STATUTORY INSTRUMENTS

1988 No. 186

The Measuring Instruments (EEC Requirements) Regulations 1988

PART IV

SUPPLEMENTARY PROVISIONS

Interpretation of Part IV

15. In this Part of these Regulations–

"occupier", in relation to any stall, vehicle, ship or aircraft or in relation to the use of any place for any purpose, means the person for the time being in charge of the stall, vehicle, ship or aircraft or, as the case may be, the person for the time being using that place for that purpose;

"premises" includes any place and any stall, vehicle, ship or aircraft; and

"ship" includes any boat and any other description of vessel used in navigation.

Enforcement of conditions applicable to EEC limited pattern approval

16. Where an EEC limited pattern approval is subject to one or more of the following conditions, that is to say–

(a) a condition requiring written notice of the place of installation to be given to the competent authorities of member States in which instruments of the pattern in question are to be installed;

(b) a condition limiting the use of instruments of the pattern in question;

(c) a special condition with respect to the techniques used;

any person who, knowing that any such condition applies to any instrument–

(i) uses for trade, or causes or permits any other person so to use, that instrument knowing that notice has not been given as required by the condition mentioned in paragraph (a) above or (as the case may be) in contravention of a condition mentioned in paragraph (b) or (c) above; or

(ii) disposes of the instrument to any other person in a state in which it could be used for trade without informing that person of the condition,

shall be guilty of an offence, and the instrument shall be liable to be forfeited.

Effect of revocation of EEC pattern approval

17.—(1) Where an EEC pattern approval is revoked, whether under these Regulations or by any member State other than the United Kingdom, any person who, knowing that the pattern approval has been revoked, uses for trade, or has in his possesion for such use, or causes or permits any other person so to use, an instrument of the pattern in question bearing any EEC sign or mark related to that pattern approval, or disposes of any such instrument to any other person in a state in which it

could be so used without informing that other person of the revocation, shall be guilty of an offence, and the instrument shall be liable to be forfeited.

(2) Paragraph (1) above does not apply if any such sign or mark on the instrument has been obliterated under Regulation 21 below.

(3) For the purposes of this Regulation and Regulations 18 and 21 below, an EEC sign or mark shall be regarded as related to a pattern approval if it is a sign framed by reference to that pattern approval or a mark of EEC initial verification which was affixed by reference to conformity to the pattern which was the subject of that pattern approval.

(4) Where any instrument is found in the possession of any person carrying on trade or on any premises which are used for trade, that person or, as the case may be, the occupier of those premises shall be deemed for the purposes of any proceedings for an offence under this Regulation, unless the contrary is proved, to have that instrument in his possession for use for trade.

(5) A certificate by the Secretary of State stating that an EEC pattern approval granted by any member State other than the United Kingdom has been revoked and thereby ceased to have effect on a date specified shall be conclusive as to the matters certified in any proceedings for an offence under this Regulation.

Effect of non-extension of EEC pattern approval

18. Where an EEC pattern approval, whether granted under these Regulations or by any member State other than the United Kingdom, is not extended–

(a) these Regulations shall, in relation to any instrument of the pattern in question which was used for trade before the pattern approval ceased to have effect, apply as if the pattern approval had continued in force;

(b) the manufacturer of any instrument of the pattern in question, bearing any EEC sign or mark related to that pattern approval, which has not been used for trade shall be guilty of an offence if, after the pattern approval has ceased to have effect, he disposes of the instrument to any other person, and the instrument shall be liable to be forfeited.

Temporary prohibition of sale or use

19.—(1) Where the Secretary of State is satisfied that instruments constructed according to a pattern in respect of which an EEC pattern approval granted by a member State other than the United Kingdom is in force reveal in service a defect of a general nature which makes them unsuitable for their intended use, he may issue a prohibition notice under this Regulation with respect to instruments of that pattern.

(2) Where the Secretary of State is satisfied, in the case of any instruments which are exempt from EEC initial verification on the basis that they are constructed in accordance with a pattern to which an EEC pattern approval granted by a member State other than the United Kingdom relates, that they do not conform to the pattern in question or do not conform to the requirements of the relevant Directive, he may by notice require the manufacturer to ensure that any such instrument shall thereafter conform to that pattern or those requirements, or both, as the case may require; and if the manufacturer fails to comply with the notice within such period of time as may appear to the Secretary of State to be reasonable, the Secretary of State may issue a prohibition notice under this Regulation with respect to instruments of the pattern in question.

(3) Regulation 17 above shall apply, with the necessary modifications, so long as a prohibition notice issued under this Regulation is in force with respect to instruments of any pattern, as it applies in a case where pattern approval is revoked by the Secretary of State.

(4) A prohibition notice under this Regulation shall give particulars of the pattern to which it relates.

(5) The Secretary of State may withdraw a prohibition notice at any time.

(6) If The Secretary of State issues a prohibition notice under this Regulation he shall give a statement in writing of his grounds for doing so to any person appearing to him to be concerned.

(7) The Secretary of State shall cause to be published–

(a) any prohibition notice issued under this Regulation; and

(b) notice of withdrawal of any such prohibition notice.

Re-testing after dismantling

20.—(1) Where in the case of any instrument bearing the mark of EEC initial verification–

(a) the verification of the instrument was carried out, whether under these Regulations or in any member State other than the United Kingdom in two or more stages; and

(b) since the mark was affixed to the instrument (within the meaning of Schedule 3 to these Regulations) the instrument has been dismantled and reinstalled, whether in the place of original installation or in some other place;

the instrument shall not be used for trade after being so reinstalled until initial verification has again been carried out.

(2) If any person knowingly uses an instrument in contravention of paragraph (1) above, or knowingly causes or permits any other person so to use it, or , knowing that initial verification of the instrument is required by that paragraph to be again carried out, disposes of it to some other person without informing him of that requirement, he shall be guilty of an offence, and the instrument shall be liable to be forfeited.

(3) A certificate by the Secretary of State stating that EEC initial verification of an instrument was carried out in any member State other than the United Kingdom in two or more statges shall be conclusive as to the matter certified in any proceedings for an offence under this Regulation.

(4) This Regulation shall not apply in the case of an instrument if a certificate of EEC pattern approval in force in respect of instruments of the pattern in question authorises instruments of that pattern to be dismantled, provided that any conditions imposed by the certificate are satisfied.

Obliteration of EEC signs and marks

21.—(1) An inspector may obliterate any EEC sign or mark if he is satisfied–

(a) that the instrument bearing the sign or mark falls outside the relevant limits of error for instruments of the category to which it belongs; or

(b) that the instrument does not comply in any other respect with the requirements of the relevant Directive.

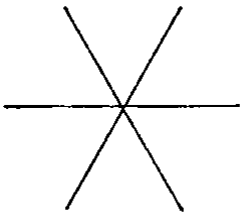
(2) In paragraph (1) above "the relevant limits of error" means the maximum permissible errors laid down by the relevant Directive for instruments in service or, if the relevant Directive does not specify maximum permissible errors for instruments in service, the maximum permissible errors laid down for instruments of the category in question by Schedule 4 to these Regulations.

(3) Where the sole ground for obliterating any EEC sign or mark under paragraph (1) above is that given in sub-paragraph (a) of that paragraph, the inspector may, instead of immediately obliterating the sign or mark, serve upon the person in possession of the instrument a notice requiring him to ensure that the instrument is brought within the limits of error there mentioned before the expiry of twenty-eight days or such shorter period as may be specified in the notice.

(4) If a notice given under paragraph (3) above is not complied with the inspector shall obliterate the sign or mark in question.

(5) Without prejudice to paragraph (1) above, an inspector may, at the request of any person appearing to him to be the owner of an instrument, obliterate any EEC sign or mark on the instrument which is related to an EEC pattern approval (whether granted under these Regulations or by any member State other than the United Kingdom) which the inspector is satisfied has ceased to have effect.

(6) Subject to paragraph (7) below, obliteration under this Regulation shall be carried out by the inspector by means of punches or pincers of a six-pointed star design as shown in the following illustration:–



(7) Paragraph (6) above shall not apply where in the opinion of the inspector it would be impossible to obliterate any EEC sign or mark by the method there specified; and in any such case obliteration shall be carried out in such other manner as the Secretary of State may direct, whether generally or in relation to signs or marks of any particular description.

(8) In the case of an instrument to which Regulation 13(9) above applies the preceding provisions of this Regulation (other than paragraph (5)) shall have effect as if references to an inspector were references to the Secretary of State or to an inspector of a nominated local weights and measures authority.

22. For the purposes of these Regulations, the obliteration, destruction or defacement of any one EEC mark on any meter measuring system shall be deemed to be the obliteration of all other EEC marks on that system, except where the mark has been lawfully obliterated under Regulation 23 or 24 below.

Lawful use for trade of meter measuring systems where marks of EEC initial verification destroyed, obliterated or defaced

23.—(1) It shall be lawful to destroy, obliterate or deface a mark of EEC initial verification on a meter measuring system, and it shall not be a contravention of section 11(2) of the Act to use such equipment for trade during the relevant period by reason only that such a mark on it has been lawfully destroyed, obliterated or defaced (such destruction, obliteration or defacement being in this Regulation referred to as "the occurrence") if–

(a) the person responsible for the occurrence is, or is the duly authorised agent of, the proprietor of the equipment or a person who is the manufacturer, or is regularly engaged in the repair, of equipment for measuring liquid fuel;

(b) the occurrence was confined to the mark protecting the joint between the gas separator and its vent pipe;

(c) the occurrence was only to permit the installation of a meter and gas separator bearing undefaced marks, such meter and gas separator having previously had affixed to them the mark of EEC initial verification either as part of that meter measuring system or another of exactly the same pattern delivering the same liquid fuel; and

(d) notification in writing complying with paragraph (2) below of the occurrence has been given by the proprietor of the equipment or his duly authorised agent before the occurrence to the chief inspector for the area in which the equipment is situated.

(2) The notification referred to in paragraph (1) above shall contain the following information–

(a) the location of, and particulars by which, the road tanker may be identified;

(b) the place where the tanker may be inspected;

(c) the intended date of the occurrence;

(d) the business name and address of the proprietor or other person referred to in paragraph (1) (a) above; and

(e) the name and address of the person giving the notification.

(3) In paragraph (1) above "relevant period" means a period of 7 days beginning with the day on which the notification referred to in that paragraph is given in accordance with that paragraph.

24.—(1) It shall be lawful to destroy, obliterate or deface a mark of EEC initial verification on a meter measuring system, and it shall not be a contravention of section 11(2) of the Act to use such equipment for trade during the relevant period by reason only that such a mark on it has been lawfully destroyed, obliterated or defaced (such destruction, obliteration or defacement being in this Regulation referred to as "the occurrence") if–

(a) the person responsible for the occurrence is, or is the duly authorised agent of, the proprietor of the equipment or a person who is the manufacturer, or is regularly engaged in the repair, of equipment for measuring liquid fuel;

(b) the occurrence was confined to the stamp protecting the ticket printing mechanism;

(c) after the occurrence access cannot be gained to the calibration mechanism of the meter; and

(d) notification in writing complying with paragraph (2) below of the occurrence has been given by the proprietor of the equipment or his duly authorised agent before the occurrence to the chief inspector for the area in which the equipment is situated.

(2) The notification referred to in paragraph (1) above shall contain the following information–

(a) the location of, and particulars by which, the road tanker may be identified;

(b) the place where the tanker may be inspected;

(c) the intended date of the occurrence;

(d) the business name and address of the proprietor or other person referred to in paragraph (1) (a) above; and

(e) the name and address of the person giving the notification.

(3) In paragraph (1) above "relevant period" means a period of 28 days beginning with the day on which the notification referred to in that paragraph is given in accordance with that paragraph.

Unauthorised application of EEC signs and marks etc.

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

(a) not being an inspector or a person acting under the authority of an inspector, marks in any manner any plug, seal or plate used or designed for use for the reception of any EEC mark; or

(b) not being a manufacturer authorised or required to do so under any provision of these Regulations, or the duly authorised agent of any such manufacturer, marks any such instrument with any EEC sign; or

(c) forges, counterfeits or, except in accordance with Regulation 21 above, in any way alters or defaces any EEC sign or mark; or

(d) removes any EEC sign or mark and inserts it into any other instrument; or

(e) makes any alteration in the instrument after any EEC sign or mark has been applied to it in accordance with these Regulations, so that it no longer complies with the requirements of the relevant Directive;

shall be guilty of an offence.

(2) A person shall not be guilty of an offence under paragraph (1) above by reason solely of the destruction or obliteration of any sign, mark, plug, seal or plate in the course of the adjustment or repair of any instrument by, or by the duly authorised agent of, a person who is a manufacturer of, or regularly engaged in the business of repairing, instruments.

(3) Any person who uses for trade, sells or exposes or offers for sale any instrument which to his knowledge–

(a) bears any EEC sign or mark which is a forgery or counterfeit, or which has been transferred from another instrument, or which has been altered or defaced otherwise than under Regulation 21 above or as permitted by virtue of paragraph (2) above; or

(b) does not comply with the requirements of the relevant Directive by reason of any alteration made in it after any EEC sign or mark was applied 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 was committed, and any implement used in the commission of the offence, shall be liable to be forfeited.

(5) In the case of an instrument to which Regulation 13(9) above applies this Regulation shall have effect as if the references in paragraph (1)(a) above to an inspector were references to the Secretary of State or to an inspector of a nominated local weights and measures authority.

Powers of inspection and entry

26.—(1) Subject to the production if so requested of his credentials, an inspector may, within the area for which he was appointed inspector, at all reasonable times–

(a) inspect and test any instrument;

(b) enter any premises at which he has reasonable cause to believe there to be any instrument, not being premises used only as a private dwelling house.

(2) Subject to the production if so requested of his credentials, an inspector may at any time, within the area for which he was appointed inspector, seize and detain any article which he has reasonable cause to believe is liable to be forfeited under these Regulations.

(3) If a justice of the peace, by information on oath–

(a) is satisfied that there is reasonable ground to believe that any such instrument or article as is mentioned in paragraph (1) or (2) above is on any premises, or that any offence under these Regulations has been, is being or is about to be committed on any premises; and

(b) is also satisfied either–

(i) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or

(ii) that 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 temporarily absent;

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

In the application of this paragraph to Scotland, the expression “a justice of the peace” shall be construed as including the sheriff.

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

(5) If any inspector 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.

(6) Nothing in this Regulation shall authorise any inspector to stop any vehicle on a highway.

(7) In this Regulation "credentials" means authority in writing from a local weights and measures authority for the exercise by an inspector of the powers conferred by this Regulation.

(8) For the purposes of paragraphs (1)(b) and (3) of this Regulation an instrument means an instrument which is, or which the inspector has reasonable cause to believe to be–

(a) used for trade, or in the possession of any person or on any premises for such use; or

(b) intended for despatch to another member State.

Obstruction of inspectors

27.—(1) Any person who–

(a) wilfully obstructs an inspector acting in the execution of any provision of these Regulations; or

(b) without reasonable cause fails to give any inspector acting as aforesaid any assistance or information which the inspector may reasonably require of him for the purposes of the performance by the inspector of his functions under these Regulations;

shall be guilty of an offence.

(2) If any person, in giving an inspector any such information as is mentioned in paragraph (1) above, gives any information which he knows to be false, he shall be guilty of an offence.

(3) Nothing in this Regulation shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

Offences by corporations

28.—(1) Where an offence under any provision of these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Prosecution and punishment of offences under these Regulations

29. Proceedings for any offence under these Regulations shall not, in England and Wales, be instituted except by or on behalf of a local weights and measures authority or the chief officer of police for a police area.

30. Any person guilty of an offence under Regulation 25, 26 or 27 above shall be liable on summary conviction to a fine not exceeding £2000, and any person guilty of an offence under any other provision of these Regulations shall be liable on summary conviction to a fine not exceeding £400.