

**2008 No. 738**

**WEIGHTS AND MEASURES**

**The Non-automatic Weighing Instruments (Amendment)  
Regulations 2008**

|                               |                        |
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| <i>Made</i> - - - -           | <i>6th March 2008</i>  |
| <i>Laid before Parliament</i> | <i>14th March 2008</i> |
| <i>Coming into force</i> - -  | <i>6th April 2008</i>  |

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to, and for purposes ancillary to, the regulation of specifications, construction, placing on the market and use of articles, instruments, containers or other equipment intended for weighing, measuring or testing.

The Secretary of State makes the following Regulations under the powers conferred on him by section 2(2) of that Act and by sections 15(1) and 86(1) of the Weights and Measures Act 1985(c).

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Non-automatic Weighing Instruments (Amendment) Regulations 2008 and shall come into force on 6th April 2008.

(2) In these Regulations, “the principal Regulations” means the Non-automatic Weighing Instruments Regulations 2000(d).

**Authorised persons**

2.—(1) In regulation 2(2) of the principal Regulations, the following is substituted for the definition of “authorised person”—

““authorised person” means—

- (a) an inspector, or
- (b) a person other than an inspector, who is authorised to exercise the functions of an authorised person under these Regulations by virtue of regulation 2A,  
but, for the purposes of regulations 23, 24 and 27, paragraph (b) does not include a person authorised under regulation 2A(3);”.

(2) After regulation 2 of the principal Regulations, a new regulation is inserted as follows—

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(a) S.I. 1975/427.  
(b) 1972 c.68.  
(c) 1985 c.72.  
(d) S.I. 2000/3236.

### **“Authorised persons**

**2A.**—(1) Subject to paragraph (2), the functions of an authorised person under these Regulations may be exercised by a person who is—

- (a) employed by a local weights and measures authority; and
- (b) authorised by the chief inspector of weights and measures of that authority to exercise the functions of an authorised person under these Regulations in its area.

(2) An authorisation under paragraph (1) shall cease to have effect—

- (a) if the authorised person ceases to be employed by the local weights and measures authority whose chief inspector authorised that person to exercise the functions of an authorised person under these Regulations; or
- (b) otherwise in accordance with its terms, or, if the authorisation makes no provision for its termination, in accordance with the terms of a notice in writing—
  - (i) from the chief inspector of the local weights and measures authority to the authorised person terminating that person’s authorisation; or
  - (ii) from the authorised person to the chief inspector of the local weights and measures authority, indicating that the authorised person no longer wishes to perform the functions of an authorised person under these Regulations.

(3) Subject to paragraph (4), the functions of an authorised person under these Regulations may be exercised by a person who—

- (a) appears to the Secretary of State to possess the necessary skills and expertise to perform those functions; and
- (b) is authorised by the Secretary of State to perform those functions.

(4) An authorisation under paragraph (3)—

- (a) does not permit a person to exercise those functions which are conferred on authorised persons by regulations 23, 24 and 27; and
- (b) shall cease to have effect in accordance with its terms, or, if the authorisation makes no provision for its termination, in accordance with the terms of a notice in writing—
  - (i) from the Secretary of State to the authorised person terminating that person’s authorisation; or
  - (ii) from the authorised person to the Secretary of State, indicating that the authorised person no longer wishes to perform the functions of an authorised person under these Regulations.”.

### **Affixing of re-qualification stickers**

**3.** After regulation 24 of the principal Regulations, a new regulation is inserted as follows—

**“24A.**—(1) This regulation applies where—

- (a) a disqualification sticker has been affixed to an instrument in accordance with regulations 23(1), 23(3), 24(1), 24(2), 24(3) or 27 or under any corresponding provision in the law of a member State other than the United Kingdom;
- (b) a notice has been served in respect of an instrument under regulation 23(2), or any notice of equivalent effect has been served under any corresponding provision in the law of a member State other than the United Kingdom; or
- (c) an instrument to which a disqualification sticker has not been affixed has—
  - (i) ceased to satisfy the essential requirements; and
  - (ii) been subjected to any adjustment, alteration, addition, repair or replacement,

and a person (“the applicant”) requires a re-qualification sticker to be affixed to the instrument concerned (“the disqualified instrument”).

(2) Where this regulation applies, the applicant may request (or, in the case of an inspector, on payment of the requisite fee, require) a person who is a re-qualifying authority in respect of the disqualified instrument, as set out in paragraph (3), to carry out the appropriate examinations and tests on the disqualified instrument with a view to determining whether the re-qualifying authority is satisfied that the disqualified instrument—

- (a) satisfies the provisions of the NAWI Directive which apply to it;
- (b) is in conformity with any EC type-approval certificate which applies to it; and
- (c) complies with any requirements of Part III which are applicable to that instrument.

(3) For the purposes of this regulation—

- (a) an inspector is a re-qualifying authority in respect of any instrument;
- (b) the Secretary of State is a re-qualifying authority in respect of instruments which have been subject to EC unit verification; and
- (c) an approved body, an approved verifier or a manufacturer whose quality system has been approved under regulation 13(4) is a re-qualifying authority in respect of instruments—
  - (i) which have been subject to EC verification, or in respect of which an EC declaration of type conformity has been made; and
  - (ii) in respect of which the terms of the approval granted to that approved body, approved verifier or manufacturer permit it to carry out the functions of an approved body or approved verifier or (in the case of a manufacturer) to make EC declarations of type conformity.

(4) The applicant shall—

- (a) submit the disqualified instrument to the re-qualifying authority, in such manner as the re-qualifying authority (or, in the case of an inspector, the local weights and measures authority which employs the inspector) may direct;
- (b) provide the re-qualifying authority with such assistance as the re-qualifying authority may reasonably require; and
- (c) pay the re-qualifying authority such reasonable fees (having regard to the work done or to be done) as the re-qualifying authority (or, in the case of an inspector, the local weights and measures authority which employs the inspector) may determine.

(5) The re-qualifying authority shall—

- (a) carry out the examinations and tests which are appropriate for the purposes of being satisfied that an instrument meets the criteria set out in paragraph (2)(a) to (c), including those specified in the relevant national standard or equivalent tests;
- (b) keep a record of any such test or examination; and
- (c) if satisfied that the disqualified instrument meets the criteria set out in paragraph (2)(a) to (c), affix a re-qualification sticker to it.

(6) Where the re-qualifying authority is a manufacturer, the re-qualification sticker may be affixed by the manufacturer's authorised representative.

(7) Where a re-qualification sticker is affixed to an instrument—

- (a) it shall be affixed in such a way as to obliterate as far as possible any disqualification sticker; and
- (b) there shall be affixed to the instrument—
  - (i) if the re-qualifying authority is the Secretary of State, an approved body or an approved verifier, the identification number of the re-qualifying authority;
  - (ii) if the re-qualifying authority is an inspector, the number assigned by the Secretary of State to the local weights and measures authority which employs the inspector; or

- (iii) if the re-qualifying authority is a manufacturer, the identification number of the approved body which granted the manufacturer an approval under regulation 13(4) in respect of the disqualified instrument.”.

#### **Re-qualification: consequential revocations and amendment**

- 4.—(1) The following provisions of the principal Regulations are revoked—
- (a) paragraphs (6) and (7) of regulation 11 (EC verification);
  - (b) paragraphs (6) and (7) of regulation 12 (EC unit verification);
  - (c) paragraphs (8) and (9) of regulation 13 (Quality system approval and EC declaration of type conformity); and
  - (d) paragraph (9) of regulation 18 (Affixing of CE marking etc).
- (2) In regulation 2(2) of the principal Regulations, for the definition of “identification number”, there is substituted—
- ““identification number” means—
- (a) in relation to the Secretary of State or an approved body, the number assigned by the Commission to the Secretary of State or the approved body; and
  - (b) in relation to an approved verifier, the number assigned by the Secretary of State to the approved verifier,
- and, where the context so permits, references in these Regulations to the identification number include references to an identification symbol so assigned before these Regulations come into force;”.

#### **Miscellaneous amendments**

- 5.—(1) In regulation 2 of the principal Regulations, for sub-paragraph (1)(b), substitute the following—
- “(b) except for the reference to the European Communities in the definition of “the Commission” and in relation to the Official Journal, a reference to the Community includes a reference to the European Economic Area, and a reference to a member State includes a reference to an EEA State which is not a member State.”.
- (2) In the heading and the first line of regulation 27 of the principal Regulations, for “trade”, there is substituted “a Schedule 3 application”.
- (3) In regulation 40(1) of the principal Regulations, the reference to regulation 17(4) of the principal Regulations is deleted.
- (4) In the second row of the second column of Table 1 in Schedule 2 to the principal Regulations, for “0,005g”, there is substituted “0,05g”.
- (5) In Schedule 5 to the principal Regulations—
- (a) the following is substituted for paragraph 1—

“1. For the purposes of these Regulations—

    - (a) references to a local weights and measures authority are references to the Department of Enterprise, Trade and Investment; and
    - (b) references to a chief inspector of weights and measures are references to a chief inspector of weights and measures appointed under article 40 of the 1981 Order.”;

and
  - (b) paragraph 5 is deleted.

6th March 2008

*Ian Pearson*  
Minister of State for Science and Innovation,  
Department for Innovation, Universities and Skills

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the enforcement provisions of the Non-automatic Weighing Instruments Regulations 2000 (S.I. 2000/3236) (“the principal Regulations”).

The principal Regulations have two purposes. First, they implement Council Directive 90/384/EEC (as amended by Council Directive 93/68/EEC) (“the Directive”) on the harmonisation of the laws of the member States relating to non-automatic weighing instruments (“instruments”). Secondly, Part III of the principal Regulations contains provisions in relation to instruments which are used for trade within the meaning of the Weights and Measures Act 1985 (“the 1985 Act”).

The amendments effected by these Regulations are principally concerned with—

- (a) who can exercise the official functions relating to instruments which are given to “authorised persons” under the principal Regulations; and
- (b) the affixing of “re-qualification stickers” in certain circumstances as an indication that instruments which have been “disqualified” (for example, for having become insufficiently accurate) have been brought back into compliance with the requirements of the Directive, any EC type-approval certificate and any applicable requirements of Part III of the principal Regulations.

The key changes introduced by these Regulations are as follows.

- (a) From 6th April 2008, an instrument to which a disqualification sticker has been affixed may be submitted for re-qualification by a local weights and measures inspector or an “approved verifier”, as well as by approved bodies and certain manufacturers.
- (b) Non-inspectors who have been authorised to exercise the functions of an authorised person by a chief inspector will remain able to do so while they remain employed by the same local weights and measures authority. In addition, the Secretary of State will be able to authorise non-inspectors to exercise the functions of an authorised person (other than the functions of disqualification and re-qualification).

An Impact Assessment in respect of these Regulations is available and a copy can be obtained from the National Weights and Measures Laboratory, Stanton Avenue, Teddington, Middlesex TW11 0JZ or from its website at [www.nwml.gov.uk](http://www.nwml.gov.uk). Copies have been placed in the libraries of both Houses of Parliament.

In so far as they affect the application and enforcement of Part III of the principal Regulations (and are, to that extent, made under the 1985 Act rather than section 2(2) of the European Communities Act 1972), these Regulations have been notified to the European Commission in accordance with the requirements of Article 8 of Directive 98/34/EC of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204, 21.7.1998, p. 37) as amended by Directive 98/48/EC of the European Parliament and of the Council (OJ L 217, 5.8.1998, p. 18).

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