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## STATUTORY INSTRUMENTS

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# 2000 No. 3236

## The Non-automatic Weighing Instruments Regulations 2000

### PART II

#### APPROVAL AND CERTIFICATION OF NON-AUTOMATIC WEIGHING INSTRUMENTS

##### Enforcement

##### Unauthorised application of CE marking etc

**22.**—(1) Subject to paragraph (2) below, any person who, in the case of any instrument—

- (a) save in accordance with regulation 11, 12 or 13, affixes any CE marking, inscription, identification number or sticker referred to in the regulation in question to any instrument; or
- (b) affixes a CE marking in contravention of regulation 18; or
- (c) forges or counterfeits or in any manner alters or defaces any such mark, inscription, identification number, sticker, disqualification sticker or re-qualification sticker; or
- (d) removes any such mark, inscription, identification number or sticker affixed to an instrument under regulation 11, 12 or 13 or re-qualification sticker and affixes it to any other instrument; or
- (e) makes any alteration to the instrument after any such mark, inscription, identification number, sticker or re-qualification sticker has been affixed to it in accordance with these Regulations so that the instrument no longer complies with the requirements of the NAWI Directive which apply to it,

shall be guilty of an offence.

(2) Where the alteration, defacement or removal of any mark, inscription, identification number, sticker, disqualification sticker or re-qualification sticker is occasioned solely in the course of the adjustment or repair of any instrument by a manufacturer of instruments regularly engaged in the business of repair of instruments, by his duly authorised agent, by a person (other than a manufacturer) regularly engaged in the business of repair of instruments or by his duly authorised agent, that person shall not be guilty of an offence under sub-paragraph (c), provided that the said alteration, defacement or removal does not amount to forging or counterfeiting as described in that sub-paragraph, or under sub-paragraph (e), of paragraph (1) above.

(3) Any person who places on the market, puts into service or uses for any Schedule 3 application any instrument which to his knowledge—

- (a) bears any CE marking, inscription, identification number, sticker, or re-qualification sticker which is a forgery or counterfeit, or which has been transferred from another instrument, or which has been altered or defaced otherwise than in accordance with these Regulations; or

- (b) does not comply with the essential requirements by reason of any alteration made to it after any CE marking, inscription, identification number, sticker or re-qualification sticker was affixed to it in accordance with these Regulations,

shall be guilty of an offence.

(4) Any instrument in respect of which an offence under this regulation has been committed, and any implement used in the commission of the offence, shall be liable to be forfeited.

(5) References in this regulation to other provisions of these Regulations include references to corresponding provisions under the laws of a member State other than the United Kingdom.

### **Disqualification stickers (instruments not complying with these Regulations etc)**

**23.**—(1) Subject to paragraph (2) below, an authorised person may affix a disqualification sticker to an instrument if he is satisfied that the instrument—

- (a) falls outside the limits of error referred to in paragraph 4.2 of Annex I to the NAWI Directive which is set out in Schedule 2; or
- (b) otherwise does not fully comply with the requirements which apply to it,

and a disqualification sticker shall be so affixed as to be clearly visible when the instrument is in its regular operating position.

(2) Save in a case where regulation 24 has effect, where an instrument does not fully satisfy the requirements of regulation 5 which apply to it but it appears to the authorised person that the nature or degree of non-compliance is not such that a disqualification sticker should be immediately affixed to it, he may give to any person in possession of the instrument a notice requiring him to ensure that the instrument is brought within the limits of error mentioned in paragraph (1)(a) above, or made to comply with the requirements which apply to it, before the expiry of twenty-eight days or such shorter period as may be specified in the notice.

(3) If a notice given under paragraph (2) above is not complied with, the authorised person shall affix a disqualification sticker to the instrument in such a position that the sticker is clearly visible when the instrument is in its regular operating position.

### **Disqualification stickers and re-qualification stickers (instruments which have been altered etc)**

**24.**—(1) If it appears to an authorised person that, since the sticker was affixed (or, where the re-qualification sticker has been affixed, since that sticker was last affixed) to an instrument, the instrument has been subject to any alteration or addition by reason of which a re-qualification sticker could not be affixed to it in accordance with this Part, an authorised person shall affix a disqualification sticker to it.

(2) Subject to paragraph (3) below, if it appears to an authorised person—

- (a) in the case of any instrument, that since the sticker was affixed (or, where the re-qualification sticker has been affixed, since that sticker was last affixed) to an instrument, the instrument has been subjected to any adjustment, alteration, addition, repair or replacement, which could affect its accuracy or functioning; or
- (b) in the case of an instrument whose performance is sensitive to differences in gravity, that since the sticker was affixed (or, where the re-qualification sticker has been affixed, since that sticker was last affixed) the instrument has been moved to a different location,

the authorised person shall affix a disqualification sticker to it.

(3) Where—

- (a) an instrument has been subjected to any of the occurrences mentioned in paragraph (2) above; and
  - (b) the chief inspector of weights and measures for the area where the instrument is located has been furnished in writing with details of the occurrence,
- an authorised person may affix a disqualification sticker to it.
- (4) A disqualification sticker shall be so affixed as to be clearly visible when the instrument is in its regular operating position.

### **Immediate enforcement action**

**25.**—(1) Where an authorised person has reasonable grounds for considering that instruments to which these Regulations apply and which bear the CE marking do not meet all the appropriate requirements of these Regulations when properly installed and used for the purposes for which they are intended, due to—

- (a) failure to meet the essential requirements;
- (b) incorrect application of the relevant national standards; or
- (c) shortcomings in the relevant national standards,

the following provisions of this regulation shall have effect.

(2) The authorised person shall give notice to the manufacturer or his authorised representative sufficiently describing the instruments to which the notice applies and specifying the respects in which the requirements of the Regulations have not been satisfied.

(3) A notice under this regulation may—

- (a) (i) require instruments of the type in question to be withdrawn from the market;
- (ii) prohibit or restrict the placing on the market or taking into service of instruments of that type; and
- (b) specify that unless steps are taken which ensure—
  - (i) that the instrument or any instrument of the same type does so conform or comply; or
  - (ii) that the manufacturer or his authorised representative does so act, as the case may require,

any EC type-approval certificate or any approval of a quality system may be withdrawn.

(4) A notice under paragraph (2) above shall be in writing and shall—

- (a) specify the date on which it is to take effect;
- (b) specify the grounds for the decision; and
- (c) inform the manufacturer of his right to apply for a review of the decision under regulation 20.

(5) Where an authorised person gives a notice under paragraph (2) above, he shall forthwith send a copy of the notice to the Secretary of State.

(6) If the Secretary of State—

- (a) in the case of an EC type-approval certificate which he has granted, after giving the manufacturer the opportunity of making representations as to why it should not be withdrawn, decides that the EC type-approval certificate should be withdrawn, he shall immediately—
  - (i) give notice of the decision to the manufacturer; and
  - (ii) inform the other member States and the Commission of the decision; or

- (b) in the case of an EC type-approval certificate granted under the law of another member State, is of the opinion that consideration ought to be given to whether the EC type-approval certificate should be withdrawn, he shall immediately inform the relevant competent authority of that fact.
- (7) If the Secretary of State is of the opinion that consideration should be given to withdrawal of any relevant quality system approval—
  - (a) in the case of an approval granted by an approved body under these Regulations, he shall inform the approved body of that fact; and
  - (b) in the case of an approval granted under the law of another member State, he shall immediately inform the relevant competent authority of that fact.
- (8) The Secretary of State shall publish, in such manner as he may consider appropriate, particulars of any notice under paragraph (6) above withdrawing an EC type-approval certificate.

### **Compliance notice procedures**

**26.**—(1) Save as provided in regulation 25 above, where an authorised person has reasonable grounds for suspecting that the affixing of the CE marking to an instrument to which these Regulations apply involves a contravention of these Regulations the following provisions of this regulation shall have effect.

(2) The authorised person, after giving any person appearing to him to be interested in the instrument in question the opportunity of making representations, may serve a notice (a “compliance notice”) on the manufacturer or his authorised representative under this regulation in accordance with paragraph (4) below and, in such a case as described in paragraph (1) above, no further enforcement action shall be taken until such a notice has been so served and the person upon whom it has been served has failed to comply with its requirements.

(3) Where an authorised person gives a notice under paragraph (2) above, he shall forthwith send a copy of the notice to the Secretary of State.

(4) A notice under this regulation shall be in writing and shall—

- (a) sufficiently describe the instrument to which it applies;
- (b) state that the authorised person suspects that the affixing of the CE marking to the instrument involves a contravention of a provision of these Regulations concerning the CE marking and the reason for that suspicion;
- (c) specify the provision or provisions referred to in paragraph (b) above;
- (d) require the person upon whom the notice is served—
  - (i) to secure that any instrument to which the notice relates conforms as regards the provisions concerning the CE marking, and to end the infringement within such period as may be specified by the notice; or
  - (ii) to provide evidence within that period to the satisfaction of the authorised person that the CE marking has been correctly affixed; and
- (e) warn the person upon whom the notice is served that if the non-conformity continues (or if satisfactory evidence has not been produced under sub-paragraph (ii) of paragraph (d) above within the period specified in the notice), further action may be taken under these Regulations in respect of that instrument or an instrument of the same type placed on the market or put into service by that person.

(5) A notice under this regulation may—

- (a) include directions as to the measures to be taken by the person upon whom it is served to secure conformity of that instrument with the provisions of these Regulations including different ways of securing conformity; and

(b) be varied or withdrawn by a further notice under this regulation.

(6) Any person who fails to end the non-conformity specified in the compliance notice within the time limits laid down in that notice shall be subject to such enforcement action as may be appropriate having regard to the provisions of these Regulations.

(7) References in this regulation to other provisions of these Regulations include references to corresponding provisions under the laws of a member State other than the United Kingdom.

#### **Unsuitable use of instrument used for trade**

**27.** If it appears to an authorised person that an instrument is used for trade—

- (a) for a purpose for which it is unsuitable; or
- (b) in circumstances where it is subject to any extraordinary environmental or operating conditions which—
  - (i) may prevent it operating consistently or accurately; or
  - (ii) are likely prematurely to degrade its metrological characteristics,

the authorised person may affix a disqualification sticker to the instrument; and any such sticker shall be affixed in such a position that it is clearly visible when the instrument is in its regular operating position.