

GOVERNMENT RESPONSE

Consultation on: Draft Weights and
Measures (Revocations) Regulations
2015

FEBRUARY 2015

GOVERNMENT RESPONSE TO THE CONSULTATION ON WEIGHTS AND MEASURES (REVOCATIONS) REGULATIONS 2015

Introduction

1. This document analyses responses to the public consultation on the Government's proposal to remove national "old approach" metrology legislation in line with Directive 2011/17/EU and on the revocation of national regulations on capacity serving measures. The consultation opened on 17 December 2014 and closed on 30 January 2015. This document also sets out the Government's response to the points raised in response to the consultation questions.

Executive Summary

2. From 30 November 2015 the seven remaining "old approach" directives on the harmonisation of the laws of Member States relating to measuring instruments and methods of metrological control are to be repealed by Directive 2011/17/EU subject to a 10 year transition. As a result, all Member States must adopt and publish the necessary national provisions to ensure compliance with EU law.
3. In addition it is the intention to remove existing national legislation on capacity serving measures (CSMs) which has been superseded by the Measuring Instruments Directive (2004/22/EC) and its implementing legislation.
4. The repeal of this legislation is also a commitment made under the Government's 'Red Tape Challenge' programme and the 10 Regulations being revoked in their entirety will contribute to the total number of Regulations scrapped during this Parliament. A Statutory Instrument, the Weights and Measures (Regulations) Regulations 2015 ("the Regulations") has been prepared for these purposes. The consultation sought views on whether the draft Regulations was clear and workable.

Indication of who responded

5. The consultation document was sent directly to around 82 stakeholders and was available through both the National Measurement Office ("NMO") website homepage and the Gov.uk main consultations web page.
6. A total of 2 formal responses were received. NMO is grateful to the respondents who gave thought to the workability of the draft legislation and took the time to respond. The responses have been analysed and considered.

7. The table below shows the breakdown of responses by type of organisation.

Type of Organisation	Responses received
Business Representative Body / Trade Association	1
Individual	0
Micro Business	0
Local Government	0
Others	1

8. The organisations who responded did not request confidentiality and can be found at Annex A.

Analysis and Government Response

9. This section considers each issue raised in the consultation responses and provides a Government Response for each one.

Question 1

Do you consider that there are any provisions which do not work or are unclear?

10. The Government proposes to remove all references to the “old approach” Directive 74/148/EEC concerning above-medium accuracy weights. Consequently, it proposes to remove in its entirety Regulation 8 ‘appropriate equipment for tests’ from the Non-automatic Weighing Instruments (NAWI) 2000 Regulations. The United Kingdom Weighing Federation (UKWF) commented that the present requirements contained in Regulation 8 operate effectively and provide clear legal criterion for local authorities, notified bodies and manufacturers to adhere to and as such its removal will have the opposite effect. The Trading Standards Institute (TSI) is in concurrence with the UKWF.

Government Response

11. The Government does not consider this to be the case. Although these references are being removed from the legislation to all intents and purposes the requirements remain in the national standard through Regulation 14(8) in the case of EC verification and EC unit verification.

12. The UKWF commented that Regulation 14(8) makes no reference to procedures contained under Regulation 13 concerning the EC declaration of type conformity and as a consequence there is likely to be inconsistency amongst manufacturers as to what constitutes appropriate weights.

Government Response

13. This is a matter for the notified body assessing the quality system of the manufacturer to ensure the tests carried out are appropriate as stated in Regulation 13(7)(b).

14. The UKWF commented that there is no obligation for manufacturers to use the relevant national standard.

Government Response

15. The expectation would be for the notified body to not only ensure the appropriate tests are carried out but also that appropriate weights are used as set out in the national standard. Other than the “old approach” Directive EEC weights being revoked the alternative weights listed in Regulation 8 cannot be used by persons aside from local authority weights and measures inspectors. Therefore there are no legally specified weights which can be used by manufacturers unless individual weight sets have been tested and approved as appropriate by the Secretary of State, Regulation 8(3). The situation being that all manufacturer weights do not currently comply with the legislation. The removal of Regulation 8 provides the opportunity for the Government to address in detail appropriate weights to be used by manufacturers outside legislation. This will be achieved through detailed notes for guidance which will provide the necessary clarity and direction for all intended parties.

16. The UKWF commented that the acceptable tolerances for weights which the relevant national standard prescribe are wider than those currently used and would thus enable manufacturers to test instruments with less accurate weights (an example was given).

Government Response

17. The Government agrees the case in question would allow weights with lower tolerances to be used however this is not the case for all capacities and scale intervals of instruments. Lower class weights are likely to be restricted due to their large error allowance consuming the maximum permissible error of the instrument. The greater flexibility provides for a closer alignment with the requirements of the national standard.

18. The TSI noted that Regulation 35 of the NAWI 2000 Regulations will also be removed as a consequence of Directive 2011/17/EU with regard to weights suitable for test of Class I and Class II instruments.

Government Response

19. Regulation 35 expressly covers Directive 74/148/EEC marked weights. Although weights used will need to satisfy the requirements of the national standard the Government notes for guidance will include appropriate weights to be used for trade for Class I and Class II instruments. The guidance will provide the “safe” route for manufacturers to follow.

20. The TSI sought clarification on existing type approval certificates.

Government Response

21. Existing “old approach” directives type approval certificates cannot be renewed or revised. Equipment in use for trade cannot undergo alteration other than the replacement of existing components. After the 10 year derogation period the enforcement provisions will also cease, instruments will then fall under the generic provisions of the Weights and Measures Act 1985 (“the Act”) and as such will be required to be fair and just and not used in a fraudulent manner (Section 17), and not used to deliver short measure (Section 28).

Question 2

Do you have any comments on the draft regulations?

22. The UKWF comments for Q1 encompass those for Q2.

23. The TSI agree to the amendment of Regulation 3(1)(a) of the Measuring Equipment (Capacity Measures and Testing Equipment) Regulations 1995.

Question 3

Do you have any comments on the proposed revocation of the Capacity Serving Measures (Intoxicating Liquor Regulations 1988 (as amended))?

24. The TSI agreed with the proposals but would like a continuation of limits of error in relation to the obliteration of stamps on existing equipment.

Government Response

25. The Government does not consider it necessary to keep in-service limits for the extremely limited number of CSMs remaining on the market which might require re-verification, therefore reliance falls on the generic provisions of “the Act”. The assessment of the accuracy of measurement may follow those in-service limits of error set out in International standards for CSMs. It would not be unreasonable for a CSM to be considered unjust if these errors are exceeded.

Question 4

Do you have any comments on the proposed revocation of the national regulations implementing all of the “old approach” directives on metrology including the seven under this proposal and where such instruments are regulated on the UK market that all in-service control will be removed after November 2025?

26. The TSI would like to the preservation of suitable limits of error in relation to existing in-service equipment.

Government Response

27. As with Q3 for instruments covered generically by the “the Act” to be considered unjust it would not be unreasonable to use the in-service errors in the relevant International standard.

Question 5

Have you any evidence that measuring instruments controlled by the regulations transposing the seven “old approach” EEC Directives are still commercially active?

28. The UKWF and TSI made no comment.

Question 6

Do you agree with the proposal to remove specific references to Directive 74/148/EEC for above-medium accuracy weights in the Non-automatic Weighing Instruments Regulations 2000 and the Non-automatic Weighing Machines Regulations 2000 from December 2015?

29. The UKWF and TSI commented that they understand the references to 74/148/EEC must be removed as instructed by Directive 2011/17/EU. However both reiterated their concern that the removal of Regulation 8 from the NAWI 2000 Regulations is substituting explicit legal requirements for implicit; giving rise to uncertainty and differences in interpretation. They propose replacing the reference to 74/148/EEC with a reference to OIML R 111.

Government Response

30. Certainty can be achieved by the use of weights as specified in the notes for guidance. Equally a new version of the applicable national standard EN 45501 is to be published in May 2015 which includes a reference to R 111 on the conformity of weights.

Question 7

Do you prefer that for above-medium accuracy weights referred to in Q6 are only replaced after the 30 November 2025 when the transition period ceases?

31. The TSI would prefer in-service controls to remain applicable as long as equipment continues in use.

Government Response

32. The last local authority to hold a certificate of nomination by the Secretary of State to verify above medium accuracy weights to 74/148/EEC ended in 2006. The likelihood is there will be very few if any EEC weights remaining in use for trade after the derogation period of 10 years ends in 2025. Based on the appropriate class maximum permissible errors for any

remaining EEC weights can be consulted by looking at the equivalent tables in the International standard R 111. Any weights outside acceptable limits can be considered under the general provisions of “the Act”.

Next Steps

33. The Government is content with the proposed Regulations and they will be laid in February 2015 to come into immediate effect for CSMs and on 1 December 2015 for “old approach” measuring instruments and methods of metrological control.
34. The Government will make changes to the Non-automatic Weighing Instruments 2000 Guidance that will provide the necessary detail for appropriate weights to be used and will publish it on the Gov.uk website.

Annex A: List of Respondents

Trading Standards Institute
UK Weighing Federation

In case of enquiries please contact:

Peter Edwards
National Measurement Office
Department for Business, Innovation and Skills
Stanton Avenue
Teddington
TW11 0JZ

Telephone: 020 8943 7298
Email: peter.edwards@nmo.gov.uk

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