

2006 No. 1264

WEIGHTS AND MEASURES

The Measuring  
Instruments (Capacity  
Serving Measures)  
Regulations 2006

*Made - - - - -* 28th April 2006

*Laid before Parliament* 8th May 2006

*Coming into force*

*Regulations 1, 2, 7, 9 and 10  
and Part 1 of Schedule 2* 30th May 2006

*Remaining regulations* 30th October 2006



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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, in relation to Part III of the Regulations, under the powers conferred on him by sections 15(1) and 86(1) of the Weights and Measures Act 1985(c).

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

# PART I

## PRELIMINARY

### Citation and commencement

1.—(1) These Regulations may be cited as the Measuring Instruments (Capacity Serving Measures) Regulations 2006.

(2) This regulation, regulations 2, 7, 9 and 10 and Part 1 of Schedule 2 shall come into force on 30th May 2006.

(3) The remaining regulations shall come into force on 30th October 2006.

### Interpretation

2.—(1) In these Regulations—

“authorised representative” means a person who is established in a member State and is authorised by a manufacturer, in writing, to act on his behalf;

“brim measure” means a capacity serving measure for which the internal volume is equal to the nominal capacity;

“capacity” means the internal volume for brim measures or internal volume to a filling mark for line measures;

“capacity serving measure” means a capacity measure designed to determine a specified volume of liquid (other than a pharmaceutical product) which is sold for immediate consumption;

“CE marking” means the CE marking referred to in regulation 12;

“the Commission” means the European Commission;

“compliance notice” means a notice served in accordance with regulation 17(2);

“conformity assessment procedure” means any procedure referred to in regulation 6;

“the Directive” means Directive 2004/22/EC of the European Parliament and of the Council of 31st March 2004 on measuring instruments<sup>(a)</sup>;

“disqualification sticker” means a sticker the design of which is published by the Secretary of State and which is affixed to a capacity serving measure in accordance with the regulation 20;

“enforcement authority” means any person who is, pursuant to regulation 16, authorised to enforce these Regulations;

“enforcement notice” means a notice served in accordance with regulation 18(2);

“enforcement officer” means—

(a) an inspector; or

(b) a person appointed by the Secretary of State to act on his behalf to enforce Part II of these Regulations;

“essential requirements” means the requirements set out in Schedule 1;

“harmonised standard” means a technical specification adopted by the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) or the European Telecommunications Standards Institute (ETSI) or jointly by two or all of these organisations, at the request of the Commission pursuant to Directive 98/34/EC of the European Parliament and of the Council of 22nd June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society Services<sup>(b)</sup>, as amended by Directive 98/48/EC<sup>(c)</sup>, and

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(a) OJ No. L135, 30.4.04, p.1.

(b) OJ No. L204, 21.7.98, p.37.

(c) OJ No. L217, 5.8.98 p.18.

prepared in accordance with the General Guidelines agreed between the Commission and one or more of CEN, CENELEC and ETSI;

“in writing” includes text that is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference;

“line measure” means a capacity serving measure marked with a line to indicate nominal capacity;

“M marking” means the M marking referred to in regulation 12;

“manufacturer” means a person responsible for the conformity of a capacity serving measure with these Regulations with a view to either placing it on the market under his own name or putting it into use for his own purposes, or both;

“normative document” means a document containing technical specifications adopted by the Organisation Internationale de Métrologie Légale, subject to the procedure stipulated in Article 16.1, the reference of which is published by the Commission in the Official Journal of the European Union pursuant to Article 16.1(b);

“notified body” means—

- (a) the Secretary of State; or
- (b) a United Kingdom notified body; and
- (c) for the purposes of regulations 4(1)(c), 18(1)(b), 20(1)(c) and 22(6), a person designated by another member State,

who has been notified to the Commission and the other member States pursuant to Article 11.1;

“notified body criteria” means the criteria set out in Part 1 of Schedule 2;

“place on the market” means making available for the first time in a member State a capacity serving measure intended for an end user, whether for reward or free of charge;

“put into use” means the first use of a capacity serving measure intended for the end user for the purposes for which it was intended;

“relevant national standard” means a standard applicable to a capacity serving measure—

- (a) implementing a harmonised standard that has been published in the Official Journal of the European Union C series; and
- (b) the reference of which is published—
  - (i) in the United Kingdom by the Secretary of State; or
  - (ii) in another member State by the competent authority pursuant to the third sub-paragraph of Article 13.1;

“relevant normative document” means a normative document applicable to a capacity serving measure, the reference of which is published—

- (a) in the United Kingdom by the Secretary of State; or
- (b) in another member State by the competent authority pursuant to the third sub-paragraph of Article 13.2;

“re-qualification sticker” means a sticker the design of which is published by the Secretary of State and which is affixed to a capacity serving measure in accordance with regulation 21;

“transfer measure” means a capacity serving measure from which it is intended that a liquid is decanted prior to consumption; and

“United Kingdom notified body” means a person designated under regulation 7.

(2) Other expressions used in these Regulations have the same meanings as in the Weights and Measures Act 1985.

(3) In these Regulations, a reference to a member State includes Norway, Iceland and Liechtenstein<sup>(a)</sup>.

(4) References in these Regulations to an Article, Annex or a part of an Annex are references to an Article, Annex, or a part of an Annex to the Directive.

### **Application**

**3.**—(1) Subject to paragraphs (2) and (3), these Regulations apply to a capacity serving measure described in Schedule 3 which is —

- (a) for use for trade; and
- (b) first placed on the market or put into use on or after 30th October 2006.

(2) These Regulations do not apply to a capacity serving measure which has been first passed as fit for use for trade and stamped before 30th October 2006 under the Capacity Serving Measures (Intoxicating Liquor) Regulations 1988<sup>(b)</sup> or the Measuring Equipment (Capacity Measures and Testing Equipment) Regulations 1995<sup>(c)</sup> and placed on the market before that date.

(3) These Regulations do not apply to a capacity serving measure which is not compliant with the essential requirements and which is displayed or presented at a trade fair, exhibition or demonstration, if a sign displayed visibly on or near the measure clearly indicates that the measure—

- (a) is not compliant with those requirements; and
- (b) cannot be acquired or used until it is made compliant with those requirements by the manufacturer.

## **PART II**

### **PLACING ON THE MARKET AND PUTTING INTO USE OF CAPACITY SERVING MEASURES**

#### **Requirements for placing on the market and putting into use**

**4.**—(1) No person shall place on the market or put into use a capacity serving measure unless the following requirements, or the corresponding requirements of the Directive as implemented under the law of another member State, are met—

- (a) the measure is compliant with the essential requirements;
- (b) the manufacturer has demonstrated its compliance with the essential requirements in accordance with regulation 5; and
- (c) the measure has affixed to it the CE marking, the M marking and the identification number of the notified body which carried out the conformity assessment procedure in respect of the measure.

(2) A person who fails to comply with the requirements of paragraph (1) shall be guilty of an offence and any capacity serving measure to which the offence relates shall be liable to be forfeited.

#### **Compliance with the essential requirements**

**5.**—(1) A manufacturer may demonstrate that a capacity serving measure is compliant with the essential requirements by—

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(a) The application of the Directive was extended to the European Economic Area by Decision No. 31/2005 (OJ No. L198, 28.7.05, p.20).  
(b) S.I. 1988/120 as amended by S.I. 1993/2060, S.I. 1994/1851, S.I. 2001/85 and S.I. 2006/659.  
(c) S.I. 1995/735 as amended by S.I. 2001/599, S.I. 2003/214 and S.I. 2006/659.

- (a) using any technical solution that is compliant with the essential requirements;
  - (b) correctly applying solutions set out in the relevant national standard; or
  - (c) correctly applying solutions set out in the relevant normative document,
- and selecting and following one of the conformity assessment procedures.
- (2) A capacity serving measure which is compliant with the relevant national standard or relevant normative document shall be presumed to be compliant with the essential requirements.
- (3) Where the capacity serving measure is compliant only in part with the relevant national standard or relevant normative document, it shall be presumed to be compliant only with that part of the essential requirements which corresponds to the elements of the relevant national standard or relevant normative document with which the measure is compliant.
- (4) Where a capacity serving measure includes or is connected to a device which is not used for trade—
- (a) that device shall not be subject to the essential requirements; and
  - (b) the measure may be considered to be compliant with the essential requirements notwithstanding that the compliance of that device with the essential requirements has not been established.

### **Conformity assessment procedures**

- 6.—(1) The conformity assessment procedures are the procedures as follows—
- (a) A1;
  - (b) B and D;
  - (c) B and E;
  - (d) D1;
  - (e) E1;
  - (f) F1; or
  - (g) H.
- (2) The manufacturer or his authorised representative shall provide to the notified body carrying out the relevant conformity assessment procedure the technical documentation set out in Schedule 4.
- (3) In this regulation—
- (a) “A1” means declaration of conformity based on internal production control plus product testing by a notified body, set out in Annex A1;
  - (b) “B” means type examination, set out in Annex B;
  - (c) “D” means declaration of conformity to type based on quality assurance of the production process, set out in Annex D;
  - (d) “D1” means declaration of conformity based on quality assurance of the production process, set out in Annex D1;
  - (e) “E” means declaration of conformity to type based on quality assurance of final product inspection and testing, set out in Annex E;
  - (f) “E1” means declaration of conformity based on quality assurance of final product inspection and testing, set out in Annex E1;
  - (g) “F1” means declaration of conformity based on product verification, set out in Annex F1; and
  - (h) “H” means declaration of conformity based on full quality assurance, set out in Annex H.

## **Designation of United Kingdom notified bodies**

7.—(1) The Secretary of State may, on the application of a person, designate that person to be a United Kingdom notified body.

(2) The Secretary of State shall not make a designation under paragraph (1) unless he is satisfied that the person meets the notified body criteria.

(3) A person who meets the criteria laid down in a national standard shall be presumed to meet that part of the notified body criteria which corresponds to the criteria in the national standard.

(4) A designation under paragraph (1)—

- (a) shall be in writing;
- (b) may be made subject to such conditions as may be specified in the designation, which may include conditions which—
  - (i) are to apply upon or following termination of the designation;
  - (ii) require the use of test equipment for the purpose of conformity assessment appropriate to the capacity serving measure being assessed; and
  - (iii) limit the description of any capacity serving measure for which the person is designated;
- (c) subject to regulation 10, may last for such period as may be specified in the designation;
- (d) shall specify the conformity assessment procedures and specific tasks (which may be framed by reference to any circumstances) which the person has been designated to carry out; and
- (e) may include a requirement to publish from time to time the scale of fees which the person charges pursuant to regulation 11 or such information about the basis of calculation of such fees as may be specified.

(5) In exercising the power conferred on him by paragraph (1), the Secretary of State may (in addition to the matters of which he is required to satisfy himself pursuant to paragraph (2)) have regard to any matter appearing to him to be relevant.

(6) For the purposes of paragraph (3), “national standard” means a standard applicable to the designation of notified bodies—

- (a) implementing a harmonised standard that has been published in the Official Journal of the European Union; and
- (b) the reference of which is published—
  - (i) in the United Kingdom by the Secretary of State; or
  - (ii) in another member State by the competent authority pursuant to Article 11.2.

## **Functions of notified bodies**

8. A notified body shall carry out the functions set out in Part 2 of Schedule 2.

## **Provisions supplemental to regulation 7**

9.—(1) The Secretary of State shall, from time to time, publish a list of notified bodies indicating, in the case of each United Kingdom notified body, the description of any capacity serving measure in respect of which that notified body is designated; and such a list may include information concerning any condition to which the designation of any United Kingdom notified body is subject.

(2) The Secretary of State shall, from time to time, carry out an inspection of each United Kingdom notified body with a view to verifying that it—

- (a) meets the notified body criteria;
- (b) complies with any condition to which its designation is subject; and
- (c) complies with these Regulations,



but, unless it appears to him that there are circumstances which make it necessary or expedient to do so, he shall not carry out an inspection within two years from the date of designation under regulation 7, or of any later inspection under this paragraph.

### **Variation and termination of designations**

**10.**—(1) The Secretary of State may vary a designation made under regulation 7 if—

- (a) the United Kingdom notified body so requests; or
- (b) it appears to him necessary or expedient to do so.

(2) The Secretary of State may terminate a designation made under regulation 7 —

- (a) on the expiry of 90 days' notice in writing at the request of the United Kingdom notified body;
- (b) if it appears to him that any condition of the designation is not complied with; or
- (c) if in his opinion the United Kingdom notified body ceases to satisfy the notified body criteria.

(3) Where the Secretary of State is minded to—

- (a) vary a designation pursuant to paragraph (1)(b); or
- (b) terminate a designation pursuant to paragraph (2)(b) or (c),

he shall—

- (i) give notice in writing to the United Kingdom notified body of his reasons; and
- (ii) give that notified body the opportunity to make representations within a period of 21 days from the date of that notice and consider any representations made to him within that period.

(4) If a designation is terminated under paragraph (2), the Secretary of State may—

- (a) give such directions (either to the United Kingdom notified body the subject of the termination or to another United Kingdom notified body) for the purposes of making arrangements for the determination of outstanding applications as he considers appropriate; and
- (b) notwithstanding sub-paragraph (a), authorise another United Kingdom notified body to take over the functions of the United Kingdom notified body the subject of the termination in respect of such cases as he may specify.

### **Fees**

**11.**—(1) A United Kingdom notified body may charge such fees in connection with, or incidental to, the carrying out of the conformity assessment procedures or specific tasks as it may determine.

(2) The fees referred to in paragraph (1) shall not exceed the following—

- (a) the costs incurred or to be incurred by the United Kingdom notified body in performing the relevant function; and
- (b) an amount on account of profit which is reasonable in the circumstances having regard to—
  - (i) the character and extent of the work done or to be done by that notified body on behalf of the applicant; and
  - (ii) the commercial rate normally charged on account of profit for that work or similar work.

(3) The power in paragraph (1) includes the power to require the payment of fees or a reasonable estimate of such fees in advance of carrying out the work requested by the applicant.

(4) Where any fees payable to a United Kingdom notified body pursuant to this regulation remain unpaid 28 days after either the work has been completed or payment of the fees has been

requested in writing, whichever is the later, that notified body may by 14 days' notice in writing provide that, unless the fees are paid before the expiry of the notice, the certificate or notification appropriate to the relevant conformity assessment procedure may be suspended until payment of the fees has been received.

### **Marking and identification requirements**

**12.**—(1) Where a capacity serving measure is compliant with the essential requirements—

- (a) the manufacturer shall affix the CE marking and the M marking to the measure; and
- (b) the notified body which carries out the conformity assessment procedure in respect of that measure shall affix its identification number to the measure, or may agree that the manufacturer shall do so on its behalf.

(2) Any other marking may be affixed to the capacity serving measure provided that the visibility and legibility of the CE marking, the M marking and the identification number of the notified body are not reduced.

(3) For the purposes of paragraph (1)—

- (a) the CE marking means the symbol “CE”, which shall be compliant with the requirements of paragraphs 1, 4 and 5 of Schedule 5;
- (b) the M marking means the capital letter “M” which shall be compliant with the requirements of paragraphs 2, 4 and 5 of Schedule 5; and
- (c) the identification number of the notified body shall be compliant with the requirements of paragraphs 3, 4 and 5 of Schedule 5.

### **Conformity with other directives**

**13.**—(1) Where a capacity serving measure falls within the scope of other directives which provide for the affixing of the CE marking, the affixing of the CE marking under these Regulations shall indicate that the measure is also presumed to be compliant with the requirements of those other directives.

(2) Where paragraph (1) applies, the publication reference of such other directives in the Official Journal of the European Union must be given in the documents, notices or instructions required to accompany the capacity serving measure.

## **PART III**

### **USE FOR TRADE OF CAPACITY SERVING MEASURES**

#### **Requirements for use for trade**

**14.** No person shall use for trade a capacity serving measure unless—

- (a) it is compliant with the essential requirements;
- (b) the requirements of regulation 15 are complied with; and
- (c) it does not bear any decorations or designs which might cause confusion in use.

#### **Manner of use**

**15.** No person shall use for trade a capacity serving measure for the measurement of intoxicating liquor before its transfer to a container in which the buyer is to receive it, unless the buyer has a clear and unobstructed view of the measurement and transfer.

## PART IV

### ENFORCEMENT

#### **Enforcement authority**

**16.**—(1) It shall be the duty of every local weights and measures authority to enforce these Regulations within its area.

(2) The Secretary of State may enforce Part II of these Regulations and for that purpose may appoint any person to act on his behalf.

(3) No proceedings for an offence under these Regulations may be instituted in England and Wales except by or on behalf of an enforcement authority.

(4) Nothing in these Regulations shall authorise an enforcement authority to bring proceedings in Scotland for an offence.

#### **Compliance notice procedure**

**17.**—(1) Where an enforcement authority establishes that, in the case of a capacity serving measure that has been placed on the market or put into use, the CE marking or the M marking has, or both have, been affixed unduly, the following provisions of this regulation shall have effect.

(2) The enforcement authority shall serve a compliance notice on the manufacturer or his authorised representative which shall—

- (a) be in writing;
- (b) describe the capacity serving measure to which it relates in a manner sufficient to identify that measure;
- (c) state that the enforcement authority is of the opinion that the CE marking or the M marking has, or both have, been affixed unduly to the capacity serving measure and give reasons for its opinion;
- (d) require the person on whom the notice is served to end the infringement under conditions specified in the notice;
- (e) specify the date, being not less than 21 days from the date of the notice, by which the infringement must be ended; and
- (f) warn that person that, where the non-conformity continues beyond the date specified in sub-paragraph (e), the enforcement authority may take further action under regulation 18 in respect of that capacity serving measure.

(3) For the purposes of paragraph (1)—

- (a) the CE marking shall be considered to have been affixed unduly if it is not compliant with the requirements of regulation 12(3)(a); and
- (b) the M marking shall be considered to have been affixed unduly if it is not compliant with the requirements of regulation 12(3)(b).

(4) Where a compliance notice is served by an enforcement authority other than the Secretary of State, it shall, at the same time as it serves that notice, send a copy to the Secretary of State.

#### **Immediate enforcement action**

**18.**—(1) Where an enforcement authority has reasonable grounds for considering that—

- (a) the manufacturer or his authorised representative has failed to comply with a compliance notice;
- (b) a capacity serving measure, which is placed on the market or put into use, does not bear one or more of the CE marking, the M marking and the identification number of the notified body which carried out the conformity assessment procedure in respect of that measure; or

- (c) a capacity serving measure which bears the marking and identification requirements referred to in sub-paragraph (b) does not meet the essential requirements when placed on the market, or properly installed and put into use in accordance with the manufacturer's instructions,

the following provisions of this regulation shall have effect.

(2) The enforcement authority shall serve an enforcement notice on the manufacturer or his authorised representative which shall—

- (a) be in writing;
- (b) describe the capacity serving measure to which it relates in a manner sufficient to identify that measure;
- (c) specify, with reasons, the respects in which, in the opinion of the enforcement authority, the requirements of these Regulations have not been complied with;
- (d) specify the date, being not less than 21 days from the date of the notice, by which the person to whom the notice is given is required to comply with it; and
- (e) inform that person of the judicial remedies available to him and of the time limits to which those remedies are subject.

(3) A notice under paragraph (2) may—

- (a) require the capacity serving measure to be withdrawn from the market; or
- (b) prohibit or restrict the placing on the market or putting into use of the capacity serving measure; and
- (c) specify that unless steps are taken which ensure—
  - (i) that the capacity serving measure is compliant with the requirements of these Regulations; or
  - (ii) that the manufacturer or his authorised representative acts as required under sub-paragraph (a) or (b),

any certificate or notification, issued by a notified body in accordance with the relevant conformity assessment procedure applicable to the capacity serving measure that the measure satisfies the essential requirements, may be withdrawn by that notified body.

(4) Where an enforcement notice is served by an enforcement authority other than the Secretary of State, it shall, at the same time as it serves that notice, send a copy to the Secretary of State.

(5) In the case of a certificate or notification referred to in paragraph (3)—

- (a) which is granted by a United Kingdom notified body, if the Secretary of State is of the opinion that consideration ought to be given to whether the certificate or notification should be withdrawn, he shall inform that notified body of that fact; and
- (b) which is granted under the law of another member State, if the Secretary of State is of the opinion that consideration ought to be given to whether the certificate or notification should be withdrawn, he shall inform the relevant competent authority of that fact.

### **Review by the Secretary of State**

**19.**—(1) Where a person is aggrieved by a compliance notice or an enforcement notice served by an enforcement authority other than the Secretary of State, that person may apply to the Secretary of State to review such notice.

(2) An application under paragraph (1) shall—

- (a) be in writing;
- (b) state the grounds on which the application is made; and
- (c) be sent to the Secretary of State within 21 days from the date of the notice referred to in paragraph (1).

(3) The Secretary of State may—

- (a) hold an inquiry in connection with the notice which is the subject of his review; and
- (b) appoint an assessor for the purposes of assisting him with his review.

(4) The Secretary of State shall, within a reasonable time, inform the aggrieved person and the enforcement authority referred to in paragraph (1) in writing of his decision whether to uphold the notice served by that authority, together with reasons for his decision.

(5) Where the Secretary of State does not uphold any notice referred to in paragraph (1), he shall give instructions for the withdrawal of that notice.

### **Disqualification**

**20.**—(1) If it appears to an inspector that a capacity serving measure which bears—

- (a) the CE marking;
- (b) the M marking; and
- (c) the identification number of the notified body which carried out the conformity assessment procedure in respect of the capacity serving measure,

is used for trade in circumstances where—

- (i) the measure is no longer compliant with one or more of the requirements of regulation 14; or
- (ii) by reason of any adjustment, alteration, addition, repair or replacement it is likely that the measure has ceased to be compliant with one or more of the requirements of regulation 14,

the inspector may affix a disqualification sticker to the capacity serving measure.

(2) Where one or more of the markings and identification requirements referred to in paragraph (1) is not affixed to a capacity serving measure, the inspector may affix a disqualification sticker to the measure.

(3) Where it appears to the inspector that the nature or degree of non-compliance of the capacity serving measure under paragraph (1) is not such that a disqualification sticker should be immediately affixed to it, he may give to any person in possession of the measure a notice requiring that person to rectify the non-compliance before the expiry of a stated period not less than 14 days and not exceeding 28 days from the date of the notice.

(4) If a notice given under paragraph (3) is not complied with, the inspector shall affix a disqualification sticker to the capacity serving measure.

(5) A disqualification sticker which is affixed to a capacity serving measure shall be affixed in such a position that it is clearly visible when the measure is in use.

(6) A person shall be guilty of an offence if he uses for trade a capacity serving measure to which there is affixed a disqualification sticker, unless a re-qualification sticker has been affixed to the measure in accordance with regulation 21.

### **Re-qualification**

**21.**—(1) Where—

- (a) a disqualification sticker has been affixed to a capacity serving measure in accordance with regulation 20(1), 20(2) or 20(4);
- (b) a notice has been served under regulation 20(3); or
- (c) a capacity serving measure is intended to be used for trade in the circumstances referred to in regulation 20(1)(i) or (ii) or 20(2) but a disqualification sticker has not been affixed to the measure,

a person requiring a re-qualification sticker to be affixed to the measure shall submit it, in such manner as may be directed, to an inspector or approved verifier and provide such assistance as the inspector or approved verifier may reasonably require.

(2) An inspector or approved verifier may affix a re-qualification sticker to that capacity serving measure if satisfied that the measure is compliant with—

- (a) the essential requirements; and
- (b) the requirements of regulation 14(b) and (c).

(3) For the purposes of being satisfied that a re-qualification sticker may be affixed to a capacity serving measure, an inspector or approved verifier may take such steps as he considers appropriate, including testing the measure by means of such test equipment as he considers appropriate and suitable for the purpose.

(4) There may be charged in respect of any steps taken under paragraph (3)—

- (a) by an inspector, such reasonable fees as the local weights and measures authority may determine; and
- (b) by an approved verifier, such reasonable fees as he may determine,

having regard to the character and extent of the work done or to be done.

(5) The inspector or approved verifier shall keep a record of any test carried out under paragraph (3).

(6) Where a re-qualification sticker is affixed to a capacity serving measure pursuant to paragraph (2), it shall be affixed in such a position that it obliterates as far as possible any disqualification sticker.

#### **Unauthorised application of authorised marks**

**22.**—(1) Subject to paragraph (2), a person shall be guilty of an offence if, in the case of a capacity serving measure, he—

- (a) affixes an authorised mark to the measure otherwise than in accordance with these Regulations;
- (b) alters or defaces an authorised mark affixed to the measure;
- (c) removes an authorised mark affixed to the measure; or
- (d) affixes any other marking to the measure which is likely to deceive any person as to the meaning or form, or both, of an authorised mark.

(2) Where the alteration or defacement of an authorised mark is occasioned solely—

- (a) in the course of the adjustment or repair of a capacity serving measure by a person regularly engaged in the business of repair of such measures, or by his authorised agent; or
- (b) by an enforcement officer or approved verifier in the carrying out of any of his functions under these Regulations,

that person or his authorised agent, enforcement officer or approved verifier shall not be guilty of an offence under paragraph (1)(b).

(3) A person shall be guilty of an offence if he places on the market, puts into use or uses for trade a capacity serving measure—

- (a) which, to his knowledge, bears—
  - (i) an authorised mark affixed otherwise than in accordance with these Regulations;
  - (ii) an authorised mark that has been altered or defaced otherwise than in the circumstances referred to in paragraph (2); or
  - (iii) any marking which is likely to deceive any person as to the meaning or form, or both, of an authorised mark; or
- (b) from which, to his knowledge, an authorised mark has been removed.

(4) A capacity serving measure in respect of which an offence under this regulation has been committed and any implement used in the commissioning of the offence shall be liable to be forfeited.

(5) A reference in this regulation to other provisions of these Regulations includes a reference to corresponding provisions under the laws of other member States.

(6) In this regulation, “authorised mark” means the CE marking, the M marking, the identification number of the notified body which carried out the conformity assessment procedure in respect of the capacity serving measure, disqualification sticker or re-qualification sticker.

### **Powers of entry and inspection**

**23.**—(1) Subject to the production if so requested of his credentials, an enforcement officer may for the purposes of these Regulations, at all reasonable times—

- (a) inspect and test any capacity serving measure in such manner as he considers appropriate;
- (b) inspect and take copies of any document relating to a capacity serving measure; and
- (c) enter any premises at which he has reasonable cause to believe there to be a capacity serving measure, not being premises used only as a private dwelling house.

(2) Subject to the production if so requested of his credentials, an enforcement officer may, at any time, seize and detain—

- (a) a capacity serving measure which he has reasonable cause to believe is liable to be forfeited under these Regulations; and
- (b) any document or goods which he has reason to believe may be required as evidence in proceedings for an offence under these Regulations.

(3) If a justice of the peace, on written information on oath—

- (a) is satisfied that there are reasonable grounds to believe that any capacity serving measure or document as is mentioned in paragraph (1) or (2) is on any premises, or that an offence under these Regulations has been, is being or is about to be committed on any premises; and
- (b) is also satisfied either that—
  - (i) admission to the premises has been or is likely to be refused, and that notice of intention to apply for a warrant has been given to the occupier; or
  - (ii) 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 is temporarily absent,

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

(4) In the application of paragraph (3) to Scotland, “justice of the peace” includes a sheriff and references to written information on oath shall be construed as references to evidence on oath.

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

(6) If an enforcement officer 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.

(7) It shall not be an offence under paragraph (6) for a person to disclose information in circumstances where—

- (a) the person from whom the information was received has consented to its disclosure; or
- (b) the information is disclosed more than 50 years after it was received.

(8) Nothing in this regulation shall authorise any person to stop any vehicle on a highway.

(9) In this regulation, “credentials” means evidence of appointment or designation as an enforcement officer.

#### **Obstruction of enforcement officer**

**24.**—(1) A person shall be guilty of an offence if he—

- (a) wilfully obstructs an enforcement officer in the execution of any of his functions under these Regulations; or
- (b) without reasonable cause fails to give that officer any assistance or information which the officer has reasonably required of him for the purpose of the performance by the enforcement authority of its functions under these Regulations.

(2) A person shall be guilty of an offence if in giving an enforcement officer such information as is mentioned in paragraph (1)(b) that person gives any information which he knows to be false.

#### **Penalties for offences**

**25.** A person guilty of an offence under Part II or Part IV shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

#### **Defence of due diligence**

**26.**—(1) Subject to the following provisions of this regulation, in proceedings against a person for an offence under these Regulations, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in proceedings against a person for such an offence the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence, unless, not less than seven clear days before the hearing of the proceedings, (or, in Scotland, the trial diet), he has served a notice in accordance with paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows it was reasonable in all the circumstances for him to have relied on the information, having regard in particular to—

- (a) the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) whether he had any reason to disbelieve the information.

#### **Liability of persons other than the principal offender**

**27.**—(1) Where the commission by a person of an offence under these Regulations is due to the act or default of another person in the course of any business of his, that other person shall be guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person.

(2) Where a body corporate commits an offence and it is proved that the offence was committed—

- (a) with the consent or connivance of an officer of the body corporate; or
- (b) as a result of the negligence of an officer of the body corporate,

the officer, as well as the body, shall be guilty of the offence.



- (3) In paragraph (2) a reference to an officer of a body corporate includes a reference to—
- (a) a director, manager, secretary or other similar officer of the body corporate;
  - (b) a person purporting to act as a director, manager, secretary or other similar officer; and
  - (c) if the affairs of a body corporate are managed by its members, a member.

(4) In this regulation references to a “body corporate” include references to a partnership in Scotland, and in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

## PART V

### MISCELLANEOUS AND SUPPLEMENTAL

#### Service of documents

**28.**—(1) Any document required or authorised by these Regulations to be served on a person may be so served—

- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address;
- (b) if the person is a body corporate, by serving it in accordance with sub-paragraph (a) on the secretary or clerk of that body; or
- (c) if the person is a partnership, by serving it in accordance with sub-paragraph (a) on a partner or on a person having control or management of the partnership business.

(2) For the purposes of paragraph (1), and for the purposes of section 7 of the Interpretation Act 1978(a) (which relates to the service of documents by post) in its application to that paragraph, the proper address of any person on whom a document is to be served by virtue of these Regulations shall be his last known address except that—

- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate; and
- (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership,

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

#### Savings for certain privileges

**29.**—(1) Nothing in these Regulations shall be taken as requiring a person to produce any documents or records if he would be entitled to refuse to produce those documents or records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, that they contain a confidential communication made by or to an advocate or solicitor in that capacity, or as authorising a person to take possession of any documents or records which are in the possession of a person who would be so entitled.

(2) Nothing in these Regulations shall be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person’s spouse or civil partner.

(3) Sub-section (1) of section 14 of the Civil Evidence Act 1968(b) (which relates to the privilege against self-incrimination) shall apply to the right conferred by paragraph (2) as it

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(a) 1978 c.30.  
(b) 1968 c.64.

applies to the right described in sub-section (1) of that section; but this paragraph does not extend to Scotland.

**Adaptation for Northern Ireland**

**30.** In their application to Northern Ireland, these Regulations shall have effect subject to Schedule 6.

28th April 2006

*Barry Gardiner*  
Parliamentary Under Secretary of State for Competitiveness  
Department of Trade and Industry

## ESSENTIAL REQUIREMENTS

1. The essential requirements are the relevant requirements relating to capacity serving measures contained in Annex I and MI-008, set out in this Schedule.

### Definitions

2. In this Schedule—

“influence quantity” means the quantity that is not the measurand but that affects the result of measurement;

“measurand” means the particular quantity subject to measurement; and

“rated operating conditions” means the values for the measurand and influence quantities making up the normal working conditions of a capacity serving measure.

### Allowable Errors

3.—(1) Under rated operating conditions, the error of measurement shall not exceed the maximum permissible error (MPE) value set out in paragraph 12.

(2) Unless stated otherwise, MPE is expressed as a bilateral value of the deviation from the true measurement value.

### Reproducibility

4. The application of the same measurand in a different location or by a different user, all other conditions being the same, shall result in the close agreement of successive measurements. The difference between the measurement results shall be small when compared with the MPE.

### Repeatability

5. The application of the same measurand under the same conditions of measurement shall result in the close agreement of successive measurements. The difference between the measurement results shall be small when compared with the MPE.

### Durability

6. A capacity serving measure shall be designed to maintain an adequate stability of its metrological characteristics over a period of time estimated by the manufacturer, provided that it is properly maintained and used according to the manufacturer’s instruction when in the environmental conditions for which it is intended.

### Reliability

7. A capacity serving measure shall be designed to reduce as far as possible the effect of a defect that would lead to an inaccurate measurement result, unless the presence of such a defect is obvious.

### Suitability

8.—(1) A capacity serving measure shall have no feature likely to facilitate fraudulent use whereas possibilities for unintentional misuse shall be minimal.

(2) A capacity serving measure shall be robust and its materials of construction shall be suitable for the conditions in which it is intended to be used.

**Information to be borne by and to accompany the capacity serving measure**

9.—(1) A capacity serving measure shall bear the following inscriptions:

- (a) manufacturer’s mark or name;
- (b) information in respect of its accuracy;
- (c) measuring capacity;

plus, when applicable:

- (d) identity marking;
- (e) number of the EC-type examination certificate;

(2) The units of measurement used and their symbols shall be in accordance with the provisions of Community legislation on units of measurement and their symbols.

(3) All marks and inscriptions required under any requirement shall be clear, non-erasable, unambiguous and non-transferable.

**Conformity evaluation**

10. A capacity serving measure shall be designed so as to allow ready evaluation of its conformity with the appropriate requirements of these Regulations.

**Reference Conditions**

11.—(1) Temperature: the reference temperature for measurement of capacity is 20 °C.

(2) Position for correct indication: free standing on a level surface.

**MPE**

12. MPE

**Table**

	<i>Line</i>	<i>Brim</i>
Transfer Measure		
< 100 ml	± 2 ml	- 0 + 4 ml
≥ 100 ml	± 3 %	- 0 + 6 %
Serving measure		
< 200 ml	± 5 %	- 0 + 10 %
≥ 200 ml	± 5 ml + 2.5%	- 0 + 10 ml + 5 %

**Materials**

13. A capacity serving measure shall be made of material which is sufficiently rigid and dimensionally stable to maintain capacity within the MPE.

**Shape**

14.—(1) A transfer measure shall be designed so that a change of contents equal to the MPE causes a change in level of at least 2 mm at the brim or filling mark.

(2) A transfer measure shall be designed so that the complete discharge of the liquid being measured will not be impeded.

### **Marking**

**15.—**(1) The nominal capacity declared shall be clearly and indelibly marked on the capacity serving measure.

(2) A capacity serving measure may also be marked with up to three clearly distinguishable capacities, none of which shall lead to confusion one to the other.

(3) All filling marks shall be sufficiently clear and durable to ensure that MPEs are not exceeded in use.

## **SCHEDULE 2**

Regulations 2(1) and 8

### **NOTIFIED BODIES**

#### **PART 1**

##### **NOTIFIED BODY CRITERIA FOR DESIGNATION**

**1.** The body, its director and staff involved in conformity assessment tasks shall not be the designer, manufacturer, supplier, installer or user of the capacity serving measure that they inspect, nor the authorised representative of any of them. In addition, they may not be directly involved in the design, manufacture, marketing or maintenance of the measures, nor represent the parties engaged in these activities. The preceding criterion does not, however, preclude in any way the possibility of exchanges of technical information between the manufacturer and the body for the purposes of conformity assessment.

**2.** The body, its director and staff involved in conformity assessment tasks shall be free from all pressures and inducements, in particular financial inducements, that might influence their judgement or the results of their conformity assessment, especially from persons or groups of persons with an interest in the results of the assessments.

**3.** The conformity assessment shall be carried out with the highest degree of professional integrity and requisite competence in the field of metrology. Should the body sub-contract specific tasks, it shall first ensure that the sub-contractor meets the requirements of these Regulations, and in particular of this Schedule. The body shall keep the relevant documents assessing the sub-contractor's qualifications and the work carried out by him under these Regulations at the disposal of the Secretary of State.

**4.** The body shall be capable of carrying out all the conformity assessment tasks for which it has been designated, whether those tasks are carried out by the body itself or on its behalf and under its responsibility. It shall have at its disposal the necessary staff and shall have access to the necessary facilities for carrying out in a proper manner the technical and administrative tasks entailed in conformity assessment.

**5.** The body's staff shall have—

- (a) sound technical and vocational training, covering all conformity assessment tasks for which the body was designated;
- (b) satisfactory knowledge of the rules governing the tasks which it carries out, and adequate experience of such tasks; and
- (c) the requisite ability to draw up the certificates, records and reports demonstrating that the tasks have been carried out.

6. The impartiality of the body, its director and staff shall be guaranteed. The remuneration of the body shall not depend on the results of the tasks it carries out. The remuneration of the body's director and staff shall not depend on the number of tasks carried out or on the results of such tasks.

7. The body shall satisfy the Secretary of State that it has adequate civil liability insurance.

8. The body's director and staff shall be bound to observe professional secrecy with regard to all information obtained in the performance of their duties pursuant to these Regulations, except vis-à-vis the Secretary of State.

## PART 2 FUNCTIONS

### **Assessment of applications for certificates or notification**

9.—(1) Subject to paragraph 10, a notified body shall assess an application made by a manufacturer for the issue of—

- (a) a certificate of conformity;
- (b) a design or type examination certificate; or
- (c) a notification of approval of the manufacturer's quality system,

in accordance with the Annex applicable to the relevant conformity assessment procedure in respect of a capacity serving measure.

(2) In determining such an application, the notified body—

- (a) shall have regard to the actual or usual environment of the capacity serving measure; and
- (b) may have regard to any other standard or other technical criteria appearing to it to be relevant.

(3) Where, in the opinion of the notified body, the capacity serving measure to which an application relates is compliant with the essential requirements of these Regulations, it shall issue a certificate or notification in accordance with requirements of paragraph 12.

(4) Where, in the opinion of the notified body, the capacity serving measure to which an application relates is not compliant with the essential requirements, it shall issue a notice to the applicant in accordance with paragraph 15.

(5) Where a certificate or notification under sub-paragraph (3) is issued by a United Kingdom notified body, it shall send a copy to the Secretary of State.

### **Limitations on duties to exercise functions**

10.—(1) A notified body shall not accept an application for a certificate or notification in respect of any capacity serving measure unless the application—

- (a) is in writing, in English or another language acceptable to that notified body;
- (b) is accompanied by all relevant documentation, in which all writing is in English or another language acceptable to that notified body; and
- (c) includes particulars of which applicable standards the manufacturer has applied or proposes to apply in respect of the measure.

(2) A notified body shall not be required to determine an application for a certificate or notification where the manufacturer has not—

- (a) granted the notified body access to a capacity serving measure to which the application relates or the production facilities for the measure (including, where applicable, the production facilities envisaged in relation to a representative measure) to the extent that the notified body reasonably requests; and

- (b) made available to the notified body such information as it may reasonably require to determine the application.
- (3) A notified body shall not be required to carry out the functions referred to in regulation 7(4) (d) if—
  - (a) the person making the application has not submitted with the application the amount of the fee which the notified body requires to be submitted with the application pursuant to regulation 11; or
  - (b) the notified body reasonably believes that, having regard to the number of applications made to it pursuant to its designation which are outstanding, it will be unable to commence the required work within three months of receiving the application.

### **Contractors**

**11.**—(1) Subject to sub-paragraphs (2) and (3), a notified body may, in exercising its functions—

- (a) arrange for some other person to carry out any test, assessment or inspection on its behalf; or
- (b) require the applicant to satisfy another person with respect to any matter at the applicant's expense.

(2) Nothing in sub-paragraph (1) authorises a notified body to rely on the opinion of another person with regard to whether a capacity serving measure is compliant with any of the essential requirements.

(3) Nothing in these Regulations shall preclude a person referred to in sub-paragraph (1)(a) or (1)(b) from charging any fee in respect of any work undertaken by him in pursuance of those sub-paragraphs.

### **Form of certificates and notifications**

**12.**—(1) A certificate or notification issued by a notified body shall be in writing and, in addition to the requirements provided for in the relevant conformity assessment procedure, shall—

- (a) be in English;
- (b) give the name and address—
  - (i) of the applicant;
  - (ii) where the applicant is not the manufacturer, of the manufacturer;
- (c) be signed by or on behalf of the notified body and give the identification number of the signatory;
- (d) bear—
  - (i) the date of issue; and
  - (ii) the number of the certificate or notification;
- (e) give particulars of the relevant capacity serving measure (where applicable, in relation to each variant) to which it relates sufficient to identify it, and shall state whether the measure to which it relates is a single item or a representative, or if it covers a number of variants of that measure; and
- (f) certify that the capacity serving measure to which it relates is compliant with the essential requirements.

### **Conditions in certificates or notifications**

**13.**—(1) A certificate or notification may be unconditional or may be subject to such conditions as the notified body considers appropriate.

- (2) Such conditions may include—

- (a) a limitation on the environment for which the capacity serving measure is stated to be suitable; or
- (b) a limitation that the capacity serving measure is only to be installed at a specific site.

(3) The conditions imposed pursuant to sub-paragraph (1) may be varied in accordance with paragraph 15 by the notified body which issued the certificate or notification and such variation may include the imposition of new conditions or the removal of conditions.

**Withdrawal of certificates or notifications**

14. The notified body which issued the certificate or notification shall withdraw that certificate or notification in accordance with paragraph 15, if it appears that the capacity serving measure to which it relates does not comply with the essential requirements.

**Procedure where a notified body is minded to refuse to give, or to vary or withdraw a certificate or notification**

15.—(1) Where a notified body is minded to—

- (a) refuse to issue a certificate or notification;
- (b) vary a certificate or notification (other than at the request of the person to whom it was given); or
- (c) withdraw a certificate or notification,

it shall give the applicant, or the person to whom the certificate or notification was given, a notice in writing—

- (i) giving reasons for the refusal, variation or withdrawal;
- (ii) specifying the date on which the refusal, variation or withdrawal is to take effect; and
- (iii) giving the applicant or person the opportunity to make representations within 21 days from the date of the notice and stating that the notified body shall consider any representations made to it within that period by that applicant or person.

(2) Where a notified body, having considered representations made to it under sub-paragraph (1), remains of the opinion that—

- (a) an application for a certificate or notification should be refused; or
- (b) a certificate or notification should be varied or withdrawn,

it shall inform the applicant, or the person to whom the certificate or notification was given, of that decision in writing and give that applicant or person information about the judicial remedies available to him.

(3) Where a notice is given under sub-paragraph (1) by a United Kingdom notified body, it shall send a copy to the Secretary of State.

**SCHEDULE 3**

Regulation 3(1)

**CAPACITY SERVING MEASURES TO WHICH THESE REGULATIONS APPLY**

**Table**

<i>Nominal capacity</i>						
<b>Imperial System:</b>						
1/3 pt	1/2 pt	1 pt	2 pt	4 pt	8 pt	16 pt
<b>Metric System:</b>						



5 ml	10 ml	20 ml	25 ml*	35 ml*	50 ml*	70 ml*
100 ml*	125 ml	150 ml*	175 ml	200 ml	250 ml	500 ml
1 l	2 l	2.5 l	5 l	10 l	20 l	

Note: The abbreviations of, and symbols for, units of measurement used in these Regulations refer to the relevant units as follows—

- Imperial system:  
pint pt
- Metric system:  
millilitre ml  
litre l

Note: Imperial measures shall only be used for measuring draft beer and cider.

Note: Metric measures shall be used for all other measurements with further limitations for measuring intoxicating liquor\*. For limitations in respect of specific uses references should be made to the Weights and Measures (Intoxicating Liquor) Order 1988(a).

## SCHEDULE 4

Regulation 6(2)

### TECHNICAL DOCUMENTATION

1. The technical documentation shall render the design, manufacture and operation of the capacity serving measure intelligible and shall permit an assessment of its conformity with the appropriate requirements of these Regulations.

2. The technical documentation shall be sufficiently detailed to ensure—

- (a) the definition of the metrological characteristics;
- (b) the reproducibility of the metrological performances of produced capacity serving measures when properly adjusted using appropriate intended means; and
- (c) the integrity of the capacity serving measure.

3. The technical documentation shall include insofar as relevant for assessment and identification of the type and/or capacity serving measure—

- (a) a general description of the capacity serving measure;
- (b) manufacturing procedures to ensure consistent production;
- (c) descriptions and explanations necessary for the understanding of sub-paragraph (b), including the operation of the capacity serving measure;
- (d) a list of the relevant national standards and/or relevant normative documents applied in full or in part;
- (e) descriptions of the solutions adopted to meet the essential requirements where the relevant national standards and/or relevant normative documents have not been applied;
- (f) results of design calculations and examinations;
- (g) the appropriate test results, where necessary, to demonstrate that the type and/or capacity serving measures comply with the requirements of these Regulations under declared rated operating conditions; and
- (h) the EC-type examination certificates or EC design examination certificates in respect of capacity serving measures containing parts identical to those in the design.

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(a) S.I. 1988/2039 as amending S.I. 1990/1550, S.I. 1994/1883 and S.I. 1994/2868.

4. The manufacturer shall specify where markings have been applied.
5. The manufacturer shall indicate the conditions for compatibility with interfaces where relevant.

## SCHEDULE 5

Regulation 12(3)

### MARKING AND INSCRIPTIONS

1. The CE marking consists of the symbol “CE” according to the design laid down in paragraph I.B(d) of the Annex to Decision 93/465/EEC(a). The CE marking shall be at least 5 mm high.
2. The M marking consists of the capital letter “M” and the last two digits of the year of its affixing, surrounded by a rectangle. The height of the rectangle shall be equal to the height of the CE marking. The M marking shall immediately follow the CE marking.
3. The identification number of the notified body concerned shall follow the CE marking and the M Marking.
4. When a capacity serving measure consists of a set of devices, operating together, the markings shall be affixed on the measure’s main device.
5. When a capacity serving measure is too small or too sensitive to carry the CE marking and the M marking, the markings shall be carried by the packaging, if any, and by the accompanying documents required by these Regulations.
6. The CE marking and the M marking shall be indelible. The identification number of the notified body concerned shall be indelible or self destructive upon removal. All markings shall be clearly visible or easily accessible.

## SCHEDULE 6

Regulation 30

### ADAPTATIONS FOR NORTHERN IRELAND

1. In regulation 2(2), the reference to the Weights and Measures Act 1985(b) shall be construed as a reference to the Weights and Measures (Northern Ireland) Order 1981(c).
2. Part III does not apply to Northern Ireland.
3. In regulation 16—
  - (a) for paragraph (1), substitute the following paragraph—

“(1) The Department of Enterprise, Trade and Investment shall enforce these Regulations in Northern Ireland.”; and
  - (b) for paragraph (3), substitute the following paragraph—

“(3) No proceedings for an offence under these Regulations shall be instituted in Northern Ireland except by or on behalf of the Department of Enterprise, Trade and Investment or the Director of Public Prosecutions for Northern Ireland.”.
4. In regulation 23—
  - (a) the reference in paragraph (3) to written information on oath shall be construed as a reference to a complaint on oath; and

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(a) OJ No. L220, 30.8.93, p.23.

(b) 1985 c.72.

(c) S.I. 1981/231 (N.I. 10) and see S.I. 1982/846 (N.I. 11) and S.I. 1999/283 (N.I. 1).

(b) for paragraph (9) substitute the following paragraph—

“(9) In this regulation, “credentials” in relation to an enforcement officer, means an authenticated document showing that he is authorised to act to exercise the powers conferred on him by this regulation.”.

**5.** In regulation 29(3) the reference to sub-section (1) of section 14 of the Civil Evidence Act 1968 shall be construed as a reference to sub-section (1) of section 10 of the Civil Evidence Act (Northern Ireland) 1971(a).

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(a) 1971 c.36

## EXPLANATORY NOTE

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

These Regulations implement Directive 2004/22/EC of the European Parliament and of the Council on measuring instruments (OJ No. L 135, 30.4.04, p1) “the Directive” in relation to capacity serving measures covered by the Directive in so far as they are prescribed.

Part I provides that these Regulations apply, with certain exceptions, to capacity serving measures for use for trade set out in Schedule 3 which are first placed on the market or put into use on or after the 30th October 2006.

Part II deals with the requirements for placing on the market and putting into use. These are that capacity serving measures are compliant with the essential requirements, that the manufacturer has demonstrated such compliance with the essential requirements and that the measures have the CE marking, the M marking and the identification number of the relevant notified body affixed to them (regulation 4(1)). It is an offence under regulation 4(2) to place on the market and put it into use a capacity serving measure without first complying with the requirements of regulation 4(1). The essential requirements are set out in Schedule 1. Compliance with the essential requirements can be demonstrated in accordance with the provisions in regulation 5. Regulation 6 sets out the different conformity assessment procedures available to a manufacturer to demonstrate compliance. The technical documentation required is set out in Schedule 4.

Regulations 7 to 11 and Schedule 2 contain provisions relating to the eligibility and designation of persons to be notified bodies and with the administrative procedures relating to their appointment, functions and fees. Requirements relating to the marking of capacity serving measures are set out in regulation 12 and Schedule 5. Regulation 13 provides for a presumption of conformity with other applicable directives conferred by the CE marking.

Part III of these Regulations deals with requirements relating to the use for trade of capacity serving measures (regulations 14 and 15) pursuant to section 15(1) of the Weights and Measures Act 1985. Failure to comply with these requirements is an offence under section 15(3) of that Act.

Part IV deals with enforcement of these Regulations. Regulation 16 provides that the Regulations shall be enforced by every local weights and measures authority within its area: the Secretary of State may act as an enforcement authority in relation to Part II and may for that purpose appoint any person to act on his behalf. Regulation 17 (compliance notice procedure) and regulation 18 (immediate enforcement action) confer powers on the enforcement authorities to take action in respect of non-compliant capacity serving measures. Regulation 19 permits a review by the Secretary of State of notices issued by other enforcement authorities under regulations 17 and 18. Regulation 20 provides for disqualification of capacity serving measures and it is an offence to use a capacity serving measure which has been disqualified unless it has been re-qualified in accordance with regulation 21.

Regulations 22 details the offences in relation to unauthorised application of authorised marks. Regulation 23 provides powers of entry and inspection for enforcement officers. Regulation 24 provides for offences relating to the obstruction of an enforcement officer. A person guilty of an offence under Part II or Part IV is liable on summary conviction to a fine not exceeding level 5 on the standard scale (which is currently £5,000) (regulation 25). A defence of due diligence in relation to any offence under the Regulations is provided for in regulation 26 and the liability of persons other than the principal offender is set out in regulation 27.

Part V (regulations 28 to 30) deals with miscellaneous matters including the application of the Regulations to Northern Ireland to the extent set out in Schedule 6 (regulation 30).

These Regulations have been notified to the European Commission and the other member States in accordance with Directive 98/34/EC of the European Parliament and of the Council (OJ No. L204, 21.7.98, p.37), as amended by Directive 98/48/EC of the European Parliament and of the Council (OJ No. L217, 5.8.98, p.18).

A Regulatory Impact Assessment (RIA) in respect of these Regulations is available and a copy can be obtained from the National Weights and Measures Laboratory (NWML), Stanton Avenue, Teddington, Middlesex TW11 OJZ or from its website at [www.nwml.gov.uk](http://www.nwml.gov.uk). As these Regulations transpose the Directive, a transposition note (TN) setting out how the Government has transposed the Directive in the United Kingdom has been prepared. Copies of the RIA and TN are available from NWML as above. Copies of these documents have been placed in the libraries of both Houses of Parliament.

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