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STATUTORY INSTRUMENTS

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**2006 No. 1264**

**The Measuring Instruments (Capacity  
Serving Measures) Regulations 2006**

**PART IV  
ENFORCEMENT**

**Enforcement authority**

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

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

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

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

**Compliance notice procedure**

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

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

- (a) be in writing;
- (b) describe the capacity serving measure to which it relates in a manner sufficient to identify that measure;
- (c) state that the enforcement authority is of the opinion that the CE marking or the M marking has, or both have, been affixed unduly to the capacity serving measure and give reasons for its opinion;
- (d) require the person on whom the notice is served to end the infringement under conditions specified in the notice;
- (e) specify the date, being not less than 21 days from the date of the notice, by which the infringement must be ended; and
- (f) warn that person that, where the non-conformity continues beyond the date specified in sub-paragraph (e), the enforcement authority may take further action under regulation 18 in respect of that capacity serving measure.

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

- (a) the CE marking shall be considered to have been affixed unduly if it is not compliant with the requirements of regulation 12(3)(a); and
  - (b) the M marking shall be considered to have been affixed unduly if it is not compliant with the requirements of regulation 12(3)(b).
- (4) Where a compliance notice is served by an enforcement authority other than the Secretary of State, it shall, at the same time as it serves that notice, send a copy to the Secretary of State.

### **Immediate enforcement action**

- 18.**—(1) Where an enforcement authority has reasonable grounds for considering that—
- (a) the manufacturer or his authorised representative has failed to comply with a compliance notice;
  - (b) a capacity serving measure, which is placed on the market or put into use, does not bear one or more of the CE marking, the M marking and the identification number of the notified body which carried out the conformity assessment procedure in respect of that measure; or
  - (c) a capacity serving measure which bears the marking and identification requirements referred to in sub-paragraph (b) does not meet the essential requirements when placed on the market, or properly installed and put into use in accordance with the manufacturer’s instructions,

the following provisions of this regulation shall have effect.

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

- (a) be in writing;
  - (b) describe the capacity serving measure to which it relates in a manner sufficient to identify that measure;
  - (c) specify, with reasons, the respects in which, in the opinion of the enforcement authority, the requirements of these Regulations have not been complied with;
  - (d) specify the date, being not less than 21 days from the date of the notice, by which the person to whom the notice is given is required to comply with it; and
  - (e) inform that person of the judicial remedies available to him and of the time limits to which those remedies are subject.
- (3) A notice under paragraph (2) may—
- (a) require the capacity serving measure to be withdrawn from the market; or
  - (b) prohibit or restrict the placing on the market or putting into use of the capacity serving measure; and
  - (c) specify that unless steps are taken which ensure—
    - (i) that the capacity serving measure is compliant with the requirements of these Regulations; or
    - (ii) that the manufacturer or his authorised representative acts as required under sub-paragraph (a) or (b),

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

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

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

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

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

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

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

- (a) be in writing;
- (b) state the grounds on which the application is made; and
- (c) be sent to the Secretary of State within 21 days from the date of the notice referred to in paragraph (1).

(3) The Secretary of State may—

- (a) hold an inquiry in connection with the notice which is the subject of his review; and
- (b) appoint an assessor for the purposes of assisting him with his review.

(4) The Secretary of State shall, within a reasonable time, inform the aggrieved person and the enforcement authority referred to in paragraph (1) in writing of his decision whether to uphold the notice served by that authority, together with reasons for his decision.

(5) Where the Secretary of State does not uphold any notice referred to in paragraph (1), he shall give instructions for the withdrawal of that notice.

### **Disqualification**

**20.**—(1) If it appears to an inspector that a capacity serving measure which bears—

- (a) the CE marking;
- (b) the M marking; and
- (c) the identification number of the notified body which carried out the conformity assessment procedure in respect of the capacity serving measure,

is used for trade in circumstances where—

- (i) the measure is no longer compliant with one or more of the requirements of regulation 14; or
- (ii) by reason of any adjustment, alteration, addition, repair or replacement it is likely that the measure has ceased to be compliant with one or more of the requirements of regulation 14,

the inspector may affix a disqualification sticker to the capacity serving measure.

(2) Where one or more of the markings and identification requirements referred to in paragraph (1) is not affixed to a capacity serving measure, the inspector may affix a disqualification sticker to the measure.

(3) Where it appears to the inspector that the nature or degree of non-compliance of the capacity serving measure under paragraph (1) is not such that a disqualification sticker should be immediately affixed to it, he may give to any person in possession of the measure a notice requiring that person to rectify the non-compliance before the expiry of a stated period not less than 14 days and not exceeding 28 days from the date of the notice.

(4) If a notice given under paragraph (3) is not complied with, the inspector shall affix a disqualification sticker to the capacity serving measure.

(5) A disqualification sticker which is affixed to a capacity serving measure shall be affixed in such a position that it is clearly visible when the measure is in use.

(6) A person shall be guilty of an offence if he uses for trade a capacity serving measure to which there is affixed a disqualification sticker, unless a re-qualification sticker has been affixed to the measure in accordance with regulation 21.

### **Re-qualification**

**21.**—(1) Where—

- (a) a disqualification sticker has been affixed to a capacity serving measure in accordance with regulation 20(1), 20(2) or 20(4);
- (b) a notice has been served under regulation 20(3); or
- (c) a capacity serving measure is intended to be used for trade in the circumstances referred to in regulation 20(1)(i) or (ii) or 20(2) but a disqualification sticker has not been affixed to the measure,

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

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

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

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

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

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

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

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

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

### **Unauthorised application of authorised marks**

**22.**—(1) Subject to paragraph (2), a person shall be guilty of an offence if, in the case of a capacity serving measure, he—

- (a) affixes an authorised mark to the measure otherwise than in accordance with these Regulations;
- (b) alters or defaces an authorised mark affixed to the measure;
- (c) removes an authorised mark affixed to the measure; or

- (d) affixes any other marking to the measure which is likely to deceive any person as to the meaning or form, or both, of an authorised mark.
- (2) Where the alteration or defacement of an authorised mark is occasioned solely—
  - (a) in the course of the adjustment or repair of a capacity serving measure by a person regularly engaged in the business of repair of such measures, or by his authorised agent; or
  - (b) by an enforcement officer or approved verifier in the carrying out of any of his functions under these Regulations,that person or his authorised agent, enforcement officer or approved verifier shall not be guilty of an offence under paragraph (1)(b).
- (3) A person shall be guilty of an offence if he places on the market, puts into use or uses for trade a capacity serving measure—
  - (a) which, to his knowledge, bears—
    - (i) an authorised mark affixed otherwise than in accordance with these Regulations;
    - (ii) an authorised mark that has been altered or defaced otherwise than in the circumstances referred to in paragraph (2); or
    - (iii) any marking which is likely to deceive any person as to the meaning or form, or both, of an authorised mark; or
  - (b) from which, to his knowledge, an authorised mark has been removed.
- (4) A capacity serving measure in respect of which an offence under this regulation has been committed and any implement used in the commissioning of the offence shall be liable to be forfeited.
- (5) A reference in this regulation to other provisions of these Regulations includes a reference to corresponding provisions under the laws of other member States.
- (6) In this regulation, “authorised mark” means the CE marking, the M marking, the identification number of the notified body which carried out the conformity assessment procedure in respect of the capacity serving measure, disqualification sticker or re-qualification sticker.

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

- 23.**—(1) Subject to the production if so requested of his credentials, an enforcement officer may for the purposes of these Regulations, at all reasonable times—
- (a) inspect and test any capacity serving measure in such manner as he considers appropriate;
  - (b) inspect and take copies of any document relating to a capacity serving measure; and
  - (c) enter any premises at which he has reasonable cause to believe there to be a capacity serving measure, not being premises used only as a private dwelling house.
- (2) Subject to the production if so requested of his credentials, an enforcement officer may, at any time, seize and detain—
- (a) a capacity serving measure which he has reasonable cause to believe is liable to be forfeited under these Regulations; and
  - (b) any document or goods which he has reason to believe may be required as evidence in proceedings for an offence under these Regulations.
- (3) If a justice of the peace, on written information on oath—
- (a) is satisfied that there are reasonable grounds to believe that any capacity serving measure or document as is mentioned in paragraph (1) or (2) is on any premises, or that an offence under these Regulations has been, is being or is about to be committed on any premises; and
  - (b) is also satisfied either that—

- (i) admission to the premises has been or is likely to be refused, and that notice of intention to apply for a warrant has been given to the occupier; or
- (ii) an application for admission, or the giving of such a notice would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

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

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

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

(6) If an enforcement officer or other person who enters any work-place by virtue of this regulation discloses to any person any information obtained by him in the work-place with regard to any secret manufacturing process or trade secret, he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.

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

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

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

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

#### **Obstruction of enforcement officer**

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

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

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

#### **Penalties for offences**

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

#### **Defence of due diligence**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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