

WEIGHTS AND MEASURES (AMENDMENT) ACT (NORTHERN IRELAND) 2000

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Weights and Measures (Amendment) Act. They have been prepared by the Department of Enterprise, Trade and Investment (“the Department”) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The three deregulatory measures contained in the Act were first proposed for inclusion in the composite Deregulation (Northern Ireland) Order 1997 (“the 1997 Order”). They were withdrawn in March 1997, when the Parliamentary process for the allied Deregulation (Weights and Measures) Order 1998 (scheduled to be made by the Department of Trade and Industry (DTI) under the Deregulation and Contracting Out Act 1994 (“the 1994 Act”)) was interrupted by the dissolution of Parliament prior to the General Election of 1 May 1997.
4. The three measures were later proposed for inclusion in a second composite draft Deregulation (Northern Ireland) Order in October 1997. It did not prove possible, however, to process this draft Order in accordance with normal procedures and bring it into effect before February 1999 (the then estimated date for devolution of power to the new Northern Ireland Assembly). It was agreed therefore in August 1998 that these three deregulatory measures and the others contained in the draft Order should be deferred for consideration by the Assembly.
5. The principal policy objective of the Act is to replicate for Northern Ireland those three deregulatory measures contained in the Deregulation (Weights and Measures) Order 1999, which was made by the DTI under the 1994 Act on

1 March 1999. Parity will thus be maintained between the legislative provisions on weights and measures here and those in Great Britain (GB), with Northern Ireland continuing to remain on all fours with the rest of the UK.

Purpose of the Act and summary of its main provisions

6. The prime purpose of the Act is to introduce three deregulatory measures to lessen the burdens on business associated with the verification of weighing or measuring equipment (e.g. scales and petrol pumps) under Article 9 (*Weighing or measuring equipment for use for trade*) of the Weights and Measures (Northern Ireland) Order 1981 ("the 1981 Order").

7. Provision is made in the Act as follows:

(a) Self-verification of weighing or measuring equipment

The 1981 Order is amended to permit approved manufacturers, installers and repairers to conduct their own testing, passing and stamping (verification) of weighing or measuring equipment as fit for use for trade. Currently such equipment is required to be verified by an inspector of weights and measures ("inspector") under Article 9 of the 1981 Order.

(b) Testing by official EEA testers

The 1981 Order is amended to allow persons who require any weighing or measuring equipment to be passed by an inspector as fit for use for trade to submit, together with the equipment, test reports from third-party testers established in the European Economic Area ("official EEA testers").

Such reports are required to:

- (i) confirm that the equipment has been tested in accordance with any tests prescribed for that equipment;
- (ii) state which tests have been applied; and
- (iii) set out the test results.

If the inspector is satisfied that the tests have been performed by a competent person, the inspector will accept the test report as part of his verification of the equipment.

(c) Pre-test stamping

The 1981 Order is amended to enable manufacturers of weighing or measuring equipment (eg glass beer measures), provided they are approved verifiers, to apply the requisite prescribed stamp prior to the equipment being tested and passed as fit for use for trade. The manufacturer must, however, be satisfied that the equipment will be

passed as fit for use for trade and that, until it has been passed, it will not be used at any time when it bears the stamp.

CONSULTATION

8. Consultation on the content of the proposed measures took place here in December 1996 and January 1997 in the context of the 1997 Order (from which the proposed measures were later withdrawn as stated in paragraph 3 above). This consultation exercise elicited no adverse responses.

OPTIONS CONSIDERED

9. In light of paragraphs 4 and 5 above, it fell to the Assembly to decide how it should legislate for such deregulatory measures. On the one hand, there was the option of introducing general powers to permit the use of a legislative mechanism, parallel to the arrangements in GB, whereby primary legislation could be amended by subordinate legislation when deregulation was the sole aim. On the other, there was the option of taking forward these particular deregulatory measures by means of a separate, stand-alone Act of the Assembly. It was decided that the primary legislation mechanism was the preferred option.

OVERVIEW

10. The Act has 5 sections and 1 Schedule. In addition to the amendments to the 1981 Order referred to in paragraph 7 above, the Act also makes provision for various consequential amendments to the 1981 Order.

COMMENTARY ON SECTIONS

Section 1 : Self-verification of weighing or measuring equipment

This section gives effect to the Schedule to the Act which amends the 1981 Order to allow self-verification of weighing or measuring equipment.

Section 2 : Testing by official EEA testers

This section provides for the insertion of a new Article 9B after the new Article 9A of the 1981 Order (Article 9A being inserted by paragraph 4 of the Schedule to the Act).

Article 9B is entitled "*Testing by official EEA testers*" and provides for the acceptance by an inspector of test reports from third-party testers established in the European Economic Area ("official EEA testers") as follows:

- (a) Paragraph (1) stipulates that Article 9B applies where equipment tested by an official EEA tester is submitted, along with the test report (comprising the tests

applied and the results), to an inspector under Article 9(3) for passing as fit for use for trade.

- (b) Paragraph (2) requires the inspector not to test the equipment and to rely instead on the test report.
- (c) Paragraph (3) defines "official EEA testers" for the purposes of Article 9B as persons required at the time the tests were applied to have:
 - (i) responsibility in an EEA State for the metrological control of equipment of that description; or
 - (ii) accreditation in an EEA State as persons operating a laboratory, in conformity with the criteria set out in the applicable European Standard for the purposes of testing equipment of that description.
- (d) Paragraph (4) defines EEA State.

Section 3 : Pre-test stamping

Subsection (1) of this section provides for the insertion of a new Article 13A after Article 13 (*Regulations relating to weighing or measuring for trade*) of the 1981 Order.

Article 13A is entitled "*Pre-test stamping by certain manufacturers*" and provides for manufacturers of weighing or measuring equipment, who are approved verifiers, to apply the prescribed stamp before the equipment has been tested and passed as fit for use for trade (provided they are satisfied that the equipment will not be used unless it has been passed as fit for use for trade) as follows:

- (a) Paragraph (1) is subject to paragraph (2) and allows an approved verifier who is the manufacturer of equipment to which Article 9 applies to apply the prescribed stamp, even when the equipment has not been passed as fit for use for trade, if he is satisfied that it will not be used unless:
 - (i) it has been so passed; or
 - (ii) the stamp has been destroyed, obliterated or defaced.
- (b) Paragraph (2) provides that the prescribed stamp so applied by the approved verifier must include his number.
- (c) Paragraph (3) makes contravention of paragraph (2) an offence, with any associated equipment being liable to forfeiture.

- (d) Paragraph (4) stipulates that application of the prescribed stamp shall indicate that:
 - (i) before equipment is passed as fit for use for trade, the approved verifier is satisfied that it will not be used unless it has been so passed or the stamp has been destroyed, obliterated or defaced; and
 - (ii) after equipment is passed as fit for use for trade, it is thereby proved to have been passed as fit for such use.
- (e) Paragraph (5) stipulates that equipment, to which the prescribed stamp has been applied under paragraph (1), will not require the application of any further stamp on having been passed as fit for use for trade.
- (f) Paragraph (6) stipulates that, where an approved verifier fails to pass as fit for use for trade any equipment to which the prescribed stamp has been applied under paragraph (1), he may destroy, obliterate or deface the stamp:
 - (i) where there is a prescribed manner of doing so; and
 - (ii) in any other case in such a way that there is no doubt that it has been intentionally destroyed, obliterated or defaced.
- (g) Paragraph (7) stipulates that references in paragraphs (4) to (6) to the application of prescribed stamps do not include references to such stamps subsequently destroyed, obliterated or defaced.

Subsection (2) of this section provides for the insertion of a qualification in the definition of "stamp" in Article 2(2) (*Interpretation*) of the 1981 Order to the extent that, with the introduction of pre-test stamping, such a mark may not necessarily be evidence of the passing of the associated equipment as being fit for use for trade.

Subsection (3) of this section provides for a minor consequential amendment to Article 47(1) (*Penalties*) of the 1981 Order.

Section 4: Interpretation

This section defines the use of the words "the 1981 Order" in the Act as meaning the Weights and Measures (Northern Ireland) Order 1981 (NI 10).

Section 5: Short title

This section states that the Act may be cited as the Weights and Measures (Amendment) Act (Northern Ireland) 2000.

Schedule: Amendment of the 1981 Order to allow self-verification

This Schedule is given effect by Section 1 of the Act and amends the 1981 Order to allow self-verification of weighing or measuring equipment as provided in *paragraphs 2 to 9*.

Paragraph 2 of the Schedule provides for the insertion of the definition of "approved verifier" in Article 2(2) of the 1981 Order.

Paragraph 3 of the Schedule provides for the amendment of Article 9 of the 1981 Order as follows:

- (a) Sub-paragraphs (a) and (b) provide for some minor consequential amendments to paragraphs (2) and (3) of Article 9 respectively.
- (b) Sub-paragraph (c) provides for the insertion after paragraph 3 of Article 9 of two new paragraphs as follows:
 - (i) paragraph (3A) makes provision for the responsibilities, duties, etc. of approved verifiers in respect of testing (ie equipment to be used) and stamping; and
 - (ii) paragraph (3B) defines "approved verifier" and includes the recognition of those approved under the law of Great Britain.
- (c) Sub-paragraph (d) provides for some minor consequential amendments to paragraph 4 of Article 9.

Paragraph 4 of the Schedule provides for the insertion of a new Article 9A after Article 9 of the 1981 Order (see also Section 2 above).

Article 9A is entitled "*Approval of persons to verify equipment manufactured etc. by them*" and provides as follows:

- (a) Paragraph (1) provides for the application of paragraph (2) by the Department to persons carrying on business as manufacturers, installers or repairers of equipment, to which Article 9 applies, where the Department is satisfied that such persons can satisfy the requirements of Part II of the new Schedule 2A (Approvals Under Article 9A)(see *paragraph 9* below) and are fit and proper persons to be so approved.
- (b) Paragraph (2) provides for the approval by the Department of such persons to verify equipment manufactured, installed or repaired by them.
- (c) Paragraph (3) provides that the Department, before granting such an approval,

may carry out such audits and inspections of the person's related systems and procedures as are necessary to ensure that the conditions of the approval will be observed.

- (d) Paragraph (4) brings Schedule 2A into effect.
- (e) Paragraph (5) stipulates that "approval" in Schedule 2A means an approval under Article 9A and "the verifier" must in relation to such an approval be construed accordingly.

Paragraph 5 of the Schedule provides for a minor consequential amendment to Article 12(1) (*General specifications of equipment for use for trade*) of the 1981 Order.

Paragraph 6 of the Schedule provides for minor consequential amendments to paragraph (1)(a) of Article 14 (*Offences in connection with stamping of equipment*) of the 1981 Order.

Paragraph 7 of the Schedule provides for the addition of a new provision at the end of sub-paragraph (a) of Article 41(1) (*General powers of inspection and entry*) of the 1981 Order enabling inspectors to inspect and test equipment passed as fit for use for trade by approved verifiers.

Paragraph 8 of the Schedule provides for the substitution of paragraph (2) of Article 45 (*Offences in connection with office of inspector*) of the 1981 Order with three new paragraphs as follows:

- (a) paragraph (1A) provides for the commission of an offence by an approved verifier who:
 - (i) stamps any equipment in contravention of the 1981 Order or without testing it; or
 - (ii) commits any breach of any duty imposed by or under the 1981 Order.
- (b) paragraph (2) provides for the commission of an offence by anyone who impersonates an inspector or approved verifier; and
- (c) paragraph (3) provides that paragraph (1) of Article 24 (*Additional defences and safeguards for traders*) and paragraph (1) of Article 25 (*Offences due to default of third person*) of the 1981 Order shall apply in relation to proceedings for an offence by an approved verifier who commits any breach of any duty imposed by or under the 1981 Order

as for an offence under Part V (Regulation of Certain Transactions in Goods) of the 1981 Order.

Paragraph 9 of the Schedule provides for the insertion of a new Schedule 2A (Approvals under Article 9A) (see *paragraph 4* above) after Schedule 2 (Units of Measurement Lawful for Use for Trade) to the 1981 Order as follows:

- (a) Paragraph 1 (Fees) of Part I (Approvals: General) provides for the determination by the Department (with the approval of the Department of Finance and Personnel) of a reasonable fee to be paid by any person making an application for an approval or being granted such an approval in respect of any related work carried out by or on behalf of the Department.
- (b) Paragraph 2 (Form, effect and conditions of approvals) of Part I provides as follows:
 - (i) Sub-paragraph (1) provides for an approval to be in writing and, subject to earlier withdrawal, to remain in force for a specified period not exceeding five years.
 - (ii) Sub-paragraph (2) provides for an approval to specify such equipment as the verifier may verify and to include such conditions as ensure that only equipment fit for use for trade is so passed and that the requirements of Part II (Requirements to be met by Approved Verifiers)(see sub-paragraph (g) of *this paragraph* below) of the Schedule are satisfied.
 - (iii) Sub-paragraph (3) provides that the conditions of an approval may require the verifier to comply with specified directions given by the Department and to ensure that his testing procedures conform with quality standards specified in the approval.
- (c) Paragraph 3 (Suspension of approvals) of Part I provides as follows:
 - (i) Sub-paragraph (1) provides for an inspector to give to an approved verifier either a general or particular notice of the suspension of his approval, for a period not exceeding 28 days, where it appears to the inspector that, otherwise than in accordance with new Article 13A (see Section 3 above), the prescribed stamp has been, or is being applied, to equipment which had not, or has not, been tested and passed as fit for use for trade.
 - (ii) Sub-paragraph (2) provides that where the inspector gives such a suspension notice, he shall immediately send a copy to his Chief

Inspector and inform the verifier in writing of the circumstances leading to the giving of the notice, the date on which it takes effect and how an application may be made for its withdrawal.

- (iii) Sub-paragraph (3) provides that, where a verifier has taken steps to prevent a recurrence of the circumstances which led to the giving of the suspension notice, he may apply to the inspector for withdrawal of the suspension during the specified period. Such an application must be made by giving notice to the inspector not later than 21 days after the date of the suspension notice and must state the steps taken to prevent a recurrence.
 - (iv) Sub-paragraph (4) provides that the inspector must consider the application and notify the verifier of his decision.
 - (v) Sub-paragraph (5) provides that a verifier aggrieved by a suspension notice may apply to the Chief Inspector to review it. Such an application must be made by giving notice to the Chief Inspector not later than 21 days after the date of the suspension notice and must state the grounds on which the application is made.
 - (vi) Sub-paragraph (6) provides that the Chief Inspector must consider the application and notify the verifier and the inspector of his decision.
 - (vii) Sub-paragraph (7) provides that where the Chief Inspector decides to uphold the suspension, he must notify the verifier and the inspector of the grounds for his decision.
 - (viii) Sub-paragraph (8) provides that where the Chief Inspector decides not to uphold the suspension, he must instruct the inspector to withdraw it.
- (d) Paragraph 4 (Withdrawal of approvals) of Part I provides as follows:
- (i) Sub-paragraph (1) is subject to sub-paragraph (2) and provides that the Department may by written notice withdraw an approval at any time during its continuance if:
 - the Department would not have been minded to grant a further approval, had the approval expired at that time;
 - it appears that the verifier has breached any condition(s) in the approval; or
 - any fee due has not been paid.

- (ii) Sub-paragraph (2) provides that the Department may normally only withdraw an approval on giving 28 days written notice of its intention to do so (with the relevant grounds), except where it considers that circumstances warrant withdrawal without delay.
 - (iii) Sub-paragraph (3) provides that where the Department withdraws an approval without giving 28 days written notice as above, it shall at or before that time give the verifier written notice of the grounds for withdrawal of the approval and the reasons for having to withdraw it without delay.
 - (iv) Sub-paragraph (4) provides for the verifier to be able to make written representations to the Department within 21 days of receiving either sort of the above notices.
 - (v) Sub-paragraph (5) provides for the Department to consider any such written representations and notify the verifier of its decision.
- (e) Paragraph 5 (Grant of new approval following withdrawal) of Part I provides as follows:
- (i) Sub-paragraph (1) provides that where the Department decides, in the light of representations or otherwise, that it ought not to have withdrawn an approval, it must as soon as practicable grant a new approval to the former verifier.
 - (ii) Sub-paragraph (2) provides that the new approval must expire on the same date as the withdrawn approval and be subject, unless otherwise agreed, to the same terms and conditions.
 - (iii) Sub-paragraph (3) provides that the verifier, on being granted any such new approval by the Department, will be deemed to have remained approved during the interim period between the date of withdrawal of the original approval and the date of coming into effect of the new approval.
- (f) Paragraph 6 (Application for further approval) of Part I provides as follows:
- (i) Sub-paragraph (1) provides for that paragraph to pertain where the verifier applies to the Department not less than 3 months before the date of expiry of his current approval for the grant of a further approval subject to the same, or substantially the same, terms and conditions.

- (ii) Sub-paragraph (2) provides that in such circumstances the current approval must remain in force until the Department notifies the verifier of its decision on the application for a further approval.
- (g) Paragraph 7 (Maintenance of quality system) of Part II (Requirements to be met by Approved Verifiers) provides as follows:
- (i) Sub-paragraph (1) provides that the verifier must maintain such systems and procedures (referred to as his quality system) as ensure that:
- any equipment passed as fit for use for trade satisfies the relevant requirements of the 1981 Order; and
 - any related testing procedures undertaken are adequate, particularly for electronic equipment.
- (ii) Sub-paragraph (2) provides that the verifier must notify the Department in writing about any modifications to his quality system likely to affect its appropriateness or effectiveness within 5 working days of their occurring.
- (iii) Sub-paragraph (3) provides that the verifier must allow the Department, on its giving prior written notice, to carry out audits and inspections of his quality system at any reasonable time to ensure that the conditions of the approval have been and continue to be met.
- (h) Paragraph 8 (Preparation etc. of quality system manual) of Part II provides as follows:
- (i) Sub-paragraph (1) provides that the verifier must prepare and maintain a quality system manual which:
- shows how his system satisfies paragraph 7(1) above;
 - sets out its objectives;
 - contains details of his organisational structure with managerial and operational responsibilities;
 - contains details of the testing equipment required for his operations;
 - contains a description of relevant regulations made and certificates of approval issued under the 1981 Order;
 - contains a description of the verifier's related detailed procedures; and

- contains a description of his system of records for demonstrating the conformity of any equipment tested with relevant regulations and certificates of approval.
- (ii) Sub-paragraph (2) provides that the verifier must at the demand of the Department provide any required copies or extracts from his quality system manual as specified or of a description specified in the demand.
- (i) Paragraph 9 (Keeping of records) of Part II provides for a verifier to keep a record of every test carried out by him in respect of equipment to which Article 9 of the 1981 Order applies.