

WEIGHTS AND MEASURES

The Measuring Instruments (Automatic Rail-weighbridges) Regulations 2006 (S.I. 2006 No. 1256)

Guidance on Regulation

March 2012

Version 5

Summary

This guidance covers all rail-weighbridges in use for trade 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

National Measurement Office
Stanton Avenue
Teddington
Middlesex
TW11 0JZ
www.bis.gov.uk/nmo

ENQUIRIES
Phone 020 8943 7277
Email registry@nmo.gov.uk

Revision History

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1. Foreword

1.1 The Measuring instruments (Automatic Rail-weighbridges) Regulations 2006, SI 2006/1256 ("the Regulations"), as amended by the Measuring Instruments (Amendment) Regulations 2006, SI 2006/2625, implement Council Directive 2004/22/EC ("the Directive") in relation to the class of rail-weighbridges ("rail-weighbridges") within the category of automatic weighing instruments covered by the Directive. The Regulations provide for the harmonisation of laws on rail-weighbridges within Member States, thereby creating a single market for them.

1.2 Eleven new measuring instrument regulations have been made to implement the Directive. Ten of these have been written so that the types of instrument and their field of application mirror the scope of the regulations made previously under the Weights and Measures Act 1985 and the Weights and Measures (Northern Ireland) Order 1981. A separate regulation relates to instruments covered by the Measuring Instruments Directive, but not regulated within the UK. These are referred to as "non-prescribed instruments" and the regulation governing them 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 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 include in-service testing and subsequent repair and re-qualification.

1.4 This guidance covers the above Regulations as amended by the Measuring Instruments (Amendment) Regulations 2006 (SI 2006/2625).

1.5 The Regulations came into force on 30 October 2006 after which date new designs of automatic rail-weighbridges placed on the market must comply with their provisions. This guidance is intended to assist manufacturers, notified bodies and enforcement authorities in meeting the requirements of the Regulations.

1.6 A similar system of approval and verification of instruments has been operating successfully for several years for non-automatic weighing instruments (NAWI) and manufacturers have benefited enormously from its introduction, through savings in costs on both approvals and verification, and through the widening of an easily accessible market. This should also be the case with the Regulations.

1.7 There is significant input from WELMEC, the European Cooperation in Legal Metrology, to the understanding and interpretation of the Directive. WELMEC has already convened a number of working groups for this purpose. WELMEC is considering 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. Information regarding WELMEC and its decisions can be found at www.welmec.org.

2. Background

2.1 The Directive is a "New Approach" Directive and was adopted by the EC Council of Ministers 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 use of 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 implementation should apply to areas covered by existing weights and measures 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 (the NAWI Directive) and relates to non-automatic weighing instruments and came fully into force in January 2003.

2.4 The Commission has issued guidance on "New Approach" directives in "Guidance on the implementation of directives based on the New and Global Approach" which can be found at: http://ec.europa.eu/enterprise/policies/single-market-goods/files/blue-guide/guidepublic_en.pdf

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

- 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 automatic measuring instruments 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.

3. PART 1 - Preliminary

3.1 The Regulations have been made using powers 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 will be drafted for Northern Ireland.

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 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 a person responsible for the conformity of an automatic gravimetric filling instrument 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 to 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 23 and means a person approved pursuant to section 11(A) of the Weights and Measures Act 1985 (in Northern Ireland Article 9(3B) of the Weights and Measures (NI) Order 1981).

Inspector – This is the term used in Regulation 22, and 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 Office (NMO) 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), 20(1)(b), 22(1)(c) and 25(6), a person designated by another Member State who has been notified to the Commission and the other Member States pursuant to Article 11.1 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.

Regulation 2(3)

20 At the time of drafting this guidance the bi-lateral agreement between Switzerland and the European Community has not been amended to include the Measuring instruments Directive. It is expected that this amendment will be made in due course.

Application

Regulation 3(1)

3.4 The Regulations apply to rail-weighbridges 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 service 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.

Regulation 3(2)

3.5 The Regulations do not apply to an instrument that has been first passed as fit for use for trade before 30 October 2006 under the following regulations and has a certificate of approval that is still in force and which is first passed as fit for use for trade and stamped under the:

- Weights and Measures Regulations 1963,
- The Weighing Equipment (Automatic Rail-weighbridges) Regulations 2003

3.6 A certificate of approval referred to in Regulation 3(2) will remain valid until the date on which it expires but no later than 29 October 2016 and may be modified up to the date of expiry. Thus an automatic rail-weighbridge may continue to be used indefinitely provided it complies with the expired certificate.

3.7 The 2003 Regulations themselves did not apply to rail-weighbridges which were in use for trade before those Regulations came into force: these may have been prescribed under national legislation by the Weights and Measures Regulations 1963, SI 1963/1710, as amended (the "1963 Regulations"). Modification of an instrument that was already in use before the 2003 Regulations came into force will not make any difference to the applicability, or not, of those Regulations.

3.8 The 2003 Regulations themselves allowed, at regulation 4, a transitional period during which rail-weighbridges, which fall within the scope of the 2003 Regulations, may nevertheless continue to be first passed as fit for use for trade under the 1963 Regulations up until and including 1st February 2014 - thereby allowing manufacturers of these instruments to make the most of type approvals that have already been granted. During this transitional period either the 2003 Regulations or the 1963 Regulations may be applied. At the end of the transitional period the 2003 Regulations will replace the 1986 Regulations to the extent that they apply to the same rail-weighbridges (although any instruments that were passed as fit for use for trade under the 1963 Regulations before the end of the transitional period can remain in use).

Regulation 3(3)

3.9 Instruments not in conformity with the regulations may be exhibited if they are clearly marked to indicate that they may not be used for trade unless they have been made to comply.

4. PART II - Placing on the market and putting into use of instruments

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 an instrument to which the Regulations apply unless it

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

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

4.3 The terms placing on the market and putting into use are defined in the regulations and originate from Directive 2004/22/EC. The requirements of Regulation 4(1) apply only to when rail-weighbridges 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 when automatic rail-weighbridges 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 to the essential requirements. Relevant national standards and normative documents for this purpose will be published by the Secretary of State, or the competent authority in another Member State. Normative documents for automatic weigh-bridges identified by the Commission are published on the NMO website and can be found at:

<http://www.bis.gov.uk/nmo>.

4.6 The appropriate OIML Recommendation for automatic rail-weighbridges is

Recommendation R106-1 (Edition 1997) which can be found on the OIML website at:
<http://www.oiml.org>.

4.7 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 other technical solutions provided. 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.

Regulation 5(4)

4.8 Provides for devices which do not meet the essential requirements and which are not in use for trade. These can be connected to an instrument without affecting the conformity of the instrument to the essential requirements. This could for example be printers or data storage devices for management purposes only. These devices are likely to carry their own CE marking under directives other than 2004/22/EC.

Conformity assessment procedures

Regulation 6(1)

4.9 The different conformity assessment procedures available to manufacturers are set out as modules in the annexes of the Directive. These are numbered A to H1. The options available to manufacturers for automatic rail-weighbridges are as follows:

	D1	F1	B+D	B+E	B+F		H1
AWIs - Mechanical	•	•	•	•		•	•
AWIs - Electro-mechanical			•	•	•	•	•
AWIs - Electronics & Software			•		•	•	•

The options above represent:

- Declaration of conformity by the manufacturer based on quality assurance of the production process (including test and final inspection) but without the need for type examination (Module D1)
- 3rd 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)
- Type examination followed by 3rd Party verification (Modules B + F)
- 3rd Party verification for one off “bespoke” instruments which would otherwise need type examination (Module G)
- Design examination together with declaration of conformity by the manufacturer based on full formal quality assurance of the design and production process (including test and final inspection) as part of an integrated process (Module H1)

4.10 For further information on conformity assessment procedures and other aspects regarding the interpretation of the Directive reference should be made to “Guide to the

implementation of directives based on the New Approach and the Global Approach". This document can be found at the following website:

http://ec.europa.eu/enterprise/policies/single-market-goods/files/blue-guide/guidepublic_en.pdf

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

4.12 The EU Commission in relation to the Directive has published a list of reference to normative documents in the Official Journal (2011/C 33/01 and 2006/C 269/01) which in part gives presumption of conformity to the essential requirements. This includes details on automatic rail-weighbridges (MI-006, Chapter VI) in relation to OIML Recommendation R106-1 (Edition 1997). This information is available on the NMO website or by reference to the EU website under the following two links:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:033:0001:0012:EN:PDF>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:269:0001:0028:EN:PDF>

4.13 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.

4.14 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. Automatic rail-weighbridges are covered by document WELMEC 8.16-5, which can be found at: <http://www.welmec.org>.

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

Regulation 6(2)

4.16 Schedule 3 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 language acceptable to it in compliance with paragraph 10(1)(a) of Part II of Schedule 2.

Designation of UK notified bodies

Regulation 7(1)

4.17 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 4.9 of this guidance) for those relevant to automatic rail-weighbridges. The criteria for designation of these bodies in accordance with Article 12 are included in Schedule 2 Part 1 of the Regulations.

Regulation 7(2)

4.18 If an organisation meets the requirements of Schedule 2 Part I the Regulations permit the Secretary of State 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 an automatic rail-weighbridge the Secretary of State must be satisfied that the applicant meets the criteria as respects that instrument. As with the definition of an importer and, 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. The application form for bodies applying to be designated as a United Kingdom notified body under Regulation 7 can be found on the NMO website: www.bis.gov.uk/nmo.

Regulation 7(3)

4.19 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 NMO website: www.bis.gov.uk/nmo/regulation.

Regulation 7(4)

4.20 Designations under the Regulations must be in writing which may be either in electronic or hard copy format. They may include conditions such as the scope of the designation.

Regulations 7(5) and 8

4.21 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 functions of a notified body in regulation 8 are set out in Part 2 of Schedule 2 to the Regulations.

Provisions supplemental to regulation 7

4.22 The provisions of regulation 9 deal with the publication of lists of notified bodies and the inspection of notified bodies. 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)

4.23 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 NMO website at www.bis.gov.uk/nmo/regulation.

4.24 The European Commission also publishes a list of notified body numbers which gives

details of the notified body and the instruments on the New Approach Notified and Designated Organisations (NANDO) website. For the MID, click on:

<http://ec.europa.eu/enterprise/newapproach/nando/>.

4.25 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.

4.26 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 referred to in the application.

Fees

Regulation 11

4.27 This regulation permits notified bodies (which include 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.

4.28 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.

4.29 The Regulations do not govern the 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)

4.30 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

Regulation 12

4.31 The annex to this guidance describes the CE marking, supplementary metrology (M) marking 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 mark denotes that the instrument is regulated by one of the metrology directives.

4.32 It should be noted the supplementary markings are different from those in 90/384/EEC. For the purposes of the Directive the M marking does not have to be on a green background as it does under the NAWI Directive 90/384/EEC but it must be accompanied by the last two digits of the year in which it is affixed. See drawings in the

annex to this guidance.

Conformity with other directives

Regulation 13

4.33 Where an automatic rail-weighbridge falls within the scope of other directives which provide for the affixing of the CE marking the CE marking affixed to the automatic rail-weighbridges shall, in addition to conformity with the Measuring Instruments Directive, indicate conformity with those other directives.. Other directives of which manufacturers should be aware 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. PART III – Use for trade

5.1 This part only applies to automatic rail-weighbridges in use for trade once they have been placed on the market and put into use in Great Britain (see paragraph 7.1 regarding Northern Ireland). It equally applies irrespective of whether the instrument was 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 Act 1985. This part of the Regulations prescribes the requirements for use for trade of the instrument and for the avoidance of doubt prescribes the instrument 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 an instrument. 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 automatic rail-weighbridge covered by the Regulations 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 instruments to continue to meet the essential requirements in-service. The in-service values for maximum permissible errors (MPEs).

Manner of erection and installation

Regulation 15(1)

5.4 The equipment in paragraph 9(5) of Schedule 1 to the Regulations relating to any special equipment that may be needed to permit the control of measuring tasks when the instrument has been placed on the market must be incorporated in the instrument and the operation manual must describe the procedure for testing the equipment.

Maximum permissible error and accuracy class

Regulation 16

5.5 Automatic rail-weighbridges with an accuracy class of 2 may only be used for trade for the weighing of wagons loaded with ballast (as defined in Schedule 4 of the Weights and Measures Act 1985), material for landfill disposal (as defined in section 70(2) of the Finance Act 1996, or household, industrial or commercial waste.

Manner of use

5.6 Where an automatic rail-weighbridge is marked with a temperature range it shall not be used for trade in temperatures outside that range.

6. 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 18(1)

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 19

6.3 In cases where the enforcement authority has established that the CE marking and/or M mark have been inappropriately affixed for an instrument 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 and the M marking confirm compliance with the essential requirements in Schedule 1 of the Regulations when the instrument 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 20

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) an automatic rail-weighbridge which has been placed on the market and 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) an automatic rail-weighbridge bearing the CE marking and the M marking does not meet all the essential requirements when placed on the market or properly installed and put into use in accordance with the manufacturer's instructions.

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 NMO website (www.bis.gov.uk/nmo).

Disqualification

Regulation 22

6.7 In cases where an instrument has been altered and the inspector has been notified in writing of the alterations a disqualification sticker will be required in all cases where the instrument no longer meets the essential requirements.

6.8 It should be noted that the maximum permissible errors for instruments (mpes) in use for trade are those in Regulation 16 (b) not those in Schedule 1 paragraph 3.

Re-qualification

Regulation 23

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. Requalification may be by an inspector of weights and measures or by an approved verifier, e.g. the manufacturer or a repairer.

6.10 Re-qualification is the process by which either an inspector or an approved verifier assesses compliance of the instrument after it has, or could have, been disqualified and returned to conformity with the essential requirements. This means that the mpes will be those applicable to first placing the instrument on the market.

Testing of automatic rail-weighbridges

Regulation 24

6.11 The Regulations do not stipulate a test procedure for conformity assessment or verification. It only stipulates that an instrument 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 rail-weighbridges is given in the section describing paragraph 4.5 above.

6.12 Where third party testing is carried out in accordance with Module F/F1 the testing requirement is specified in the harmonised standard or normative document or equivalent tests. In the absence of these documents the Notified Body is responsible for specifying the appropriate tests to be used for the purposes of Sections 6.1 and 7.2 of Annex F1 to the Directive.

6.13 This regulation, being part of Part IV (Enforcement), relates only to the testing carried out by the inspector in relation to his duties as an enforcement officer when he makes an in-service inspection of the measuring system. It does not apply to testing for conformity assessment or re-qualification.

Regulation 24(1)

6.14 Requires the person in control of the equipment to provide such assistance as necessary to enable the inspector to carry out his duties. In most cases this normally means allowing access to the equipment and co-operation of site staff so that inspection of the equipment can take place. However, the regulation gives the inspector the power to require reasonable assistance in a number of specific and non-specific ways. This helps to ensure the inspector cannot be prevented from carrying out his duties without very good reason.

Unauthorised application of authorised marks

Regulation 25

6.15 Any automatic rail-weighbridge in use for trade but not marked with the notified body number, CE mark and M mark and put in use on or after 30 October 2006 may be disqualified unless it can be demonstrated that the instrument is not subject to the Regulations.

Powers of entry and inspection

Regulation 26(1)

6.16 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.

6.17 It should be noted that this Regulation gives an enforcement officer the authority to inspect and test an automatic rail-weighbridge, 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 19) or take immediate enforcement action (regulation 20) if the requirements of those regulations are met.

6.18 The powers under regulation 26(1) should be contrasted with those existing in relation to the NAWI Regulations 2000 (SI 2000/3236), as amended - "the NAWI Regulations". 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 instruments. Where this becomes a necessity such action may be authorised as part of a market surveillance exercise.

6.19 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 28

6.20 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

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

7. PART V - Miscellaneous and supplemental

Adaptation for Northern Ireland

7.1 The regulations apply to Northern Ireland subject to Schedule 5. 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 automatic rail-weighbridges.

The Electromagnetic Compatibility regulations 2005

Regulation 33

7.2 The Electromagnetic Compatibility Directive was implemented in the UK by the Electromagnetic Compatibility Regulations 2005 (S.I. 2005 No 281) and applies to all instruments. The MID specifically provides immunity requirements in relation to instruments within its scope and therefore these implementing regulations have been disapplied for all MID instruments by Regulation 33 of these regulations. The EMC Regulations 2005 remain in force for all automatic rail-weighbridges not subject to these regulations i.e. all those instruments that are not regulated whether because the instrument type is not regulated in the UK or is a regulated instrument that is not in use for trade. The EMC Regulations continue to apply to emissions.

Annex 1

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 NMO 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 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 had to apply both his number and the year of re-qualification in manuscript on a modified NAWI sticker using a “permanent” marker. It was 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 1968 (SI. 1968/1615) will need to be amended as re-qualification is carried out under the provisions of these regulations.

The Green 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. Organisations which need to obtain supplies are invited to contact stickers@nmo.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 NMO 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@nmo.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 NAWI and MID instruments.

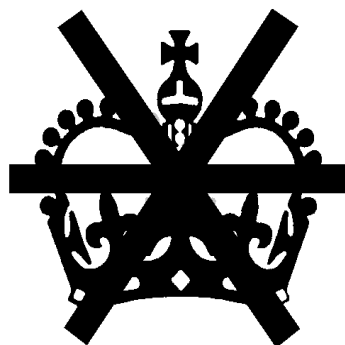
Approved Verifier

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.

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

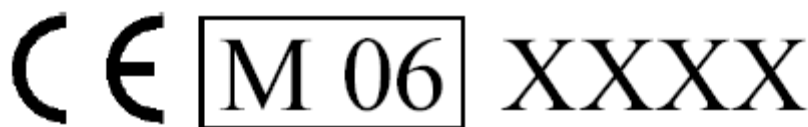
This is a plain white label in which the Notified Body number has been overprinted using a thermal printer. It is not a requirement for the number to be pre-fixed by NB.

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 MID Directive



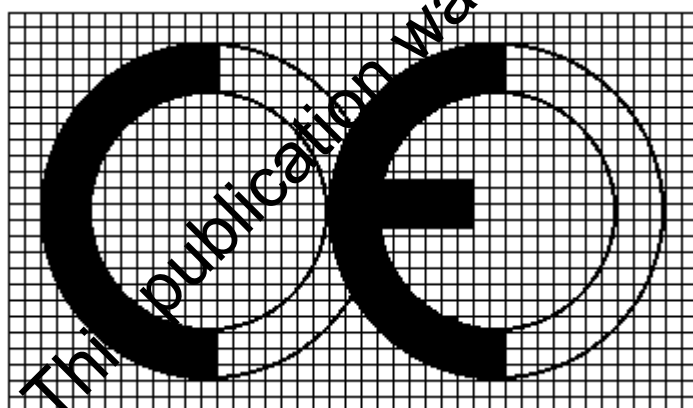
CE Mark
At least 5 mm high

Supplementary metrology mark
Rectangle height the same as CE
'Immediately follows' CE

Identification number of the notified body
'Follows' CE and Supplementary metrology mark



"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 Schedule 4 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.

When a rail-weighbridge consists of a set of devices operating together, the markings shall be affixed on the instrument's main device.

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.

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National Measurement Office
Stanton Avenue
Teddington
Middlesex
TW11 0JZ
Tel: +44 (0)20 8943 7272
Fax: +44(0)20 8943 7270

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