

## SCHEDULE 1

Regulation 9(2)

### INFORMATION TO BE MARKED ON REGULATED NON-AUTOMATIC WEIGHING INSTRUMENTS

1. The number of the EU-type examination certificate, where appropriate.
2. The manufacturer's name, registered trade name or registered trade mark.
3. The accuracy class, enclosed in an oval or in two horizontal lines joined by two half circles.
4. Maximum capacity, in the form "Max .....".
5. Minimum capacity, in the form "Min .....".
6. Verification scale interval in the form "e =....."
7. Type, batch and serial number
8. When applicable the following:
  - (a) for instruments consisting of separate but associated units, the identification mark on each unit;
  - (b) scale interval if different from e, in the form "d =....";
  - (c) maximum additive tare effect, in the form "T = +.....";
  - (d) maximum subtractive tare effect if it is different from Max, in the form "T = -...";
  - (e) tare interval if it is different from d, in the form "d<sub>T</sub> = ....";
  - (f) maximum safe load if it is different from "Max....", in the form "Lim....";
  - (g) the special temperature limits, in the form "...°C/...°C"; and
  - (h) ratio between load receptor and load.
9. The requirements of points 1.2 to 1.5 of the Annex III to the Directive must be complied with.

## SCHEDULE 2

Regulation 36(4)

### OPERATIONAL OBLIGATIONS OF NOTIFIED BODIES

1. Conformity assessment must be carried out in a proportionate manner, avoiding unnecessary burdens for economic operators.
2. Conformity assessment bodies must perform their activities taking due account of—
  - (a) the size of an undertaking;
  - (b) the sector in which it operates and its structure;
  - (c) the degree of complexity of the of the regulated non-automatic weighing instrument technology in question; and
  - (d) the mass or serial nature of the production process,but respecting the degree of rigour and the level of protection required for compliance of the regulated non-automatic weighing instrument with these Regulations.
3. Where a notified body finds that the essential requirements have not been met by a manufacturer, it—
  - (a) must require that manufacturer to take appropriate corrective measures; and
  - (b) must not issue a certificate of conformity.

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4. Where in the course of the monitoring of conformity following the issue of a certificate, a notified body finds that a regulated non-automatic weighing instrument no longer complies, it must require the manufacturer to take appropriate corrective measures and must suspend or withdraw the certificate if necessary.

5. Where corrective measures are not taken or do not have the required effect, the notified body must restrict, suspend or withdraw any certificates, as appropriate.

6. Where a person is aggrieved at a decision taken by a notified body in relation to the conformity assessment of a regulated non-automatic weighing instrument, the notified body must have appropriate arrangements for the review of that decision by a person who was not involved in the taking of that decision.

7. Notified bodies must inform the notifying authority of the following—

- (a) any refusal, restriction, suspension or withdrawal of a certificate;
- (b) any circumstances affecting the scope of or conditions for notification;
- (c) any request for information which they have received from market surveillance authorities regarding conformity assessment; and
- (d) on request, conformity assessment activities performed within the scope of their notification and any other activity performed, including cross-border activities and subcontracting.

8. Notified bodies must provide other bodies notified under this Directive carrying out similar conformity assessment activities covering the same regulated non-automatic weighing instruments with relevant information on issues relating to negative and, on request positive conformity assessment results.

9. Notified bodies must—

- (a) when requested by the Secretary of State, nominate a representative to attend a group convened by the Commission pursuant to Article 35 of the Directive; and
- (b) ensure attendance of that representative at meetings of the group.

### SCHEDULE 3

Regulation 49(4)

#### REQUIREMENTS RELATING TO NOTIFIED BODIES

1. A conformity assessment body must be established under the national law of an EEA state and have legal personality.

2. A conformity assessment body must be a third party body independent of the organisation or the regulated non-automatic weighing instrument it assesses.

3. A body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of regulated non-automatic weighing instruments which it assesses, may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered such a body of a kind referred to in paragraph 2.

4. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks must not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the regulated non-automatic weighing instruments that they assess, nor the representative of any of those parties. This provision shall not preclude the use of assessed regulated non-automatic weighing instruments that are necessary for the operations

of the conformity assessment body or the use of such regulated non-automatic weighing instruments for personal purposes.

**5.** A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks—

- (a) must not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of those regulated non-automatic weighing instruments, or represent the parties engaged in those activities.
- (b) must not engage in any activity (including consultancy services) that may conflict with their independent of judgement or integrity in relation to the conformity assessment activities for which they are notified.

**6.** Conformity assessment bodies must ensure that the activities of their subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.

**7.** Conformity assessment bodies and their personnel must carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and must be free all pressures and inducements, particularly financial, which might influence their judgment or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in the results of those activities.

**8.** A conformity assessment body must be capable of carrying out all the conformity assessment tasks assigned to it by Annex II to the Directive and in relation to which it has been notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf under its responsibility.

**9.** At all times and for each conformity assessment procedure and each kind or category of regulated non-automatic weighing instruments in relation to which it has been notified, a conformity assessment body must have at its disposal the necessary—

- (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment task;
- (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the transparency and the ability of reproduction of those procedures;
- (c) appropriate policies and procedures in place that distinguish between tasks it carries out as a notified body and other activities; and
- (d) procedures for the performance of activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the instrument technology in question, and the mass or serial nature of the production process.

**10.** A conformity assessment body must have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and must have access to all necessary equipment or facilities.

**11.** The personnel responsible for carrying out conformity assessment tasks must have the following—

- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
- (b) satisfactory knowledge of the requirements of the assessments they carry out and adequate authority to carry out those assessments;
- (c) appropriate knowledge and understanding of the requirements set out in Annex I to the Directive, of the applicable harmonised standards, and of the relevant provisions of European Union harmonisation legislation and of national legislation;

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(d) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.

12. Conformity assessment bodies, their top-level management and the personal responsible for carrying out conformity assessment tasks must be impartial in the execution of their functions.

13. The remuneration of the top-level management and personnel responsible for carrying out the conformity assessment tasks of a conformity assessment body must not depend on the number of assessments carried out or on the results of those assessments.

14. A conformity assessment body must satisfy the Secretary of State that it has adequate civil liability insurance.

15. The personnel of a conformity assessment body must observe professional secrecy with regard to all information obtained in carry out their tasks under Annex II, except as regards the Secretary of State. Proprietary rights must be protected.

16. Conformity assessment bodies must participate in, or ensure that their personnel responsible for carrying out the conformity assessment tasks are informed of, the relevant standardisation activities and the activities of the notified body coordination group established under the European Union harmonisation legislation and must apply as general guidance the administrative decisions and documents produced as a result of the work of that group.

#### SCHEDULE 4

Regulation 56

### USE FOR TRADE OF REGULATED NON-AUTOMATIC WEIGHING INSTRUMENTS IN GREAT BRITAIN

#### **Restrictions on use of instruments for trade**

1.—(1) An instrument marked with a weighing range may be used for trade for determining the weight of any item by ascertaining the difference between two weights (both of which fall within the weighing range).

(2) Save in accordance with paragraph (1) above, a person must not use for trade regulated non-automatic weighing instrument marked with a weighing range for determining a weight outside that range in relation to—

- (a) articles made from, gold, silver, platinum or palladium;
- (b) precious stones or pearls; or
- (c) drugs or other pharmaceutical products.

(3) A person must not use for trade any regulated non-automatic weighing instrument other than an instrument of accuracy classification Class I or Class II within the meaning of paragraph 2 of Annex I to the Directive in any transaction relating—

- (a) to, or to articles made from, gold, silver, platinum or palladium;
- (b) to precious stones or pearls.

(4) Where a regulated non-automatic weighing instrument bears a mark which signifies the manner and purpose of use, it must not be used for trade in a manner or for a purpose which does not accord with that marking.

(5) A person must not use a Class III regulated non-automatic weighing instrument (within the meaning of paragraph 2 of Annex I to the Directive) for trade for any purpose other than for weighing—

- (a) any of the materials to which the expression “ballast” applies in Schedule 4 to the Weights and Measures 1985 Act;
- (b) any material the disposal of which constitutes a landfill disposal as defined in paragraph (2) of section 70 of the Finance Act 1996<sup>(1)</sup>, whether or not the disposal amounts to a taxable disposal as defined in section 40 of that Act; or
- (c) waste not falling within paragraph (b).

(6) A person must not use for trade any regulated non-automatic weighing instrument for the purpose of multiple weighing, that is to say, determining the mass of a load by totalling the results of more than one static weighing operation during each of which the load is only partially supported by the load receptor.

(7) For the purposes of this paragraph, “waste” means any substance that its holder, discards, or intends or is required to discard, including any waste disposed of for reprocessing or recycling purposes.

#### **Manner of erection of regulated non-automatic weighing instruments**

2. Where a regulated non-automatic weighing instrument is fitted with one or more level-indicating devices, a person must not use the instrument for trade unless each such device indicates that it has been set to its reference position.

#### **Regulated non-automatic weighing instruments marked with temperature range**

3. Where a regulated non-automatic weighing instrument is marked with a temperature range, a person must not use the instrument for trade at temperatures outside that range.

#### **Regulated non-automatic weighing instruments marked with manner of use**

4. Where a regulated non-automatic weighing instrument is marked with the manner of use, a person must not use the instrument for trade in a manner which does not accord with the marking.

#### **Regulated non-automatic weighing instruments fitted with printing devices**

5. Where a regulated non-automatic weighing instrument is fitted with a printing device, a person must not use the instrument for trade unless the printing device produces a legible and durable printout.

#### **Load receptors**

6.—(1) A person must not use a regulated non-automatic weighing instrument for trade unless it is erected and used in such a manner that, during a weighing operation, the load being weighed is stationary relative to the load receptor and supported only by the load receptor.

(2) A person must not use for trade a regulated non-automatic weighing instrument for the purpose of sales by retail—

- (a) unless—
  - (i) the load receptor is not less than 10 mm above any adjacent surface; or
  - (ii) where the load receptor is less than 10 mm above any adjacent surface, the boundary of the top surface of all adjacent surfaces is durably marked in a distinctive and contrasting manner with a band at least 15 mm in width; or
- (b) if the load receptor is below the level of any adjacent surface.

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(1) 1996 c.8.

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### **Operation of regulated non-automatic weighing instrument**

7. A person must not use a regulated non-automatic weighing instrument for trade unless it is erected in such a manner that the operator can, readily take up a single position from which he can—

- (a) see directly or with the aid of mirrors, closed-circuit television or other permanently installed facilities, the whole of the unladen load receptor;
- (b) operate the instrument's controls; and
- (c) obtain a weight reading from the instrument.

### **Regulated non-automatic weighing instruments to be set to zero or to be balanced before use**

8.—(1) A person must not use a regulated non-automatic weighing instrument for trade unless it is properly balanced or set to zero immediately prior to use.

(2) Paragraph (1) does not apply in the case of a regulated non-automatic weighing instrument if it is designed so as not to balance when unloaded.

## SCHEDULE 5

Regulations 32(4), 54(8) and 61(4)

### MONETARY PENALTIES

#### **Introduction**

1. This Schedule applies in relation to the imposition by the Secretary of State of a monetary penalty under these Regulations.

#### **Procedure**

2.—(1) Before imposing a monetary penalty under these Regulations, the Secretary of State must notify the person on whom the penalty is to be imposed of the Secretary of State's intention to do so.

(2) The notice must—

- (a) specify the proposed amount of the penalty (which must not exceed £50,000),
- (b) specify the Secretary of State's reasons for proposing to impose the penalty,
- (c) specify the period during which the person on whom the penalty is to be imposed may make representations about the proposal ("the specified period"), and
- (d) specify the way in which those representatives may be made.

(3) The specified period must not be less than 28 days beginning with the date on which the notice is received.

(4) The Secretary of State must have regard to any representations made by the person during the specified period in deciding whether to impose a monetary penalty on it.

(5) Having decided whether or not to impose a monetary penalty, the Secretary of State must notify the person of the Secretary of State's decision.

(6) Where the decision is to impose a monetary penalty, the notice must specify—

- (a) the amount of the penalty, and
- (b) the period within which the penalty must be paid or the periods within which different portions of the penalty must be paid.

(7) The notice must also contain information as to—

- (a) the grounds for imposing the penalty,
- (b) how payment may be made,
- (c) rights of appeal,
- (d) the period within which an appeal may be made, and
- (e) the consequences of non-payment.

(8) The requirement to pay the penalty is suspended at any time when an appeal could be brought in respect of the penalty or such an appeal is pending.

(9) But sub-paragraph (8) does not prevent the requirement to pay taking effect if the person notifies the Secretary of State that it does not intend to appeal.

### **Appeals**

**3.—**(1) A person on whom a monetary penalty is imposed, may appeal to the First-tier Tribunal against—

- (a) a decision under these Regulations to impose a monetary penalty on the person;
  - (b) a decision as to the amount of the penalty.
- (2) An appeal under this paragraph may be made on the grounds—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable.
- (3) On an appeal under this paragraph the Tribunal may—
- (a) withdraw the requirement to pay the penalty;
  - (b) confirm that requirement;
  - (c) vary that requirement;
  - (d) remit the decision whether to confirm the requirement to pay the penalty, or any matter relating to that decision, to the Secretary of State.

### **Interest and recovery**

**4.—**(1) This paragraph applies if all or part of a monetary penalty imposed under these Regulations is unpaid by the time when it is required to be paid.

- (2) The unpaid amount of the penalty for the time being—
- (a) carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838<sup>(2)</sup>, and
  - (b) does not also carry interest as a judgment debt under that section.

(3) The total amount of interest imposed under sub-paragraph (2) must not exceed the amount of the penalty.

(4) The Secretary of State may recover from the person on whom it is imposed, as a civil debt, the unpaid amount of the penalty and any unpaid interest.

(5) Any sums received by the Secretary of State by way of a penalty imposed under these Regulations or interest under this paragraph must be paid into the Consolidated Fund.

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(2) 1838 c.110.