade and Industry

Date ***28th April 2006***

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Annex 1

List of RIAs relating to the implementation of the MID

1. Weighing Instruments, which covers:
 - a) Automatic Beltweighers
 - b) Automatic Catchweighers
 - c) Automatic Gravimetric Filling Instruments
 - d) Automatic Rail-weighbridges
 - e) Automatic Discontinuous Totalisers
2. Liquid Fuel delivered from Road Tankers
3. Liquid Fuel and Lubricants
4. Material Measures, which covers:
 - a) Capacity Serving Measures
 - b) Material Measures of Length
5. Cold-water Meters
6. Non-Prescribed Instruments
7. Exhaust Gas Analysers
8. Gas Meters¹
9. Electricity Meters²
10. Taximeters³

¹ The Regulations and associated RIA for these instruments are the responsibility of DTI Energy Group, working with Ofgem, who are working to a different timetable.

² See above footnote.

³ The Regulations and associated RIA for these instruments are the responsibility of Department for Transport, who are working to a different timetable.

Annex 2

Rural Proofing

1. Will the policy affect the availability of public and private services? *No*
2. Is the policy to be delivered through existing service outlets, such as schools, banks and GP surgeries? *No*
3. Will the cost of delivery be higher in rural areas where clients are more widely dispersed or economies of scale are harder to achieve? *No*
4. Will the policy affect travel needs or the ease and cost of travel? *No*
5. Does the policy rely on communicating information to clients? *No*
6. Is the policy to be delivered by the private sector or through a public-private partnership? *No*
7. Does the policy rely on infrastructure (e.g. broadband ICT, main roads, utilities) for delivery? *No*
8. Will the policy impact on rural businesses, including the self-employed? *There has been no indication of significant costs.*
9. Will the policy have a particular impact on land-based industries and, therefore, on rural economies and environments? *No*
10. Will the policy affect those on low wages or in part-time or seasonal employment? *No*
11. Is the policy to be targeted at the disadvantaged? *No*
12. Will the policy rely on local institutions for delivery? *No*
13. Does the policy depend on new buildings or development sites? *No*
14. Is the policy likely to impact on the quality and character of the natural and built rural landscape? *No*
15. Will the policy impact on people wishing to reach and use the countryside as a place for recreation and enjoyment? *No*

TRANSPOSITION NOTE
THE MEASURING INSTRUMENTS(NON-PRESCRIBED INSTRUMENTS)
REGULATIONS 2006

Directive 2004/22/EC of the European Parliament and Council on measuring instruments.

These Regulations transpose the Measuring Instruments Directive (MID) (2004/22/EC – OJ No. L135, 30.4.04). The Regulations provide for the designation of notified bodies and their functions in relation to conformity assessment of measuring instruments which are not subject to regulation in the United Kingdom. The Secretary of State is responsible for taking measures to implement the MID in relation to the making of Regulations, the appointment of notified bodies, enforcement of provisions and market surveillance. Administrative actions that are the responsibility of the Secretary of State are not included within the Regulations.

Article	Objectives	Implementation
1	Specifies scope of the directive in respect of measuring instruments controlled.	Regulation 3(1) Regulations apply in relation to the conformity assessment of measuring instruments which are not subject to regulation in the United Kingdom: <ul style="list-style-type: none"> • Automatic weighing instruments (certain types); • Dimensional measuring instruments; • Heat meters; • Material measures (certain types/capacities); • Measuring systems for the continuous and dynamic measurement of quantities of liquids other than water (certain types/capacities); • Volume conversion devices; and • Water meters (certain types), within the scope of the MID and first placed on the market or put into use on or after 30 October 2006
2	Specifies scope of the directive in respect of the tasks for which measuring instruments are prescribed.	Regulation 3 specifies scope in relation to legal metrological control (LMC) in order for such instruments to be placed on the market or put into use in another member State. For those instruments prescribed this relates to LMC other than use for trade
3	Sets out the essential requirements for measuring instruments to be placed on the market and put into use	Schedule 1

	The directive provides requirements for electromagnetic immunity.	This provision is given effect by regulation 33 of the Measuring Instruments (Automatic Gravimetric Filling Instruments) Regulations 2006 (one of the set of Regulations implementing MID). This provides that the provisions of Directive 89/336/EEC are disapplied in relation to the electromagnetic immunity of measuring instruments by amendment of the Electromagnetic Compatibility Regulations 2005 (EMC Regulations) in respect of measuring instruments complying with the marking and identification requirements of the MID. The emission requirements of the EMC Regulations continue to apply to measuring instruments.
4	Definitions	Where applicable, included within regulation 2 and in the instrument-specific Parts in Schedule 1.
5	Applicability to sub-assemblies	Schedule 1 – Essential requirements
6	Essential requirements and assessment of conformity	Regulations 9 and 10, Schedule 1
7	Conformity marking	Regulations 11 and 12, and Schedule 4
8	Placing on the market and putting into use	N/A to the UK market. Regulation 3 makes provision for measuring instruments under these Regulations to be placed on the market and put into use in other member State markets.
9	Conformity assessment	Regulations 9 and 10
10	Technical documentation	Regulation 10 and Schedule 3
11	Procedure for the designation of notified bodies	Regulations 4, 6 and 7
12	Criteria to be satisfied by designated bodies	Regulation 4 and Schedule 2
13	Harmonised Standards and Normative Documents	Regulations 2(1), 9(2) and (3)
14-16	Committees of the Commission	Not relevant
17	Markings	Schedule 4
18-20	Enforcement provisions	Not relevant
21	Decisions entailing refusal or restriction	Schedule 2 Part 2 – in relation to functions of notified bodies
22	Repeals	Not relevant

23 + 25	Transitional provisions + Revision	Not relevant
24.1	Transposition	Regulation 1. The Regulations come into force on 30 October 2006 except Regulations for the designation of notified bodies which come into force on 30th May 2006.
Annex I	General Essential Requirements	Schedule 1 Part 1
Annex MI-001	Specific requirements for water meters	Regulation 2 and Schedule 1, Part 2, Part A
Annex MI-002	Specific requirements for gas meters and volume conversion devices	Gas meters N/A other than volume conversion devices – regulation 2 and Schedule 1, Part 2, Part G
Annex MI-004	Specific requirements for heat meters	Regulation 2 and Schedule 1, Part 2, Part B
Annex MI-005	Specific requirements for measuring systems for the continuous and dynamic measurement of quantities of liquids other than water	Regulation 2 and Schedule 1, Part 2, Part C
Annex MI-006	Common/specific requirements for Automatic Weighing Instruments	Regulation 2 and Schedule 1, Part 2, Part D
Annex MI-008 Chapter I	Specific requirements for material measures of length and capacity serving measures	Schedule 1, Part 2, Part E
Annex MI-009	Dimensional measuring instruments	Schedule 1, Part 2, Part F