NWML
NATIONAL WEIGHTS AND MEASURES LABORATORY

Department for **Innovation, Universities** & **Skills**

The Legislative Reform (Verification of Weighing and Measuring Equipment) Order 2008

Explanatory Document by the National Weights and Measures Laboratory (NWML), an Executive Agency of the Department for Innovation, Universities and Skills

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EXECUTIVE SUMMARY

1 Weighing and measuring equipment which is used for trade is subject to statutory checking requirements at certain points in its life cycle. This process is known as verification. Equipment which is subject to such statutory verification requirements is said to be "prescribed". Verification typically takes place before prescribed equipment is first marketed or used, and again after it has undergone installation, repair or adjustment.

2 It is often possible for manufacturers, installers or repairers of prescribed equipment to verify equipment which they have themselves manufactured, installed or repaired. To do this they must become "approved verifiers" (or, in the case of verification immediately after manufacture under certain Regulations implementing EC Directives, "approved manufacturers"). However, the Weights and Measures Act 1985 does not currently permit approved verifiers to verify equipment which they have adjusted.

3 This is anomalous: "adjustment" usually takes place where equipment which is already operating within the legal limits of accuracy is adjusted to make it still more accurate. By contrast, "repair" occurs where equipment which is already outside the legal limits is made to conform to them. There is no reason why persons who are judged fit and proper to verify equipment which they have repaired should not also be judged fit and proper to verify equipment which they have adjusted.

4 The proposed Legislative Reform Order would remove this anomaly by amending the Weights and Measures Act 1985 so as to permit approved verifiers to be approved to verify after adjustment. At present, where prescribed equipment is adjusted, verification has to be carried out by an inspector of weights and measures. The need to involve an inspector imposes additional and unnecessary costs on businesses which operate such equipment, notably petrol retailers (petrol pumps are adjusted more frequently than other types of prescribed equipment). While businesses will still be able to use the services of inspectors if the Order is made, it is expected that many who use the services of approved verifiers will find it significantly cheaper and more convenient and cheaper to have them verify any adjustments they make.

5 Approved verifiers are subject to stringent quality control and monitoring requirements. They have been carrying out the technically identical task of verification after repair satisfactorily for several years. There is no evidence that consumer protection will be diminished as a result of their work being extended to verification after adjustment. Local authorities may lose some revenue in the form of inspectors' fees as a result of this proposal, but the fees are only intended to cover the costs of the verifications they carry out, so that the loss of revenue should correspond to a reduction in work and associated costs. The Government does not believe that local authorities' ability to carry out other metrology and consumer protection work will be compromised by the proposed Order.

INTRODUCTION

6 This explanatory document is laid before Parliament in accordance with Section 14 of the Legislative and Regulatory Reform Act 2006 ("the 2006 Act") together with a draft of the Legislative Reform (Verification of Weighing and Measuring Equipment) Order 2008 ("the draft Order") which it is proposed should be made under section 1 of the 2006 Act.

7 The purpose of the draft Order is to introduce more efficient arrangements for bringing certain categories of weighing and measuring equipment in use for trade back into service after they have been adjusted. The new arrangements extend those which have applied since 1999 where such equipment is first put into service or is put back into service after repair.

Legislative context: verification of measuring instruments

8 In the UK, and throughout the EEA, many different types of weighing and measuring instruments are subject to "prescription". This typically means that they must satisfy certain technical criteria (in particular, of accuracy) both before they are first placed on the market or put into service, and whenever they are used for specified purposes, such as in commercial transactions. Since no commonly used measuring instrument can be absolutely 100% accurate every time, a prescription system aims to provide consumers and businesses with as good a level of certainty about the accuracy of equipment used for trade and other purposes as is reasonably practicable.

9 Equipment which is subject to prescription has to be tested to check that it complies with the relevant criteria, both (i) before it is placed on the market and/or after it has been installed ("initial verification"), and (ii) whenever it has undergone any repair or adjustment which may have affected its accuracy ("subsequent verification"). Whenever equipment passes the verification test, its compliance with the relevant criteria is indicated either by "stamping" it or by affixing some other clearly visible mark showing that its use for trade or other specified purposes is lawful.

10 The legislation which lays down the requirements that apply to prescribed weighing and measuring equipment in the UK is a combination of provisions which implement European Directives, and purely domestic rules made under the Weights and Measures Act 1985 ("the 1985 Act"). In some cases, the European legislation only lays down prescription criteria for initial verification. However, the UK, like many other EU Member States, uses the criteria in the Directives as the basis for the "in service" requirements which apply in domestic legislation, and against which any subsequent verification tests are carried out.

11 The vast majority of prescribed instruments used for commercial purposes in the UK can now be divided into three categories:

(a) instruments which are regulated under UK regulations that implement the Non-automatic Weighing Instruments ("NAWI") Directive.[1] The category of NAWIs includes any weighing instrument requiring the intervention of an operator during weighing, and therefore most shop scales. The NAWI Regulations apply to NAWIs first placed on the market after 1 January 1993;

(b) instruments which are regulated under UK regulations that implement the Measuring Instruments Directive ("MID")[2] (collectively referred to as the "MID Regulations").[3] This includes various kinds of weighing instruments typically used in business-to-business, rather than business-to-consumer transactions, as well as petrol pumps, capacity serving measures, and gas and electricity meters. The MID Regulations apply to instruments first placed on the market after 1 October 2006;

(c) instruments which are prescribed by regulations made under s. 11 of the 1985 Act. This category includes instruments that are not NAWIs or one of the kinds of instruments covered by MID, such as intoxicating liquor measuring instruments, as well as older types of the kinds of instruments which would fall within categories (a) and (b) if first placed on the market now, such as petrol pumps, but which were first placed on the market before the relevant EC-based Regulations came into force. For these instruments the old regulations still apply for subsequent verification until the instrument's type approval certificate expires.

12 Before the NAWI Regulations came into force, all initial verification and subsequent verification was carried out by local authority inspectors of weights and measures appointed under section 72 of the 1985 Act ("inspectors"). The NAWI Directive introduced a system of initial and subsequent verification by "notified bodies" (certification agents designated by EEA member states) and "approved manufacturers" (whose quality systems have been approved by notified bodies), who carry out most of the initial verification work on NAWIs.

13 In 1999, the 1985 Act was amended by the Deregulation (Weights and Measures) Order 1999 (S.I. 1999/503) ("the 1999 Order") so as to permit both initial and subsequent verification to be undertaken, subject to the issue of an approval by the Secretary of State, by manufacturers, installers and repairers ("approved verifiers"), as an alternative to verification by inspectors. This meant that equipment could be put into service, or brought back into service, more quickly and efficiently. The removal of a

[1] Directive 90/384/EEC (OJ L 189, 20.7,1990, p.35) as amended by Directive 93/68/EEC (OJ L 220, 30.8.93, p.1). The NAWI Directive is currently implemented in the UK by the Non-automatic Weighing Instruments Regulations 2000 (S.I. 2000/3236) as amended.
by S.I. 2008/738 (the "NAWI Regulations").

[2] Directive 2004/22/EC (OJ L 135, 30.4.2004, p.1). ,

[3] MID covers all the kinds of instruments to which it relates in a single 80-page Directive. In implementing MID in the UK it was felt that it would be more user-friendly to have separate sets of Regulations for each kind of instrument. The MID Regulations were all made in 2006.

requirement for independent third party verification was compensated for by a system of approved verifier auditing and inspection which ensured that consumer protection was not diminished. (Annex F is a process chart of the Approved Verification System.)

14 When the MID Regulations were made in 2006, they permitted approved verifiers to carry out subsequent verification. In April 2008, following extensive consultations, the NAWI Regulations were amended to permit approved verifiers to carry out subsequent verification of NAWIs. (The ability of an organisation to carry out initial verification under the NAWI or MID Regulations effectively depends on whether it qualifies to be classified as an approved manufacturer as defined by the NAWI or MID Directive.)

15 However, for all types of equipment in respect of which the legislation assigns functions to approved verifiers, they remain unable to carry out the full range of subsequent verification functions. This is because section 11A of the 1985 Act only permits them to be approved to carry out verification after they have manufactured, installed or repaired equipment. If equipment is subjected to a form of maintenance which falls short of being "repair", in particular if it is adjusted so as to make it measure more accurately when it is already within the prescribed limits of accuracy, it cannot be verified by an approved verifier ("self-verified"), but must be verified by an inspector. The fact that post-adjustment verification still needs to be carried out by an inspector, rather than also being able to be carried out by an approved verifier, appears to have been an unintended consequence of the drafting of the 1999 Order rather than a deliberate policy choice.

Policy context: the draft Order and petrol retailing

16 The draft Order aims to complete the process of opening up subsequent verification to approved verifiers by correcting the anomaly in the changes to the 1985 Act made by the 1999 Order which prevents approved verifiers from carrying out post-adjustment verification.

17 The protection required by parties using weighing or measuring equipment in a trade transaction is that the equipment should conform with relevant Regulations and measure with sufficient accuracy for its purpose so that they can be confident of fairness when conducting such transactions. In order to maintain this necessary level of protection it was considered essential that verification by approved verifiers should be subject to an adequate level of control. Therefore the 1999 Order provides for the grant of an approval by the Secretary of State to persons considered fit and proper and who meet the requirements of section 11A and Schedule 3A to the 1985 Act (see Annex E). The classes of persons who can apply for such approval are manufacturers, installers and repairers of weighing or measuring equipment. Each approved verifier is issued with a unique traceable identification number to use when verifying equipment.

18 In the 1996 consultation exercise on the proposals for the 1999 Order representatives of the enforcement bodies raised concerns that permitting self-verification of fuel dispensers (petrol pumps) could result in an unacceptable reduction in consumer protection. In response to those concerns, Ministers decided that, after the Order was made in 1999, additional safeguards should apply in relation to self-verification of liquid fuel dispensers. One of the safeguards was that NWML should form a working party with representatives of industry and the enforcement bodies to monitor the verification of fuel dispensers by approved verifiers for a period of 12 months to determine whether the necessary protection was being maintained.

19 The working party reported back to the Minister in March 2003, by which time it had become apparent that the changes made by the 1999 Order did not permit approved verifiers to carry out post-adjustment verification. Amongst other things, the working party concluded:

(a) that verification of fuel dispensers by approved verifiers had not resulted in any reduction in the previous level of consumer protection; and

(b) that there was no difference from a technical point of view between the activities of repair, where action was taken to reduce delivery errors when the errors exceeded the maximum permissible errors allowed under the legislation, and of adjustment, where the same procedure was used to reduce errors but where the errors had not originally exceeded the maximum permissible errors.

20 Consequently, in its report to the Minister, the working party also concluded that there was no technical reason not to permit self-verification of fuel dispensers following the activity of adjustment.

21 It has been accepted that the term “repair”, in relation to verification under the 1985 Act, extends only to action taken in respect of equipment that is <u>not</u> performing within the accuracy requirements of the Regulations that apply to the equipment. Consequently, persons approved to verify equipment following repair cannot currently be approved to conduct verification following an adjustment – that is, where measuring or weighing equipment was, prior to their intervention, within the legal tolerances of measurement accuracy. At present verification in such cases can only be carried out by an inspector. The recommendation by the working party was that approved verifiers should be permitted to carry out verification after adjustment. Although the working party was concerned with the verification of petrol pumps there is no reason not to extend this recommendation to self-verifiers of any weighing or measuring equipment.

22 The draft Order will permit approved verifiers to reverify weighing or measuring equipment so that it can be returned to use for trade after it has been adjusted as part of maintenance work in the same way that they can

already verify (or reverify) equipment after they have manufactured, installed or repaired it.

23 The only sector likely to be significantly affected by the draft Order is the petrol retailing industry. Fuel dispensers tend to be adjusted for accuracy more frequently than many other kinds of measuring instruments because their accuracy 'drifts' due to normal wear of the meter. A working group was set up by NWML in November 2001 following the coming into force of the 1999 Order and the appointment of two businesses to conduct self-verification of petrol pumps. The working group monitored the performance of approved verifiers and included representatives from both local authorities and industry and concluded in November 2002 that the verification of petrol pumps by approved verifiers was being carried out satisfactorily and that there was no technical reason not to permit self-verification after adjustment by approved verifiers, recommending that the existing provision be extended to permit self-verification after the activity of adjustment.

24 Site owners commonly arrange for an approved verification company to attend a petrol station and test the pumps. The company can repair those pumps that are operating outside legal tolerances, re-verify them and put them back into use that same day. However, if pumps are not operating outside legal tolerances but the site owner wants to adjust them so that they are not giving away fuel (in other words, to improve their accuracy), the approved verifier could adjust the pump, but is not currently permitted to re-verify it, so there is no purpose in making the adjustment, as the pump cannot be returned to use for trade until re-verified and would be out of commission pending the inspector's visit. As a result and to eliminate any pump down time, the approved verifier has to make another visit at a time when an inspector is available so that the pumps can be adjusted by the approved verifier and re-verified by the inspector at the same time. The draft Order would provide increased flexibility to businesses by giving them the choice of using the services of inspectors or approved verifiers to verify equipment that has been adjusted (by the approved verifier). This will allow businesses to have more control over the planning and incorporation of these activities into the working schedule, resulting in savings to business both in respect of the fees paid out and the costs borne (including costs of delay pending the availability of inspectors of weights and measures).

25 Local authorities currently charge for the provision of their verification services. These charges are set at a level that covers the cost of the provision of the service. The proposal could result in a reduction of such income for local authorities which should be offset by a combination of the reduction in their costs as a result of not having to do so much verification work and the funding they receive from the Secretary of State to carry out audits and inspections on approved verifiers, both before and after receipt of appointment.

26 In summary, the draft Order would:

- reduce the cost to businesses of verification after adjustment;

- reduce the amount of time equipment is out of service or operating at a sub-optimal level of accuracy, while waiting for a visit from an inspector;

- extend to adjustment the same regime that already applies to the kind of equipment affected by the draft Order at other points in its life-cycle (i.e. when it is manufactured, installed or repaired); and

- enable better stock control for management purposes and consequently reduce the risk of environmental damage caused by potential leaks.

Procedure

27 The Minister recommends that the draft Legislative Reform Order and the Explanatory Document be laid before Parliament under the affirmative resolution procedure, for which provision is made by section 17 of the 2006 Act.

28 This procedure is proposed because although the Order is extremely simple (making as it does a one-word amendment to a single provision of the existing legislation) a significant amount of adverse comment about the possible impact of the draft Order was made during the consultation process, which began in July 2005 under the Regulatory Reform Act 2001. While the Minister considers that all the issues raised in the consultation process have been fully addressed, a degree of Parliamentary scrutiny greater than that which is available under the negative resolution procedure is felt to be appropriate. However, the draft Order remains a relatively minor and technical measure, which has been discussed exhaustively with – and, it would appear, ultimately to the satisfaction of – all those whom it will affect (or their representative bodies) over a period of at least two years, and the Minister does not consider that it raises any matter of wider political or public importance that would make it appropriate to invoke the super-affirmative resolution procedure under section 18 of the 2006 Act.

Pre-conditions of section 3(2)

29 The Minister considers that the conditions set out in s. 3(2) of the 2006 Act, where relevant, are satisfied in respect of the draft Order:

(a) *The policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means:* The policy objective could not be satisfactorily secured by non-legislative means because it is the current wording of the 1985 Act, as amended by the 1999 Order, which prevents approved verifiers from carrying out verification after adjustment.

(b) *The effect of the provision is proportionate to the policy objective:* This condition is satisfied because it goes no further than is required to achieve the cost savings and other deregulatory benefits of the policy.

(c) *The provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it:* The proposed provision facilitates, rather than mandates an alternative method of complying with existing statutory requirements. The Minister does not believe that the draft Order will adversely affect the interests of retailers or their customers. It is true that as far as Local Authorities are concerned, an activity in which they have hitherto enjoyed a monopoly (post-adjustment verification) will be opened up to competition, and that this is likely to result in some reduction in the fee income associated with such activity. However, for the reasons explained below and in Annex B, the Minister believes that the reduction in burden to business outweighs any potential detriment to local government, and that, taken as a whole, the proposal strikes a fair balance between the public interest and the interests of any person adversely affected by it.

(d) *The provision does not remove any necessary protection:* The statutory requirement for verification after adjustment provides a necessary protection for consumers and businesses. The proposal does not remove or diminish that protection: it simply makes it possible for the verification to be carried out by an approved verifier rather than an inspector in certain cases. The accuracy of verification work carried out by approved verifiers is (and will continue to be) underpinned by the comprehensive system of approvals and audits administered by the Secretary of State under which they work. It may also be subject to further checking in the form of periodic inspections by local authority weights and measures inspectors. For the reasons given below and in Annex B, the Minister does not believe that the contrary views advanced on this point expressed by a minority of respondents to the consultation are well founded.

(e) *The provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise:* Local authority weights and measures departments will continue to be able to offer a verification service to businesses, and businesses will be able to choose whether to use that service. Although, as now, inspectors, unlike approved verifiers, will not be able to offer an adjustment service (being prohibited under sections 74 and 75 of the 1985 Act from doing so), the proposal does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

(f) *The provision is not of constitutional significance:* The draft Order is not of constitutional significance.

DESCRIPTION OF THE PROPOSALS

30 Under section 11 of the 1985 Act, certain classes of weighing and measuring equipment prescribed in regulations[4] (e.g. petrol pumps, beer meters, some industrial equipment) are required to be tested, passed and stamped (verified) by an inspector of weights and measures, or an approved verifier, as fit for use for trade before being placed into such use. They must also be re-verified after re-installation, repair or adjustment.

31 Approved verifiers are manufacturers. Installers or repairers of equipment who have been approved under section 11A of the 1985 Act by the Secretary of State to verify equipment which they have themselves manufactured, installed or repaired. Section 11A,along with Schedule 3A (which makes provision as to the conditions of approved verifiers' approvals), was inserted into the 1985 Act by the 1999 Order. At present, approved verifiers are not permitted to verify equipment after adjustment.

32 The Government proposes to amend section 11A(2)(a) of the 1985 Act so as to allow persons who carry on a business as manufacturers, installers or repairers of weighing or measuring equipment to be approved by the Secretary of State for the purposes of verifying equipment which they have adjusted. This will make it possible for approved verifiers to pass equipment as fit for use for trade, and stamp it with the prescribed stamp, after they have adjusted it. The amendment will also make it possible for approved verifiers to be approved to exercise post-adjustment verification functions under the NAWI Regulations[5] and MID Regulations.[6]

33 This change will have most impact in relation to petrol pumps, which are adjusted more frequently than other types of weighing and measuring equipment. Once in use, a petrol pump is permitted to operate with a margin of error of between -0.5% and +1% for quantities above the minimum delivery of 2 or 5 litres. However, greater levels of accuracy can readily be attained, and it is generally in the interests of retailers and their customers that they should be attained wherever possible. The need for such adjustments "within tolerance" tends to come to light during regular maintenance work, which will often be carried out by an approved verifier. However, approved verifiers cannot adjust a pump immediately a discrepancy has been identified because to do this they must break the seals which show pumps have not been tampered with, and they cannot reseal them since this can only be done after the verification, which they are not allowed to do after adjustment. Hence the need (as the law stands currently) to call in an inspector.

[4] For example, the Measuring Equipment (Liquid Fuel and Lubricants) Regulations 1995 (S.I. 1995/1014), as amended.
[5] S.I. 2000/3236, as amended by S.I. 2008/738.
[6] For example, the Measuring Instruments (Liquid Fuel and Lubricants) Regulations 2006 (S.I. 2006/1266).

NATURE OF BURDENS AND PROPOSALS TO REMOVE OR REDUCE EXISTING BURDENS

34 There is currently a financial burden on owners of equipment in that, when an approved verifier recommends that equipment would benefit from adjustment, but does not need repair, they typically have to pay for an inspector to attend to carry out verification, as well as for a second visit by the approved verifier. This compares with the position where equipment is repaired, when only a single visit by the approved verifier is necessary. Most petrol pumps require adjustment (or at least, the retailers whose customers use them would benefit from adjustment) more frequently than they require repair. There is also a burden on such owners in that if the equipment is dispensing an over-measure they are giving away free goods while they wait for the second visit of the approved verifier.[7]

35 There is also a burden on the businesses of manufacturers, installers and repairers who are approved verifiers, to have to arrange a return visit to a site, and arrange the services of an inspector for verification of equipment which has been adjusted before it can be returned into use for trade. The removal of this burden would improve company efficiency and planning.

36 The objective of the proposal is to remove these burdens, by permitting approved verifiers to verify adjusted equipment, thereby reducing the cost to business of verification following adjustment and reducing the amount of time businesses are giving away a product while waiting for equipment to be adjusted and then verified by an inspector.

OTHER BENEFITS

37 In the petrol retailing industry better stock reconciliation (between petrol delivered by tanker and petrol sold to customers) and, consequently, improved ability to detect leakage, should have both environmental and health and safety benefits. Fuel leaks from underground storage into ground water, aquifers, or local streams, pose major environmental problems. Without accurate measurement and stock control, leaks go undetected. Fuel leaking into basements or gardens nearby creates immediate risks to safety, as well as risks to longer-term health. In 2000 the Health and Safety Executive issued new guidance on leak detection. A circular (PETEL 65/34) was sent to all Petroleum Licensing Authorities, recommending that they should require all licensees to have a suitable system of detecting leaks, including the use of Statistical Inventory Reconciliation. This has resulted in much more reliance being placed on the continuous monitoring and analysis of wetstock records in order to

[7] The only alternative to this is not to use the equipment pending the second visit, which may not be possible. Moreover, taking the equipment out of service will in itself tend to be a burden on the business and/or its customers (e.g. in terms of longer queues to use the equipment at busy times).

detect leaks. Such methods rely heavily on accurate metering of fuel dispensed and tank contents measurement. Equipment owners need to keep their pumps dispensing fuel as accurately as possible in order to maintain accurate wetstock records, and a reduction in the cost of having equipment adjusted would facilitate this.

38 Reducing the number of visits to a site would slightly reduce the number of journeys made by car or van, with a corresponding reduction in traffic congestion and carbon emissions.

TERRITORIAL EXTENT

39 The draft Order, like the 1985 Act, extends to Great Britain. Units and standards of weights and measurement and the regulation of trade so far as involving weighing, measuring and quantities are reserved to the Westminster Parliament by both the Scottish and Welsh devolution settlements. Northern Ireland has separate weights and measures legislation.

DETAILS OF THE CONSULTATION

40 On 29th July 2005 the Government published a Consultation Document on the proposed changes to section 11A of the 1985 Act within the framework laid down by the Regulatory Reform Act 2001.

41 The Consultation was produced in accordance with the Code of Practice on written consultations. The Consultation Document was published on NWML's website at:
http://www.nwml.gov.uk/Regulatory_Reform_Order/default.aspx

42 The Consultation Document was circulated to the organisations and individuals listed at Annex A to this document. The closing date for the consultation was 29th October 2005 (a period of 13 weeks).

43 The National Assembly for Wales was consulted as required under section 5(1) of the 2001 Act. The Assembly made no comments. The Department also consulted the Scottish Executive, which made no comments.

44 A number of issues were raised in response to the written consultation. NWML worked closely with stakeholders including Local Authorities, retailers, approved verifiers and equipment manufacturers from January to September 2007 to resolve these issues. This process has been successful. The consultation meetings held and related correspondence with stakeholders were extremely useful in uncovering and resolving issues, difficulties and minor discrepancies within the existing system of approvals, record-keeping and audit relating to approved verifiers. The Minister is confident that the system provides all the essential safeguards and that the further work done during 2007 to tighten up certain aspects of

its administration means that it will be fit for purpose if and when it is extended to cover verification after adjustment by the draft Order.

RESPONSES TO THE WRITTEN CONSULTATION

45 There were twenty-four responses to the Consultation Document received by NWML by 29th October 2005. Six further responses were received after this closing date. Representations were received mainly from industry – approved verifiers (manufacturers, installers and repairers) and petroleum retailers (trade associations and individuals) – and from the trading standards community (both representative bodies and individual Trading Standards departments).

46 The majority of the respondents (60%) agreed that the proposals for the Legislative Reform Order were appropriate and supported the proposed changes to the Act. Of the respondents who supported the proposals 72% were from industry and 28% from the trading standards community. The only opposition to the proposal came from the trading standards community. However, almost all the specific concerns which they raised related not to the principle of permitting post-adjustment verification by approved verifiers, but to the operation of the existing approved verifiers regime (so that they can be addressed, where appropriate, by changes and clarifications to the scheme), or to the alleged impact of the proposal on local authority funding for metrology work more generally. Following extensive discussions with all the relevant stakeholder groups, representatives of the trading standards community (via the Local Authority Co-ordinators of Regulatory Services ("LACORS")) indicated that they would not object to the draft Order proceeding.

47 Although not all trading standards authorities were against the proposals, those trading standards authorities who were opposed to the proposals expressed themselves in quite strong terms. All the issues raised by respondents are dealt with in detail in Annex B. However, some key points on two areas of particular concern, consumer protection and impact on local authorities, are summarised below.

Consumer protection

48 By law, petrol pumps are permitted to be used for trade if the amount dispensed is within a certain limit of the amount displayed as being dispensed. For example, if the display reads 20 litres, then the pump must dispense between 19.9 and 20.2 litres. These differences in allowable amounts are known as "tolerances" or "limits of error", and are expressed in the Regulations in terms of a percentage – the pump is permitted to dispense between 0.5% less than the displayed quantity and 1% more than the displayed quantity.

49 Respondents to the consultation commented that if an inspector did not independently verify the results then there would be a greater potential for abuse of tolerances, by retailers requesting approved verifiers to adjust the petrol pump down to the maximum negative legal error (for example, in the case above, down to 19.9 litres), which would be to the detriment of consumers and would lead to loss of consumer confidence.

50 NWML believes that this concern has its origins in the previous Regulations, which were changed in 1995, and under which it was permitted to adjust equipment such that the measurement fell anywhere within the limits of error. Under the Liquid Fuel and Lubricants Regulations 1995, as amended in 1998, the requirement is now that three measurements should be taken and they should "straddle strike" i.e. the measurements should neither be all positive nor all negative.[8] Moreover, as an increasing proportion of petrol pumps in use for trade come to be subject to the MID Regulations, it is likely that practice will follow the requirements of those Regulations, which state that if a petrol pump is adjusted it shall not be used for trade unless the calibration of the instrument is set as close to zero error as is practicable.[9] In short, as approved verifiers would risk breaking the law if they set an instrument to the lower limit (as well as violating the terms of, and so potentially losing, their approval), NWML considers it unlikely that they would do so.

51 The petrol retail community commented that accurate measurement is essential for retailers to monitor their stock levels for commercial reasons and to detect losses in the event of an environmentally harmful leak in the storage tanks. Failure to demonstrate that the leak detection system is accurate enough could result in Petroleum Licensing Authorities requiring retailers to carry out an annual tank and pipeline test, which would cost in excess of £1000. It would not, therefore, be to the retailer's advantage to set the pumps to anything other than as close to zero as practicable.

52 There is currently a requirement that approved verifiers have to notify local authorities, within five working days, of any (re)verification work carried out. This means that local authorities if they so wish can carry out checks (both on paper and on the forecourt) on the work of self-verifiers soon after the work is done. During the consultation meetings it was claimed that not all approved verifiers notified their local authority whenever they had carried out verification work. Further investigations by NWML have shown that all but one of the approved verifier companies included the requirement for notification within their quality system documentation and were fulfilling the requirement. The remaining approved verifier has now improved its processes for both engineers and office staff. Approved verifiers are encouraged to report any illegal activity they may observe, or any improper pressure they may be subjected to in the course of their duties, either to NWML or the local trading standards department. There

[8] S.I. 1995/1014, regulation 19, as amended by S.I. 1998/2218.
[9] See the Measuring Instruments (Liquid Fuel and Lubricants) Regulations 2006 (S.I. 2006/1266), regulation 16(5).

is an electronic notification system set up for this purpose on the NWML website.

53 NWML will maintain the existing requirement for fuel dispenser approved verifiers to notify local authorities within five days of any verification work carried out. NWML will also require an approved verifier's quality system to be audited to ensure this requirement is met. NWML has amended its internal procedures to include a check on this requirement at every fuel dispenser approved verifier audit. In addition to these audits, NWML carries out additional spot checks on the approved verifiers' systems, and this work will continue. This programme of audits means that approved verifiers are audited thoroughly at least once every year, and their work could be followed up by an inspector at any time. Stakeholders accept that this system of monitoring is sufficient to prevent any deliberate wrong doing or systematic negligence on the part of an approved verifier.

54 Some respondents suggested that approved verifiers are (and will increasingly be) subject to an inherent "conflict of interests". There are two possible concerns about how an approved verifier subject to a "conflict of interests" would act. The first is that he would not have an incentive to test his own work as thoroughly as an inspector or – in an extreme case – that he might pass as fit for use equipment which is not really accurate enough to be so passed. However, NWML is satisfied that, if anything, the incentives should operate in the opposite direction, because petrol pump maintenance is a competitive market, and accurate measurement is ultimately in the interests of the retailers as well as their customers so it is what approved verifiers will deliver. The second possible concern is that approved verifiers may encourage the making of adjustments which are unnecessary in order to increase their verification revenue. However, verification after adjustment typically occurs not as a result of any sort of speculative application to the retailer by the approved verifiers, but where the desirability of adjustment has been identified by the retailer, or by an equipment maintenance company in the course of pre-planned contractual maintenance activities.

Impact on Local Authorities

55 It was suggested that increased self-verification activity would result in an increased need for inspections to be undertaken, and that this could not be resourced properly if local authorities were suffering from a reduction in income as a consequence of a reduced demand for verifications by inspectors (for which a fee is payable to cover the authority's costs of verification activity).

56 In line with the Hampton risk-based approach to enforcement, NWML believes that there is no need for an increased number of inspections or surveillance visits because future visits of approved verifiers who carry out adjustments will include an element of checking that part of their work without the need for scheduling extra surveillance visits specifically for that purpose: we envisage in most cases the same approved verifiers that are

currently satisfactorily carrying out verification following manufacture, installation and repair would be carrying out verification following adjustment. All existing or new approved verifiers would have to meet the control processes laid down by the Secretary of State in order to ensure there is no detriment or potential detriment to consumer confidence. The original controls of inspections and the requirement for the fuel dispenser approved verifier to notify the local weights and measures authority within 5 working days of any (re)verifications carried out, including the errors before and after adjustment, were instigated following the changes made by the 1999 Order partly with a view to approved verifiers being permitted to carry out adjustment. Hence NWML has already put the controls in place for the activity of adjustment so there is no need to introduce them again.

57 After the end of the written consultation process most of the local authority objections diminished over the course of a series of regular meetings and discussions with stakeholders. Although LACORS maintain this measure may have a funding impact on local authorities they have said they would not stand in the way of the proposal as they understand the rationale behind it and there is no technical or legal reason why the measure should not proceed.

58 Detailed responses to the individual points made by respondents to the consultation on this and other points can be found at Annex B.

59 In the Consultation Document respondents were asked to identify any information they did not wish to be disclosed. Six respondents asked for this protection in respect of their full response. All responses have therefore been anonymised.

CHANGES MADE IN LIGHT OF THE CONSULTATION

60 Having considered the responses the Minister is satisfied that the proposed provisions are justified and generally supported by stakeholders. Any justified concerns about the proposals ultimately turned on the effectiveness of the controls in the existing approval and audit system for approved verifiers, which will be adapted as necessary at an administrative level to take account of stakeholder comments. The Minister is satisfied that no changes are necessary to the draft Order.

61 The overall findings from the consultation are that the amendment should go ahead as proposed. The benefits to industry are undisputed and no clear or strong evidence has been put forward to show that consumers will be disadvantaged. However it is vital that approved verifiers continue to comply with the legal requirements so that public confidence is not diminished. One way of ensuring such compliance is by local authorities continuing to carry out adequate inspections – which we believe they will be able to do.

62 In addition to the recommendation to proceed with the Legislative Reform Order, NWML makes the following recommendations:

- That approval to verify weighing and measuring equipment following adjustment activity be made conditional upon approved verifiers continuing to inform the local weights and measures office of all verifications undertaken within five days. Both Trading Standards and industry are content with this requirement, although industry has commented that this requirement is, in itself, a burden.

- That the Department should continue to fund, via NWML and the Legal Metrology Programme, a programme of checks on approved verifiers and their activities.

COMPATIBILITY WITH EUROPEAN CONVENTION ON HUMAN RIGHTS

63 The Minister considers that the provisions of the draft Order do not engage any Convention rights and that it is therefore compatible with the Convention.

PLAIN ENGLISH

64 The draft Order has been clearly drafted in plain English and follows closely the proposals contained in the Consultation Document.

CHARGES ON PUBLIC REVENUE

65 The draft Order does not impose charges on public revenue and does not require any payments to be made to a Public Authority.

EFFECT ON PUBLIC EXPENDITURE AND PUBLIC SERVICE MANPOWER

66 It is not anticipated that the Order will result in any significant effects on central government expenditure or public service manpower.

IMPACT ASSESSMENT

67 An Impact Assessment of the measures in the Order has been published and is given in Annex C. Total recurring savings are estimated at £615,000 per annum.

RETROSPECTION

68 The draft Order does not have retrospective effect, nor, as far as NWML is aware, could it affect any existing legal decisions.

EUROPEAN UNION

69 It is the Department's view that the draft Order is compatible with all the requirements of EU membership and with EU legislation.

NWML
On behalf of the Secretary of State for Innovation, Universities and Skills

7 October 2008

Annex A List of Consultees

Annex B Representations Received and Government's Response to them

Annex C Final Impact Assessment

Annex D Report on Approved Verification of Liquid Fuel Dispensers

Annex E Pre-consolidated Text

Annex F Outline of the Approved Verification System

Annex A — List of Consultees

Aeroplas (UK) Ltd
Alpeco Ltd
Association of British Chambers of Commerce
Association of Local Authorities In The North East
Association of London Government
Association of Licensed Free Traders
Avery Weigh-Tronix
British Chambers of Commerce
British Retail Consortium
BSI Management Systems
BVQI
Confederation of British Industries
Consumers Association
Convention of Scottish Local Authorities
Dept of Trade & Industry
Fairbanks Environmental Ltd
Federation of Petroleum Suppliers Ltd
Food and Drink Federation
Forecourt Equipment Federation
Forum of Private Business
Gambica
Garage Equipment Association
Gilbarco Veeder-Root Ltd
H M Customs & Excise Excise Policy Group
Institute of Consumer Affairs
ISO QAR
Jersey Trading Standards Department
LACORS
Lloyds Register
Manchester Metropolitan University
Mitchell & Cooper Ltd
Northern Ireland Office
NWML ACB
Office of Fair Trading Consumer Affairs
Petrol Retailers Association
Processing & Packaging Machinery Association
Retail & Forecourt Solutions Ltd
Scales, Spares & Services Ltd
Schering Weighing Ltd
Scotland Office
Scottish Executive
SGS Yarsley
Trading Standards Institute
UK Petroleum Industry Association
UK Weighing Federation Ltd
UKAS
Wales Office
Welsh Assembly Government
Welsh Consumer Council
Welsh Local Government Association
West Sussex County Council

Annex B — Representations received and Government's response to them

RESPONSES RECEIVED

1. Thirty substantive responses to the proposals were received. Sixteen responses (53%) were from the enforcement community, including responses received from individual Local Authority Trading Standards Departments, regional Trading Standards groups, the Trading Standards Institute (TSI) and the Local Authorities Co-ordinators of Regulatory Services (LACORS). Twelve responses (40%) were received from the business community – approved verifiers (manufacturers, installers and repairers) and petroleum retailers (trade associations and individuals). One response was received from an academic institution and one from another Government department. Consultation questions are listed in Annex 1.

STRUCTURE OF THIS DOCUMENT

2. A number of general comments were repeated in answer to several of the questions, and these have been included at the start of this paper under two headings: responses in support of the proposals and responses opposing the proposals. Points made which relate more specifically to particular questions posed in the consultation document are then summarised separately,

RESPONSES IN SUPPORT OF THE PROPOSALS

3. The proposal is a natural development of the deregulation of the economy. Businesses have demonstrated since 1999 their ability to provide approved verification services which maintain the necessary levels of consumer protection. The proposal would have the benefits of minimising the burdens on business and releasing scarce Trading Standards resources to focus on business compliance and tackling rogue traders.

4. The current situation of having to organise and pay for two sets of expensive individuals when pumps are re-calibrated is costly and inefficient. Costs would be decreased because maintenance service providers would be able to complete the work on the same day, without the need for a return visit with an inspector.

5. It is inconsistent that the existing classes of approved verifiers, who are permitted to carry out self verification following repair of equipment, cannot also conduct self verification following maintenance (adjustment).

6. Existing approved verifiers have established their competence and integrity as shown by the research carried out by the working party[10]. Respondents feel that there are sufficient controls in place to protect consumers when making fuel purchases, in particular the requirement for approved verifiers to inform Local Authorities when verification has taken place.

7. There is no evidence to suggest that approved verifiers are not performing verifications satisfactorily and fully in accordance with the requirements of the appropriate type approval certificates and the applicable regulations when carrying out installation or repair. There would seem to be no reason why those approved verifiers should not meet their obligations in respect of compliance with type approvals and regulations when dealing with instruments and systems that they have adjusted during routine maintenance/servicing.

8. Quality systems are a requirement of being an approved verifier whereas they are optional for trading standards carrying out verification.

Benefits to Retailers

9. The cost of regular checking and recalibration could be incorporated into any existing annual maintenance contract.

10. A reduction in cost could lead to retailers having pumps checked and adjusted more often, as the benefits of doing so would outweigh the costs, and this in turn could lead to more accurate measurement of fuel.

11. Stock reconciliation would be improved and, consequently, there would be improved ability to detect leakage which could have both environmental and health and safety benefits.

12. Regulatory / financial burdens would be reduced.

13. Quicker verification would lead to no loss of use of the equipment; this would particularly benefit the smaller retailer.

14. If a retailer could afford to have his pumps checked more often then this could lead to a reduction in the numbers of site closures through unsustainable losses.

Benefits to Trading Standards Departments

15. Inspector time would be released for enforcement of other 'higher-risk' duties.

16. Some pressure would be relieved from existing staffing difficulties.

[10] The Working Party report on verification of petrol pumps is attached at Annex D.

17. Existing planned work schedules would not be subject to ad hoc disruption as a result of responding to a request for a verification appointment.

Other Benefits

18. Fewer people on visits means fewer car journeys and less impact on the environment.

19. If retailers wish to wait until adjustments can be scheduled, fewer pieces of equipment would be 'out of service' at the forecourt at any given time.

RESPONSES OPPOSING THE PROPOSALS

20. Respondents who were against the proposal argued that there were three main areas where difficulties lay:

    - loss of consumer protection
    - impact on local authorities
    - disadvantages to petrol retailers

    The points made by respondents in each of these areas and the government's responses to them are detailed below.

Loss of Consumer Protection

"Cut-backs"

21. The only instrument type subject to the regular practice of 'cutting back' (adjusting equipment such that any errors are no longer in the customer's favour) is the petrol pump. Inspectors currently carrying out inspections of petrol pumps that have been adjusted and reverified regularly have to request that pumps are re-adjusted because there are negative errors only. The Regulations state that the cut back should be made such that the errors are as close to zero as possible, then three consecutive measurements are made and the errors should neither be all positive nor all negative. The removal of inspectors from the cut-back (adjustment) process eliminates impartiality and puts consumers at risk.

22. Stakeholders also said that they had concerns that with an approved verifier being employed on behalf of the site owner there was a real risk of conflict of interest, and that taking the inspector out of the equation made for a loss of independence and confidence in the process of adjustment. They were unsure why the arguments relating to inspectors not being allowed to carry out adjustments did not equally apply to self verifiers.

23. Respondents also felt that approved verifiers could be subject to pressure to deliberately set instruments to minimum tolerance, thus providing as small a measure as is legally permissible to the consumer. In the petrol industry it is unlikely that an ordinary motorist would notice as much as a 5% deficiency (a 5% deficiency of course would not be legal), and, without

regular routine inspections, currently provided by inspectors when asked to carry out reverification following adjustment, occurrences such as this could escalate in frequency and magnitude.

24. Respondents felt that the cost to the consumer of petrol pumps delivering short measure would outweigh the savings made to the petroleum industry.

Government Response

25. *Approved verifiers can already verify equipment they have installed or repaired. They are considered fit and proper persons to do so. NWML takes seriously any suggestion that approved verifiers under the existing scheme are not complying with applicable legislation or the terms of their approvals. However, when, in response to the allegations made against approved verifiers by some respondents, NWML asked for evidence to substantiate claims that they set instruments to dispense the minimum amount possible, no such evidence was forthcoming.*

26. *The retailer will still have the choice to use trading standards rather than an approved verifier if they so choose*.

27. *Fuel dispenser approved verifiers, of which there are currently five, and inspectors agreed at a meeting at NWML that either an inspector or an approved verifier could in theory be put under pressure to "cut back" a pump to maximum negative tolerance in this way, but that both had strong incentives not to succumb to such pressure. In particular, as far as approved verifiers are concerned, apart from the matter of personal integrity, if they were caught doing this then the fitter would lose his job and/or the approved verifier's company could lose its approval. The petrol retailer has a requirement for accurate measurement in order to detect leaks; therefore it is not in his interest for the pumps to be adjusted to other than zero. Approved Verifiers are encouraged to report any illegal activity they may observe, or any improper pressure they may be subjected to in the course of their duties, either to NWML or the local trading standards department. There is an electronic notification system set up for this purpose on the NWML website.*

28. *Therefore we do not feel there will be any loss to consumer protection.*

Reduced inspector activity

29. If there is a significant loss of revenue by Local Authorities then this could lead to a reduction in staffing levels and hence increased risks to consumers and businesses in many fields. Respondents strongly believed that a consequence of extending the provisions to include self verification after the activity of adjustment could be a reduction in the number of inspectors of weights and measures conducting metrological and other consumer protection activities resulting in a reduction in wider protection. They wanted the Minister to be aware that because few Local Authorities

employ inspectors exclusively on verification work or Weights and Measures duties in general, they may seek additional funding to compensate for the financial losses and to minimise the impact on consumer protection services for the public and business.

30. Some stakeholders also thought that consumers could be disadvantaged, as the independent monitoring that is currently provided by inspectors would no longer be carried out. This could lead to very little independent checking of work done by approved verifiers. In addition, the current situation is that when requests for verification following adjustment are received, most Local Authorities follow an established good practice – that the meters are tested and stamped, then, if the site is due an inspection, the remaining meters are tested, thereby saving an additional trip to the site. Inspection levels may decrease if all of the work is done by an approved verifier and there is a greater risk of petroleum-related incidents, pricing discrepancies and other infringements as fewer inspection visits will be conducted.

Government Response

31. *Local Authorities have a statutory duty to inspect weighing and measuring equipment (including petrol pumps) used for trade in their areas (and are funded to do carry out this duty). This should not be dependent on the activity of verifications being carried out. Local Authorities receive notification of all work carried out by fuel dispenser approved verifiers in their area to provide the possibility for them to check the work carried out as they think appropriate. Approved verifiers are subject to annual audit and spot checks, requirements that are not applied to inspectors. Just as inspectors check up on retailers as well as on those responsible for maintaining petrol pumps, approved verifiers sometimes pick up problems with retailers and let Local Authorities know about non-compliance. Approved verifiers already work well with some Local Authorities on this issue, and would be happy for there to be a process whereby they could report problems to the Local Authority. Approved verifiers and Local Authority representatives are working together to provide such a system.*

Approved verifiers' technique

32. Approved verifiers might only carry out a simple measure test, without checking whether the rest of the pump conforms to the Regulations. Due to time constraints they might also only carry out a 'fast' delivery, which does not show up wear on a meter in the way that a 'slow' delivery does.

Government Response

33. *The requirements for verification and testing under the regulations are the same for approved verifiers and inspectors. Following the written consultation NWML asked for evidence to support the suggestion that approved verifiers only carry out a simple measure test, but it has not been*

provided. There is no evidence that inspectors are necessarily under less time pressure than approved verifiers.

Commercial pressures

34. Commercial relationships are often built up between the retailer and the self verifier. The retailer may have a position of power and may require that meters are not replaced following wear and tear as this may be expensive, particularly if the meter is under-measuring.

Government Response

35. *Following the written consultation NWML has asked for evidence to support this comment, but no supporting evidence has been provided.*

36. *If the meter is operating within the parameters defined by the legislation there is no obligation for it to be changed. This applies whether an approved verifier or an inspector is inspecting the meter. If the meter is operating outside the legal tolerances and cannot be repaired then it would be illegal to continue to use that meter. We have no evidence to suggest approved verifiers would break the law in this way.*

Other objections

37. Some stakeholders did not agree with the findings of the partial RIA, with respect to the effect on consumers and the amount of savings that could be made. They thought it unlikely that consumers would suffer any delay in equipment being returned to use pending verification, as fuel dispensers awaiting adjustment which were already within legal tolerances could remain in use until such time as the inspector attends the site for the adjustment and subsequent verification. There are also concerns over whether consumers are aware of this regulatory change and that cut-backs are made to ensure that no product is given away. Would consumers be aggrieved if they knew the system was open to abuse, for example by engineers working in collaboration with petrol stations?

Government Response

38. *We accept that any delays suffered by consumers would result from a conscious decision by the retailer not to operate a pump which is inaccurate (but dispensing within legal tolerances) rather than from the operation of the law, and that the detriments arising to individual consumers in such cases are likely to be small.*

39. *The consultation document was sent to the Consumers' Association, Institute of Consumer Affairs, OFT Consumer Affairs and the Welsh Consumer Council, none of which responded, suggesting a low level of consumer interest.*

40. *It is not unreasonable for cut-backs to be made so that a retailer is not giving away free product, provided that this is done in compliance with the relevant legislation and type approvals.*

41. *NWML does not consider it any more likely that an approved verifier engineer would work in collaboration with a petrol retailer to defraud the consumer than an inspector.*

Impact on Local Authorities

Financial Impact

42. Local Authorities charge a fee for verification to recover their costs. The more retailers make use of the services of approved verifiers to do verification work, the less verification fee income will accrue to Local Authorities. All of those who expected that local authority costs would increase as a result of the draft Order were from the enforcement community. They gave three reasons for their views. The first was that the cost of maintaining the test equipment within a local authority will remain the same, but income from its use will decrease. The second was that verification income is returned to the Trading Standards Service provision budget. Thirdly, there would be an increased cost of inspecting premises when previously an inspection could have been carried out at the same time as verification. If the level of service is to remain the same the cost to the taxpayer will go up in proportion to the decrease in revenue from the provision of verification services. Respondents commented that the concerns expressed by the working group regarding the impact on the operation of Local Weights and Measures Authorities, and particularly in respect of the provision of metrological services, have not been addressed. They were not convinced by the assurance that loss of verification income will in fact be compensated for by funding for "surveillance activities", and commented that no account appears to have been taken of the fact that periodic reverifications on forecourts provide both the opportunity and incentive for the LWMA to undertake routine inspections.

Government Response

43. *Section 5 of the Weights and Measures Act 1985 places a duty on the Local Authority to provide such standards, testing and stamping equipment as are proper and sufficient for the efficient discharge of their functions in their area. Each Local Authority is not required to provide all of the possible combinations of equipment itself, as section 5 also permits the Local Authority to make arrangements to hire or borrow this equipment (from another Local Authority, a commercial provider or NWML). The Act provides for a great deal of flexibility and the amount of testing equipment maintained by any authority depends on the portfolio of businesses in any geographic area; the risk of failure of any weighing and measuring equipment in those businesses; and how the authority prioritises weights and measures work.*

44. *The intention of the provision for local authorities to charge a fee for verification work was that they could recover the cost of that verification work, not subsidise inspection work that is funded by the central government revenue support grant and council tax. The new measure will not diminish the sort of synergies trading standards may derive more generally when combining inspection visits e.g. combining food hygiene with weights and measures checks in a large supermarket.*

45. *When the 1999 Order was made it was initially assumed that the activity of 'post-adjustment' verification would be included in the work which approved verifiers would be permitted to do. The 1999 Order permitted approved verifiers to verify equipment which they had manufactured, installed or repaired, with no reference being made to adjustment. After the order was made, the view was taken, on legal advice, that, since equipment which is within the legal tolerance could not properly be considered to be "broken", the concept of 'repair' could not properly be considered to cover adjustment within tolerance. However, in calculating the amount of money to be paid to local authorities as a result of the changes introduced by the 1999 Order, account was taken, in line with the original assumption that the Order would permit post-adjustment verification, both of local authorities' anticipated loss of post-adjustment verification fee income and of any increased burden of inspection because of the need to check up on post-adjustment verification work. This money has continued to form part of central Government support to local authorities since that time, even though the assumptions about the amount of extra work entailed by the approved verifiers scheme have generally proved to be over-estimates.*

Loss of expertise

46. With a significant loss of revenue anticipated by trading standards a reduction in staffing levels and loss of local services such as metrology laboratories could occur. Less verification could mean a loss of expert knowledge in this area. A decrease in the number of inspectors could lead to a less speedy response from departments when required, or even inability to provide the service at all. It should perhaps be recognised that the resource may not be available in the future, as indeed it is not in respect of NAWIs[11] in many areas, for the simple reason that the Local Authority cannot justify the cost of providing the service.

47. Trading Standards' involvement in the verification of weighing and measuring equipment would reduce, resulting in a loss of expertise. This could impact on their ability to carry out other duties under the Weights and Measures Act, and market surveillance, along with investigation of business and consumer complaints.

[11] Non-Automatic Weighing Instruments e.g. shop scales

48. There is a high probability of the loss of working relationships with those businesses choosing to use approved verifiers.

49. Loss of local authority intelligence as to the type and whereabouts of weighing and measuring equipment in their area, in order for the checks to be performed.

Government Response

50. *Metrology competence is the responsibility of the employing local authorities. However NWML provides support for the metrology qualification to trainee inspectors and offers metrology training courses (including verification of fuel dispensers). NWML have liaised with TSI and they have agreed to assign continuous professional & personal development CPPD hours where appropriate to NWML's courses.*

51. *There may be a loss of working relationships with businesses, but if the business is using an approved verifier then a relationship is not of such high importance in any case.*

52. *Fuel dispenser approved verifiers are required to notify the Local Authority of any verifications of weighing or measuring equipment intended for trade use. This requirement will continue. The extension of an approved verifier's approval such that he can verify equipment he has adjusted does not affect the Local Authority knowledge of where such equipment has been verified.*

Lack of "level playing field"

53. The Weights and Measures Act (section 74) says that an inspector can not adjust any weighing or measuring equipment. This is due to the importance of inspectors being independent and impartial. Some stakeholders commented that it is unfair that this does not apply to a manufacturer, installer or repairer, and that there is not a 'fair and level playing field' when different rules apply. They said that the proposal to allow self-verification after adjustment goes against the principles of the primary legislation and will reduce consumer confidence.

Government Response

54. *If an approved verifier is allowed to carry out installation or repair and then verification there is no reason not to allow him to carry out adjustment and then verification. The risk to the consumer is not increased.*

55. *The inspector maintains his current role – that of independent inspector of equipment at a level of inspection that the Local Authority considers necessary. If (as many respondents contend) there is a need for inspectors to operate as an independent and impartial check on the activities of, amongst others, approved verifiers, it is arguable that the value of that check would be eroded by giving them the power to adjust*

equipment themselves. Ministers take no position at this stage as to whether there is a case for removing the restriction imposed on inspectors by section 74, but if there is, the issues raised by such a change would go well beyond the scope of the draft Order, and would more appropriately be considered as part of some future and wider-ranging reform of the GB weights and measures regime. Meanwhile it is worth noting that as the law stands currently, it may be possible for a local authority, or a group of local authorities, to set up a company offering weighing and measuring equipment repair services, and for such a company to become an approved verifier, but it is not clear whether, or on what terms, such a company could use the services of inspectors.

Disadvantages to petrol retailers

56. There are concerns that self-verifiers' fees will increase once the Regulations are changed. Respondents also thought that the draft Order would shift the decision as to whether to adjust within tolerance from the retailer to the approved verifier, and if the decision on whether to adjust a petrol pump or not was up to the self-verifier then he could make unnecessary adjustments for the purpose of increasing revenue. In some instances the decision to replace a worn meter may be made by the self-verifier who then charges the retailer for the new installation. This is a conflict of interest and is unfair to some petrol retailers. Stakeholders also disagreed with the Partial RIA statement that the proposals do not impact on "Equity and Fairness", as the cost of verifications in rural communities could increase due to self-verifiers not considering the work to be economic, or only undertaking it at significant cost. They also noted that only one Small Firms Impact Test had been undertaken.

57. Larger chains of forecourt owners would be in a position to negotiate discounts from approved verifiers, whereas smaller independents would not have this buying power. As there could also be an increase in Trading Standards fees, due to economies of scale being lost, this could mean an increase in costs to the small, independent site owner.

58. There is a risk that small businesses may be led to believe that approved verifiers may be the only providers of verification services, and that the trading standards service is no longer an option.

Government Response

59. *The approved verifier is likely to charge appreciably less for the combined adjustment and verification service when this measure is introduced than retailers pay in approved verifier and inspector fees at present, because fewer people and visits will be involved in doing the same work. If this is not the case, the approved verifier is unlikely to "win business" from the local authority.*

60. *Non-statutory tests are carried out at the instigation of the owner or operator rather than at the suggestion of the verifier. The owner or*

operator has to provide the authority for the approved verifier to work on equipment in the first place. The approved verifier presents the figures on errors to the site owner and it is up to the owner to decide whether to have the adjustments made or not if the pump is "within tolerance".

61. *Approved verifiers may suggest to the retailer that a meter needed to be changed if it was not serviceable, but it would be up to the retailer to make the final decision. If adjustments were made unnecessarily there would be no subsequent improvement to wet-stock management, which is one of the main drivers as far as retailers are concerned. At a meeting at NWML, the Petrol Retailers Association advised that the industry is small, and word would soon get about if a company was acting dishonourably.*

62. *If self-verifiers' fees increase, or are higher for work carried out in rural communities, then a retailer might find it cheaper to use the Local Authority. The price will be determined by the economic factors of the marketplace.*

63. *The forecourt owner is free to choose on a commercial or any other basis between using an approved verifier or the local trading standards officer. The Petrol Retailers' Association (PRA) which represents small, independent site owners fully support the proposal, which they would not do if it was likely to result in increased costs to their members.*

64. *No evidence has been provided in support of the claim that small retailers might be led to believe that verification services are only available from approved verifiers.*

65. *NWML has close links with the industry and information is disseminated very quickly. Information on "self-verification" is freely available on the NWML website. Local Authorities still carry out a significant amount of verification following installation and repair and they remain free to advise businesses of the services they can provide.*

STATUTORY QUESTIONS

Other questions

66. The Legislative and Regulatory Reform Act requires that three specific questions are included in any consultation on an LRO. These relate to the proposal's impact on necessary protections, on rights and freedoms and on burdens.

Necessary protections

67. The first of the statutory questions is: *Does the proposal put forward in this consultation exercise maintain necessary protections for those affected?*

    Responses to this question were as follows:

Yes	50%	(15 respondents)
No	34%	(10 respondents)

The remainder (5 respondents, 16%) did not answer the question.

Comments made by those responding YES

68. Cheaper verification and adjustment means that more dispensers will be checked and corrected more often.

69. There are already several measures in place to maintain the integrity of the verification process including the requirement for verifiers to be approved and annually inspected as well as implementing an externally assessed quality management system. The approval process for approved verifiers combined with the proposal to retain the requirement to notify fuel dispenser verifications are sufficient safeguards.

70. Those people approved to perform certain tasks under the proposals will be working within an independently assessed quality management system.

71. Advanced statistical stock reconciliation techniques and services allow the behaviour of individual dispensers to be monitored and corrected. The availability of cheaper verification and adjustment services maximises the benefit of this new statistical service.

72. The existing requirement to send documentation to Local Authorities after self-verification has taken place provides them with the information necessary to fulfil their statutory duties.

Comments made by those stakeholders responding NO

73. In addition to the points noted above in relation to consumer protection generally, the following comments were made.

74. There is no compelling evidence to support the view that the protection provided by the existing regulatory regime is no longer needed. No trials under controlled conditions have been conducted. To replace checks and balances that are tried and tested with those that are not means that the proposal is flawed. For the public to benefit some checks on what is happening must be carried out, and removing inspectors from the verification process will reduce the level of involvement of the customers' only champion.

75. The monitoring carried out as part of the working group investigation was not sufficient and anomalies were found. There is not enough evidence to conclude that self-verification following adjustment would be satisfactory.

Government Response

76. *NWML disagrees, as the working party of 2003 (comprising the fuel dispenser industry and Trading Standards representatives) agreed that the system for monitoring of approved verifiers worked, and that it is possible for approved verifiers to conduct the verification of dispensers in an appropriate manner which resulted in no loss of confidence in the equipment to either the consumer or trader. Inspectors are still able to carry out targeted inspection visits on a sample of approved verifiers' work to check that the equipment has been correctly verified.*

77. *The working group investigation was carried out at a time when the members agreed an adequate number (over four thousand) of self-verifications had taken place. At the time of the investigation the group agreed the investigation was sufficient and only a small number of anomalies were found. Only one pump that had been self-verified returned a delivery error outside the permissible errors, and that pump was delivering in excess. If a similar survey were carried out with inspectors checking the work of other inspectors it is possible that similarly isolated anomalous results would be found.*

Comment

78. There is a real possibility of undue pressure being put on approved verifiers to adjust equipment so that the errors are all negative (i.e. all in favour of the seller), rather than meeting the requirement of the Regulations that the errors are a mix of positive and negative. Customers have no way of being involved at all unless their champion, an inspector, is involved in the process.

Government Response

79. *Non-statutory tests are carried out at the instigation of the owner or operator rather than at the suggestion of the verifier. At a meeting at NWML, the Petrol Retailers Association advised that the same assumed pressure exists already for verification after repair – with no known consumer detriment.*

80. *Industry has confirmed that it actually wants the error to be as close to zero as possible for stock management reasons. These include environmental protection, by monitoring for potential leaks. In addition, if an approved verifier were to comply with a request to exploit tolerances the fitter could lose his job or the company could lose its approval, putting it out of business.*

Comment

81. Self-verifiers do not always carry out full metrological checks, and faults with equipment not associated with the job in hand may be missed or overlooked because they are outside the remit of the verifier.

Government Response

82. *Fuel dispenser approved verifiers work almost exclusively with fuel dispensers and their training and experience makes them no less likely than inspectors to identify other problems. Equipment is only re-stamped if the whole system is compliant and is functioning correctly.*

Comment

83. Local authorities faced with reduced income and increased costs for maintaining a metrology service will offer less market surveillance and proactive education and advice. They would also have a reduced ability to agree levels of service. There is also the threat that in some uneconomic geographical areas local authorities will have to charge much more than they do at present to guarantee a service to business.

Government Response

84. *Local Authorities have already received compensation for any loss of earnings relating to the proposed measure and some have gained additional income from NWML on a contractual basis to check the work of approved verifiers 'in the field'.*

85. A number of authorities will significantly reduce the amount of petroleum forecourt inspections they undertake, although the introduction of nationally agreed inspection targets could go some way towards providing protection. Incorrectly adjusted flow meters could remain in use for a significant time without being picked up.

Government Response

86. *A LA has a statutory duty to inspect in its area. Approval of approved verifiers to adjust has no bearing on inspection frequency. The priority and funding of weights and measures duties and consumer protection is a matter for the local authority. NWML does not believe the proposal will increase the risk of non-compliance.*

Rights and freedoms

87. The second statutory question is: *Does the proposal put forward in this consultation exercise prevent any person from continuing to exercise any right or freedom that he/she might reasonably expect to continue to exercise?*

88. Only one comment was made under this heading: that the wider public would lose the right to have an unbiased witness involved in the process which decides whether or not they get a fair deal.

Government Response:

89. *The wider public does not have a right to an unbiased witness present at every transaction. They will not lose the right to an independent arbiter, since such a right does not exist at present. The draft Order will not change the fact that the accuracy of the relevant equipment is subject to statutory control and that the performance of approved verifiers is monitored by local authorities and NWML.*

Burdens

90. The third statutory question is: *Does the proposal put forward in this consultation exercise impose or re-enact any burdens on those affected?*

    The responses were as follows:

No	9 respondents	30%
Yes	5 respondents	16%

    The remainder of the respondents (53%) did not answer the question directly. Some further comments were made which duplicated in substance those noted above in relation to the financial impact on local authorities.

CURRENT VERIFICATION ACTIVITY

91. Local Authority respondents were asked: *(1) How many verifications of per year do you conduct, following adjustment? (2) How much do you charge per verification? (3) How do you view the proposals impacting upon your current responsibilities?*

92. The number of verifications carried out per year following adjustment varied considerably, from 40 to 500. The fees are charged in accordance with the LACORS recommended fees, and are set at a level to cover costs rather than to make a profit. The fee for the first nozzle is about £87, and for each additional nozzle about £53.

93. Approved verifier respondents were asked: *(1) how much do you anticipate you would charge for a verification following adjustment? (2) how much time is lost, on average, waiting for an inspector to attend a site?*

94. Respondents thought it likely that the costs would decrease as only one visit to a site would be needed rather than two.

95. The amount of time between requesting a visit from an inspector and the visit taking place varied between authorities. The average was around 7 – 10 working days. Another factor here is the amount of time spent trying to organise a visit to fit in with the schedules of all those involved.

Annex 1

Questions Asked in the Consultation Document

Question 1 – are you in favour of permitting the existing classes of person to carry out self-verification following adjustment of equipment?

In favour	60%	(18 respondents)
Not in favour	30%	(9 respondents)
Don't know / blank	10%	(3 respondents)

Question 2 – if the reform was implemented would you expect to have an increase or reduction in costs? How much per year?

Decrease	40%	(12 respondents)
Increase	23%	(7 respondents)

The remainder (11 respondents, 37%) did not know, expected no change in costs or did not answer the question.

Question 3 - Are there any other benefits that would be gained from this proposal?

Question 4 – In your opinion, what are the potential disadvantages that might arise from this proposal?

Question 5 – Does the proposal put forward in this consultation exercise maintain necessary protections for those affected?

Yes	50%	(15 respondents)
No	34%	(10 respondents)

The remainder (5 respondents, 16%) did not answer the question.

Question 6 – Does the proposal put forward in this consultation exercise prevent any person from continuing to exercise any right or freedom that he/she might reasonably expect to continue to exercise?

Question 7 – Does the proposal put forward in this consultation exercise impose or re-enact any burdens on those affected?

No	9 respondents	30%
Yes	5 respondents	16%

Question 8 – Local Authorities only: (1) How many verifications of per year do you conduct, following adjustment? (2) How much do you charge per verification? (3) How do you view the proposals impacting upon your current responsibilities?

Question 9 – Approved verifiers only: (1) how much do you anticipate you would charge for a verification following adjustment? (2) how much time is lost, on average, waiting for an inspector to attend a site?

Question 10 – do you have any other comments on the proposal put forward in this consultation exercise?

Annex C — Final Impact Assessment

Department /Agency:	Title:	
National Weights and Measures Laboratory	**Impact Assessment of Legislative Reform Order to amend the Weights and Measures Act 1985**	
Stage: Final	**Version:** Final	**Date:** 6/10/08
Related Publications:		

Available to view or download at:

http://www.nwml.go.uk

Contact for enquiries: Christine Munteanu **Telephone:** 020 8943 7231

What is the problem under consideration? Why is government intervention necessary?

Weighing and measuring instruments used for trade are required to be verified by either an inspector of weights and measures, or an approved verifier. Both under the Weights and Measures Act 1985 and Regulations implementing EC Directives on weighing and measuring equipment, approved verifiers can verify equipment following manufacture, installation or repair, but only inspectors can verify after minor but commercially significant adjustments have been made, so an amendment to the act is needed to remove this unintended anomaly.

What are the policy objectives and the intended effects?

To remove the burden of requiring the services of both an inspector and an approved verifier where relevant equipment is being adjusted to read more accurately, thereby not only directly reducing costs to businesses but also assisting improved stock control and reduction in the administrative burdens involved in dealing with two parties rather than one. As the main affected parties are petrol retailers this would ease pressure on retail costs.

What policy options have been considered? Please justify any preferred option.

i) Leave matters as they are.

ii) Amend the legislation as recommended by the Working Party set up to review this issue by Ministers.

The proposed Order extends the scope of the work that may be undertaken by approved verifiers. This will benefit business without materially increasing the risk to safety or consumer protection.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Autumn 2011

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



..... Date: 7 October 2008

Summary: Analysis & Evidence

Policy Option:	Description:

COSTS

ANNUAL COSTS	Description and scale of **key monetised costs** by 'main affected groups'
One-off **Yr**	Local Authorities estimate they would lose £500,000 in fee income resulting from approved verifiers being able to self-verify, instead of trading standards only being able verify the work of the companies that carry out adjustments, but they have already been compensated for this in previous settlements.
£	
Average Annual Cost (excluding one-off)	
£	**Total Cost** (PV) £

Other **key non-monetised costs** by 'main affected groups'

BENEFITS

ANNUAL BENEFITS	Description and scale of **key monetised benefits** by 'main affected groups'
One-off **Yr**	By reducing the costs of verification after adjustment, and the additional costs placed on the retailers, estimated at a further 25% of the inspectors' costs, businesses would directly save £625,000, minus the costs verifiers charge to complete the verification.
£	
Average Annual Benefit (excluding one-off)	
£ **£615,000**	**Total Benefit** (PV) £

Other **key non-monetised benefits** by 'main affected groups'

Petrol retailers would gain greater stock control, have less down-time, and have lower administrative burdens, offering small but real improvements to cost-control, safety management, and helping competition as these burdens fall harder on smaller retailers.

Key Assumptions/Sensitivities/Risks

These proposals assume that the vast majority of petrol retailers take the opportunity to verify at the time of adjustment.

Price Base	Time Period	**Net Benefit Range** (NPV) £	**NET BENEFIT** (NPV Best estimate) £

What is the geographic coverage of the policy/option?	Great Britain
On what date will the policy be implemented?	Octber 2008
Which organisation(s) will enforce the policy?	NWML
What is the total annual cost of enforcement for these	£ minimal
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No

What is the value of the proposed offsetting measure per			£	
What is the value of changes in greenhouse gas emissions?			£ small but real	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro **n/a**	Small **n/a**	Medium **n/a**	Large **n/a**
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase -
Increase	£ N/A	Decreas	£ N/A	**Net**	**£** N/A

Kev:	**Annual costs and benefits: Constant Prices**		**(Net) Present Value**

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Impact Assessment for the Legislative Reform (Weights and Measures) Order 2008

1 Introduction

This assessment estimates the costs and benefits of the proposed amendment to the Weights and Measures Act 1985 ("the 1985 Act"), which would allow approved verifiers of relevant equipment to verify such equipment after adjustments. This is particularly relevant to the maintenance of liquid fuel dispensers (petrol pumps), and therefore will primarily benefit petrol retailers by reducing verification costs and improving control of fuel dispensing.

2 Statutory functions of approved verifier

2.1 Section 11 of the 1985 Act requires certain classes of weighing and measuring equipment (e.g. shop scales, petrol pumps, beer meters) to be tested, passed and stamped ("verified") by an inspector of weights and measures ("an inspector"), or an "approved verifier", as being fit for use for trade before being placed into use. The Deregulation (Weights and Measures) Order 1999 amended Section 11 of the 1985 Act to allow the Secretary of State to approve certain persons (manufacturers, installers or repairers of equipment to which Section 11 applies) to conduct their own verification of equipment in the same way as undertaken by an Inspector. The key change proposed is that, where equipment which is already operating within the prescribed legal limits of accuracy is adjusted, the approved verifier will be able to identify a discrepancy, adjust the meter, and then re-seal it for immediate use, rather than having to wait to carry out that operation in the presence of an inspector, and without the need to wait to coordinate a further visit in the presence of an inspector.

2.2 Section 11 as amended allowed approved verifiers to verify equipment following manufacture, installation and /or repair where such activities necessitate verification before relevant equipment is placed into use for trade, or returned into use for trade once it has been taken out of such use. This has had the unintended consequence of preventing approved verifiers verifying equipment when they have merely adjusted it to read more accurately. It further imposes a requirement for an inspector to conclude the process after adjustment by carrying out the verification, imposing additional and unnecessary costs on the retailer – in the form of:

i) the costs of the inspectors' visits;

ii) additional costs of the return visit and coordination of the necessary work by the approved verifier;

iii) costs that fall on the retailer as these further visits have to be worked into schedules and do not always take place immediately, leading to poorer stock control, additional management time etc.

The same restrictions exist where verification functions are conferred on approved verifiers by Regulations implementing the Non-automatic Weighing Instruments Directive and the Measuring Instruments Directive.

2.3 In practice, these burdens fall most heavily on petrol retailers, where the issues of accuracy, safety, and margins are most closely entwined. Concerns have been expressed that approved verifiers, more than inspectors, might find themselves under pressure to set and reverify dispensers that would not produce a fair measure. In response to similar concerns raised at the time of the 1999 Order, Ministers decided that, as a condition of any approval issued, approved verifiers must submit full details of any verifications undertaken to the relevant Local Authority within 5 working days. Inspectors therefore have the option of carrying out follow-up inspections to determine that verification has been carried out correctly.

2.4 Ministers also decided, in 2001, to set up a Working Group comprised of parties from industry and local authorities to monitor the self verification of liquid fuel dispensers. Their unanimous report concluded that the system of self-verification should be continued, and that the anomalous restriction on self-verification after adjustment be removed. [The report is at Annex D]

3 Impact of Current Restrictions

3.1 Petrol Pumps are calibrated, for verification, in accordance with regulations, with tolerances that allow between 0.5% in excess or in deficiency of the quantity indicated for quantities above Minimum Delivery (typically 2 or 5 L). However there is also a requirement that the errors must not all be in excess or deficiency throughout the range but must 'straddle strike' i.e. some must be negative and some must be positive at the 2, 5, 10 and 20 litre tests. For obliteration of the stamp (that is, when the pump moves outside legal limits and must be removed from use) the tolerances are 0.5% in deficiency and 1% in excess of the quantity indicated for quantities above Minimum Delivery. This is not just a matter of consumer protection, important though that is in such a sensitive area, but is also fundamental in assisting stock control, where wider variances might mask leakages, posing a serious safety and environmental risk. So retailers have many incentives to ensure that meter readings are as close to strike as possible – that is, give a true reading.

3.2 Against this, retailers currently have to consider the costs of allowing approved verifiers to adjust pumps that are already within the maximum possible errors of accuracy to give a true reading, given that this imposes a greater reverification fee as an inspector must attend the site to reverify, in addition to the commercial costs of maintenance. In practice, adjustment requirements tend to come to light during standard maintenance. Since these costs are incurred anyway it would make sense to allow approved verifiers to verify adjusted pumps, given that the same people are already permitted, during the same visit, to verify a pump they have installed or repaired and which has been out of service. The reason an approved verifier cannot adjust a pump immediately a discrepancy has been identified is that to do this they must break the seals which show pumps have not been tampered with, and

cannot reseal them since this can only be done after the verification, which they are not allowed to do. Hence the need to call in an inspector.

3.3 In short, the current restrictions impose additional and disproportionate costs on business for minor but important adjustments which are not incurred for major repairs or installations. The proposed changes would remove these costs, facilitate improved management of liquid fuel storage, and have other benefits as set out below.

4 Costs of the Current Regulations

4.1 These costs will vary over time, and will be related to the number of pumps in operation, the maintenance schedules etc of the retailer, the number of nozzles verified per visit and so forth (strictly speaking, verifications are 'per nozzle' rather than per pump). The most recent estimates from the Local Authorities through their representative LACORS (Local Authorities Co-ordinators of Regulatory Services), collected in January 2008, indicate that the local authorities believe that they would lose about £525,000 in fees for carrying out 4,500 verifications. Industry sources, although wary of revealing commercially sensitive information, have suggested that the additional costs they levy to co-ordinate and attend the adjustment, verification and reverification regimes currently add an additional 50% to the Local Authority costs. Retailers are therefore currently incurring nearly **£800,000** in costs directly attributable to the adjustment / inspection / reverification regime.

4.2 In addition, retailers can lose significant amounts of money where a pump dispenses, for example, the maximum allowed 1% over strike for any lengthy period of time. At current prices (£1.20 a litre) every 50 litres of fuel registered would lose the retailer 60 pence a fill. It follows that in a time of rapidly rising prices such pressures escalate. Even allowing for the fact that a retailer's business planning should have made some allowance for routine over-fill, given the nature of pump wear, such losses could prove significant for small rural retailers, precisely those most likely to have problems co-ordinating the visits of inspectors and verifiers.

4.3 There are additional benefits to retailers in not having to cope with two visits from approved verifiers and approved verifiers and inspectors. Improved stock control, as noted above, ensures that the retailer claims the right amount of tax from the consumer. The retailer will also be better able to spot possible leakages, improving safety and helping to protect the environment. In addition this change will help retailers decide how best to schedule maintenance visits – retailers might even invest some of the savings in more frequent calibrations.

4.4 Finally, there are small but real benefits in reducing the number of unnecessary journeys made by approved verifiers and inspectors, in promoting competition by reducing costs and improving margins for smaller, mainly rural, retailers, and useful safety improvements through better stock control. The measures should also help stimulate competition amongst approved verifiers, further driving down costs.

5 Costs of the proposals

5.1 Costs of the proposals to businesses. The proposals will give retailers the option of reducing overall costs by reducing the cost of reverification. They will only need to pay the costs of the approved verifiers, not both the approved verifier and inspector. However, approved verifiers will of course charge for their work in verifying equipment and then notifying Local Authorities of the verifications, as required for installation and repair work, but NWML is confident that these charges will be less than those of the Local Authorities as, for example, the approved verifier will not incur additional travel costs to carry out the verification and notification procedures.

5.2 Costs to Local Authorities. Local Authorities estimate they will lose £525,000 fees from loss of reverification work, which cover the costs of supplying the service. However, although it would be wrong to suggest that the local authorities are pleased, they recognise the strength of the case for making the proposed changes, and have in any case received compensation for the loss of this service since it was recognised that the Government intended to make such changes in line with the intentions of the legislation as originally envisaged. In addition, although many local authorities (but not all) take a pessimistic view that they will lose all their reverification work they will still have the right, as with other verifications, to carry out reverifications after adjustment if the retailer wishes to continue to use their services, and it is not certain that all retailers will wish to dispense with their services.

6 Quality of the evidence

6.1 Following the realisation that the original amendments to the 1985 Act inadvertently imposed costs on business by failing to remove all the costs that they were supposed to remove, NWML, Local Authorities, the approved verifiers, and the Petrol retailers have considered this matter in the context of the overall verification regime, which has been endorsed. All parties recognise that the current situation is unsatisfactory and needs to be remedied. Taking account of the information gathered by the Working Group, of consultations and discussions since, and of the overall framework in which petrol retailing occurs, NWML has decided to present a case based on conservative estimates of the cost benefits to business, which accords with our experience of dealing with these issues in a regulatory framework, and with Local Authority experience, as well as information from approved verifiers and others. NWML believes that the recent evidence of fee income received by Local Authorities, which is the main indicator of the cost burdens on petrol retailers, is robust, and that the estimates of the additional costs that fall as costs from approved verifiers is reasonable, and to collect more detailed information in what is a commercially sensitive area would be both disproportionate and unnecessary.

6.2 Given the strength of the arguments from principle; the strong evidence of costs savings to business from removing a clearly anomalous restriction on approved verifiers; and the general and widespread support for the changes, NWML believes the evidence is sufficient to support the proposed changes.

A table setting out the summary of the costs and benefits to business of the proposed changes, compared with the current situation, is set out below.

Table 1: Costs and Benefits to Business of Proceeding with the Order

Agent	**£ annually now**	**£ annually under proposals**	**Annual savings to business**
Inspectors' fees	525,000	0	n/a
Approved verifiers' costs of accompanying Inspectors	265,000 (assumption 50% of inspectors)	0	n/a
Approved verifiers' costs of verification	0	175,000 (assume 33% of inspectors' fees)	n/a
Total burden	790,000	175,000	**615,000**

6.3 There are therefore real cost savings to the petrol retailers of over £600,000 annually plus additional cost benefits through improved stock control and so forth as set out above. The savings to business are not considered to be savings to administrative burdens.

7 Statutory Specific Impact Tests

After initial screening it has been concluded that there cannot be impacts upon minority groups, or by race, disability or gender, from the proposed changes. The Regulations are not expected to have any impact on the Convention Rights of any person or class of persons.

8 Small Firms Impact test

As noted above, the reduction in costs and improvements in stock control etc are marginally more beneficial to small and rural retailers. The Petrol Retailers Association, which represents the smaller retailers, fully supports this proposal. NWML also believes this measure will expand the market and promote competition between approved verifiers.

9 Competition Assessment

9.1 The proposed changes will simultaneously save petrol retailers costs and increase the market for verification work amongst the private sector suppliers. There are currently 5 approved verifiers for petrol pumps, two manufacturers approved to verify their own equipment, and three who can verify the relevant equipment after installation and/or repair. In addition, retailers can chose to

use the combined services of a non-approved adjuster and an inspector. Since this proposal would grow the market for verification, albeit that that is a subset of the overall maintenance market, NWML believes that new entrants may be attracted in, and that by removing a burden on business competition between the current market players will be enhanced as they will be keener to offer a competitive price for an all inclusive service. As noted above there will also be some benefits to small retailers which will enhance their competitive position.

10 Rural proofing

The proposed regulations have been scrutinised with the Countryside Agency's rural proofing checklist in mind. To the extent that the proposed changes impact upon rural communities we believe it will have a small but positive effect on the costs of maintaining rural petrol retailers and is thus beneficial.

11 Enforcement and Monitoring

11.1 NWML would continue to approve approved verifiers, and Local Authorities would still have the powers to inspect verification work, in line with the overall regulation of the dispensable of liquid fuel (and other relevant tradeables). NWML, in co-operation with the Local Authority Trading Standards Departments, has been conducting an annual programme of inspection visits on approved verifiers to ensure that they are conducting verification correctly and to the conditions of their approval. This programme is funded as part of the National Measurement System Legal Metrology Programme and will continue.

11.2 NWML would commit to reviewing the effects of the changes within three years, by autumn 2011, to confirm that the expected benefits had accrued to business and that competition was flourishing amongst approved verifiers.

12 Implementation and Delivery plan

The proposed changes would take effect from the day after the Order is made, enabling the Secretary of State from that date to approve existing approved verifiers, or new players who are manufacturers, installers or repairers of weighing or measuring equipment, for the purposes of verifying equipment after adjustment.. All parties understand the rationale and expect the change. NWML will issue relevant guidance to all parties as soon as the Order is made.

13 Summary and Recommendation

13.1 The Minister's Working Group gave unanimous support to the principle of self-verification, and recommended the removal of the anomaly that resulted from the drafting of the amendments to the 1985 Act which allowed

repairs and installation of relevant equipment to be self-verified but not adjustments of equipment still in use.

13.2 The evidence indicates that there will be clear financial and other benefits to business, with annual savings of £600,000. No evidence of likely detriment has been presented to oppose the proposed changes, and the basic economic case for making this change, which is in effect a deregulation action, seems clear. NWML recommend that Ministers proceed with the proposed Order, which will result in resource cost savings for business by permitting approved verifiers to verify equipment they have adjusted in line with the requirements of the regulations and their approvals. This is in line with government policy to reduce barriers to trade wherever possible.

Contact Point

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Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annex D — Report of the Working Party on Approved Verification of Liquid Fuel Dispensers (2003)

Summary

1. This report contains the conclusions and recommendations of the Working Group set up in response to the requirement to monitor the effectiveness of self-verification ("Approved Verification") of liquid fuel dispensers[12] ("petrol pumps"), made by the then Minister, Nigel Griffiths as a result of his concerns that permitting the self verification of petrol pumps may have resulted in an un-acceptable reduction in consumer protection.

Background

2. The Deregulation (Weights and Measures) Order was made in March 1999. Among other things, the Order amended section 11 of the Weights and Measures Act 1985 (the 1985 Act) to permit verification (that is the testing, passing as fit for trade, and stamping) of weighing or measuring equipment by persons other than inspectors of weights and measures. These classes of person are Manufacturers, Installers and Repairers of the equipment. In each case, before a business is granted an approval, NWML must be satisfied that the business is operating an appropriate quality system, has the competence and resources to undertake verification properly and is fit and proper to be so approved. In the case of third party installers and repairers they must also have access to necessary technical information (or technical support) from the equipment manufacturer to permit them to undertake the installation and/or repair correctly and to be able to ensure that equipment complies with the certificate of approval.

3. Since the making of the Order, 3 approvals permitting the verification of liquid fuel dispensers have been issued. The first approval was issued in August 2000 to a company whose business is the repair and adjustment of dispensers. They have subsequently carried out approximately 50 verifications. The second approval was issued in May 2001 to a company whose business includes the manufacture, installation and repair of dispensers, they have conducted approximately 4000 verifications. A third approval was issued in November 2001. This company, whose business includes the repair and adjustment of dispensers, have not yet undertaken any verifications.

4. During consultation on the draft proposals specific concerns were received about permitting self-verification of dispensers. A major concern being that self-verifiers, much more than inspectors, could find themselves under pressure to set and verify dispensers that would not deliver a fair measure. This is exacerbated by the normal situation whereby when re-fuelling a vehicle, normally the fuel tank already contains fuel which makes it impossible to re-measure the delivery. As a result it is

[12] Paragraph 56, Explanatory Memorandum, 11 May 1998

impossible for a consumer to determine whether an accurate measure has been delivered or for an inspector to check that delivery.

5. In response to these concerns the then Minister, Nigel Griffiths, decided that, as a condition of any approval issued, self-verifiers of dispensers must submit full details of any verifications undertaken to the local authority within whose area the equipment was located. The information includes details and location of the equipment verified, reasons for undertaking the verification and the results of the tests performed. The information has to be sent to the local authority within 5 working days of the verification. This requirement to notify makes the local authority aware that verifications have been undertaken in its area and provides the opportunity to carry out a follow-up inspection to determine whether the verification had been undertaken correctly.

6. The Minister also decided that a Working Group, comprised of interested parties from both industry and the local authorities (See Annex 1), be set up to monitor the self-verification of dispensers for a period of 12 months. At the end of that period, the group was to report back to the Minister on the success or otherwise of the provision of self-verification as conducted on dispensers.

PART I

Review of Evidence

7. The first meeting of the group took place in November 2001, following the grant of 2 approvals to businesses seeking to conduct the self-verification of dispensers and after an adequate number of self-verifications were being undertaken to permit meaningful monitoring to be started. The group met again in March, June, September and November 2002.

8. During these meetings the group discussed emerging evidence on the conduct of self-verification of dispensers. Initially problems were highlighted by local authorities of late arrivals of some notifications and insufficient information being included in others. To ensure that the correct information was being notified, the Working Group designed and agreed a standard form for notifications, the use of which has subsequently improved the situation.

9. At the second meeting of the group it was agreed that the 202 local weights and measures authorities be requested to conduct a full monitoring exercise for one month. Each authority was asked to conduct a follow-up inspection on each notification received in the month of May 2002. In reply to this request, over 120 authorities reported back to NWML. 81 authorities reported that they had not received any notifications. However, 31 authorities submitted data to NWML of inspections that they had conducted on 270 dispensers. Although the inspectors found a small number of anomalies, only one pump that had been self-verified returned a delivery error outside of the errors

permissible within the Regulations for the initial verification of dispensers and, in that case, the pump was delivering in excess.

10. The evidence provided by the exercise was considered at a meeting of the Working Group in September 2002. The Working Group agreed it had demonstrated that it is possible for self-verifiers to conduct the verification of dispensers in an appropriate manner which resulted in no loss of confidence in the equipment to either the consumer or the trader. The exercise also determined that following the earlier teething problems, in the significant majority of cases local authorities were receiving notifications of verifications within the 5 working day time limit stipulated within the requirements. Having notified the local authority, the self-verifier is aware an inspection visit may be made to determine that the equipment has been correctly verified.

Conclusions

11. No particular problems have emerged with the current requirements for self-verification of dispensers which have resulted in any reduction in the previous level of consumer protection.

12. The evidence considered by the Working Group shows that the self-verification of dispensers is working satisfactorily.

13. The Working Group is unanimous in its view that self-verification of dispensers should continue to be permitted.

14. The Working Group is unanimous in its view that the requirement for the self-verifier to notify the local authority of verification activities is vital in order to maintain the necessary protection and confidence.

PART II

Limitations of the existing provisions

15. The majority of verifications undertaken by inspectors of weights and measures, both before and subsequent to the introduction of self-verification, are to equipment that has been adjusted only to reduce or eliminate accuracy errors that do not in fact exceed the maximum permissible errors in the Measuring Equipment (Liquid Fuel and Lubricants) Regulations 1995[13]. There are a number of reasons why operators of filling stations seek to have their dispensers adjusted while they still comply with the requirements of the Regulations. The elimination of avoidable errors ensures accurate measurement in terms of “best available practice” and assists stock control, in particular avoiding the incorrect suspicions of leakage from storage tanks which can arise if there are significant differences between purchase and sales totals.

[13] SI 1995/1014

16. The scope of the current legislation only permits self-verification after the activities of manufacture, installation or repair. On the advice of DTI's legal department the interpretation of the activity of repair excludes the adjustment of equipment that already fully complies with the requirements of the Regulations. Where such a dispenser has only been adjusted, the subsequent verification must currently be conducted by an inspector of weights and measures. Industry questions this interpretation and is seeking to have the current provisions extended to permit self-verification following adjustment. The Working Group acknowledges that, in some instances, the differences between the "repair" and an "adjustment" of a dispenser is defined by nothing more than the initial delivery errors prior to adjustment.

17. Several local authorities have voiced concern that permitting adjusters to conduct self-verification will have an impact on the number of verifications that the local authorities undertake. The consequences of this could be a reduction in the number of inspectors of weights and measures employed in some authorities who will be undertaking not only metrological but also other consumer protection activities. The group unanimously agreed this could lead to a reduction in wider protection.

18. Industry believes permitting adjustments under the self-verification procedures will result in reduced costs to site operators which will encourage them to have their dispensers checked and adjusted more frequently.

19. Both the local authorities and industry have submitted papers to the Working Group detailing their views on the effect of extending self-verification to adjusters. These papers are attached at Annexes 1 and 2. [NWML note, 2008: Annexes to 2003 Report not included here.]

20. The Working Group is agreed that there is no technical reason not to allow self-verification after adjustment. A business seeking to conduct its own verification following adjustment of a dispenser would be expected to comply with exactly the same requirements as those for a repairer of equipment. Consequently, there should be no loss of protection or confidence in the measuring system or in consumer protection.

Conclusions

21. The Working Group is of the opinion that the consequences of the current interpretation of a "repair" as excluding the activity of adjustment has limited the potential ability of the Order to reduce burdens on industry.

22. The Working Group is agreed that there is no technical reason not to permit self-verification of petrol pumps following the activity of adjustment.

23. The group unanimously agreed that the consequences of extending the provisions to permit self-verification after the activity of adjustment could be a reduction in the number of inspectors of weights and measures

conducting metrological and other consumer protection activities resulting in a reduction in wider protection.

Recommendations

24. The Working Group recommends to the Minister:

- That the current system of self-verification should continue in relation to the verification of liquid fuel dispensers;

- That notifications of verification activities to the local authorities should become a permanent requirement for businesses conducting the verification of fuel dispensers;

- That NWML should find a suitable legislative vehicle to permit the provisions for self-verification to now include self-verification after the activity of adjustment, thus removing the current restriction.

- Consideration should be given to the impact that self-verification after adjustment will have on the budgets of some Local Authorities, and the possibility that it might result in a reduction in the number of inspectors involved in the national inspection scheme. The Minister will wish to be aware, that because few Local Authorities employ inspectors exclusively on verification work or Weights and Measures duties in general, they may seek additional funding to compensate for the financial losses and to minimise any impact on consumer protection services for the public and businesses.

25th March 2003

Annex E — Pre-consolidated text of relevant provisions of the Weights and Measures Act 1985

(With the amendment proposed to be made to section 11A by the draft Order shown in bold and underlined)

11 Certain equipment to be passed and stamped by inspector

(1) The provisions of this section shall apply to the use for trade of weighing or measuring equipment of such classes or descriptions as may be prescribed.

(2) No person shall use any article for trade as equipment to which this section applies, or have any article in his possession for such use, unless that article, or equipment to which this section applies in which that article is incorporated or to the operation of which the use of that article is incidental,—

(a) has been passed by an inspector or approved verifier as fit for such use, and

(b) except as otherwise expressly provided by or under this Act, bears a stamp indicating that it has been so passed which remains undefaced otherwise than by reason of fair wear and tear.

(3) If any person contravenes subsection (2) above, he shall be guilty of an offence and any article in respect of which the offence was committed shall be liable to be forfeited.

(4) Any person requiring any equipment to which this section applies to be passed by an inspector as fit for use for trade shall submit the equipment, in such manner as the local weights and measures authority may direct, to the inspector who (subject to the provisions of this Act and of any regulations under section 15 below) shall—

(a) test the equipment by means of such local or working standards and testing equipment as he considers appropriate or, subject to any conditions which may be prescribed, by means of other equipment which has already been tested and which the inspector considers suitable for the purpose,

(b) if the equipment submitted falls within the prescribed limits of error and by virtue of subsection (10) below is not required to be stamped as mentioned in paragraph (c) of this subsection, give to the person submitting it a statement in writing to the effect that it is passed as fit for use for trade, and

(c) except as otherwise expressly provided by or under this Act, cause it to be stamped with the prescribed stamp.

(4A) An approved verifier may (subject to the provisions of this Act, to any regulations under section 15 below and to any conditions included in his approval)—

(a) test any equipment to which this section applies by means of other equipment which has already been tested and which the verifier considers suitable for the purpose,

(b) if the equipment being tested falls within the prescribed limits of error and by virtue of subsection (10) below is not required to be stamped as mentioned in paragraph (c) below, make a statement in writing to the effect that it is passed fit for use for trade, and

(c) except as otherwise expressly provided for by or under this Act, stamp it with the prescribed stamp.

(5) There shall be charged in respect of any test carried out under subsection (4) above such reasonable fees as the local weights and measures authority may determine.

(6) An inspector shall keep a record of every test carried out by him under subsection (4) above.

(6A) In this Act "approved verifier", in relation to weighing or measuring equipment of any class or description, means a person who is for the time being approved under section 11A below in relation to the testing, passing and stamping of weighing or measuring equipment of that class or description.

(7) Except as otherwise expressly provided by or under this Act, no weight or measure shall be stamped as mentioned in subsection (4)(c) or (4A)(c) above unless it has been marked in the prescribed manner with its purported value.

(8) Subject to subsection (9) below, where any equipment submitted to an inspector under subsection (4) above is of a pattern in respect of which a certificate of approval granted under section 12 below is for the time being in force, the inspector shall not refuse to pass or stamp the equipment on the ground that it is not suitable for use for trade.

(9) If the inspector is of opinion that the equipment is intended for use for trade for a particular purpose for which it is not suitable, he may refuse to pass or stamp it until the matter has been referred to the Secretary of State, whose decision shall be final.

(10) The requirements of subsections (2), (4), (4A) and (7) above with respect to stamping and marking shall not apply to any weight or measure which is too small to be stamped or marked in accordance with those requirements.

(11) Where a person submits equipment to an inspector under this section, the inspector may require the person to provide the inspector with such assistance in connection with the testing of the equipment as the

inspector reasonably considers it necessary for the person to provide and shall not be obliged to proceed with the test until the person provides it; but a failure to provide the assistance shall not constitute an offence under section 81 below.

(12) If an inspector refuses to pass as fit for use for trade any equipment submitted to him under this section and is requested by the person by whom the equipment was submitted to give reasons for the refusal, the inspector shall give to that person a statement of those reasons in writing.

(13) In the case of any equipment which is required by regulations made under section 15 below to be passed and stamped under this section only after it has been installed at the place where it is to be used for trade, if after the equipment has been so passed and stamped it is dismantled and reinstalled, whether in the same or some other place, it shall not be used for trade after being so reinstalled until it has again been passed under this section.

(14) If any person—

(a) knowingly uses any equipment in contravention of subsection (13) above, or

(b) knowingly causes or permits any other person so to use it, or

(c) knowing that the equipment is required by virtue of subsection (13) above to be again passed under this section, disposes of it to some other person without informing him of that requirement,

he shall be guilty of an offence and the equipment shall be liable to be forfeited.

(15) Subject to subsection (13) above, a stamp applied to any equipment under this section shall have the like validity throughout Great Britain as it has in the place in which it was originally applied, and accordingly that equipment shall not be required to be re-stamped because it is used in any other place.

(16) If at any time the Secretary of State is satisfied that, having regard to the law for the time being in force in Northern Ireland, any of the Channel Islands or the Isle of Man, it is proper so to do, he may by order provide for any equipment to which this section applies duly stamped in accordance with that law, or treated for the purposes of that law as if duly stamped in accordance with it, to be treated for the purposes of this Act as if it had been duly stamped in Great Britain under this section.

Amendments made by the 1999 Deregulation Order (S.I. 1999/503) from 29 March 1999:
Sub-s (2): in para (a) words “or approved verifier” inserted.
Sub-s (4): words “by an inspector” the second line inserted.
Sub-s (4): words “the inspector” in the fourth line substituted.
Sub-s (4A) inserted.

Sub-s (6A) inserted.
Sub-s (7): words “or (4A)(c)” inserted.
Sub-s (10): words “(4), (4A) and (7)” substituted.

11A Approval of persons to verify equipment manufactured etc by them

(1) Subsection (2) below applies where, as regards a person who carries on business (whether in Great Britain or elsewhere) as a manufacturer, installer or repairer of equipment to which section 11 above applies, the Secretary of State—

(a) is satisfied that the person would, if approved under this section, satisfy the requirements set out in Part II of Schedule 3A to this Act, and

(b) considers the person a fit and proper person to be so approved.

(2) The Secretary of State may approve the person for the purpose of—

(a) testing any equipment to which section 11 above applies and which is manufactured, installed**, adjusted** or repaired by him,

(b) passing any such equipment as fit for use for trade, and

(c) stamping any such equipment with the prescribed stamp.

(3) Before granting an approval under this section, the Secretary of State may carry out such audits and inspections of the person's systems and procedures as he considers necessary to establish that the conditions of the approval would be observed.

(4) Schedule 3A to this Act (which relates to approvals under this section and matters connected with such approvals) shall have effect.

(5) In that Schedule “approval” means an approval under this section and “the verifier”, in relation to such an approval, shall be construed accordingly.

Amendment: section inserted by the 1999 Deregulation Order (S.I. 1999/503) from 29 March 1999.

SCHEDULE 3A APPROVALS UNDER SECTION 11A

Part I Approvals: General

Fees

1

Where—

(a) any person makes an application for an approval, or

(b) an approval is to be, or has been, granted to any person,

the Secretary of State may require that person to pay, in respect of any work carried out by or on behalf of the Secretary of State in relation to the application or the approval, such reasonable fee as the Secretary of State may determine with the approval of the Treasury.

Form, effect and conditions of approvals

2

(1) An approval shall be in writing and, unless previously withdrawn in accordance with any term in that behalf contained in the approval and subject to the following provisions of this Part of this Schedule, shall continue in force for such period (not exceeding five years) as may be specified in the approval.

(2) An approval—

(a) shall specify the classes or descriptions of weighing or measuring equipment for the testing, passing as fit for use for trade and stamping of which the verifier is approved,

(b) may include such conditions as appear to the Secretary of State to be requisite or expedient having regard to the need to ensure that only such equipment as is fit for use for trade is passed as fit for such use, and

(c) shall contain conditions requiring the verifier to satisfy the requirements set out in Part II of this Schedule.

(3) Without prejudice to the generality of sub-paragraph (2) above, conditions included in an approval by virtue of that sub-paragraph may—

(a) require the verifier to comply with any direction given by the Secretary of State as to such matters as are specified in the approval or are of a description so specified;

(b) require the verifier to ensure that his procedures for the testing of weighing or measuring equipment conform with such quality standards as are specified in the approval or are of a description so specified.

Suspension of approvals

3

(1) If it appears to an inspector that, otherwise than in accordance with section 15A of this Act, the prescribed stamp has been, or is being, applied by an approved verifier to equipment which had not, or has not, been duly tested and passed as fit for use for trade, he may give to the verifier a notice (a “suspension notice”) suspending the verifier's approval (either generally or in relation to particular areas or places) for a period not exceeding 28 days.

(2) Where an inspector gives a suspension notice, he shall forthwith send a copy of the notice to the Secretary of State and inform the approved verifier in writing of—

(a) the circumstances which have led to the giving of the notice;

(b) the date on which the notice takes effect; and

(c) the effect of the following provisions of this paragraph.

(3) An approved verifier who has taken steps to prevent a recurrence of the circumstances which led to the giving of a suspension notice may apply to the inspector for the suspension to be withdrawn before the expiry of the specified period; and an application under this sub-paragraph—

(a) shall be made by notice to the inspector given not later than 21 days after the date of the suspension notice, and

(b) shall state the steps taken to prevent such a recurrence.

(4) An inspector shall consider any application made to him under sub-paragraph (3) above and, having done so, shall notify the approved verifier of his decision.

(5) An approved verifier who is aggrieved by a suspension notice may apply to the Secretary of State to review the suspension; and an application under this sub-paragraph—

(a) shall be made by notice to the Secretary of State given not later than 21 days after the date of the suspension notice, and

(b) shall state the grounds on which the application is made.

(6) The Secretary of State shall consider any application under sub-paragraph (5) above and, having done so, shall notify the approved verifier and the inspector of his decision.

(7) Where the Secretary of State decides under sub-paragraph (6) above to uphold the suspension, he shall also notify the approved verifier and the inspector of the grounds for his decision.

(8) Where the Secretary of State decides under sub-paragraph (6) above not to uphold the suspension, he shall instruct the inspector to withdraw the suspension.

Withdrawal of approvals

4

(1) Subject to sub-paragraph (2) below, the Secretary of State may by written notice withdraw an approval if at any time during the continuance of the approval—

(a) he is of the opinion that if the approval had expired at that time he would have been minded not to grant a further approval;

(b) it appears to him on reasonable grounds that the verifier is, or has been, in breach of any condition contained in the approval; or

(c) any fee due to the Secretary of State by virtue of a requirement made by him under paragraph 1 above has not been paid.

(2) Except where the Secretary of State considers in the circumstances of any particular case that it is necessary for him to withdraw an approval without delay, he shall not withdraw an approval unless he has given the verifier at least 28 days written notice of his intention to do so and of the grounds for withdrawal.

(3) Where the Secretary of State withdraws an approval without giving the notice required by sub-paragraph (2) above, he shall, at or before the time when the withdrawal takes effect, give the verifier written notice of the grounds for withdrawal and of his reasons for considering it necessary to withdraw the approval without delay.

(4) Where a verifier receives notice under sub-paragraph (2) or (3) above, he may within 21 days of receipt of the notice make representations in writing to the Secretary of State.

(5) The Secretary of State shall consider any representations so made and, having done so, shall notify the verifier of his decision.

Grant of new approval following withdrawal

5

(1) Where the Secretary of State decides, whether in the light of representations or otherwise, that an approval which has been withdrawn should not have been withdrawn, he shall as soon as reasonably practicable grant a new approval to the former verifier.

(2) The new approval shall expire on the date on which the withdrawn approval would have expired and (except as may otherwise be agreed with the former verifier) shall be subject to the same terms and conditions as the withdrawn approval.

(3) Where the Secretary of State grants a new approval under sub-paragraph (1) above, the verifier shall be deemed to have remained approved for the period beginning on the date on which the original approval was withdrawn and ending on the date on which the new approval took effect.

Application for further approval

6

(1) This paragraph applies where, not less than three months before the end of the period specified in an approval as the period for which the approval is to continue in force, the verifier applies to the Secretary of State for the grant of a further approval in the same, or substantially the same, terms as those of the existing approval.

(2) The existing approval shall remain in force until the Secretary of State gives the verifier notice of the Secretary of State's decision with respect to the application.

Amendment: section inserted by the 1999 Deregulation Order (S.I. 1999/503) from 29 March 1999.

Annex F — Outline of the Approved Verification System

