



National  
Measurement &  
Regulation Office

# WEIGHTS AND MEASURES

The Measuring Instruments (Capacity  
Serving Measures) Regulations 2006  
(S.I. 2006 No. 1264)

Guidance on Regulation

July 2015

Version 2

This publication was withdrawn on 1 January 2021.

## Summary

This guidance covers capacity serving measures covered by the Measuring Instruments Directive (MID) i.e. those put on the market on or after 1st October 2006.

Nothing in this guidance should be construed as overriding, amending or deferring safety regulations and requirements issued by the Health and Safety Executive (in Northern Ireland the Health and Safety Executive for Northern Ireland), in connection with the conduct of persons and the condition and use of machinery and equipment on any premises.

The guidance is addressed to organisations that are required to comply with weights and measures law. Following the guidance is not in itself obligatory but, if you do follow it, this should help your organisation to meet its legal obligations.

Ultimately, only the courts can provide a definitive interpretation of the law. However, for further guidance on how to comply with the law, you can contact your local authority trading standards department, who provide this service free of charge:

<http://www.tradingstandards.gov.uk/advice/index.cfm> - simply type in your postcode and press "go".

*This guidance complies with the Government Code of Practice on Guidance and will be reviewed in October 2016.*

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This publication was withdrawn on 7 January 2021.

# 1. FOREWORD

1.1 The Measuring Instruments (Capacity Serving Measures) Regulations 2006, S.I. 2006 No. 1264 ("the Regulations") implement Council Directive 2004/22/EC ("the Directive") in relation to the class of capacity serving measures within the category of material measures. The Regulations provide for the harmonisation of laws on capacity serving measures within Member States, thereby creating a single market for them.

1.2 Separate measuring instrument regulations have been made to implement each of the instrument types prescribed in the UK under the Directive. They have been written so that for each type of instrument (measure) their field of application and in-service control mirror the scope of regulations made previously under the Weights and Measures Act 1985 and the Weights and Measures (Northern Ireland) Order 1981. A further regulation relates to instruments covered by the Directive, but not regulated within the UK<sup>1</sup>. This regulation provides a means by which UK manufacturers can be permitted to undertake conformity assessment procedures on these instruments. This will allow them to export to other Member States where the particular instruments are regulated.

1.3 There is also a distinction between measures relating to the measuring instruments when they are first placed on the market (which are governed by the Directive) and the in-service provisions which are derived from existing national provisions. The Regulations therefore apply both at the point at which the instrument is placed on the market and in-service testing and subsequent repair and re-qualification.

1.4. This guidance covers the above Regulations.

1.5 The Regulations came into force on 30 October 2006 after which date new designs of capacity serving measures placed on the market must comply with their provisions). This guidance is intended to assist business and the third sector (voluntary) but will also be of interest to manufacturers, notified bodies and enforcement authorities in meeting the requirements of the Regulations.

1.6 There is significant input from WELMEC<sup>2</sup>, the European Co-operation in Legal Metrology, to the understanding and interpretation of the Directive. WELMEC has already convened a number of working groups for this purpose and the UK leads the WG8 sub-group on capacity serving measures. WELMEC considers questions of application and implementation, particularly in areas of technical uncertainty and acts as a forum for seeking advice from the European Commission on common issues.

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<sup>1</sup> The Measuring Instruments (Non-Prescribed Instruments) Regulations 2006 (S.I. 2006 No 1270) as amended by The Measuring Instruments (Amendment) Regulations 2006 (S.I. 2006 No 2625)

<sup>2</sup> <http://www.welmec.org/>

1.7 On the 25 March 2015 The Weights and Measures (Revocations) Regulations 2015 revoked The Capacity Serving Measures (Intoxicating Liquor) Regulations 1988 (1988 No. 120). The 1988 Regulations had effectively become redundant as they had, since October 2006, been superseded by new EU legislation on Measuring Instruments. Since that date it had been prohibited to place new capacity serving measures on the UK market under the 1988 Regulations. All new capacity serving measures from that date have been required to comply with the Measuring Instruments (Capacity Serving Measures) Regulations 2006. Over the years fewer and fewer capacity serving measures already placed on the market under the 1988 Regulations had been put into use. As the life span of traditional glasses is relatively short, and those found to be non-compliant are generally removed from use rather than being made good and re-qualified (which would be uneconomic) there were very few glasses left to which the Regulations could apply and the number dwindling each year. Given that there were such low numbers left on the market and the low risk of non-compliant glasses the 1988 Regulations were revoked in their entirety. The repeal of the legislation was a commitment made under the Government's 'Red Tape Challenge' programme and contributed to the total number of Regulations scrapped during Parliament.

## 2.0 BACKGROUND

2.1 The Directive is a "New Approach" Directive and was adopted by the EC Council of Ministers and European Parliament in April 2004. It consists of 27 Articles, 14 annexes and 10 instrument specific annexes. Member States were required to implement the provisions of the Directive into their national law by 30 April 2006 and to apply the new legislation with effect from 30 October 2006.

2.2 The Directive extends to all measuring instruments listed in Article 1 and provides that Member States may prescribe them for measuring tasks for reasons of public interest, public health, public safety, public order, protection of the environment, protection of consumers, levying of taxes and duties and fair trading where they consider it justified. Following a public consultation it was decided that the UK prescription should apply to areas covered by existing regulations only.

2.3 The Directive is the second "New Approach" Directive adopted in respect of measuring instruments. The first was Directive 90/384/EEC (2009/23/EC (codified)) and relates to non-automatic weighing instruments (NAWIs) and came fully into force in January 2003.

2.4 The Commission has issued guidance that covers New Approach directives "The 'Blue Guide' on the implementation of EU product rules 2014"<sup>3</sup>

2.5 The principles of the directive are set out in the Commission Guidance as follows:

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<sup>3</sup> <http://ec.europa.eu/DocsRoom/documents/4942>

- Harmonisation is limited to essential requirements.
- Only products fulfilling the essential requirements may be placed on the market and put into service.
- Harmonised standards, the reference numbers of which have been published in the Official Journal and which have been transposed into national standards, are presumed to conform to the corresponding essential requirements.
- Application of harmonised standards or other technical specifications remain voluntary, and manufacturers are free to choose any technical solution that provides compliance with the essential requirements.
- Manufacturers may choose between different conformity assessment procedures provided for in the applicable directive.

2.6 The "New Approach" to Technical Harmonisation is an important part of the process for achieving the single market. It is intended to remove the technical barriers to trade caused by differing national laws. Directives agreed under the New Approach allow for the free movement (placing on the market and putting into service) in the Community of goods that conform to the essential and other requirements of those Directives. Such products carry the "CE marking" and no Member State is allowed to refuse complying products access to its market. In this case all compliant capacity serving measures covered by the Directive 2004/22/EC have free movement throughout the Community.

2.7 In the Regulations it is important to distinguish between when instruments are first placed on the market or put into service and requirements that relate to in-service provisions. The first are requirements of the Directive. The second are national provisions and will therefore apply only to Great Britain.

2.8 The Directive provides an 'optionality clause'. This means that Member States may prescribe the category and range of applications for measuring instruments they wish to control. This will lead to a variation between Member States which will mean that for the same use, instruments in some Member States will be regulated, whereas in other Member States they will not. Where regulated in relation to capacity serving measures this may also mean that there are certain nominal capacity restrictions as is the case for use for trade in the UK.

### **3.0 PART 1 - PRELIMINARY**

3.1 The Regulations have been made using powers under the European Communities Act 1972 and, in relation to Part III, the Weights and Measures Act 1985. The Regulations also extend to Northern Ireland except for Part III. Separate in-service regulations for Northern Ireland are covered by the Measuring Instruments (Capacity Serving Measures) (Use for Trade) Regulations (Northern Ireland) 2007 (SR 2007/387).

## Citation and commencement

### Regulation 1

3.2 This gives the title of the Regulations and states the coming into force dates of 30 May 2006 for the regulations listed in regulation 1(2) (essentially relating to the designation of notified bodies) and 30 October 2006 for the remaining regulations.

## Interpretation

### Regulation 2

3.3 The following definitions are important to an understanding of the Regulations:

- **Manufacturer** – This term means the 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.

- **Authorised representative** - The manufacturer may appoint any natural or legal person to act on his behalf as an authorised representative.  
The authorised representative must be established in a Member State. The authorised representative must be authorised by the manufacturer, in writing, to act on his behalf and he may be addressed by the UK authorities instead of the manufacturer with regard the latter's obligations under the Regulations. The manufacturer remains generally responsible for actions carried out by an authorised representative on his behalf.

- **Approved verifier** - This is a term used in Regulation 21 and means a person approved pursuant to section 11(A)(1) of the Weights and Measures Act 1985 (in Northern Ireland Article 9(3B) of the Weights and Measures (NI) Order 1981).

**Inspector** - This is a term used in Regulation 20, and is not defined in the Regulations. It means an inspector of weights and measures appointed under section 72(1) of the Weights and measures Act 1985 (in Northern Ireland Article 40 of the Weights and Measures (NI) Order 1981).

- **Importer/person responsible for placing on the market** - An importer (a person responsible for placing on the market), for the purposes of the Directive, is any natural or legal person established in the Community who places a product from a third country on the Community market. The importer must ensure that he is able to provide the market surveillance authority with the necessary information

regarding the product, where the manufacturer is not established in the Community, and has no authorised representative in the Community. In line with Schedule 1 of the Interpretation Act 1978 a person includes a body of persons corporate or unincorporated in that it applies to both a natural or a legal person.

- **Notified Body** - This means:
  - (a) the Secretary of State i.e. National Measurement & Regulation Office (NMRO) Services; or
  - (b) a United Kingdom notified body namely a person designated under Regulation 7; and
  - (c) for the purposes of regulations 4(1)(c), 18(1)(b), 20(1)(c) and 22(d), a person designated by another member State who has been notified to the Commission and the other Member States pursuant to Article 11.1 of the Directive.
- **Installer** - The installer and assembler of a product, which is already placed on the market, should take necessary measures to ensure that it still complies with the essential requirements at the moment of first use within the Community. This applies to products where the directive in question covers putting into service, and where such manipulations may have an impact on the compliance of the product.

## APPLICATION

### Regulation 3(1)

3.4 The Regulations apply to capacity serving measures for use for trade as defined in section 7 of the Weights and Measures Act 1985 (in Northern Ireland Article 5 of the Weights and Measures (NI) Order 1981) that have been first placed on the market or put into use on or after the 30 October 2006. The Regulations have similar in-service provisions to those included in the existing regulations insofar as they are consistent with the Directive. The Regulations under Schedule 3 set out the capacities lawful for use for trade in the UK and highlight those metric capacities which must be used for certain intoxicating liquors and those Imperial capacities which can only be used for beer and cider.

3.5 Transitional provisions under the Directive are only applicable where national measures or measuring instruments have received type approval prior to 30 October 2006. Neither capacity serving measures under the either the Capacity Serving Measures (Intoxicating Liquor) Regulations 1988 or the Measuring Equipment (Capacity Measures and Testing Equipment) Regulations 1995 allow for type approval therefore the transitional provisions are not applicable.

### Regulation 3(2)

3.6 The Regulations do not apply to a capacity serving measure that has been first passed as fit for use for trade and stamped before 30 October 2006, and which was first passed as fit for use for trade and stamped under the:

- Capacity Serving Measures (Intoxicating Liquor) Regulations 1988
- Measuring Instruments (Capacity Measures and Testing Equipment) Regulations 1995.

3.7 For existing measures these need only to have had to be placed on the market not put into use as well. This may have been achieved in a number of different ways including specifically identifying stock for a given customer or transferring stock to another legal entity. For further generic guidance reference should be made to the European Commission Guide to the Global and New Approach.

### **Regulation 3(3)**

3.8 Instruments not in conformity with the Regulations may be displayed or presented at a trade fair, exhibition or demonstration if they are clearly marked to indicate that they are not compliant with the essential requirements of the Regulations and cannot be acquired or used until they have been made to comply by the manufacturer.

## **4.0 PART II - PLACING ON THE MARKET AND PUTTING INTO USE**

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

#### **Regulation 4(1)**

4.1 This regulation makes it an offence to first place on the market or put into use a capacity serving measure to which the Regulations apply unless it:

- (a) Meets the essential requirements,
- (b) Has demonstrated conformity with these essential requirements and
- (c) Carries the CE marking, M marking (including the year of manufacture) and identification number of the notified body which carried out the conformity assessment.

4.2 In Regulation 4(b) "its" refers to "the measure's".

4.3 The terms placing on the market and putting into use are defined in the Regulations and originate from the Directive. The requirements of Regulation 4(1) apply only to when capacity serving measures are first placed on the market or put into use. Any subsequent re-qualification is addressed by Part IV of the regulations. It should be remembered that it is intended these regulations apply only to measures that are being used for trade as defined in

Section 7 of the Weights and Measures Act 1985 (in Northern Ireland Article 5 of the Weights and Measures (NI) Order 1981). This applies to instruments when they are first placed on the market or re-qualified.

## **COMPLIANCE WITH THE ESSENTIAL REQUIREMENTS**

### **Regulation (5)(1)**

4.4 Manufacturers can use more than one method for compliance with the essential requirements. These methods are identified as:-

- (a) using any technical solution that complies 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 referred to in regulation 6.

### **Regulation 5(2)**

4.5 This includes the presumption that instruments which conform fully or in part to relevant national standards or normative documents will be presumed to conform fully or in part with the essential requirements. Details of the relevant national standards and normative documents for this purpose will be published by the NMRO, or the competent authority in another Member State, in accordance with Regulation 2. Normative document reference capacity serving measures identified by the Commission are published on the GOV.UK website<sup>4</sup>.

### **Regulation 5(3)**

4.6 Where conformity is only in part to relevant national standards or normative documents then either alternative, where available, should be used to give full conformity or through the issue of other technical solutions. Other technical solutions could include the use of European standards which are not harmonised standards and international standards such as OIML Recommendations which are not normative documents.

The appropriate OIML Recommendation for capacity serving measures is Recommendation (R138 (2007))<sup>5</sup>.

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<sup>4</sup> [www.gov.uk/nmro](http://www.gov.uk/nmro)

<sup>5</sup> <http://www.oiml.org>

## Regulation 5(4)

4.7 Provides for devices which do not meet the essential requirements and which are not in use for trade. These can be connected to a capacity serving measure without affecting the conformity of the measure to the essential requirements. This could for example be a capacity serving measure in the form of a beer tower attached to a base station for dispensing purposes or a plastic or cardboard cup holder used in conjunction with a flexible plastic “glass”.

## CONFORMITY ASSESSMENT PROCEDURES

### Regulation 6(1)

4.8 The different conformity assessment procedures available to manufacturers are set out as modules in the annexes of the Directive. These are number A to H1. The modules available to manufacturers of capacity serving measures are shown in the table below.

	A1	D1	E1	F1	B+D	B+E	H
Capacity Serving Measures	•	•	•	•	•		•

The options above for specified instrument types represent:

- Declaration of conformity by manufacturer based on internal production control plus random 3<sup>rd</sup> party checking (Module A1)
- Declaration of conformity by the manufacturer based on formal quality assurance of the production process (including test and final inspection) but without the need for type examination (Module D1)
- Declaration of conformity by the manufacturer based on formal quality assurance of product testing and final inspection but without the need for type examination (Module E1)
- 3<sup>rd</sup> Party verification but without the need for type examination (Module F1)
- Type examination followed by declaration of conformity by the manufacturer based on formal quality assurance of the production process (including test and final inspection) as two separate processes (Modules B + D)
- Type examination followed by declaration of conformity by the manufacturer based on formal quality assurance of product testing and final inspection only (Modules B + E)
- Declaration of conformity by the manufacturer based on full formal quality assurance of the design and production process (including test and final inspection) but without the need for design examination (Module H)

4.9 For further information on conformity assessment procedures and other aspects regarding the interpretation of the Directive reference should be made to the “Blue Guide”<sup>6</sup>.

4.10 For Module F1 under points 6.1 and 7.2 of these Regulations the recommended tests to be carried out for initial and subsequent verification should be identified together with the standards necessary to ensure traceability of measurement.

4.11 The EU Commission in relation to the Directive has published a list of references to normative documents in the Official Journal (2009/C 268/01) which in part gives presumption of conformity to the essential requirements. This includes details on capacity serving measures (MI-008, Chapter II) in relation to Recommendation R138 (2007). This information can be found on the GOV.UK website<sup>7</sup> or by reference to the EU website<sup>8</sup>.

4.12 The normative references address all the relevant provisions of the Directive i.e. both the general and instrument specific requirements, in tabular form, in relation to the corresponding paragraphs of the respective OIML Recommendation and makes comment, in general terms only, of any differences.

4.13 WELMEC documents, published on the WELMEC website, set out as guidance full versions of these simplified tables with background information and comment for interested parties. The document for capacity serving measures (WELMEC 8.18-2) is available.<sup>9</sup>

It will be for the manufacturer and/or Notified Body to decide how to interpret the guidance.

#### **Regulation 6(2)**

4.14 Schedule 4 of the regulations outlines the nature of the technical documentation that a manufacturer or his authorised representative must maintain. This information must be provided to a notified body to enable them to carry out the relevant assessment. This documentation must be provided in the language of the notified body or any other acceptable language acceptable to it in compliance with paragraph 10 of Part II of Schedule 2.

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<sup>6</sup> The ‘Blue Guide’ on the implementation of EU product rules 2014

<sup>7</sup> [www.gov.uk/nmro](http://www.gov.uk/nmro)

<sup>8</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:268:0001:0012:EN:PDF>

<sup>9</sup> <http://www.welmec.org/>

# DESIGNATION AND FUNCTION OF NOTIFIED BODIES

## Regulation 7(1)

4.15 Under Article 11 of the Directive notified bodies are required for the tasks relating to the conformity assessment of modules A to H1 (see paragraph 1.4.8 of this guidance for those relevant to capacity serving measures). The criteria for designation of these bodies in accordance with Article 12 are included in Schedule 2 Part 2 of the Regulations

4.16 If an organisation meets the requirements of Schedule 2 Part I the Regulations permit the Secretary of State (NMRO) to designate a person, whether that is a person resident or incorporated or carrying on a business in the United Kingdom or any other type of person e.g. a local weights and measures authority, to be a UK notified body. The definition of a notified body includes a person although it would appear unlikely that an individual person would be appointed. Where the designation is in respect of a particular description of a capacity serving measure the Secretary of State must be satisfied that the applicant meets the criteria as respects that measure. As with the definition of an importer and, in line with Schedule 1 of the Interpretation Act 1978, a person includes both a natural or a legal person. The application form for bodies applying to be designated as a United Kingdom notified body under Regulation 7 is available on the GOV.UK website<sup>10</sup>.

## Regulation 7(3)

4.17 If a person applying to be a notified body operates an approved quality system under a relevant harmonised standard e.g. EN 17025/17020 and EN45011/45012 he shall be presumed to meet the criteria of the Directive only to the extent that the standard corresponds with the criteria of the Directive. The application form for persons applying to be designated as a notified body under Article 11 and bodies wishing to extend their current status to include conformity assessment tasks in the Directive can be found on the GOV.UK website.<sup>11</sup>

## Regulation 7(4)

4.18 Designations under the Regulations must be in writing which may be either in electronic or hard copy format.

## Regulation 7(5)

4.19 In addition to the criteria in Schedule 2 Part I of the Regulations the Secretary of State may consider any matter appearing to him to be relevant prior to designating a person to be a UK notified body under Regulation 7. The

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<sup>10</sup> [www.gov.uk/nmro](http://www.gov.uk/nmro)

<sup>11</sup> <https://www.gov.uk/notified-bodies-appointment-and-co-ordination>

functions of a notified body (Regulation 8) are set out in Part 2 of Schedule 2 to the Regulations.

## PROVISIONS SUPPLEMENTAL TO REGULATION 7

4.20 These provisions of Regulation 9 deal with the publication of lists of notified bodies and the inspection of notified bodies.

4.21 The Secretary of State will periodically carry out an inspection of UK notified bodies. The purpose of that inspection shall be to verify whether the notified body meets the notified body criteria and complies with any designation to which it is subject and complies with the Regulations. It is important to remember that although such an inspection may result in a visit to a manufacturer, it is the notified body that will be being inspected, not the manufacturer.

### Regulation 9(1)

4.22. The Secretary of State will publish a list which specifies for which instruments the notified body is designated and any conditions to which it is subject. These details will be available on the GOV.UK website<sup>12</sup>.

4.23 The European Commission also publishes a list of notified body numbers on the New Approach Notified and Designated Organisations (NANDO) website<sup>13</sup> which gives details of the notifying authority, the notified body and the instruments/measures covered by the designation.

4.24 Search by Annex for the relevant declaration of conformity and then by instrument type.

Search by country and then by notified body number to give name and directives and for MID both the instruments for which it has been notified and the applicable procedures/ annexes.

4.25 This site will enable you to find the European notified bodies as well as third country bodies designated under formal agreements - Mutual Recognition Agreements (MRAs), Protocols to the Europe Agreements on Conformity Assessment and Acceptance of Industrial Products (PECAs) and European Economic Area (EEA) - responsible for carrying out the conformity assessment procedures.

## FEES

### Regulation 11

4.26 This Regulation permits notified bodies (which includes the Secretary of State) to charge such fees in connection with or incidental to the carrying out of conformity assessments or specific tasks as it may determine.

<sup>12</sup> <https://www.gov.uk/notified-bodies-appointment-and-co-ordination>

<sup>13</sup> <http://ec.europa.eu/growth/tools-databases/nando/>

4.27 Section 56 of the Finance Act 1973 requires the Secretary of State to define by statute the fees he charges for certain tasks to be carried out in relation to EU commitments/obligations.

4.28 The Regulations do not govern the actual fees that may be charged by other Notified Bodies other than identifying broad parameters in which all notified body fees should be set. The Regulations do not govern other duties undertaken by the local authority relative to the Regulations i.e. in service inspection, subsequent re-qualification and market surveillance.

#### **Regulation 11(4)**

4.29 Provides that, in cases where fees (charged after work is completed or payment of fees has been requested in writing) have not been paid the notified body within a period of 28 days the notified body may give 14 days' notice in writing that the certificates or notification appropriate to the conformity assessment will be suspended until the fees have been paid.

## **MARKING AND IDENTIFICATION REQUIREMENTS**

4.30 Annex 2 to this guidance describes the CE marking, supplementary metrology (M) marking (including year digits) and the identification number of the notified body concerned with the conformity assessment which must be affixed to each instrument so as to be visible and legible. The M marking denotes that the instrument/measure specifically meets the requirements of the MID.

4.31 It should be noted the supplementary markings are different from those in 2009/23/EC (codified). For the purposes of the MID the M marking does not have to be on a green background as it does under the NAWI Directive 2009/23/EC (codified) but it must be accompanied by the last two digits of the year in which it is affixed. See drawings in Annex 2 to this guidance for details including the use of other marks, for example the "Crown Stamp" and decoration.

## **CONFORMITY WITH OTHER DIRECTIVES**

#### **Regulation 13**

4.32 Where a capacity serving measure falls within the scope of other directives which provide for the affixing of the CE marking the CE marking affixed to the capacity serving measures shall, in addition to conformity with the Directive, indicate conformity with those other directives. Other directives which manufacturers should be aware of include the following:

- 89/336/EEC (amended by 91/263/EEC, 92/31/EEC and 2004/108/EC) on electro-magnetic compatibility, as implemented by The Electromagnetic Compatibility Regulations 2005 (as amended);

- 89/392/EEC (amended by 91/368/EEC, 93/44/EEC and 93/68/EEC) on machinery safety (for some but not all industrial products), as implemented by the Supply of Machinery (Safety) Regulations 1992 (as amended); and
- 73/23/EEC (amended by 93/68/EEC) on low voltage, as implemented by the Electrical Equipment (Safety) Regulations 1994.

This list is not exhaustive.

## 5.0 PART III – USE FOR TRADE

5.1 This part only applies to capacity serving measures in use for trade once they have been placed on the market and put into use in Great Britain (see paragraph 7.2 regarding Northern Ireland). It applies irrespective of whether the measures were attested under the Regulations or the corresponding regulations issued by another member State.

5.2 This part of the Regulations is made under section 15 of the Weights and Measures 1985. This part of the Regulations prescribe the requirements for use for trade of the measures and for the avoidance of doubt prescribe the measures for the purposes of section 11(1) of the Act once put into use. The enforcement provisions of Part IV of the Regulations make reference to Regulation 14 in Part III by providing the inspector or approved verifier the criteria under which a disqualification or re-qualification sticker may be applied to a measure. Only the inspector of weights and measures can apply a disqualification mark to a measure. The activities of an approved verifier are controlled by an approval issued by the Secretary of State under section 11A of the Weights and Measures Act 1985. Approved verifiers must apply to the Secretary of State to have any MID capacity serving measures that they propose to re-qualify added to the appendix which accompanies their approval.

### REQUIREMENTS FOR USE FOR TRADE

#### Regulation 14

5.3 This Regulation requires measures to continue to meet the essential requirements in-service. There are no separate in-service maximum permissible errors (MPEs). This is consistent with the current national regulations. It is also important that measures must not have decorations or designs which are likely to cause confusion when in use. This is further clarification of the provision in paragraph 7 of Schedule 1 (essential requirements) and is particularly directed at those MID measures once they have been put into use.

## **MANNER OF USE**

### **Regulation 15**

5.4 This Regulation relates specifically to transfer measures used by the seller. It is consistent with existing national regulations in relation to the dispensing of, for example, intoxicating liquor in that all measures are dispensed such that the buyer has a clear and unobstructed view of the measurement and transfer.

## **6.0 PART IV - ENFORCEMENT**

### **ENFORCEMENT AUTHORITY**

6.1 All enforcement of these regulations will be under the European Communities Act. The powers of the Weights and Measures Act (in Northern Ireland the Weights and Measures (NI) Order 1981) do not extend to enforcement for these regulations.

### **Regulation 16**

6.2 This regulation imposes a duty on every local weights and measures authority in Great Britain to enforce the Regulations within its area. (In Northern Ireland the enforcement authority is the Department of Enterprise, Trade and Investment). It also authorises the Secretary of State to enforce Part II of the Regulations and for that purpose gives him the power to appoint any persons to act on his behalf. The power of the Secretary of State is independent of a weights and measures authority and is to ensure the Secretary of State is able to fulfil his obligations to conduct market surveillance. Those authorised by this regulation are referred to as "enforcement authorities".

### **COMPLIANCE NOTICE PROCEDURES**

#### **Regulation 17**

6.3 In cases where the enforcement authority has established that the CE marking and/or M marking have been inappropriately affixed for a measure that has been placed on the market or put into use it may serve a notice on the manufacturer or his authorised representative requiring him to end the infringement. It must be noted that this power rests with an enforcement authority, not with an officer of that authority. It therefore does not limit the issuing of these notices to inspectors.

6.4 It should also be remembered that the application of the CE marking and the M marking confirm compliance with the essential requirements in Schedule 1 of the Regulations when the measure was placed on the market or put into use. This will include selecting and following one of the conformity

assessment routes. Any contravention that falls outside of these definitions is not caught by the compliance notice procedure.

## **IMMEDIATE ENFORCEMENT ACTION**

### **Regulation 18**

6.5 An enforcement authority has powers to take action pursuant to this Regulation where it has reasonable grounds for considering that either:

- (a) the requirements of a compliance notice procedure have not been complied with; or
- (b) a capacity serving measure which has been 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 instrument; or
- (c) a capacity serving measure bearing the CE marking and the M marking does not meet all the essential requirements when placed on the market

6.6 The Secretary of State will publish particulars of any notice issued withdrawing a certificate or notification. It is expected that this will take the form of advice to trading standards officers/interested parties and published on the GOV.UK website<sup>14</sup>.

## **DISQUALIFICATION**

### **Regulation 20**

6.7 It should be noted that the errors with which the measure must comply are the same as those in the Table associated with paragraph 12 on MPEs in Schedule 1 of the Regulations.

6.8 For measures which are found to be non-compliant and for which there is no realistic means of bringing such measures back into compliance an inspector may in conjunction with the owner take alternative means to put the measures beyond further use without the application of a disqualification sticker.

## **RE-QUALIFICATION**

### **Regulation 21**

6.9 It is important to contrast this process with that initially placing a measure on the market for the first time which requires the involvement of a notified body. Re-qualification may be by an inspector of weights and measures or by an approved verifier, e.g. the manufacturer or a repairer.

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<sup>14</sup> [www.gov.uk/nmro](http://www.gov.uk/nmro)

6.10 Re-qualification is the process by which either an inspector or an approved verifier assesses compliance of the measure after it has, or could have, been disqualified and returned to conformity with the essential requirements.

6.11 The Measuring Instruments (Capacity Serving Measures) Regulations 2006 do not stipulate a test procedure for conformity assessment or verification. They only stipulate that a measure must comply with the essential requirements. The use of a harmonised standard or normative document will demonstrate compliance with the essential requirements. The reference for normative documents covering capacity serving measures is given in the section describing regulation 5(2) above.

## **UNAUTHORISED APPLICATION OF AUTHORISED MARKS**

### **Regulation 22**

6.12 Any capacity serving measure in use for trade but not marked with the notified body number, CE mark and M mark and put in use after 30 October 2006 may be disqualified unless it can be demonstrated that the instrument is not subject to the Regulations. Capacity serving measures passed as fit for use for trade and crown stamped may, despite the fact that transitional provisions are not applicable, legally be put into use for the first time after that date so long as they were first placed on the market before that date.

## **POWERS OF ENTRY AND INSPECTION**

### **Regulation 23(1)**

6.13 It is important to consider the definition of Enforcement Officer. It is either an inspector as defined in the Weights and Measures Act 1985 (in Northern Ireland the Weights and Measures (NI) Order 1981), or a person appointed by the Secretary of State to act on his behalf to enforce Part II of the Regulations.

6.14 It should be noted that is Regulation gives an enforcement officer the authority to inspect and test a capacity serving measure, but it is only an inspector of weights and measures that may reject the instrument if it is found not to comply with the regulations. The enforcement authority does have the power to issue a compliance notice (regulation 18) or take immediate enforcement action (regulation 19) if the requirements of those regulations are not met.

6.15 The powers under regulation 23(1) should be contrasted with those existing in relation to the Non-automatic Weighing Instruments Regulations 2000. These give an authorised officer an extra power to inspect relevant quality systems. A similar power has not been included in these regulations. This means that an enforcement officer will not have the power to look at the quality systems that a manufacturer or approved verifier may be using when

engaging in conformity assessment procedures of their own measures. Where this becomes a necessity such action may be authorised as part of a market surveillance exercise.

6.16 It should be noted that there is no provision in these regulations which allows a person to refuse to give information if it may incriminate them. This should be contrasted with the NAWI regulations which do contain such a provision.

## **PENALTIES FOR OFFENCES**

### **Regulation 25**

6.17 The enforcement provisions for these Regulations have been made under the European Communities Act the maximum penalty is a fine not exceeding level 5 on the standard scale levied on summary conviction. The scale has 5 levels, each corresponding to a certain amount. This means that the level of fines can be updated by changing the value of each level, without the need to amend the legislation relating to each separate offence. The current values of the standard scale are section 37 of the Criminal Justice Act 1982 provides as follows:

Level on the scale	Amount of fine
1	£200
2	£500
3	£1,000
4	£2,500
5	£5,000

6.18 This penalty avoids the threat of imprisonment previously applicable to offences made under the Weights and Measures Act 1985.

## **7.0 PART V MISCELLANEOUS AND SUPPLEMENTAL**

### **ADAPTATION FOR NORTHERN IRELAND**

#### **Regulation 30**

7.1 The regulations apply to Northern Ireland subject to Schedule 6. This means that these Regulations apply the requirements relating to placing on the market to the whole of the UK. However the in-service provisions relate to Great Britain. Northern Ireland will make in-service provisions for capacity serving measures.

## **THE ELECTROMAGNETIC COMPATIBILITY REGULATIONS 2005**

7.2 It is unlikely that capacity serving measures would be covered by these Regulations although this could change over time with technological development. The Electromagnetic Compatibility Directive was implemented in the UK by the Electromagnetic Compatibility Regulations 2005 (S.I. 2005 No 281) and applies to all relevant instruments.

7.3 The MID specifically provides immunity requirements in relation to instruments within its scope – however, the immunity requirements have been omitted from the Measuring Instruments (Capacity Serving Measures) Regulations 2006 as they are not electronic instruments.

*This publication was withdrawn on 7 January 2021.*

## Annex 1 – Applicability of Regulations

This section sets out the extent of prescription in relation to measures of capacity both metric and Imperial which are lawful for use for trade in the UK. It mirrors the requirements under the Weights and Measures Act 1985 and ensures that the placing on the market provisions and the enforcement provisions which are the subject of national not MID controls are identical.

Scope of Control	Comment
Legal Metrological Control	MID Scope
Use for Trade (specific capacities)	UK MID Prescription $\equiv$ (Schedule 3, 1985 Weights & Measures Act)
Specific products (If draught must be sold) Other products	Certain prescribed capacities  All prescribed capacities (some exceptions)
Beer & cider Wine Fortified wine Prescribed spirits	Imperial only Metric only Metric only Metric only
Prescribed capacities	Weights & Measures (Intoxicating Liquor) Order 1988 as amended by the Weights and Measures (Specified Quantities) (Unwrapped Bread and Intoxicating Liquor) Order 2011

This publication was withdrawn on 7 January 2021.

## Annex 2 – Marking and Inscriptions

### Regulation 12(3)

#### Supply of Stickers

The Secretary of State has decided that it is necessary to provide a long-term, professional solution to resolve the difficulties that have arisen in securing a consistent good quality source for the supply of the metrology stickers that local authorities and others require to fulfil their statutory obligations for both initial verification, disqualification and subsequent re-qualification activities.

A new solution has been identified which will enable NMRO to produce printed versions of the stickers described below on demand. The system has the capability to incorporate the specific identification data required in thermal printed form. This solution will replace the current stop-gap solution introduced in 2006 to allow for the changes to the marking requirements in the MID which meant that, when re-qualifying an instrument, an inspector has to apply both his number and the year of re-qualification in manuscript on a modified NAWI sticker using a “permanent” marker. It has become clear that these marks were not sufficiently permanent so as to withstand the harsh cleaning requirements in some conditions of use particularly in the food preparation sector.

The new stickers have been tested and performed well in a harsh cleaning environment and have been found to meet the requirements applicable in the food industry.

It is the opinion of the Secretary of State that the following stickers should be required to be used for the statutory marks. The new stickers are 12.7 mm x 11.1 mm.

It is not envisaged that the Weights and Measures (Prescribed Stamp) Regulations 1988 (SI. 1968/1615) will need to be amended as re-qualification is carried out under the provisions of these regulations.

The M Metrology mark, and the CE mark for initial verification which are the responsibility of the instrument manufacturer will not be supplied centrally.

The new stickers will also be relevant to local authorities who are notified bodies and to approved verifiers under the regulations. Commercial organisations which need to obtain supplies are invited to contact [stickers@nmro.gov.uk](mailto:stickers@nmro.gov.uk) to discuss availability and prices.

The Secretary of State has determined that there will be benefits arising from a change of process with the stickers produced centrally and supplied by NMRO directly to local authorities. To that end the decision has been made to supply a limited quantity of stickers free of charge to all inspectors. The stickers used for re-qualification of NAWI and MID instruments will be supplied

overprinted with the inspector's number and on an annual basis with the year also overprinted. Stickers can also be overprinted with the relevant Notified Body/Approved Verifier numbers on request

If you have a requirement for a larger quantity, or you are not a local authority, please contact [stickers@nmro.gov.uk](mailto:stickers@nmro.gov.uk). It will be possible to agree terms under which larger numbers/other stickers can be provided (at a cost).

## **STICKER 1 – RE-QUALIFICATION**

### **Inspector or**

**INS/0704/08**



This is all white label printed on which with the prescribed crown and the information for Inspector's number will be overprinted using thermal printing technology for use for NAW and MID instruments.

### **Approved Verifier**

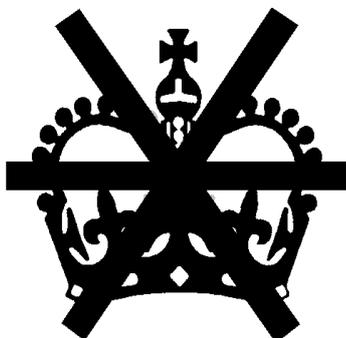
**AV/0704/08**



This is all white label printed on which with the prescribed crown and the information for Approved Verifier number will be overprinted using thermal printing technology.

*This publication was withdrawn on 7 January 2021.*

## STICKER 2 – DISQUALIFICATION



This is a plain white label bearing the prescribed crown mark which has been printed with the disqualification mark. No overprinting is required.

## STICKER 3 - NOTIFIED BODY IDENTIFICATION NUMBER FOR INITIAL VERIFICATION

**NB 0126**

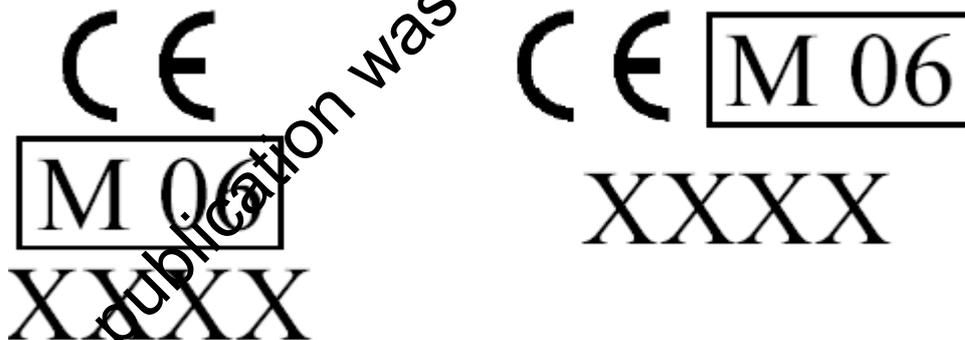
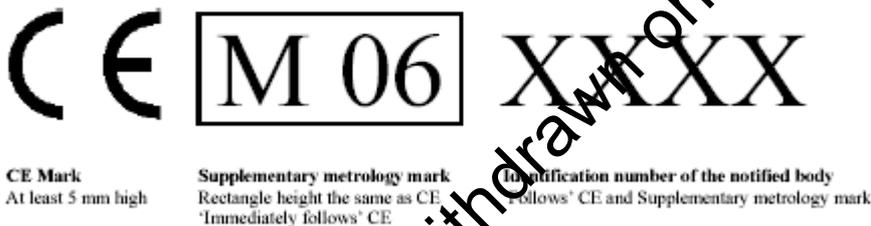
This is a plain white label in which the Notified Body number has been overprinted using a thermal printer. It is not a requirement for the number to be prefixed by NB.

## Other marks and requirements for MID instruments

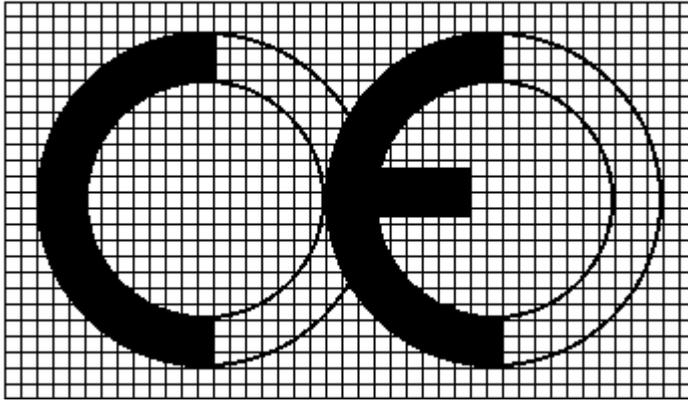
1. The CE marking consists of the symbol “CE” according to the design laid down in paragraph I.B(d) of the Annex to Decision 93/465/EEC. The CE marking shall be at least 5 mm high.
2. The M marking consists of the capital letter “M” and the last two digits of the year of its affixing, surrounded by a 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. 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.

Directive 2004/22/EC does not itself contain diagrams for any of these marks although **the CE mark** is prescribed by reference to paragraph 1.B(d) of the Annex to Decision 93/465/EEC.

**Possible Examples of Article 17 Markings required by the MDD Directive**



The CE mark must not be less than 5mm in its vertical height, and the proportions maintained. It is generally shown on a grid in the guidance booklets, as below (the grid does not form part of the marking and is for information only):



This mark looks the same as some previous marks, but there are subtle changes, and it should be studied closely. It should be noted, for example, that the C and E are not formed by perfect semi-circles, i.e. the top and bottom arms extend one square beyond the semi-circles, and the middle arm of the E stops one square short.

The graphic is not made available for download from any official sources, but can be obtained in a wide variety of file formats from commercial organisations, sometimes freely available for download.

As far as **the M mark** is concerned the manufacturer applying the mark has freedom over the design provided that the M marking meets the criteria set down in Paragraph 2 of Article 17 of Directive 2004/22/EC, as to being surrounded by a rectangle also containing the last two digits of the year of affixing, and is placed immediately after the CE mark.

Similarly **the Notified Body** must place its mark, or authorise the manufacturer to do so on its behalf, so that it follows the CE and M markings.

The identification number of the notified body concerned shall follow the CE marking and M marking.

The CE marking and the M marking must be indelible. The identification number of the notified body concerned must be indelible or self-destructive upon removal. All markings shall be clearly visible or easily accessible.

The Directive does not specify in detail the form and appearance of all the various markings. It has therefore been necessary to decide on the details that will apply under the Regulations as indicated in the examples statutory marks above.

### Use of “Crown Stamp” verification mark

The “Prescribed Stamp” verification mark used on glasses prior to or on 30 October 2006 would, if used on glasses placed on the market after 30 October 2006, be considered likely to deceive third parties and is therefore prohibited. Specifically it would be an offence under

Section 16(1) of the Weights and Measures Act 1985 to counterfeit the mark specified in the Prescribed Stamp Regulations 1963. Such a mark would comprise a crown of the shape shown in the 1963 Regulations accompanied by numerals to identify the inspector or approved verifier under whose authority the mark was applied. National markings such as the prescribed stamp that are intended to indicate the reliability of the marking are not permitted by Article 7.3 of the Directive and may not be used alongside the CE marking. It should be noted that the Royal Crown in this context is considered to be part of the Royal Arms and cannot be used without authority.

The Directive does permit other markings provided the visibility and legibility of the CE mark is not reduced. Stylised crown markings on beer glasses etc are permitted on a voluntary basis as a decoration provided that they are marked in such a way that they could not be confused with the CE marking.

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