
Weighing of Goods Vehicles and Other Cargo for Class II and Class II(A) Ro/Ro Passenger Ship Operations

Notices to Owners, Masters and Officers of United Kingdom Class II and II(A) Passenger Ro/Ro Ships and other Class II and II(A) Passenger Ro/Ro Ships serving UK Ports; and to Operators of Ports and Berths served by such ships.

1. The Merchant Shipping (Weighing of Goods Vehicles and Other Cargo) Regulations 1988 (SI 1988/No. 1275) ("the principal Regulations") came into force on 1 February 1989. The Merchant Shipping (Weighing of Goods Vehicles and Other Cargo) (Application to Non-United Kingdom Ships) Regulations 1989 (SI 1989/No. 568) came into force on 31 March 1989. The Merchant Shipping (Weighing of Goods Vehicles and Other Cargo) (Amendment) Regulations 1989 ("the Amendment Regulations") (SI 1989/No. 270) also came into force on 31 March 1989, amending both the principal Regulations and the non-UK Regulations. The primary purpose of this Merchant Shipping Notice is to amplify the amended Regulations. This M Notice supersedes M Notice No. 1337.

2. The purpose of the principal Regulations is to require owners of UK ro/ro passenger ships operating on Class II and II(A) certificates to ensure that all goods vehicles (ie lorries, trailers, semi-trailers and combinations) whose actual or maximum gross weight exceeds 7.5 tonnes, and all other individual (vehicular or non-vehicular) cargo items exceeding 7.5 tonnes except buses, are individually weighed before loading. The Regulations follow a recommendation in the Report of the Court of Formal Investigation into the loss of the Herald of Free Enterprise (Report of Court No. 8074). That Report pointed out that, whilst overloading can be prevented by careful reading of draughts, accurate control over the calculation of the stability of a ship (ie its centre of gravity in relation to its transverse meta-centre) before sailing can only be achieved from a detailed knowledge of the weight and disposition of the cargo.

Application and Interpretation

(Regulation 1)

3. Regulation 1(2) of the principal Regulations makes clear that they apply only to ships operating on Class II

and II(A) Certificates. The Department recommends, however, that vehicles and other cargo be weighed for all the services that are basically Class II(A) services even on occasions when, due to the time of day and weather conditions, a ship is operating on another Certificate (Class III or Class IV).

4. Whilst the Regulations set no requirements for ships that are not Class II or II(A) ships there is nothing in the Regulations to prevent a port operator from requiring the weighing of "qualifying cargo items" for all services from its port, or a ferry operator from requiring all qualifying cargo items to be weighed on all his services. Equally, port and ferry operators will be free to require the weighing of goods and other vehicles of less than 7.5 tonnes, should they wish to do so.

5. The full definition of "bus", "motor vehicle", "trailer" etc are given in the Road Traffic Act 1988 and the Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/No. 1078). A lorry or a trailer (or semi-trailer) is a "vehicle", and the term "motor vehicle" does not include a trailer (or semi-trailer) that a lorry may be drawing. A "bus" is a motor vehicle which is constructed or adapted to carry more than eight seated passengers in addition to the driver.

Requirement for weighing of cargo items, and the use of weights for stability calculations

(Regulation 2)

6. Regulation 2(1) of the principal Regulations indicates the routes and ports that are covered. The Regulations only cover sailings *from* United Kingdom ports. They cover all international services, services to and from Northern Ireland, services to the Isle of Man and Channel Islands (which are Crown Dependencies and "outside the United Kingdom"). The ports and routes in Schedule 1 are the main ports and routes serving the

Scottish Islands at the present time; the Amendment Regulations (regulation 2(j)) add the ports of Burwick and Gills Bay to the Schedule. If other new services are established, the Department would consider extending the Schedule, taking into account the new traffic flows, and competitive and other factors.

7. Regulation 2(1) places the primary duty of ensuring vehicles (and other cargo) are weighed before loading upon a shipowner (or, under regulation 1(5), the ship's manager) and master. There is no specific legal duty upon the harbour authority (or any other person) to provide a weighbridge, but in practice it will not be possible for the port to be used by ro/ro passenger ferries carrying cargo unless such a weighbridge is installed. It will normally be for the harbour authority, any berth operators and the shipowners using the port to agree which of them is to install the weighbridge, and how the cost of its installation and operation is to be recouped. Whichever party assumes responsibility for managing the weighbridge becomes the "weighing manager" and assumes certain duties in relation to its accuracy in operation under regulation 3. The Department of Transport and the local Trading Standards Department should be formally advised of which person or body has taken on the role of weighing manager.

8. Regulation 2(1)(iv) requires there to be reliable arrangements for the retention of evidence of weighing, etc for enforcement purposes under these Regulations, made under the auspices of the Merchant Shipping Acts—see paragraph 39 below.

9. The calculations of stability referred to in regulation 2(2) are required by the Merchant Shipping (Loading and Stability Assessment of Ro/Ro Passenger Ships) Regulations 1989 (SI 1989/No. 100) and the Merchant Shipping (Loading and Stability Assessment of Ro/Ro Passenger Ships) (Non-United Kingdom Ships) Regulations 1989 (SI 1989/No. 567). Guidance on those Regulations is given in Merchant Shipping Notice No. 1366.

10. The Amendment Regulations (regulation 2(a)) define what a weighbridge certificate is, and who should issue it in the case of manned weighbridges (self operated weighbridges are dealt with under paragraphs 16–17 below). The person issuing the certificate must have a certificate of competence from an inspector of weights and measures. It must either be a certificate showing that "he has sufficient knowledge for the proper performance of his duties" (section 18(1) of the Weights and Measures Act 1985) or a certificate of competency issued by an inspector by virtue of regulation 3(3) of the principal Regulations.

Accuracy of weighing machines and persons qualified to use them

(Regulation 3)

11. Weighbridges within ports, if they are available solely to weigh goods to be loaded onto ferries for the purpose of satisfying the principal Regulations, are not "available for use by the public" and are therefore not in "use for trade" under section 7 of the Weights and Measures Act 1985. Accordingly, such machines will not fall within the scope of the Weighing Equipment (Non-Automatic Weighing Machines) Regulations 1988 (SI 1988/No. 876).

12. Regulation 3(1) of the principal Regulations sets out a choice of three standards of accuracy for a weighbridge used within the port premises, for the purposes of these Regulations, to meet. A machine which is already in use for trade will already have been required to meet the requirements of regulation 3(1)(a) or its EEC alternative—regulation 3(1)(b) (unless it is of low—Class IV—accuracy and for restricted use such as for the weighing of ballast). This standard is also acceptable for weighbridges newly installed, purely for the purposes of these Regulations. However, such machines may alternatively satisfy regulation 3(1)(c) which requires such a weighbridge to be accurate to plus or minus 2 per cent. This level of accuracy is determined as being sufficient to allow satisfactory calculation of ship stability and also has the effect of permitting the use of dynamic axle weighers conforming to the Department of Transport's Code of Practice on such weighers.

13. There is no requirement for individual axle weights to be recorded, or to be measured to any degree of accuracy other than that needed to achieve the required accuracy in the overall weight, by such a machine. The accuracy of such a machine must be certified by an inspector of weights and measures. Under section 74(4) of the Weights and Measures Act 1985, inspectors are empowered to report on request upon the accuracy of any weighing equipment, and are entitled to charge for this service.

14. Attention is drawn to the fact that, under the Weights and Measures Act 1985, cargo weights obtained by machines tested under regulation 3(1)(c) are not passed for use for trade and cannot be used for the purposes of a tariff based upon weight.

15. The inspector is empowered, under regulation 3(2), to lay down conditions of use for ensuring that the required accuracy is met. Those conditions could include general conditions (for example, to ensure that the maximum speed for a lorry to pass over an axle weigher is not exceeded), or more specific (eg to permit draw bar trailer combinations to be "double weighed")

if they were too long to be accommodated on a particular static weighbridge installation). In the case of a machine which is also in use for trade (and of at least Class III accuracy) it can generally be assumed that use in compliance with the requirements for such use would also be approved as satisfactory for the purposes of these Regulations. Under regulation 3(3) weighbridge operators must be certified as competent, and there is a power (implied by the words “or on his authority”) for a chief inspector to delegate such certification to suitably qualified trading standards officers.

16. Regulation 3(4) makes provisions for self-operated weighing machines, operated (for example) by the drivers of vehicles. It is the duty of the weighing manager to ensure that instructions are displayed, and the duty of the user to comply with those instructions. Just as for non-self-operated machines it will be for the inspector to lay down requirements to ensure that weighing is accurate.

17. This regulation makes specific provisions that there must be arrangements to ensure that the vehicle weighed is that which purports to have been weighed. These arrangements can fall into two categories; if the vehicle is to be photographed at the point of weighing, the photographs should include frames of the registration plate, to be checked against the vehicle by the operative processing the weight data. When a vehicle is not photographed, a strict traffic management regime should be utilised to ensure, for instance, that the vehicle cannot leave the port premises without the weighing manager's authority once it has been weighed. All such arrangements (photographic or non-photographic), since they are not concerned with the accuracy of the weighing, are subject to approval by the Department of Transport (regulation 3(4)(c)).

18. Weighing machines used for the purposes of these Regulations outside the port premises (to obtain possibly a mean operating weight, or a weigh bridge ticket in connection with regulation 5) are required to conform to the requirements of weighing machines used for trade - in other words, the option of regulation 3(1)(c) is not, in general, available for such machines.

19. Regulation 7, paragraphs (3), (4) and (5), lays down the offences committed if there is a breach of regulation 3: except when the equipment is outside the port premises, or improper usage of self-operated equipment is involved, breaches of regulation 3 are offences by the weighing manager.

Manner of weighing (Regulation 4)

20. Regulation 4(1) of the principal Regulations states that the normal procedure will be for cargo items to

be weighed alone. Regulation 4(2) allows motor vehicles or combinations to be weighed with or without the driver, but requires that weighing to be recorded whether the driver is included or not so that this can be taken into account when a ship's stability calculation is made. (Although the weight of a driver is considerably less than the permitted tolerance in weighing, systematic neglect or double counting of the driver's weight will generate inaccurate weights which would feed through to the stability assessment.) There is no requirement for the presence of other passengers to be recorded.

21. Regulation 4, paragraphs (3) and (4), deals with the weighing of unaccompanied trailers (including semi-trailers) and non-wheeled cargo items. The trailer may be weighed with the tractor and the weight of the tractor subtracted. The weight to be subtracted may be obtained by weighing the tractor in the port after the trailer has been detached; or it may be a weight obtained in a similar manner at the same port on a previous occasion; or a “mean operating weight” as defined in regulation 2(b)(7) of the Amendment Regulations. The mean operating weight must be obtained from a weigh bridge conforming to regulation 3(1) or (5) as appropriate.

22. The tractor could either be the haulier's tractor delivering the trailer to the port, or a tractor belonging to the operator's fleet. This is intended to permit ports to develop databases of tractor weights, including those of hauliers regularly using ports. The attention of Trading Standards Departments is drawn to the possibility that there may be occasions when hauliers request mean operating weight certificates at inland weighbridges.

23. Non-wheeled qualifying cargo items delivered on lorries, trailers or combinations may be weighed on those lorries, trailers or combinations, with similar adjustments being made, except when in the case of a trailer, the normal certificated tare weight may be used. Regulation 4(5) provides similar flexibility for determining the weights of empty lorries and trailers when they are to be loaded as cargo.

24. The Amendment Regulations define how a mean operating weight is to be determined—see regulation 2(b)(7)(i)–(ii). The person presenting the vehicle or combination must endorse the weighbridge certificate to the effect that the vehicle or combination has been presented for weighing in accordance with the definition of a mean operating weight. Because most ports have begun to establish databases this endorsement requirement need not be complied with until 1 April 1990, enabling operators to replace, over a period of time, files and databases of unendorsed mean operating weights. The mean operating weight can be

obtained from self-operating weighbridges or a weighbridge manned by an operator certificated by an inspector of weights and measures.

25. The Amendment Regulations (regulation 2(b)(6)-enable a weighing manager to exchange one tractor unit (which has pulled a trailer and load to the port and over the weighbridge) for another (which will pull the trailer and load onto the vessel and remain with it on the voyage) where mean operating weights of both tractor units involved are known to the weighing manager.

Place of weighing

(Regulation 5)

26. Regulation 5 of the principal Regulations makes provision for custom-sealed loads and oversized vehicles to be weighed outside the port. In the case of excess weights, which cannot be tolerated on port weighbridges, and which are not prohibited by the Road Traffic Act 1988, if a weight certificate is not available from a weighbridge (approved by Trading Standards Departments) outside a port premises, then the weight can be calculated by the sum of the gross weight of goods shown on the consignment note; plus the mean operating weight of the trailer; plus the mean operating weight of the prime mover.

27. In the case of self-propelled vehicles—such as large agricultural machinery—which could not be tolerated for weight or size reasons on weighbridges, operators should use a mean operating weight obtained from a weighbridge outside a port, or if this is not practicable, the weight shown on the manufacturer's or exporter's consignment note.

28. Regulation 5(4)(b) enables alternative arrangements to be approved in advance when a qualifying cargo item is too heavy, etc for the port weighbridge.

29. The Department has granted separate exemptions and approvals in relation to Ministry of Defence vehicles.

30. Regulation 5(4)(a) provides for prior authorisation of arrangements to apply when a weighbridge breaks down. In general, the Department would much prefer if alternative weighbridges were utilised, but if this is operationally impracticable a declared weight, as set out in Merchant Shipping Notice No. 1366 (Appendix 3, paragraph 1.4) can be utilised ie the declared weight of qualifying cargo items should be uplifted by 7 per cent. A 7 per cent uplift need not be utilised in the case of unaccompanied *empty* trailers and semi-trailers, though a 7 per cent uplift must be applied to unaccompanied *loaded* trailers and semi-trailers when a weighbridge has broken down. Weighing managers are advised that an approval is required from the Secretary of State for Transport to utilise any proposed alternative method of calculating weights in the event of weighbridge breakdowns.

Prevention of fraud

(Regulation 6)

31. Regulation 6 of the principal Regulations requires the person who has submitted arrangements to prevent fraud, for the Department's approval under regulation 2(1)(ii), to comply with those arrangements when approved. The kind of measures an authority, an operator or shipowner might adopt to discourage alterations of loads after weighing could include traffic handling arrangements; CCTV; secure fencing; 24-hour patrols; and possibly the use of time limits between weighing and loading. Submissions to the Department have revealed that, in general, current security arrangements—to prevent pilfering for example—need very little alteration in order to satisfy prevention of fraud arrangements. Traffic handling arrangements should include a system whereby a lorry cannot leave port premises unchallenged once it has been weighed; and weighing managers may want to consider a system whereby registration numbers and weights are checked off against the manifest list just prior to boarding.

32. Under regulation 2(1)(ii) of the principal Regulations it will be an offence by the shipowner to load cargo without arrangements to prevent fraud having been approved at that port and under regulation 7(3)(e) it would also be an offence by the weighing manager to carry out weighing. Once those arrangements are approved (and so long as that approval remains in force) the shipowner's and weighing manager's responsibilities in this respect cease, and the body that has submitted arrangements is required to comply with the arrangements that have been approved. Any person changing the composition of a load after weighing without first making arrangements for reweighing commits an offence under regulation 7(7)(c).

Offences and Defence

(Regulations 7–9)

33. Apart from the offences already referred to, it is an offence under regulation 7(7)(a) and (b) of the principal Regulations for any person to supply information knowing it to be false, etc. This offence relates, *inter alia*, to false declarations on weighbridge tickets—see paragraph 24 above. Regulation 7(8) makes it clear that offences concerned with the use of unsuitable weighing machines, or failure to comply with conditions imposed for the purpose of ensuring their accuracy are for Trading Standards Officers to enforce (as they have the expertise). The Amendment Regulations include offences (regulation 2(e)) for contravention of matters relating to those Officers' powers (see paragraph 38 below).

34. There is a general defence in regulation 9 which is intended to limit, *inter alia*, the liability of shipowners

and masters under regulation 2(1) in so far that fulfilment of that regulation requires regulations 3, 4 and 5 to have been satisfied. Provided a shipowner has taken reasonable precautions to ensure that those regulations have been complied with, he can use this defence; but under regulation 8, and so far as the default of some other person has brought about a situation which requires the shipowner to use that defence, that other person is himself liable for the offence (see also paragraph 37).

Penalties

(Regulation 10)

35. The maximum penalties in regulation 10 of the principal Regulations are those permitted under the enabling legislation, section 21 of the Merchant Shipping Act 1979 as amended. Attention is drawn to section 46(1) of the Act, as amended by Schedule 5 of the Merchant Shipping Act 1988, which makes officers of bodies corporate personally guilty if they have consented to, or connived at, an offence.

Exemptions

(Regulation 11)

36. Regulation 11 of the principal Regulations is a general power of exemption. It could be used, for example, to exempt occasional sailings from ports without weighbridges, particular types of vehicles or in particular circumstances not foreseen in the Regulations; and it has been utilised over a short period of time to enable weighing managers to complete weighbridge installation after the operative dates of particular sets of Regulations.

Approvals and Enforcement

37. The Amendments Regulations (regulation 2(a)) define what a weighbridge certificate is, and who should issue it in the case of a manned weighbridge—

self operated weigh bridges are dealt with at paragraphs 16–17 above. The person issuing the certificate must have a certificate of competence from an inspector of weights and measures. Under regulations 2(1) and 7(1) it is an offence by the shipowner if cargo is loaded without having been weighed in accordance with the Regulations. However, the effect of regulations 8 and 9 is that if the shipowner takes all reasonable precautions to ensure that an effective system is set up within the port and is operating effectively, he will have a defence if there is a lapse that is not his fault—though the person (or body) responsible for the lapse will generally be liable.

38. The Amendment Regulations (regulation 2(d)) outline the powers which Trading Standards Officials possess in connection with the weighing Regulations: they are, substantially, powers granted to Trading Standards Officers by virtue of the Weights and Measures Act 1985.

39. Regulation 2(1)(iv) of the principal Regulations requires there to be reliable arrangements in place for the retention, within the port premises or on board the ship, of records or documents demonstrating that weighing has taken place in accordance with the Regulations. (Again, the duty to ensure that this requirement is complied with falls on the shipowner in the first instance). Such records (which could be electronic) or documents should include the identity of the cargo item, the weight, the date and time of weighing and the details of any subtraction of tractor weight, trailer weight etc. For cargo covered by regulations 4(4) and (5), and 5(3) and (4) that has not been weighed it will include documentation relevant to the determination of that weight—in other words the endorsed weighbridge ticket of a mean operating weight. Records and documents should be retained for a minimum of two weeks to permit checking and enforcement by the Department's surveyors and the local Trading Standards Department.

Department of Transport
Marine Directorate
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