

**EXPLANATORY MEMORANDUM TO**  
**THE MEASURING INSTRUMENTS (AMENDMENT) REGULATIONS 2006**

**2006 No. 2625**

**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 amend the Measuring Instruments (Non-Prescribed Instruments) Regulations 2006, the Measuring Instruments (Automatic Rail-weighbridges) Regulations 2006, the Measuring Instruments (Catchweighers) Regulations 2006 and the Measuring Instruments (Cold-water Meters) Regulations 2006.

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

3.1 These Regulations correct errors in the above Regulations. In relation to those identified by the Committee at its meeting of the 7 June 2006 and included in the 31st Report of 2005/06 a memorandum was submitted by the Department of Trade and Industry for each of the three reports, indicating that amendments would be made before the coming into force date of the Regulations of the 30 October 2006.

**4. Legislative Background**

4.1 Directive 2004/22/EC of the European Parliament and of the Council on measuring instruments (OJ No. L35, 30.4.04, p.1) (“the Directive”) is implemented in the UK in respect of 11 categories of measuring instruments intended for use for trade. The implementing regulations are made under section 2(2) of the European Communities Act 1972 (“the 1972 Act”) and, in respect of Part III, under the Weights and Measures Act 1985, with the exception of the Measuring Instruments (Non-Prescribed Instruments) Regulations 2006 and the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006 which are made under section 2(2) of the 1972 Act.

4.2 In addition to the corrections referred to above, an amendment is required to the Measuring Instruments (Non-Prescribed Instruments) Regulations 2006 to enable the Gas and Electricity Markets Authority (GEMA) and the Northern Ireland Authority for Energy Regulation (NIAER) to charge a fee for the designation and inspection of notified bodies in relation to conformity assessment tasks for volume conversion devices. This will then be consistent with the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006 which already include such a provision for similar services carried out by GEMA and NIAER.

**5. Extent**

5.1 Subject to paragraph 5.2, these Regulations apply to the United Kingdom.

5.2 In the case of the Measuring Instruments (Automatic Rail-weighbridges) Regulations 2006, the amendment relates only to Part III of those Regulations and therefore applies to Great Britain.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 As indicated above, the corrections to the four sets of Regulations referred to in paragraph 2 are being made: three as a result of comments from the Joint Committee on Statutory Instruments in June this year and the other, the Measuring Instruments (Automatic Rail-weighbridges) Regulations 2006, as a result of a typographical error which has come to light since those Regulations were made.

7.2 As regards the charging of fees by GEMA and NIAER in relation to the designation and inspection of notified bodies, the current policy position is that both bodies fully recover their costs directly through the charging of fees from those organisations applying to them for designation and inspection as a notified body. The inclusion of such a provision in relation to designation and inspection as a notified body responsible for volume conversion devices, the regulatory responsibility of which falls to GEMA and NIAER, in the Measuring instruments (Non-Prescribed Instruments) Regulations 2006 will enable this policy to be implemented in respect of such instruments.

### **Who has been consulted?**

7.3 No consultation has taken place in relation to these Regulations as extensive consultation took place on all issues associated with volume conversion devices, including the costs for designation and inspection of notified bodies, in the consultation on the Measuring Instruments (Non-Prescribed Instruments) Regulations. Details of the consultation exercise and the Government response to that consultation can be found on the DTI web-site using the link below:-

<http://www.dti.gov.uk/consultations/page15305.html>

## **8. Impact**

8.1 A Regulatory Impact Assessment in respect of regulation 2 of these Regulations is attached to this memorandum at Annex A.

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](mailto:peter.edwards@nwml.gov.uk) can answer any queries regarding the instrument. For specific issues relation to the Regulatory Impact Assessment contact Adrian Rudd Tel: 020 8943 7286 or e-mail: [adrian.rudd@nwml.gov.uk](mailto:adrian.rudd@nwml.gov.uk).



## **Final Regulatory Impact Assessment on the Measuring Instruments (Amendment) Regulations 2006**

### **Objective**

The Measuring Instruments (Amendment) Regulations 2006 are being produced to amend The Measuring Instruments (Non-Prescribed) Instruments Regulations 2006 (S.I. 2006/1270), the Measuring Instruments (Automatic Rail-weighbridges) Regulations 2006 (S.I. 2006/1256), the Measuring Instruments (Automatic Catchweighers) Regulations S.I. 2006 (SI 2006/1257) and the Measuring Instruments (Cold-water Meters) Regulations 2006 (S.I. 2006/1268). All the amendments are in the form of corrections with the exception of regulation 2(a) which authorises the Gas and Electricity Markets Authority (GEMA) and the Northern Ireland Authority for Energy Regulation (NIAER) to charge a fee for services provided in relation to the designation and inspection of notified bodies for the conformity assessment of volume conversion devices<sup>1</sup> (VCDs). This RIA is produced in respect of regulation 2(a) as the other provisions of these Regulations have no new impact on the costs of business.

### **Background**

The Measuring Instruments Directive (MID) has been implemented in respect of:

- a) placing on the market and putting into service of 11 categories of measuring instruments intended for use for trade; and
- b) the designation of notified bodies to carry out conformity assessment of non-UK prescribed measuring instruments within the scope of the MID (“the MID implementing Regulations”). The MID implementing Regulations also contain provisions relating to the use in service of the measuring instruments in question.

The majority of the provisions in the MID implementing Regulations come into force on 30 October 2006 but those relating to the designation of notified bodies for the particular conformity assessment tasks came into force on 30<sup>th</sup> May 2006 (31st July 2006 for The Measuring Instruments (Active Electrical Energy meters) Regulations 2006 (SI 2006/1679)). The instrument-specific Regulations replace existing provisions relating to the measuring instruments in question. With the exception of SI 2006/1679, the MID implementing Regulations make provision for the Secretary of State to appoint notified bodies and to carry out conformity assessment of measuring instruments. Regulations will shortly be made under the Finance Act 1973 authorising him to charge a fee for these services.

SI 2006/1679 provides for GEMA and NIAER to designate notified bodies and to charge a fee for assessment and inspection of applicants. The Measuring Instruments (Non-Prescribed Instruments) Regulations 2006 (SI 2006/1270) which also provide for the designation and inspection of notified bodies by GEMA and NIAER for the conformity assessment of VCDs do not have a similar provision for charging fees for the assessment and inspection of applicants, and that is the purpose of regulation 2(a) of these Regulations.

### **Consultation**

No consultation has taken place in relation to the substantive issue in these Regulations as extensive consultation took place on all issues associated with VCDs, including the costs for

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<sup>1</sup> VCD is a sub-assembly which functions independently from and is compatible with a gas meter

designation and inspection of Notified Bodies, in the Measuring Instruments (Non-Prescribed Instruments) Regulations by DTI Energy Market Unit at the same time as the consultation on the Measuring Instruments (Gas Meters) Regulations, still to be made, and the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006.

### **Options**

Option One – make regulation 2(a).

The proposal will bring the position of GEMA and NIAER in relation to the designation and inspection of notified bodies for the conformity assessment of VCDs into line with similar arrangements to charge for services provided by those agencies for the designation and inspection of notified bodies for the conformity assessment of active electrical energy meters and gas meters. The regulations for gas meters are still to be made. The fees will be charged against the groups who seek to benefit from being designated.

Option Two – do not make regulation 2(a).

If the regulation is not made a duty still remains for GEMA and NIAER to designate such organisations which satisfy the necessary criteria as notified bodies. This service would then have to be directly funded by GEMA or NIAER. As the activities of GEMA and NIAER are funded by licence fee provisions, the UK gas and electricity industry would take on the burden for regulatory activities associated with conformity assessment of measuring instruments currently outside the scope of UK regulatory control.

### **Costs and benefits**

#### **Sectors and groups affected**

Organisations wishing to become a notified body under the Measuring Instruments Directive.

#### **Benefits**

The benefit of Option One is that the new arrangements will be consistent with current arrangements under similar Regulations. This will enable GEMA and NIAER to directly recover costs incurred in the provision of services relating to the designation of notified bodies for the conformity assessment of VCDs under SI 2006/1270 thus avoiding any additional burden on UK industry. Those organisations seeking to benefit from being designated will cover the costs of resources incurred by GEMA or NIAER.

Option Two overall has no benefits. UK business could benefit from free services in relation to the designation of notified bodies for the conformity assessment of VCDs, however the costs of GEMA and NIAER would be funded by the licence fee mechanism with little perceived benefit to the UK energy industry.

#### **Costs**

The cost of the service will be on the basis of full cost recovery. An organisation wishing to become a notified body will have to pay the full cost to GEMA and NIAER of the provision of the service. No other organisations or persons will be affected.

The costs, dependant on the complexity of individual cases, are likely to be up to £4000 and could include the designation to carry out conformity assessment of all relevant modules. It is estimated that only one or two organisations will apply and this is more likely in combination with designations under other MID implementing Regulations. The total costs of designation may be as much as £5,000, with annual inspection costs of up to £2000 likely.

Regulation 2(a) is not in the nature of a burden on business as it permits payment for services carried out by GEMA and NIAER in relation to the designation of notified bodies under the

Measuring Instruments (Non-Prescribed Instruments) Regulations 2006 for VCDs. It provides that the services offered will be charged for on the same basis as existing services.

**Small Firms Impact Test**

We have considered this. It is not likely that SMEs will apply to be a notified body for the conformity assessment of VCDs.

**Competition assessment**

Not applicable.

**Enforcement, sanctions and monitoring**

Not applicable.

**Summary and recommendation**

Only those organisations wishing to become a notified body for the conformity assessment of VCDs are affected by the proposal. The fees will be charged at full cost recovery only. Therefore the recommendation is that the Regulations are implemented.

**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

*Sainsbury of Turville*

*Date 1st October 2006*

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