

1999 No. 503

DEREGULATION

The Deregulation (Weights and Measures) Order 1999

Made - - - - 1st March 1999

Coming into force in accordance with article 1

Whereas:

- (a) the Secretary of State is of the opinion that certain provisions of the Weights and Measures Act 1985(a) which are the subject of this Order authorise the imposition of burdens affecting persons in the carrying on of a trade, business, profession or otherwise and that by amending or repealing the provisions concerned and by making certain other provision it is possible to remove or reduce the burdens without removing any necessary protection;
- (b) he has consulted such organisations as appear to him to be representative of interests substantially affected by his proposals and such other persons as he considers appropriate;
- (c) it appears to the Secretary of State that it is appropriate, following that consultation, to proceed with the making of this Order;
- (d) a document setting out the Secretary of State's proposals has been laid before Parliament as required by section 3 of the Deregulation and Contracting Out Act 1994(b) and the period for Parliamentary consideration under section 4 of that Act has expired;
- (e) the Secretary of State has had regard to the representations made during that period and, in particular, to any resolution or report of, or of any committee of, either House of Parliament with regard to the document;
- (f) a draft of this Order has been laid before Parliament together with a statement giving details of the representations and any such resolution or report and the changes which the Secretary of State has made to his proposals in the light of such representations, resolution or report; and
- (g) a draft of this Order has been approved by a resolution of each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 1 of the Deregulation and Contracting Out Act 1994, hereby makes the following Order:—

Citation, interpretation and commencement

- 1.—(1) This Order may be cited as the Deregulation (Weights and Measures) Order 1999.
- (2) In this Order “the 1985 Act” means the Weights and Measures Act 1985(c).
- (3) This Order shall come into force 28 days after the day on which it is made.

(a) 1985 c. 72.
(b) 1994 c. 40.
(c) 1985 c. 72.

Verification by approved verifiers

2.—(1) In subsection (2)(a) of section 11 of the 1985 Act (certain equipment to be passed and stamped by an inspector), after the word “inspector” there shall be inserted the words “or approved verifier”.

(2) In subsection (4) of that section, after the word “passed”, in the first place where it occurs, there shall be inserted the words “by an inspector” and for the words “an inspector” there shall be substituted the words “the inspector”.

(3) After that subsection there shall be inserted the following subsection—

“(4A) An approved verifier may (subject to the provisions of this Act, to any regulations under section 15 below and to any conditions included in his approval)—

- (a) test any equipment to which this section applies by means of other equipment which has already been tested and which the verifier considers suitable for the purpose,
- (b) if the equipment being tested falls within the prescribed limits of error and by virtue of subsection (10) below is not required to be stamped as mentioned in paragraph (c) below, make a statement in writing to the effect that it is passed fit for use for trade, and
- (c) except as otherwise expressly provided for by or under this Act, stamp it with the prescribed stamp.”

(4) After subsection (6) of that section there shall be inserted the following subsection—

“(6A) In this Act ‘approved verifier’, in relation to weighing or measuring equipment of any class or description, means a person who is for the time being approved under section 11A below in relation to the testing, passing and stamping of weighing or measuring equipment of that class or description.”

(5) In subsection (7) of that section, after the words “subsection (4)(c)” there shall be inserted the words “or (4A)(c)”.

(6) In subsection (10) of that section, for the words “(4) and (7)” there shall be substituted the words “(4), (4A) and (7)”.

(7) After that section there shall be inserted the following section—

“Approval of persons to verify equipment manufactured etc by them.

11A.—(1) Subsection (2) below applies where, as regards a person who carries on business (whether in Great Britain or elsewhere) as a manufacturer, installer or repairer of equipment to which section 11 above applies, the Secretary of State—

(a) is satisfied that the person would, if approved under this section, satisfy the requirements set out in Part II of Schedule 3A to this Act, and

(b) considers the person a fit and proper person to be so approved.

(2) The Secretary of State may approve the person for the purpose of—

(a) testing any equipment to which section 11 above applies and which is manufactured, installed or repaired by him,

(b) passing any such equipment as fit for use for trade, and

(c) stamping any such equipment with the prescribed stamp.

(3) Before granting an approval under this section, the Secretary of State may carry out such audits and inspections of the person’s systems and procedures as he considers necessary to establish that the conditions of the approval would be observed.

(4) Schedule 3A to this Act (which relates to approvals under this section and matters connected with such approvals) shall have effect.

(5) In that Schedule ‘approval’ means an approval under this section and ‘the verifier’, in relation to such an approval, shall be construed accordingly.”

(8) In section 14(1) of the 1985 Act (general specifications of equipment), after the words “an inspector” there shall be inserted the words “or approved verifier”.

(9) In section 16(1)(a) of that Act (offences in connection with stamping of equipment), after the word “inspector”, in both places where it occurs, there shall be inserted the words “or approved verifier”.

(10) In subsection (4) of section 74 of that Act (performance by inspectors of additional functions), the words from “Without prejudice” to “this Act” shall be omitted.

(11) After that subsection there shall be inserted the following subsections—

“(5) A local weights and measures authority may also make arrangements whereby an inspector may, at the request of the Secretary of State and subject to payment by him of such fee, if any, as the authority may think fit, provide advice and assistance to the Secretary of State in connection with the carrying out by him of any audit or inspection under section 11A(3) above or paragraph 7(3) of Schedule 3A to this Act.

(6) Subsections (4) and (5) above are without prejudice to the functions of local weights and measures authorities or inspectors under any other provision of this Act.”

(12) For subsection (2) of section 75 of that Act (offences in connection with office of inspector) there shall be substituted the following subsections—

“(1A) Any approved verifier who—

- (a) stamps any weighing or measuring equipment in contravention of any provision of this Act or of any instrument made under this Act or without duly testing it, or
- (b) commits any breach of any duty imposed on him by or under this Act,

shall be guilty of an offence.

(2) If any person who is not an inspector, or is not an approved verifier, acts or purports to act as such, he shall be guilty of an offence.

(3) Section 34 of this Act shall apply in relation to proceedings for an offence under subsection (1A)(b) above as it applies in relation to proceedings for an offence under Part IV of this Act.”

(13) In section 79(1) of that Act (general powers of inspection and entry), at the end of paragraph (a) there shall be inserted “or which has been, or which he has reasonable cause to believe to have been, passed by an approved verifier, or by a person purporting to act as such a verifier, as fit for such use”.

(14) In section 94(1) of that Act (general interpretation), immediately before the definition of “capacity measurement” there shall be inserted the following definition—

“‘approved verifier’ has the meaning given by section 11(6A) above;”.

(15) After Schedule 3 to that Act there shall be inserted, as Schedule 3A, the provisions set out in the Schedule to this Order.

Testing by official EEA testers

3. After section 11A of the 1985 Act there shall be inserted the following section—

“Testing by
official EEA
testers.

11B.—(1) This section applies where—

- (a) any equipment which has been tested by an official EEA tester is at any time submitted to an inspector under section 11(4) above,
- (b) the test report of the official EEA tester is submitted to the inspector at that time, and
- (c) that report states which tests have been applied to the equipment and sets out the results of those tests.

(2) Section 11 above shall have effect as if—

- (a) paragraph (a) of subsection (4) required the inspector not to test the equipment in the manner mentioned in that paragraph,

- (b) paragraphs (b) and (c) of that subsection required him to rely, for the purposes of those paragraphs, on the test report of the official EEA tester, and
 - (c) the reference in subsection (5) to any test carried out under subsection (4) were a reference to anything done under subsection (4).
- (3) In this section ‘official EEA tester’, in relation to the testing of equipment of any description, means a person who, at the time when the tests were applied—
- (a) had responsibility in an EEA State for the metrological control of equipment of that description, or
 - (b) was accredited in an EEA State as a person operating a laboratory, in conformity with the criteria set out in the applicable European Standard, for the purpose of testing equipment of that description.
- (4) In subsection (3) above ‘EEA State’ means a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.”

Pre-test stamping by certain manufacturers

4.—(1) After section 15 of the 1985 Act there shall be inserted the following section—

“Pre-test stamping by certain manufacturers.

15A.—(1) Subject to subsection (2) below, an approved verifier who is the manufacturer of any equipment to which section 11 above applies may apply the prescribed stamp to the equipment, notwithstanding that it has not been passed as fit for use for trade, if he is satisfied on reasonable grounds that it will not be used (whether for trade or otherwise) unless either—

- (a) the equipment has been passed as fit for use for trade, or
- (b) the stamp has been destroyed, obliterated or defaced.

(2) A prescribed stamp shall not be applied under subsection (1) above unless the stamp includes the approved verifier’s number.

(3) If any person contravenes subsection (2) above, he shall be guilty of an offence and any equipment in respect of which the offence was committed shall be liable to be forfeited.

(4) A prescribed stamp which has been duly applied to any equipment under subsection (1) above shall have effect as follows—

- (a) at any time before the equipment is passed as fit for use for trade, as an indication that, at the time when the stamp was applied, the approved verifier was satisfied as mentioned in subsection (1) above, and
- (b) at any time after the equipment is so passed, as evidence of the passing of the equipment as fit for such use.

(5) Where equipment to which a prescribed stamp has been duly applied under subsection (1) above is passed as fit for use for trade, nothing in section 11(4)(c) or (4A)(c) above shall require another such stamp to be applied to it.

(6) Where the approved verifier fails to pass as fit for use for trade equipment to which a prescribed stamp has been applied under subsection (1) above, he may destroy, obliterate or deface the stamp—

- (a) in any case where there is a prescribed manner of doing so, in that manner, and
- (b) in any other case, in such reasonable manner as will leave no doubt that the stamp has been intentionally destroyed, obliterated or defaced.

(7) References in subsections (4) to (6) above to prescribed stamps which have been applied do not include references to such stamps which have subsequently been destroyed, obliterated or defaced.”

(2) In section 84(2) of that Act (penalties), after the entry relating to section 15(5) there shall be inserted the following entry–

“section 15A(3);”.

(3) In section 94(1) of that Act (general interpretation), in the definition of “stamp”, after the word “means” there shall be inserted the words “, subject to section 15A(4) above,”.

Kim Howells,
Parliamentary Under Secretary of State
for Competition and Consumer Affairs,
Department of Trade and Industry

1st March 1999

“SCHEDULE 3A TO THE 1985 ACT
APPROVALS UNDER SECTION 11A

PART I

APPROVALS: GENERAL

Fees

1. Where—

- (a) any person makes an application for an approval, or
- (b) an approval is to be, or has been, granted to any person,

the Secretary of State may require that person to pay, in respect of any work carried out by or on behalf of the Secretary of State in relation to the application or the approval, such reasonable fee as the Secretary of State may determine with the approval of the Treasury.

Form, effect and conditions of approvals

2.—(1) An approval shall be in writing and, unless previously withdrawn in accordance with any term in that behalf contained in the approval and subject to the following provisions of this Part of this Schedule, shall continue in force for such period (not exceeding five years) as may be specified in the approval.

(2) An approval—

- (a) shall specify the classes or descriptions of weighing or measuring equipment for the testing, passing as fit for use for trade and stamping of which the verifier is approved,
- (b) may include such conditions as appear to the Secretary of State to be requisite or expedient having regard to the need to ensure that only such equipment as is fit for use for trade is passed as fit for such use, and
- (c) shall contain conditions requiring the verifier to satisfy the requirements set out in Part II of this Schedule.

(3) Without prejudice to the generality of sub-paragraph (2) above, conditions included in an approval by virtue of that sub-paragraph may—

- (a) require the verifier to comply with any direction given by the Secretary of State as to such matters as are specified in the approval or are of a description so specified;
- (b) require the verifier to ensure that his procedures for the testing of weighing or measuring equipment conform with such quality standards as are specified in the approval or are of a description so specified.

Suspension of approvals

3.—(1) If it appears to an inspector that, otherwise than in accordance with section 15A of this Act, the prescribed stamp has been, or is being, applied by an approved verifier to equipment which had not, or has not, been duly tested and passed as fit for use for trade, he may give to the verifier a notice (a “suspension notice”) suspending the verifier’s approval (either generally or in relation to particular areas or places) for a period not exceeding 28 days.

(2) Where an inspector gives a suspension notice, he shall forthwith send a copy of the notice to the Secretary of State and inform the approved verifier in writing of—

- (a) the circumstances which have led to the giving of the notice;
- (b) the date on which the notice takes effect; and
- (c) the effect of the following provisions of this paragraph.

(3) An approved verifier who has taken steps to prevent a recurrence of the circumstances which led to the giving of a suspension notice may apply to the inspector for the suspension

to be withdrawn before the expiry of the specified period; and an application under this sub-paragraph—

(a) shall be made by notice to the inspector given not later than 21 days after the date of the suspension notice, and

(b) shall state the steps taken to prevent such a recurrence.

(4) An inspector shall consider any application made to him under sub-paragraph (3) above and, having done so, shall notify the approved verifier of his decision.

(5) An approved verifier who is aggrieved by a suspension notice may apply to the Secretary of State to review the suspension; and an application under this sub-paragraph—

(a) shall be made by notice to the Secretary of State given not later than 21 days after the date of the suspension notice, and

(b) shall state the grounds on which the application is made.

(6) The Secretary of State shall consider any application under sub-paragraph (5) above and, having done so, shall notify the approved verifier and the inspector of his decision.

(7) Where the Secretary of State decides under sub-paragraph (6) above to uphold the suspension, he shall also notify the approved verifier and the inspector of the grounds for his decision.

(8) Where the Secretary of State decides under sub-paragraph (6) above not to uphold the suspension, he shall instruct the inspector to withdraw the suspension.

Withdrawal of approvals

4.—(1) Subject to sub-paragraph (2) below, the Secretary of State may by written notice withdraw an approval if at any time during the continuance of the approval—

(a) he is of the opinion that if the approval had expired at that time he would have been minded not to grant a further approval;

(b) it appears to him on reasonable grounds that the verifier is, or has been, in breach of any condition contained in the approval; or

(c) any fee due to the Secretary of State by virtue of a requirement made by him under paragraph 1 above has not been paid.

(2) Except where the Secretary of State considers in the circumstances of any particular case that it is necessary for him to withdraw an approval without delay, he shall not withdraw an approval unless he has given the verifier at least 28 days written notice of his intention to do so and of the grounds for withdrawal.

(3) Where the Secretary of State withdraws an approval without giving the notice required by sub-paragraph (2) above, he shall, at or before the time when the withdrawal takes effect, give the verifier written notice of the grounds for withdrawal and of his reasons for considering it necessary to withdraw the approval without delay.

(4) Where a verifier receives notice under sub-paragraph (2) or (3) above, he may within 21 days of receipt of the notice make representations in writing to the Secretary of State.

(5) The Secretary of State shall consider any representations so made and, having done so, shall notify the verifier of his decision.

Grant of new approval following withdrawal

5.—(1) Where the Secretary of State decides, whether in the light of representations or otherwise, that an approval which has been withdrawn should not have been withdrawn, he shall as soon as reasonably practicable grant a new approval to the former verifier.

(2) The new approval shall expire on the date on which the withdrawn approval would have expired and (except as may otherwise be agreed with the former verifier) shall be subject to the same terms and conditions as the withdrawn approval.

(3) Where the Secretary of State grants a new approval under sub-paragraph (1) above, the verifier shall be deemed to have remained approved for the period beginning on the date on which the original approval was withdrawn and ending on the date on which the new approval took effect.

Application for further approval

6.—(1) This paragraph applies where, not less than three months before the end of the period specified in an approval as the period for which the approval is to continue in force, the verifier applies to the Secretary of State for the grant of a further approval in the same, or substantially the same, terms as those of the existing approval.

(2) The existing approval shall remain in force until the Secretary of State gives the verifier notice of the Secretary of State's decision with respect to the application.

PART II

REQUIREMENTS TO BE MET BY APPROVED VERIFIERS

Maintenance of quality system

7.—(1) An approved verifier shall maintain in force such systems and procedures (in this Part of this Schedule referred to as his quality system) as will ensure that—

- (a) any weighing or measuring equipment passed by the verifier as fit for use for trade satisfies any requirements relating to it imposed by or under this Act; and
- (b) adequate testing procedures are undertaken by the verifier having regard to the nature of weighing or measuring equipment with which the verifier is concerned and, in particular, to whether any such equipment is electronic.

(2) An approved verifier shall give the Secretary of State written notice, within five working days of their occurrence, of any modifications to the verifier's quality system which are liable to affect its appropriateness or effectiveness.

(3) An approved verifier shall permit the Secretary of State, at any reasonable time after giving written notice, to carry out such audits and inspections of the verifier's quality system as the Secretary of State considers necessary to establish that the conditions of the approval have been, and will continue to be, observed.

Preparation etc. of quality system manual

8.—(1) An approved verifier shall prepare and keep up-to-date a quality system manual, that is to say, a document—

- (a) showing how his quality system satisfies the requirements of paragraph 7(1) above;
- (b) setting out the objectives of that system;
- (c) containing details of his organisational structure, including details of—
 - (i) the persons who have management responsibility for that system, including their names and individual responsibilities;
 - (ii) the persons who are authorised to test, pass or stamp weighing or measuring equipment with which the verifier is concerned, including their names and qualifications;
- (d) containing details of the equipment and other items required for the testing of weighing or measuring equipment with which the verifier is concerned;
- (e) containing a description of the regulations made under this Act, and certificates of approval issued under section 12 of this Act, which are applicable to the testing, passing or stamping of weighing or measuring equipment with which the verifier is concerned;
- (f) containing a description of the verifier's procedures—
 - (i) for the testing of weighing or measuring equipment;
 - (ii) for ensuring that weighing or measuring equipment passed as fit for use for trade conforms with any such regulations and (where applicable) any such certificates of approval;
 - (iii) for ensuring that weighing or measuring equipment which does not conform with any such regulations, or (where applicable) any such certificates of approval, is prevented from being passed as fit for use for trade;

- (iv) for ensuring that any persons conducting tests of weighing or measuring equipment have the necessary skills and qualifications to do so;
- (v) for ensuring that the verifier exercises control over and retains responsibility for the actions of any sub-contractor of his in relation to the testing of weighing and measuring equipment;
- (vi) for enabling identification of individual items or batches of weighing or measuring equipment;
- (vii) for the control of the equipment used for the testing of weighing or measuring equipment;
- (viii) for the control and use of the prescribed stamp;
- (ix) for the control of documents and data;
- (x) for undertaking internal reviews and audits of the verifier's quality system;
and
- (g) containing a description of the verifier's system of records for showing that any weighing or measuring equipment passed as fit for use for trade conforms with any such regulations and (where applicable) any such certificates of approval.

(2) An approved verifier shall, on demand by the Secretary of State, provide him with such copies of or extracts from the verifier's quality system manual as may be specified or of a description specified in the demand.

Keeping of records

9. An approved verifier shall keep a record of every test carried out by him of equipment to which section 11 of this Act applies."

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which is made under section 1 of the Deregulation and Contracting Out Act 1994 (c. 40), amends certain provisions of the Weights and Measures Act 1985 (the “1985 Act”).

This Order makes the following amendments to the 1985 Act—

- (a) that equipment to which section 11 of the 1985 Act applies may be tested, passed as fit for use for trade and stamped with the prescribed stamp by a manufacturer, installer or repairer of the said equipment who is for the time being approved for such purpose (an “approved verifier”) by the Secretary of State (section 11(4A)) (article 2(3));
- (b) for approvals of persons by the Secretary of State as approved verifiers if he is satisfied that the person would, if approved, satisfy certain requirements and that he considers the person a fit and proper person to be so approved (section 11A) (article 2(7));
- (c) confers on a local weights and measures authority the power to provide advice and assistance to the Secretary of State in connection with the carrying out by him of any audit or inspection of an applicant’s or approved verifier’s quality system if requested and to charge a fee for such advice and assistance (section 74(5)) (article 2(11));
- (d) adds a new Schedule to the 1985 Act to provide for—
 - (i) matters incidental to approvals of persons by the Secretary of State; form, effect and conditions of approvals; suspension of approvals; withdrawal of approvals and grant of new approval following withdrawal and application for further approval (Part I Schedule 3A) (article 2(15) and Schedule); and
 - (ii) requirements to be met by approved verifiers: maintenance of a quality system; the preparation and keeping up-to-date a quality system manual; keeping of records (Part II Schedule 3A) (article 2(15) and Schedule);
- (e) the acceptance by an inspector of weights and measures of testing of equipment to which section 11 of the 1985 Act applies by an official EEA tester; an official EEA tester is a person who had responsibility within an EEA State for metrological control of such equipment or was accredited in an EEA State as a person operating a laboratory for the purpose of testing such equipment (section 11B) (article 3);
- (f) by authorising an approved verifier who is a manufacturer of equipment to which section 11 of the 1985 Act applies to apply the prescribed stamp to that equipment notwithstanding that it has not been passed as fit for use for trade provided certain requirements are fulfilled (section 15A) (article 4);
- (g) for offences committed by approved verifiers in respect of the stamping of equipment in contravention of the provisions of the 1985 Act or an instrument made under the Act or without duly testing the equipment and pre-test stamping (articles 2(12) and 4); or any breach of any duty imposed on an approved verifier (in respect of which section 34 of the 1985 Act, which makes provision for a defence of due diligence, applies) (article 2(12)); and
- (h) consequential amendments to the 1985 Act arising from the amendments described above.

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