

**EXPLANATORY MEMORANDUM TO**  
**THE MEASURING INSTRUMENTS (AMENDMENT) REGULATIONS 2010**

**2010 No. 2881**

1. This explanatory memorandum has been prepared by the National Measurement Office (NMO), an Executive Agency of the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments (JCSI).

2. **Purpose of the instrument**

The Measuring Instruments (Amendment) Regulations 2010 (the Regulations) amend various 2006 statutory instruments regulating “flow measuring instruments”, for example, water meters, gas meters, active electrical energy meters, heat meters, and fuel dispensers. The purpose of the Regulations is to prohibit the systematic exploitation of maximum permissible errors of measurement when such instruments are placed on the market - in other words, to ensure that flow measuring instruments are set as closely as possible to zero.

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

In addition, the Measuring Instruments (Gas Meters) Regulations 2006 are amended to correct defective drafting reported by the JCSI on the basis that they do not clearly indicate the class of each meter. The Measuring Instruments (Active Electrical Energy Meters) Regulations 2006 contain the same defect and they are amended in the same way. The relevant JCSI report is available from the following web link: <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtstatin/18/1802.htm>.

4. **Legislative Context**

4.1 The Regulations implement changes to Directive 2004/22/EC of the European Parliament and of the Council on measuring instruments (the MID) made by Commission Directive 2009/137/EC (the MID Amendment Directive). The MID prohibited unduly biased errors of measurement *outside* the range of measurement of flow measuring instruments which it controlled. The MID Amendment Directive explicitly prohibits the systematic exploitation of maximum permissible errors of measurement *inside* the controlled range when flow measuring instruments are placed on the market.

4.2 The instrument implements EU legislation and a Transposition Note is attached.

5. **Territorial Extent and Application**

This instrument applies to all of the United Kingdom, including Northern Ireland.

## **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 The Regulations implement the MID Amendment Directive. The policy objective of the MID Amendment Directive is to ensure that flow measuring instruments do not exploit maximum permissible errors and systematically favour any of the parties involved in a transaction. The Regulations achieve that objective by prohibiting unduly biased errors inside the controlled range of those instruments. The Regulations protect consumers by preventing systematic short measure.

7.2 In line with the Coalition Government's commitment to ensure there is no 'gold-plating' (and as a result of the consultation response), the Government is adopting the 'copy-out' approach to implementing the MID Amendment Directive.

7.3 The Department has no plans at present to issue a Consolidated Text for any of the legislation being amended.

## **8. Consultation outcome**

8.1 NMO consulted stakeholders on implementation of the MID Amendment Directive between 23 March 2010 and 30 June 2010, with an extension until 6 August 2010 to accommodate late comments. Twelve substantive responses were received in total.

8.2 Views were sought on the wording of the proposed amendments to the 2006 statutory instruments. The response was generally of a positive nature and showed broad support for the proposed Regulations. The Government Response to replies to the consultation will be published at the time the instrument is laid before Parliament.

## **9. Guidance**

Guidance for business explaining the changes made by the Regulations will be published on the NMO website at least 12 weeks before the Regulations come into force. A notice about the guidance together with a web link to it will be circulated directly to stakeholders, including those who responded to the consultation.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is minimal. There is no associated EC Impact Assessment (IA) because the EC considered that the MID Amendment Directive would not have any impact.

10.2 The impact on the public sector is minimal. There may be some savings for Trading Standards Departments e.g. simplified testing requirements for flow measuring instruments.

10.3 A UK IA is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on small firms employing up to 20 people, the approach taken is to reduce unnecessary burdens on business by providing clarity in relation to what is required by the MID as amended (without introducing any new burdens).

11.3 The basis for the final decision on what action to take to assist small business is that the reduction in unnecessary burdens should apply equally to small business and no additional action is necessary (because the operations of UK business are already compliant with the new requirement to set the relevant measuring instruments as accurately as possible to zero for placing on the market and putting into use where prescribed in the UK).

## **12. Monitoring & review**

A Post Implementation Review (PIR) will be carried out in 2016 i.e. in line with a review of the MID as a whole 10 years after it was implemented in the UK. The EC is currently reviewing the MID and will report to the Council and European Parliament on 30 April 2011 (in accordance with Article 25 of the MID). This may result in legislative changes/additions around the same time as the PIR.

## **13. Contact**

Peter Edwards at the National Measurement Office, Tel: 020 8943 7298 or e-mail: peter.edwards@nmo.gov.uk can answer any queries regarding the instrument.

**TRANSPOSITION NOTE**  
**THE MEASURING INSTRUMENTS (COLD-WATER METERS) REGULATIONS 2006,**  
**AS AMENDED BY THE MEASURING INSTRUMENTS (AMENDMENT) REGULATIONS 2010**

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

*Commission Directive 2009/137/EC amending Directive 2004/22/EC of the European Parliament and Council on measuring instruments in respect of the exploitation of the maximum permissible errors, as regards instrument specific annexes MI-001 to MI-005 (“the MID Amendment Directive”).*

The 2006 regulations transpose the Measuring Instruments Directive (“the MID”) (2004/22/EC – OJ No. L135, 30.4.04) in relation to cold-water meters in use for trade for the supply of cold water to domestic premises. 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 2006 regulations.

The 2010 regulations which amend the 2006 regulations transpose the MID Amendment Directive (2009/137/EC – OJ No. L294, 11.11.09) in relation cold-water meters in use for trade for the supply of cold water to domestic premises. The 2010 regulations prohibit the systematic exploitation of maximum permissible errors of measurement and thus ensure that such instruments are set as closely as practicable to zero when they are placed on the market. The 2010 regulations do what is necessary to implement the MID Amendment Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Article	Objectives	Implementation
1	Specifies scope of the directive in respect of measuring instruments controlled.	Regulation 3(1) Regulations apply to Cold-water Meters for use for trade for the supply of cold water to domestic premises within Annex MI-001 and first placed on the market or put into use after 30 October 2006.
2	Specifies scope of the directive in respect of the tasks for which measuring instruments are prescribed.	Regulation 3(1) Regulations for Cold-water Meters within Annex MI-001 only apply to cold-water meters intended for use for trade.
3	Sets out the essential requirements for measuring instruments to be placed on the market and put into use  The directive provides requirements for electromagnetic immunity.	Schedule 1  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	
5	Applicability to sub-assemblies	Not relevant
6	Essential requirements and assessment of conformity	Regulations 5 and 6, Schedule 1 and Part 2 of Schedule 2
7	Conformity marking	Regulations 12 and 13, and Schedule 4.
8	Placing on the market and putting into use	Regulation 4  Regulation 3(4) disappplies the obligations in relation to non-compliant instruments displayed at trade fairs and exhibitions subject to certain conditions.
9	Conformity assessment	Regulations 5 and 6
10	Technical documentation	Regulation 6(2) and Schedule 3
11	Procedure for the designation of notified bodies	Regulations 7, 9 and 10
12	Criteria to be satisfied by designated bodies	Regulation 7 and Part 1 of Schedule 2
13	Harmonised Standards and Normative Documents	Regulations 2(1), 5(2) and (3)
17	Markings	Regulation 12 and Schedule 4
18.1	Market surveillance	Regulations 18 and 19
18.2, 18.3 and 18.4	Administrative cooperation	Not relevant
19.1	Safeguard clause	Regulations 18 and 19
19.2	Administrative provisions for Commission	Not relevant
20.1 20.2	Unduly affixed markings	Regulations 18 and 19
21	Decisions entailing withdrawal from the market or prohibition or restriction on placing on the market of non-compliant measuring instruments	Regulation 19 and Part 2 of Schedule 2
22	Repeals of directives	Not relevant

23	Transitional provisions	Regulation 3. The Regulations do not apply to instruments placed on the market before 30 October 2006 or instruments placed on the market after that date which comply with current Regulations
24.1	Transposition	Regulation 1. The Regulations come into force on 30 October 2006 except regulations relating to the designation of notified bodies which come into force on 30 May 2006.
24.2	Administrative action for member States	Not relevant
Annex I	Essential Requirements	Schedule 1
Annex MI-001 <sup>1</sup>	Requirements for Cold-water Meters	Regulation 2 and Schedule 1 – Annex MI-001 applies to water meters intended for the measurement of volumes of clean, cold or heated water in residential, commercial and light industrial use. Only meters supplying cold water (potable water in the range from 0.1 degrees Celsius to and including 30 degrees Celsius) to domestic premises are being regulated. Therefore only the parts of MI-001 which relate to such cold-water meters have been transposed.

<sup>1</sup> Amendments to Annex MI-001 (for cold-water meters) made by Article 1 of and paragraph 1 of the Annex to the MID Amendment Directive are implemented by regulation 3 of the 2010 regulations.

**TRANSPPOSITION NOTE**  
**THE MEASURING INSTRUMENTS (ACTIVE ELECTRICAL ENERGY METERS)**  
**REGULATIONS 2006, AS AMENDED BY THE MEASURING INSTRUMENTS**  
**(AMENDMENT) REGULATIONS 2010**

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

*Commission Directive 2009/137/EC amending Directive 2004/22/EC of the European Parliament and Council on measuring instruments in respect of the exploitation of the maximum permissible errors, as regards instrument specific annexes MI-001 to MI-005 (“the MID Amendment Directive”).*

The 2006 regulations transpose the Measuring Instruments Directive (“the MID”) (2004/22/EC – OJ No. L135, 30.4.04) in relation to active electrical energy meters for use for trade. The Secretary of State is responsible for taking measures to implement the MID in relation to these meters. Under the 2006 regulations, the appointment of notified bodies, enforcement of provisions and market surveillance will fall to the Gas and Electricity Markets Authority or the Northern Ireland Authority for Energy Regulation. Administrative actions that are the responsibility of the Secretary of State or those authorities are not included within the 2006 regulations.

The 2010 regulations which amend the 2006 regulations transpose the MID Amendment Directive (2009/137/EC – OJ No. L294, 11.11.09) in relation to active electrical energy meters. The 2010 regulations prohibit the systematic exploitation of maximum permissible errors of measurement and thus ensure that such instruments are set as closely as practicable to zero when they are placed on the market. The 2010 regulations do what is necessary to implement the MID Amendment Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Article	Objectives	Implementation
1	Specifies scope of the directive in respect of measuring instruments controlled.	Regulation 3(1) Regulations apply to active electrical energy meters within Annex MI-003 for use for trade and first placed on the market or put into use after 30 October 2006.
2	Specifies scope of the directive in respect of the tasks for which measuring instruments are prescribed.	Regulation 3(1) Regulations for active electrical energy meters within Annex MI-003 only apply to instruments for use for trade.
3	Sets out the essential requirements for measuring instruments to be placed on the market and put into use  The directive provides requirements for electromagnetic immunity.	Schedule 1  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 disappplied 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
5	Applicability to sub-assemblies	Not relevant
6	Essential requirements and assessment of conformity	Regulations 5 and 6, and Schedule 1
7	Conformity marking	Regulations 12 and 13, and Schedule 4.
8	Placing on the market and putting into use	Regulation 4  Regulation 3(6) disapples the obligations in relation to non-compliant instruments displayed at trade fairs and exhibitions subject to certain conditions.
9	Conformity assessment	Regulations 5 and 6
10	Technical documentation	Regulation 6 (2) and Schedule 3
11	Procedure for the designation of notified bodies	Regulations 7, 9 and 10
12	Criteria to be satisfied by designated bodies	Regulation 7 and Part 1 of Schedule 2
13	Harmonised Standards and Normative Documents	Regulations 2(1), 5(2) and (3), and 6
17	Markings	Regulation 12 and Schedule 4
18.1	Market surveillance	Regulations 16 and 17
18.2, 18.3 and 18.4	Administrative cooperation	Not relevant
19.1	Safeguard clause	Regulations 16 and 17
19.2	Administrative provisions for Commission	Not relevant
20.1 20.2	Unduly affixed markings	Regulations 16 and 17
21	Decisions entailing withdrawal from the market or prohibition or restriction on placing on the market of non-compliant measuring instruments	Regulation 17 and Part 2 of Schedule 2
22	Repeals of directives	Not relevant
23	Transitional provisions	Regulation 3. The Regulations do not apply to instruments placed on the market before 30 October 2006 or instruments placed on the market after that date which comply with current Regulations
24.1	Transposition	Regulation 1. The Regulations come into force on 30 October 2006 except regulations relating to the designation of notified bodies which come into force on 31 July 2006.



24.2	Administrative action for member States	Not relevant
Annex I	Essential Requirements	Schedule 1
Annex MI-003	Definitions	Regulation 2 and Schedule 1
Annex MI-003 <sup>2</sup>	Specific Requirements for active electrical energy meters	Schedule 1

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<sup>2</sup> Amendments to Annex MI-002 made by Article 1 of and paragraph 3 of the Annex to the MID Amendment Directive are implemented by regulation 6 of the 2010 regulations.

**TRANSPOSITION NOTE**  
**THE MEASURING INSTRUMENTS (GAS METERS) REGULATIONS 2006, AS AMENDED**  
**BY THE MEASURING INSTRUMENTS (AMENDMENT) REGULATIONS 2010**

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

*Commission Directive 2009/137/EC amending Directive 2004/22/EC of the European Parliament and Council on measuring instruments in respect of the exploitation of the maximum permissible errors, as regards instrument specific annexes MI-001 to MI-005 (“the MID Amendment Directive”).*

The 2006 regulations transpose the Measuring Instruments Directive (“the MID”) (2004/22/EC – OJ No. L135, 30.4.04) in relation to gas meters for use for trade. The Secretary of State is responsible for taking measures to implement the MID in relation to these meters. Under the 2006 regulations, the appointment of notified bodies, enforcement of provisions and market surveillance will fall to the Gas and Electricity Markets Authority or the Northern Ireland Authority for Energy Regulation. Administrative actions that are the responsibility of the Secretary of State or those authorities are not included within the 2006 regulations.

The 2010 regulations which amend the 2006 regulations transpose the MID Amendment Directive (2009/137/EC – OJ No. L294, 11.11.09) in relation to gas meters. The 2010 regulations prohibit the systematic exploitation of maximum permissible errors of measurement and thus ensure that such instruments are set as closely as practicable to zero when they are placed on the market. The 2010 regulations do what is necessary to implement the MID Amendment Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Article	Objectives	Implementation
1	Specifies scope of the directive in respect of measuring instruments controlled.	Regulation 3(1) Regulations apply to gas meters within Annex MI-002 for use for trade and first placed on the market or put into use after 30 October 2006.
2	Specifies scope of the directive in respect of the tasks for which measuring instruments are prescribed.	Regulation 3(1) Regulations for gas meters within Annex MI-002 only apply to instruments for use for trade.
3	Sets out the essential requirements for measuring instruments to be placed on the market and put into use The directive provides requirements for electromagnetic immunity.	Schedule 1 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
5	Applicability to sub-assemblies	Schedule 1
6	Essential requirements and assessment of conformity	Regulations 5 and 6, and Schedule 1
7	Conformity marking	Regulations 12 and 13, and Schedule 4.
8	Placing on the market and putting into use	Regulation 4 Regulation 3(6) disapples the obligations in relation to non-compliant instruments displayed at trade fairs and exhibitions subject to certain conditions.
9	Conformity assessment	Regulations 5 and 6
10	Technical documentation	Regulation 6 (2) and Schedule 3
11	Procedure for the designation of notified bodies	Regulations 7, 9 and 10
12	Criteria to be satisfied by designated bodies	Regulation 7 and Part 1 of Schedule 2
13	Harmonised Standards and Normative Documents	Regulations 2(1), 5(2) and (3), and 6
17	Markings	Regulation 12 and Schedule 4
18.1 18.2, 18.3 and 18.4	Market surveillance Administrative cooperation	Regulations 16 and 17 Not relevant
19.1 19.2	Safeguard clause Administrative provisions for Commission	Regulations 16 and 17 Not relevant
20.1 20.2	Unduly affixed markings	Regulations 16 and 17
21	Decisions entailing withdrawal from the market or prohibition or restriction on placing on the market of non-compliant measuring instruments	Regulation 17 and Part 2 of Schedule 2
22	Repeals of directives	Not relevant

23	Transitional provisions	Regulation 3. The Regulations do not apply to instruments placed on the market before 30 October 2006 or instruments placed on the market after that date which comply with current Regulations
24.1 24.2	Transposition Administrative action for member States	Regulation 1. The Regulations come into force on 30 October 2006. Not relevant
Annex I	Essential Requirements	Schedule 1
Annex MI-002	Definitions	Regulation 2 and Schedule 1
Annex MI-002 <sup>3</sup>	Specific Requirements for gas meters	Schedule 1

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<sup>3</sup> Amendments to Annex MI-002 made by Article 1 of and paragraph 2 of the Annex to the MID Amendment Directive 5 are implemented by regulation 7 of the regulations.

**TRANSPOSITION NOTE**  
**THE MEASURING INSTRUMENTS (LIQUID FUEL DELIVERED FROM ROAD TANKERS)**  
**REGULATIONS 2006, AS AMENDED BY THE MEASURING INSTRUMENTS (AMENDMENT)**  
**REGULATIONS 2010**

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

*Commission Directive 2009/137/EC amending Directive 2004/22/EC of the European Parliament and Council on measuring instruments in respect of the exploitation of the maximum permissible errors, as regards instrument specific annexes MI-001 to MI-005 (“the MID Amendment Directive”).*

The 2006 regulations transpose the Measuring Instruments Directive (“the MID”) (2004/22/EC – OJ No. L135, 30.4.04) in relation to measuring systems for use for trade in the making of a continuous and dynamic measurement of liquid fuel in a quantity exceeding 100 litres or 100 kilograms delivered from a road tanker. 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 2006 regulations.

The 2010 regulations which amend the 2006 regulations transpose the MID Amendment Directive (2009/137/EC – OJ No. L294, 11.11.09) in relation to measuring systems in use for trade in the making of a continuous and dynamic measurement of liquid fuel in a quantity exceeding 100 litres or 100 kilograms delivered from a road tanker. The 2010 regulations prohibit the systematic exploitation of maximum permissible errors of measurement and thus ensure that such instruments are set as closely as practicable to zero when they are placed on the market. The 2010 regulations do what is necessary to implement the MID Amendment Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Article	Objectives	Implementation
1	Specifies scope of the directive in respect of measuring instruments controlled.	Regulation 3(1) Regulations apply to meter measuring systems, within Annex MI-005, for use for trade in the making of a continuous and dynamic measurement of liquid fuel in a quantity exceeding 100 litres or 100 kilograms, delivered from a road tanker 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(1) Regulations for meter measuring systems within MI-005 only apply to instruments for use for trade.
3	Sets out the essential requirements for measuring instruments to be placed on the market and put into use  The directive provides requirements for electromagnetic immunity.	Schedule 1  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
5	Applicability to sub-assemblies	Not relevant
6	Essential requirements and assessment of conformity	Regulations 5 and 6, and Schedule 1
7	Conformity marking	Regulations 12 and 13, and Schedule 4.
8	Placing on the market and putting into use	Regulation 4 Regulation 3(6) disapplies the obligations in relation to non-compliant instruments displayed at trade fairs and exhibitions subject to certain conditions.
9	Conformity assessment	Regulations 5 and 6
10	Technical documentation	Regulation 6 and Schedule 3
11	Procedure for the designation of notified bodies	Regulations 7, 9 and 10
12	Criteria to be satisfied by designated bodies	Regulation 7 and Part 1 of Schedule 2
13	Harmonised Standards and Normative Documents	Regulations 2(1), 5(2) and (3)
17	Markings	Regulation 12 and Schedule 4
18.1	Market surveillance	Regulations 19 and 20
18.2, 18.3 and 18.4	Administrative cooperation	Not relevant
19.1	Safeguard clause	Regulations 19 and 20
19.2	Administrative provisions for Commission	Not relevant
20.1 20.2	Unduly affixed markings	Regulations 19 and 20
21	Decisions entailing withdrawal from the market or prohibition or restriction on placing on the market of non-compliant measuring instruments	Regulation 20 and Part 2 of Schedule 2
22	Repeals of directives	Not relevant
23	Transitional provisions	Regulation 3. The Regulations do not apply to instruments placed on the market before 30 October 2006 or instruments placed on the market after
that date which comply with current Regulations		
24.1	Transposition	Regulation 1. The Regulations come into force on 30 October 2006 except regulations relating to the designation of notified bodies which come into force on 30 May 2006. Not relevant

24.2	Administrative action for member States	
Annex I	Essential Requirements	Schedule 1
Annex MI-005 <sup>4</sup>	Requirements for measuring systems for the continuous and dynamic measurement of quantities of liquids other than water	Schedule 1 – Annex MI-005 applies to measuring systems intended for the continuous and dynamic measurement of quantities of liquids other than water. These Regulations only regulate meter measuring systems which are used in the making of a continuous and dynamic measurement of liquid fuel in a quantity exceeding 100 litres or 100 kilograms. Therefore only the parts of MI-005 which relate to such meter measuring systems have been transposed.

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<sup>4</sup> Amendments to Annex MI-005 made by Article 1 of and paragraph 5 of the Annex to the MID Amendment Directive are implemented by regulation 4 of the regulations.

**TRANSPOSITION NOTE**  
**THE MEASURING INSTRUMENTS (LIQUID FUEL AND LUBRICANTS) REGULATIONS 2006, AS AMENDED BY THE MEASURING INSTRUMENTS (AMENDMENT) REGULATIONS 2010**

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

*Commission Directive 2009/137/EC amending Directive 2004/22/EC of the European Parliament and Council on measuring instruments in respect of the exploitation of the maximum permissible errors, as regards instrument specific annexes MI-001 to MI-005 (“the MID Amendment Directive”).*

The 2006 regulations transpose the Measuring Instruments Directive (MID) (2004/22/EC – OJ No. L135, 30.4.04) in relation to measuring systems in use for trade in the making of a continuous and dynamic measurement of liquid fuel in a quantity equal to or less than 100 litres or 100 kilograms. 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 2006 regulations.

The 2010 regulations which amend the 2006 regulations transpose the MID Amendment Directive (2009/137/EC – OJ No. L294, 11.11.09) in relation to measuring systems in use for trade in the making of a continuous and dynamic measurement of liquid fuel in a quantity equal to or less than 100 litres or 100 kilograms. The 2010 regulations prohibit the systematic exploitation of maximum permissible errors of measurement and thus ensure that such instruments are set as closely as practicable to zero when they are placed on the market. The 2010 regulations do what is necessary to implement the MID Amendment Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Article	Objectives	Implementation
1	Specifies scope of the directive in respect of measuring instruments controlled.	Regulation 3(1) Regulations apply to measuring systems for use for trade in the making of a continuous and dynamic measurement of liquid fuel in a quantity equal to or less than 100 litres or 100 kilograms within Annex MI-005, which are first placed on the market or put into use after 30 October 2006.
2	Specifies scope of the directive in respect of the tasks for which measuring instruments are prescribed.	Regulation 3(1) Regulations for measuring systems within Annex MI-005 only apply to systems intended for use for trade.
3	Sets out the essential requirements for measuring instruments to be placed on the market and put into use  The directive provides requirements for electromagnetic immunity.	Schedule 1  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
5	Applicability to sub-assemblies	Not relevant
6	Essential requirements and assessment of conformity	Regulations 5 and 6, and Schedule 1
7	Conformity marking	Regulations 12 and 13, and Schedule 4.
8	Placing on the market and putting into use	Regulation 4  Regulation 3(5) disappplies the obligations in relation to non-compliant instruments displayed at trade fairs and exhibitions subject to certain conditions.
9	Conformity assessment	Regulations 5 and 6
10	Technical documentation	Regulation 6 and Schedule 3
11	Procedure for the designation of notified bodies	Regulations 7, 9 and 10
12	Criteria to be satisfied by designated bodies	Regulation 7 and Part 1 of Schedule 2
13	Harmonised Standards and Normative Documents	Regulations 2(1), 5(2) and (3)
17	Markings	Regulation 12 and Schedule 4
18.1 18.2, 18.3 and 18.4	Market surveillance Administrative cooperation	Regulations 18 and 19 Not relevant
19.1	Safeguard clause	Regulation 19
19.2	Administrative provisions for Commission	Not relevant
20.1 20.2	Unduly affixed markings	Regulations 18 and 19
21	Decisions entailing withdrawal from the market or prohibition or restriction on placing on the market of non-compliant measuring instruments	Regulation 19 and Part 2 of Schedule 2
22	Repeals of directives	Not relevant
23	Transitional provisions	Regulation 3. The Regulations do not apply to systems placed on the market before 30 October 2006 or systems placed on the market after that date which comply with current Regulations
24.1	Transposition	Regulation 1. The Regulations come into force on 30 October 2006 except regulations relating to the designation of notified bodies, which come into force on 30 May 2006.
24.2	Administrative action for member States	Not relevant
Annex I	Essential Requirements	Schedule 1
Annex MI-005 <sup>5</sup>	Requirements for measuring systems for the continuous and dynamic measurement of quantities of liquids other than water	Regulation 2 and Schedule 1 - Annex MI-005 applies to measuring systems intended for the continuous and dynamic measurement of quantities of liquids other than water. These Regulations only regulate measuring systems which are used in the

<sup>5</sup> Amendments to Annex MI-005 made by Article 1 of and paragraph 5 of the Annex to the MID Amendment Directive are implemented by regulation 2 of the 2010 regulations 2010.

		making of a continuous and dynamic measurement of liquid fuel in a quantity equal to or less than 100 litres or 100 kilograms. Therefore only the parts of MI-005 which relate to such meter measuring systems have been transposed.
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**TRANSPOSITION NOTE**  
**THE MEASURING INSTRUMENTS (NON-PRESCRIBED INSTRUMENTS)**  
**REGULATIONS 2006, AS AMENDED BY THE MEASURING INSTRUMENTS (AMENDMENT)**  
**REGULATIONS 2010**

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

*Commission Directive 2009/137/EC amending Directive 2004/22/EC of the European Parliament and Council on measuring instruments in respect of the exploitation of the maximum permissible errors, as regards instrument specific annexes MI-001 to MI-005 (“the MID Amendment Directive”).*

The 2006 regulations transpose the Measuring Instruments Directive (“the MID”) (2004/22/EC – OJ No. L135, 30.4.04). The 2006 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 2006 regulations.

The 2010 regulations which amend the 2006 regulations transpose the MID Amendment Directive (2009/137/EC – OJ No. L294, 11.11.09) in relation to water meters, volume conversion devices, complete heat meters and measuring systems for the continuous and dynamic measurement of quantities of liquids other than water. The 2010 regulations prohibit the systematic exploitation of maximum permissible errors of measurement and thus ensure that such instruments are set as closely as practicable to zero when they are placed on the market. The 2010-regulations do what is necessary to implement the MID Amendment Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

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"> <li>• Automatic weighing instruments (certain types);</li> <li>• Dimensional measuring instruments;</li> <li>• Heat meters;</li> <li>• Material measures (certain types/capacities);</li> <li>• Measuring systems for the continuous and dynamic measurement of quantities of liquids other than water (certain types/capacities);</li> <li>• Volume conversion devices; and</li> <li>• Water meters (certain types),</li> </ul> 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  The directive provides requirements for electromagnetic immunity.	Schedule 1  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	Regulations 4, 6 and 7

	bodies	
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 <sup>6</sup>	Specific requirements for water meters	Regulation 2 and Schedule 1, Part 2, Part A
Annex MI-002 <sup>7</sup>	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 <sup>8</sup>	Specific requirements for heat meters	Regulation 2 and Schedule 1, Part 2, Part B
Annex MI-005 <sup>9</sup>	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

<sup>6</sup> Amendments to Annex MI-001 (for water meters) made by Article 1 of and paragraph 1 of the Annex to the MID Amendment Directive are implemented by regulation 5(a) of the 2010 regulations.

<sup>7</sup> Amendments to Annex MI-002 (for volume conversion devices) made by Article 1 of and paragraph 2 of the Annex to the MID Amendment Directive are implemented by regulation 5(d) of the 2010 regulations.

<sup>8</sup> Amendments to Annex MI-004 (complete heat meters) made by Article 1 of and paragraph 4 of the Annex to the MID Amendment Directive are implemented by regulation 5(b) of the 2010 regulations.

<sup>9</sup> Amendments to Annex MI-005 (measuring systems for the continuous and dynamic measurement of quantities of liquids other than water) made by Article 1 of and paragraph 5 of the Annex to the MID Amendment Directive are implemented by regulation 5(c) of the 2010 regulations.



<b>Title:</b> <b>Implementation of Directive 2009/137/EC amending the Measuring Instruments Directive regulations</b>  <b>Lead department or agency:</b> National Measurement Office, Department for Business, Innovation and Skills  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> BIS0137
	<b>Date:</b> 26.10.2010
	<b>Stage:</b> Final
	<b>Source of intervention:</b> EU measure
	<b>Type of measure:</b> Secondary Legislation
<b>Contact for enquiries:</b> Veronica Truscott 020 8943 7263	

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**

The essential requirements of the existing Regulations implementing the Measuring Instruments Directive (2004/22/EC - "the MID") in respect of the flow annexes (MI-001 to MI-005) require amendment to ensure that the relevant measuring instruments are set as accurately as possible to zero for placing on the market and putting into use where prescribed in the UK, with the aim of preventing potential fraud whereby an instrument would be deliberately set up to give short measure from within the given tolerances to the benefit of the supplier and the detriment of the consumer. This addresses an information asymmetry market failure in which the consumer would not be aware whereas the supplier would be aware, clarifying existing legislation on gas meters (found unclear by industry) and other flow measuring instruments. It would also remove a potential barrier to trade whereby a Member State (MS) might not accept the test results of another MS because they find that the instrument fails where it had passed before. The amendments make the requirement explicit, rather than implicit as in the MID 2006 Regulations.

**What are the policy objectives and the intended effects?**

To close a legislative loophole by providing that relevant measuring instruments are set as accurately as possible to zero for placing on the market and putting into use where prescribed in the UK, with the aim of preventing potential fraud i.e. short measure from within the given tolerances, the possibility of a lower level of consumer protection and providing clarity for business. Implementation would be achieved at no cost to business as their operations are already compliant with the new requirement. The new legislation is required because although current UK and many other Member States' businesses are compliant, this does not mean that they are all likely to be in the future particularly if new manufacturers enter into the marketplace. The amendments make the requirement explicit, rather than implicit as in the MID 2006 Regulations. The problems that arise from inaccurate measurement are short measure or over measure even if at the extremities of the legal tolerance. To remove the potential barrier to trade mentioned above.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**

Two options have been considered:

Option 1: Transpose Commission Directive 2009/137/EC (and at the same time take the opportunity of correcting a typographical error and consequential omission in the relevant Regulations which implemented the MID i.e. the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647).

Option 2: Do nothing. This is not possible because the UK would risk infraction proceedings from non-compliance.

Option 1 is the preferred option as it addresses the information asymmetry problem outlined above.

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will be reviewed 05/2016
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**SELECT SIGNATORY Sign-off** For final proposal stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Minister: 

Date: 22 November 2010

# Summary: Analysis and Evidence

# Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate	zero		zero		zero
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
<p>The implementing legislation closes a potential legislative loophole, provides clarification to users and reflects current industry practice, so there are no costs for business who are already compliant with the legislation. UK-based manufacturers will not have to alter production processes so there will be no costs in that respect. Where a manufacturer is not UK-based, importers/retailers will not suffer from costs being passed on through higher prices. Current manufacturers are already compliant with the legislation.</p>					
<b>Other key non-monetised costs by 'main affected groups'</b>					
<p>There are no other key non-monetised costs by 'main affected groups'. Businesses that are compliant with the legislation currently will remain compliant with it when the legislation is amended. They are meeting the requirements implicit in the current legislation and with the revision will then meet the explicit requirements. They will not have to undertake any actions (e.g. realign their measuring instruments, buy new instruments) to comply with the legislation as they are already compliant.</p>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate	Unquantified		Unquantified		<b>Unquantified</b>
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
<p>It is not possible to quantify the benefits because there is no available evidence relating to the impact of the amending Directive. Feedback from respondents to the Consultation Stage Impact Assessment provided no further evidence. However, any benefit is expected to be minimal. The requirement (to set the relevant measuring instruments as accurately as possible to zero for placing on the market and putting into use where prescribed in the UK) is implicit in the MID 2006 Regulations. Correction became necessary as a result of a specific element in relation to error allowances for gas meters which was found to be incorrect in the English base text but correct in most other language versions. Manufacturers were still complying with the implicit, expected requirements.</p>					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
<p>By removing the potential for fraud, the proposed amendment also removes the possibility of a lower level of consumer protection. By clarifying current law on gas meters (found unclear by industry) and other flow measuring instruments, it potentially reduces the time and cost that businesses might spend on understanding how to comply with the law. It is difficult to say how much time businesses now spend on this. However, clearer and more explicit legislation is easier to understand.</p>					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
New AB:	AB savings: 0	Net: 0	Policy cost savings: 0		Yes



## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			01/06/2011		
Which organisation(s) will enforce the policy?			Trading Standards		
What is the annual change in enforcement cost (£m)?			0		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded: 0	Non-traded: 0	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: N/A	Benefits: N/A	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro 0	< 20 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties<sup>1</sup></b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	8
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	8
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	8
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	9
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	9
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	9
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	9
Justice system <a href="#">Justice Impact Test guidance</a>	No	9
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	8
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	9

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	<u>Directive 2009/137/EC:</u> <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:294:0007:0009:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:294:0007:0009:EN:PDF</a>
2	<u>Consultation including Consultation Stage Impact Assessment:</u> <a href="http://www.nmo.bis.gov.uk/fileuploads/Legislation/ConsDoc_-_MID_Amdmt_Regs_-_Final.pdf">http://www.nmo.bis.gov.uk/fileuploads/Legislation/ConsDoc_-_MID_Amdmt_Regs_-_Final.pdf</a>
3	<u>The (Regulatory) Impact Assessments for the Regulations implementing Directive 2004/22/EC:</u> <a href="http://www.nmo.bis.gov.uk/content.aspx?SC_ID=340">http://www.nmo.bis.gov.uk/content.aspx?SC_ID=340</a> .
4	<u>Government Response:</u> <a href="http://www.nmo.bis.gov.uk/content.aspx?SC_ID=338">http://www.nmo.bis.gov.uk/content.aspx?SC_ID=338</a>

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	0	0	0	0	0	0	0	0	0	0
<b>Annual recurring cost</b>	0	0	0	0	0	0	0	0	0	0
<b>Total annual costs</b>	0	0	0	0	0	0	0	0	0	0
<b>Transition benefits</b>	0	0	0	0	0	0	0	0	0	0
<b>Annual recurring benefits</b>	0	0	0	0	0	0	0	0	0	0
<b>Total annual benefits</b>	0	0	0	0	0	0	0	0	0	0

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

# Evidence Base (for summary sheets)

## 1. Problem under consideration

1.1 The focus of this Impact Assessment is on effective UK implementation of Commission Directive 2009/137/EC<sup>2</sup> (“the MID Amendment Directive”) which amends Directive 2004/22/EC on measuring instruments in respect of exploitation of the maximum permissible errors (MPEs) for the instruments specified in the flow annexes, following agreement in November 2009. The proposal is to transpose the MID Amendment Directive into UK legislation. This would be achieved by amending the essential requirements of the existing Regulations implementing the MID (listed at paragraph 3.3 below) in respect of the flow annexes to ensure that flow measuring instruments are set as accurately as possible to zero for placing on the market and putting into use. There is no European Commission Impact Assessment for the MID Amendment Directive. The (Regulatory) Impact Assessments for the Regulations implementing Directive 2004/22/EC<sup>3</sup> (“the MID”) are available via the following link under the heading ‘MID’: [http://www.nmo.bis.gov.uk/content.aspx?SC\\_ID=340](http://www.nmo.bis.gov.uk/content.aspx?SC_ID=340).

1.2 At the same time, the MID gas meter Regulations<sup>4</sup> will be amended to correct defective drafting reported by the Joint Committee on Statutory Instruments when the MID was implemented on the basis that those Regulations do not provide a clear indication of what each class of meter is. The MID electricity meter Regulations<sup>5</sup> also contain the same defect and the opportunity is therefore being taken to make a corresponding amendment to those Regulations.

1.3 The relevant MID Amendment Regulations will be amended to correct a typographical error and consequential omission in the MID gas meter Regulations.

1.4 In addition, the MID Amendment Regulations will be revised to reflect the Government response to the consultation.

## 2. Rationale for intervention

2.1 The primary aim of the proposed MID Amendment Regulations is:

- (a) to align the 2006 flow Regulations (listed at paragraph 3.3 below) with the MID Amendment Directive in respect of certain requirements in relation to the MPEs
- (b) in particular to clarify the legal position regarding gas meters because of industry concerns that the existing law is unclear

2.2 To remove the potential for fraud and consumer detriment by preventing short measure from within, or exploitation of, the given tolerances whereby a flow measuring instrument with good measurement repeatability could be set to make all deliveries close to the MPE, whether in excess or deficiency. If this does not happen, the consequent problem arising from inaccurate measurement is short measure or over measure even if at the extremities of the legal tolerance.

2.3 Implementation of the MID Amendment Directive helps to take forward NMO's objective to maintain and improve weights and measures and related legislation, in line with Ministerial obligations and requirements.

## 3. Policy objective

3.1 The policy objectives of the proposed MID Amendment Regulations are:

3.1.1 to clarify the legal position regarding gas meters because of industry concerns that the existing law is unclear.

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<sup>2</sup> Commission Directive 2009/137/EC of the European Parliament and of the Council on measuring instruments in respect of exploitation of the maximum permissible errors, as regards the instrument-specific annexes MI-001 to MI-005

<sup>3</sup> Commission Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004 on measuring instruments

<sup>4</sup> The Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647

<sup>5</sup> The Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679

3.1.2 to close a legislative loophole and remove the potential for fraud and consumer detriment by preventing short measure from within, or exploitation of, the given tolerances whereby a flow measuring instrument with good measurement repeatability could be set to make all deliveries close to the MPE, whether in excess or deficiency. (The new requirement that relevant measuring instruments are set as accurately as possible to zero for placing on the market and putting into use where prescribed in the UK will also reflect the current industry practice of setting meters accurately to prevent leaks. However, because it is already current industry practice prevention of leaks is a non-problem in relation to the amendment.)

3.1.3 to remove a barrier to trade which presents a hindrance to the completion of the single market in flow measuring instruments i.e. to remove the potential for misunderstanding the existing requirement across the European Union, so that one Member State might not accept the test results of another Member State because they find that the instrument fails where it had passed before.

3.2 Implementation would be achieved at no cost to UK business as their operations are already compliant with the new requirement to set the relevant measuring instruments as accurately as possible to zero for placing on the market and putting into use where prescribed in the UK. The new legislation is required because although current UK and many other Member States' businesses are compliant, this does not mean that they are all likely to be in the future particularly if new manufacturers enter into the marketplace. The amendments make the requirement explicit, rather than implicit as in the MID 2006 Regulations.

3.3 The Regulations to be amended are as follows:

- The Measuring Instruments (Liquid Fuel and Lubricants) Regulations 2006
- The Measuring Instruments (Cold-water Meters) Regulations 2006
- The Measuring Instruments (Liquid Fuel delivered from Road Tankers) Regulations 2006
- The Measuring Instruments (Active Electrical Energy Meters) Regulations 2006
- The Measuring Instruments (Gas Meters) Regulations 2006, and
- The Measuring Instruments (Non-Prescribed Instruments) Regulations 2006 in respect of water meters, heat meters, measuring systems for the continuous and dynamic measurement of quantities of liquids other than water, and volume conversion devices, that are not regulated in the UK

Together these are referred to below as “the 2006 flow Regulations”.

3.4 The MID Amendment Regulations are relevant to the following industry sectors: The industry for flow measuring instruments (which measure gas, electricity, water, heat, liquids other than water, and volume conversion devices) i.e. manufacturers, notified bodies, retailers and utilities, small businesses and trade associations in that field; and trading standards officers. The MID Amendment Regulations do not affect instruments already placed on the market because industry is already compliant with the requirement to set relevant measuring instruments as accurately as possible to zero for placing on the market and putting into use where prescribed in the UK.

3.5 The policy objective is to provide clarity to the legislation not legislative change.

## **4. Description of Options**

4.1 Option One: Implement the provisions of the MID Amendment Directive

This is the recommended option. Making the proposed MID Amendment Regulations would bring the requirements for MPEs of the 2006 flow Regulations in line with the equivalent provisions in the MID Amendment Directive, and thereby bring the Regulations up to date. The issues identified arise directly though lack of clarity in the legislation and therefore require corrective action through amendment to the 2006 flow Regulations. The MID Amendment Directive is consistent with UK policy and practice on these issues e.g. industry is already doing what is required because they have to set meters accurately to prevent leaks. There is no “gold plating” in the implementation of this directive.

## 4.2 Option Two: Do nothing

As the amendments to the MID have already been agreed, Option Two serves as a theoretical baseline to measure the impact of Option One to implement the MID Amendment Directive. If this Option Two were chosen and no UK implementation took place, the UK would risk infraction proceedings.

## 5. Costs and benefits

### 5.1 Costs

#### 5.1.1 Option One: Implement the provisions of the MID Amendment Directive

Evidence from responses to the consultation shows there was general agreement with the Government's expectations that there would be no monetary or non-monetary cost to business, nor an increase or decrease to administrative burdens. The requirement to set the relevant measuring instruments as accurately as possible to zero for placing on the market and putting into use where prescribed in the UK is implicit in the MID 2006 Regulations. Correction became necessary as a result of a specific element in relation to error allowances for gas meters which was found to be incorrect in the English base text but correct in most other language versions. Manufacturers were still complying with the implicit, expected requirements. Neither one-off costs nor on-going costs are envisaged to occur in order to comply with the MID Amendment Regulations.

#### 5.1.2 Option Two: Do nothing

The cost would be incurred of not providing clarification regarding the legal position and the testing of flow measuring instruments, of not removing the potential for fraud by tightening a legislative loophole, and of not removing the possibility of a lower level of consumer protection. Other Member States' implementing the legislation will benefit from the provisions in the MID Amendment Directive, which will leave the UK at a competitive disadvantage because clear legislation is better regulation and therefore simpler for stakeholders to understand. Finally, non-compliance with EC law would risk infraction proceedings.

### 5.2 Benefits

#### 5.2.1 Option One: Implement the provisions of the MID Amendment Directive

This option would make the 2006 flow Regulations consistent with the MID Amendment Directive regarding the requirements for MPEs, provide legal certainty in clear terms to manufacturers (and retailers). The amendment to the MID clarifies concerns for the gas industry in particular by replacing the very specific requirement of point 2.1 of MID Annex MI-002 relating to gas meters and volume conversion devices with a more general performance requirement. This removes a potential barrier to trade i.e. the potential for misunderstanding the existing requirement across the European Union, so that one Member State might not accept the test results of another Member State because they find that the instrument fails where it had passed before.

The MID Amendment Directive will be implemented in all Member States, and implementation in the UK would ensure that the original policy intention of the 2006 flow Regulations of making clear, fair and accurate provisions is achieved. The proposed amendment also removes the potential for fraud, and the possibility of a lower level of consumer protection.

There is no available evidence as to how much time and money industry spends now on having to comply with unclear Regulations and feedback from respondents to the consultation stage Impact Assessment provided no further evidence on this specific point. Therefore, taking these facts together with the relatively small-scale size and focus of the amendments, it has not been possible to quantify the benefits. They are expected to be minimal. However, respondents to the consultation agreed generally with the Government's expectations that there would be both improved clarity in the Regulations which would achieve the non-quantifiable benefit of reducing any unnecessary burden on industry in terms of time and therefore cost in having to comply with unclear Regulations, and also a simplification of the

requirements for testing flow measuring instruments. In addition, it was believed that potential cost savings would come from the certainty brought about by improved objectivity in the Regulations<sup>6</sup>.

### 5.2.2 Option Two: Do nothing

In the absence of any corrective action, there would be no benefit as unclear information would continue to be provided. The clarification which the MID Amendment Directive provides is that flow measuring instruments require protection against unduly biased errors inside the controlled range. The existing legislative loophole could potentially give rise to an instrument being incorrectly set up so that it favours one party to a transaction. This would defeat the original policy intention of the 2006 flow Regulations to make clear, fair and accurate provisions.

## 6. Risks and assumptions

6. If Option 2 'Do nothing' was chosen and no UK implementation took place, the UK would risk infraction proceedings. The new Regulations are designed to provide sufficient clarity to business and it is highly unlikely that they would not do so because they were drafted by stakeholders and in particular by those in the industries concerned.

## 7. Administrative burdens

There are no administrative burdens or savings and no policy savings. However we believe the legal clarification may help businesses better understand the legal requirements thus spend less time (and cost) trying to understand their legal obligations. It is not possible to quantify the savings spent from this simplification of legislation.

## 8. Specific Impact Tests

### 8.1 Equality Tests

After initial screening as to the potential impact of the proposed Regulations on race, disability and gender equality, it has been decided that there will not be a major impact upon minority groups in terms of either the numbers affected or the seriousness of the likely impact.

### 8.2 Small Firms Impact Test

This legislation applies equally to SMEs as it does to large enterprises. After initial screening as to the potential impact of the proposed Regulations on small firms including SMEs, it has been decided that there will not be a significant disproportionate impact upon small firms in terms of either the numbers affected or the seriousness of the likely impact. It was not foreseen at consultation stage that implementation of the MID Amendment Directive will have a negative effect. However, to help identify any unintended impacts or consequences of the proposal for small firms, views were sought from small firms or their representative bodies during the consultation exercise and the majority view was that there would not be any unintended impacts or consequences of the proposal for small firms including SMEs.

### 8.3 Rural Proofing

No aspect of the MID Amendment Regulations has been identified as having an impact upon rural communities or areas.

### 8.4 Competition Assessment

#### 8.4.1 Option One

There would be no change in the operations or number of businesses affected by these provisions to that intended originally under the 2006 flow Regulations. The proposal is corrective and a simplifying measure to ensure that the original policy intention is achieved in each case. Screening of the Office of Fair Trading competition filter test concluded that because the proposed MID Amendment Regulations

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<sup>6</sup> See 'Government response to the consultation on the draft Regulations to amend the Regulations implementing the Measuring Instruments Directive in respect of the flow annexes' pp.10-11 at [http://www.nmo.bis.gov.uk/content.aspx?SC\\_ID=338](http://www.nmo.bis.gov.uk/content.aspx?SC_ID=338) under the heading 'MID'.

are to clarify the requirements of the 2006 flow Regulations with respect to MPEs they would be unlikely to hinder the number or range of suppliers or the ability and incentive for businesses to compete.

The MID Amendment Regulations should provide a level playing field for all firms operating in this sector – fair-dealing businesses will not potentially be put at a disadvantage.

#### 8.4.2 Option Two

Option Two would be a continuation of existing policy and does not give rise to any significant competition issues. There is no major impact to competition. Manufacturers and providers in other Member States of flow meter equipment calibrated to comply with the amendment to the MID would potentially be at a competitive advantage if the UK did not implement them because they would have clear legislation which is simpler and therefore quicker to understand.

### 8.5 Other Specific Impact Tests

After initial screening as to the potential impact of the proposed Regulations on the Environment, Society and Sustainable Development, it has been decided that there will not be a major impact of either the numbers affected or the seriousness of the likely impact.

## 9. Alternatives to Regulation

Alternatives to regulation have been considered. However, in order to implement the provisions of the MID Amendment Directive effectively, the principal MID Regulations 2006 need to be amended. This will ensure that the existing legislation is made accurate and clear, and that the current potential for a barrier to trade and for fraud and consumer detriment (as described above) is removed from it. Therefore alternatives to regulation have been ruled out in order to arrive at the preferred option in this case.

### 9. One In, One Out

The Coalition Agreement states that "we will cut red tape by introducing a 'one-in, one-out rule' whereby no new regulation is brought in without other regulation being cut by a greater amount". This new Regulation will not fall within the one-in-one-out rule as it implements a European Directive and in any case has a zero cost effect. A 'One Out' therefore does not need to be sought for this measure.

## 10. Enforcement, Sanctions, Monitoring and Evaluation

The existing provisions in the 2006 flow Regulations apply. There are no new enforcement implications in this proposal. A Post Implementation Review will be carried out in 2016 i.e. 10 years after it was implemented in the UK, in line with review of the MID as a whole. We understand the European Commission are not planning to review this amending directive although they will review the original directive in 2016.

## 11. Summary and Recommendation

The recommendation is that Option One is taken forward. The UK's legal obligations under the Treaty of Rome require implementation of the MID Amendment Directive into UK law. The MID Amendment Directive is in line with government policy and practice in relation to the MPEs of flow measuring instruments. Implementation would fully realise the benefits and avoid the risks set out on pages 6 and 7 of this Impact Assessment.

One in, One Out. The Coalition Agreement states that "we will cut red tape by introducing a 'one-in, one-out rule' whereby no new regulation is brought in without other regulation being cut by a greater amount". This new regulation will not fall within this rule (a) because it implements European legislation which is currently exempt, and perhaps more importantly (b) because it does not introduce any new cost.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p><b>Basis of the review:</b> [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p> <p>The Measuring Instruments Directive will be reviewed by the Commission in 2016. At the same time, the UK will review the implementing regulations as the final part of the policy making process while feeding into the Commission's review.</p>
<p><b>Review objective:</b> [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>It is strongly anticipated that the policy objective will be met as it reflects current practice in the UK therefore a low-key check is proportionate in this case. There are no costs/benefits to be re-evaluated.</p>
<p><b>Review approach and rationale:</b> [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>We will gain feedback from the enforcement authority (trading standards, largely represented by TSI and LGR) and from businesses, trade associations and manufacturers of measuring instruments</p>
<p><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>The effectiveness of the legislation is measured against the do nothing option as a baseline. This is to retain unclear legislation with the potential for a barrier to trade and for fraud and consumer detriment.</p>
<p><b>Success criteria:</b> [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>Confirmation from industry that no costs or other negative impacts have arisen due to the change.</p> <p>Legislative clarity is provided for business so less time and money are spent attempting to understand the Regulations.</p> <p>Removal of potential barrier to trade whereby a Member State (MS) might not accept the test results of another MS because they find that the instrument fails where it had passed before.</p> <p>Potential fraud i.e. short measure or over measure arising from inaccurate measurement is prevented.</p> <p>Potentially lower level of consumer protection is prevented.</p> <p>If any new manufacturers enter into the marketplace, their businesses (like current businesses) are compliant (including with the new requirement that relevant measuring instruments are set as accurately as possible to zero for placing on the market and putting into use where prescribed in the UK) .</p>
<p><b>Monitoring information arrangements:</b> [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>Feedback obtained from regular meetings with industry stakeholders, trade organisations (the Petrol Retailers Association and the Forecourt Equipment Federation) and the enforcement community (the Trading Standards Institute and Local Government Regulation) will provide the indicators/statistics that will be used to measure the success of the policy.</p>



**Reasons for not planning a PIR:** [If there is no plan to do a PIR please provide reasons here]

Add annexes here.