

EXPLANATORY MEMORANDUM TO
THE MEASURING INSTRUMENTS (EEC REQUIREMENTS) (FEES)
(AMENDMENT No. 2) REGULATIONS 2006

2006 No. 2679

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 further amend the Measuring Instruments (EEC Requirements) (Fees) Regulations 2004 (“the 2004 Fees Regulations”).

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

3.1 None.

4. Legislative Background

4.1 The 2004 Fees Regulations were updated earlier this year by SI 2006/604 to provide for new fees and a modified fee structure for the start of the financial year for certain tasks undertaken by the Secretary of State. These Regulations provide for the Secretary of State to charge fees for carrying out similar functions as a result of the implementation of the Measuring Instruments Directive by way of ten sets of instrument specific implementing Regulations (“the 2006 Measuring Instruments Regulations”) and the Measuring Instruments (Non-Prescribed Instruments) Regulations 2006.

5. Extent

5.1 These Regulations apply to the United Kingdom.

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 In line with the existing fees provisions under the 2004 Fees Regulations as amended by SI 2006/604 these Regulations provide for the designation, variation of designation and inspection of notified bodies and the carrying out of conformity assessments tasks by the Secretary of State for measuring instruments as a result of the implementation of the Measuring Instruments Directive by the 2006 Measuring

Instruments Regulations and the Measuring Instruments (Non-Prescribed Instruments) Regulations 2006.

7.2 The Regulations also incorporate existing fees provisions from the 2004 Fees Regulations in respect of the designation, variation of designation and inspection of approved bodies under the Non-automatic Weighing Instruments Regulations 2000.

Who has been consulted?

7.3 No consultation has taken place in relation to these Regulations. Extensive consultation however took place in relation to the 2006 Measuring Instruments Regulations and the Measuring Instruments (Non-Prescribed Instruments) Regulations 2006 (i.e. the Regulations under which the fees will be charged) including in relation to the costs for designation and inspection of notified bodies and the carrying out of conformity assessment procedures.

8. Impact

8.1 A Regulatory Impact Assessment 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 can answer any queries regarding the instrument.

ANNEX A

Final Regulatory Impact Assessment on the Measuring Instruments (EEC Requirements) (Fees) (Amendment No. 2) Regulations 2006

Objective

The Measuring Instruments (EEC Requirements) (Fees) (Amendment No. 2) Regulations 2006 amend the Measuring Instruments (EEC Requirements) (Fees) Regulations 2004 (SI 2004/1300) to authorise the Secretary of State to charge a fee for certain services provided by him in relation to:

- a) the designation, variation of designation and inspection of notified bodies; and
- b) conformity assessment of measuring instruments

as a result of the implementation of the Measuring Instruments Directive¹ (MID).

These Regulations also include the existing provisions on fees chargeable by the Secretary of State in respect of the designation, variation of designation and inspection of approved bodies in relation to the Non-automatic Weighing Instruments Regulations 2000 (SI 2000/1930) in regulation 6 of SI 2004/1300. Regulation 6 has been substituted in these Regulations. This regulatory impact assessment therefore extends only to the fees prescribed in respect of the MID implementing regulations.

Background

The MID has been implemented in respect of:

- a) placing on the market and putting into service of 10 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 instrument 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 May 2006. The instrument-specific regulations replace existing provisions relating to measuring instruments. The MID implementing Regulations make provision for the Secretary of State to appoint Notified Bodies, and to carry out conformity assessment of measuring instruments. The Secretary of State is permitted (under the Finance Act 1973) to make a charge for services provided by him in relation to the above tasks, and that is the purpose of these Regulations.

Consultation

No separate consultation has taken place because the Regulations have a negligible impact on the costs of business (see costs section below), and there is no obligation for anyone to apply to become a Notified Body. No comments on this aspect were made as a result of the consultation on the MID-implementing Regulations. Informal consultation on designation of notified bodies has been held with organisations likely to apply and the subject of fees has been discussed.

Options

Option One – make these Regulations

The proposed regulations will bring new arrangements into line with existing arrangements to charge for services provided by the Secretary of State in this area.

Option Two – do not make the Regulations

If the Regulations are not made –

¹ Directive 2004/22/EC

(a) a duty still remains for the Secretary of State to designate such organisations which satisfy the necessary criteria as notified bodies. This service would then have to be funded from public funds and the burden will fall on tax-payers, and

(b) the Secretary of State is not obliged to carry out conformity assessment services free of charge. Manufacturers would have to look elsewhere for conformity assessment of their instruments, almost certainly at greater expense. Such expense could be considerable if there is no provision for conformity assessment in the UK for certain tasks.

This option would also be inconsistent with the position under existing EC-based Regulations, where the Secretary of State can charge a fee for carrying out both designation and conformity assessment services.

Costs and benefits

Sectors and groups affected

Organisations wishing to become a Notified Body under the Measuring Instruments Directive and organisations applying to the Secretary of State in his capacity as a notified body to carry out conformity assessment of their products.

Benefits

The benefit of Option One is that the new arrangements will be consistent with current arrangements under other similar Regulations. This will enable Government to recover its costs incurred in the provision of services relating to the designation of notified bodies and the carrying out of conformity assessment under the MID implementing Regulations, thus avoiding any additional burden on public funds .

Option Two overall has no benefits. UK business could benefit from free services in relation to the designation of notified bodies but a lack of a charging facility for the Secretary of State would mean certain conformity assessment services would not be provided in the UK which would disadvantage UK industry.

Costs

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

The costs are likely to be in the region of £200 for a simple amendment to an existing designation to £4000 for a complex new application for designation to carry out conformity assessment of many modules and, in addition, in respect of various instrument types. It is estimated that approximately 50 organisations will apply for the simplest designation and up to 5 organisations for a complex application. The total costs of designation would be £30,000.

The costs for carrying out conformity assessment is dependent on the particular assessment task and complexity of the measuring instrument to be evaluated. For type examination this could vary from £500 for a simple instrument to £15,000 for a complex measuring system, design examination dependant on complexity up to £5,000 and quality assessment between £1,500 and £5,000 dependant on size and location of organisation. The total costs of conformity assessment could be expected to rise over time to £100,000 per year.

The Regulations will not impose additional burdens on business; these are amending Regulations - they extend the power to charge fees to services carried out in relation to the MID implementing Regulations. They provide that the services offered will be charged for on the same basis as existing services.

In fact, the Regulations are being introduced to enable the Secretary of State to charge on a full cost recovery basis for the services covered by the Regulations. The provision of these services, in particular conformity assessment in relation to type and design examination by the Secretary of State will be beneficial to UK industry if there is no other UK designated Notified Bodies because UK manufacturers would have to go abroad for conformity assessment. This would substantially increase costs, not least because they would have to pay to have all their documentation translated. Moreover it is probable that assessment costs abroad would be charged at a commercial rate, not on a cost recovery basis. The provision of such services also helps to ensure a free market in conformity assessment services for measuring instruments throughout Europe.

Small Firms Impact Test

We have considered this. The impact on SMEs will be negligible or non-existent as we do not know of any that are likely to apply to be a Notified Body.

In relation to conformity assessment a disproportionate impact would arise if SMEs had to apply to notified bodies in other member States due to non-availability of any of the conformity assessment tasks in the UK.

Competition assessment

Not applicable.

Enforcement, sanctions and monitoring

Not applicable.

Summary and recommendation

Only those organisations wishing to become a notified body or wishing to have conformity of their measuring instruments assessed by the Secretary of State 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*

Contact point for enquiries and comments:

Peter Edwards
NWML
Stanton Avenue
Teddington
TW11 0JZ

020 8943 7298
peter.edwards@nwml.gov.uk