EXPLANATORY MEMORANDUM TO

THE MEASURING EQUIPMENT (INTOXICATING LIQUOR) (AMENDMENT) REGULATIONS 2009

2009 No. 2463

1. This explanatory memorandum has been prepared by the National Measurement Office, an Executive Agency of the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Measuring Equipment (Intoxicating Liquor) Regulations 1983 and introduce the option of testing certain fixed chamber instruments to demonstrate compliance with the regulations by means of a statistical sample as an alternative to the existing requirement to test each individual instrument.

3. Matters of special interest to the joint Committee on Statutory instruments

3.1 None

4. Legislative Context

4.1 The Measuring Equipment (Intoxicating Liquor) Regulations 1983 impose a requirement on manufacturers of measuring instruments used for the sale of intoxicating liquor, to perform a check of every instrument prior to stamping to confirm compliance with the Regulations and putting into use. The 1983 regulations do not apply to Capacity Serving Measures, such as beer glasses, which are subject to a separate regulatory - and less onerous - regime whereby the measures may be tested by means of a statistical sample rather than the 100% test of each individual measure.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain. Northern Ireland has its own weights and measures legislation.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 The amendment results from the responses to the Prescription Review of secondary legislation on measuring instruments made under the Weights and Measures Act 1985 and the European Communities Act 1972 issued in November 2007. That Review sought comments on all secondary legislation on measuring instruments.

7.2 The main points on which the review sought views specifically were:-

- whether measuring instruments needed to be controlled at all,
- whether there was legislation which was no longer needed and could be revoked,
- which legislation could be amended, or
- identification of areas for which new additional regulations should be considered.

7.3 The Review identified the introduction of statistical sampling for measuring instruments used for intoxicating Liquor as one area which could be amended and would provide cost savings to industry. It was therefore decided to issue a further consultation on a proposal to amend the Measuring Equipment (Intoxicating Liquor) Regulations 1983 to allow the possibility of statistical sampling for fixed chamber measuring equipment which measures nominal quantities of intoxicating liquor (other than beer and cider) using a chamber which collects the correct quantity of liquid for discharge into a serving glass. It is this consultation to which these Regulations relate.

7.4 The test involves the selection of a small, random sample from a batch of measuring instruments being of the same design, the same manufacturer and designed to deliver the same nominal quantity and which were produced in a single homogenous production run. Once the sample has been drawn the instruments are tested to determine whether the instruments deliver the correct quantity. If the number of defective units identified is less than or equal to the acceptance criteria specified for that particular batch size the sample will pass the test. Any items tested which fail even when part of a satisfactory batch must be rejected.

- **Consolidation**

Although the Regulations were made in 1983 the current amendment is minor in nature and of relevance to only one sector of the market. The Regulations will be consolidated when the next substantive amendment is proposed.

An unofficial consolidated text is available from the National Measurement Office website http://www.nmo.bis.gov.uk/Content.aspx?SC_ID=321

8. Consultation outcome

8.1 The consultation document on the proposal to permit statistical sampling http://www.nmo.bis.gov.uk/news/newsarticle.aspx?id=134 was sent to manufacturers, consumer groups, the licensed trade and enforcement agencies. It invited comments on the proposal to allow the option of statistical sampling. Of the six responses were received five were in favour of the proposal. The only opposition raised was from a manufacturer who was not convinced that the instruments were suitable for statistical sampling and considered 100% testing as the only appropriate method of testing. Neither the second manufacturer, nor the enforcement bodies that responded, expressed similar concerns.

8.2 The Government believes that the objection raised is not significant because manufacturers will not be obliged to use the statistical sampling option where there is no perceived advantage in so doing. In such cases the manufacturer's costs would remain unchanged.

8.3 In consequence any additional costs arising from compliance with the new amendment will be incurred only by those who perceive an advantage in so doing and who consider that the benefits outweigh the costs.

8.4 The government response to the consultation may be found at http://www.nmo.bis.gov.uk/fileuploads/Legislation/Il_government_response_final_Aug_09.pdf

9. Guidance

9.1 The National Measurement Office has issued the 12 week guidance to business which describes the legislative change arising from these Regulations. This will be up-dated once the regulations have been made.

9.2 It is proposed that fuller guidance to cover the whole of the 1983 Regulations (as amended) into which the guidance on statistical sampling will be incorporated which will be drafted for consultation with interested parties later this year.

10. Impact

An Impact Assessment in respect of these Regulations is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 The amending legislation results from a request from small business. The legislation introduces the possibility of using the statistical sampling route which the business concerned believes will offer a financial benefit but, where there is no perceived benefit, businesses need not make any changes from their existing practices or incur additional costs.

12. Monitoring and review

12.1 The effectiveness of the legislative change will be reviewed after 5 years to determine take-up and estimated cost savings.

13. Contact

Any queries regarding the instrument should be addressed to Sue Billing at the National Measurement Office, Tel: 020 8943 7277 or e-mail: sue.billing@nmo.gov.uk

Summary: Intervention & Options

Department /Agency:	Title: Impact Assessment of	
Stage: Final	**Version:** 2	**Date:** September 2009
Related Publications: The Measuring Equipment (Intoxicating Liquor) (Amendment) Regulations 2009		

Available to view or download at:

http://www.nmo.bis.gov.uk/content.aspx?SC_ID=230

Contact for enquiries: Sue Billing **Telephone:** 020 8943 7277

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

The existing regulations which relate to certain measuring instruments used for the dispense of intoxicating liquor such as spirits do not benefit from the Measuring Instrument Directive provision, applicable to capacity serving measures (e.g. beer glasses) used for the dispense of draught beer and cider, in that every instrument must be tested before it is placed on the market rather than accepting the results of tests on a sample from a batch as demonstrating compliance for the whole batch. This requirement is disproportionate

and imposes unnecessary costs on the relevant businesses.

What are the policy objectives and the intended effects?

The change will enable manufacturers and other verifiers to stamp instruments as fit for placing on the market at a lower cost than the current requirement for 100% testing without reducing the accuracy of the measures. The legislation is optional and there is no requirement to make any changes from existing practice unless there are sufficient cost savings to outweigh any additional set-up costs associated with quality control procedures.

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

Option One - make the proposed Amendment Regulations. This is the preferred option - it would broadly align the verification activities of the Regulations applicable to certain intoxicating liquor measuring instruments with the requirements applicable to capacity serving measures.

Option Two - continue with the present situation resulting in disproprtionate costs for measuring instruments for intoxicating liquor when compared with those applicable to capacity serving measures.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The National Measurement Office (NMO) reviews its legislation on a 3-5 year cycle and will conduct a Post-Implementation Review. NMO holds regular discussions with weights and measures representatives of LACORS and with manufacturers on an ad hoc basis

Ministerial Sign-off For final proposal/implementation 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:

Lord Drayson..... Date: 3rd September 2009

Summary: Analysis & Evidence

Policy Option:	Description:

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition)	**Yrs**	(i) Manufacturers to amend their quality system to include statistical sampling.
£ 1990-9750		(ii) There are no additional annual costs outside existing audits in future years.
Average Annual Cost (excluding one-off)		
£ 0		**Total Cost** (PV) **£ 1990-9750**

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

BENEFITS

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups' Figures are based on grossing up 1 firm's estimated saving of £15,000 p.a. to cover costs of a maximum of five firms. Customers using chargeable third party verification will also accrue a cost saving arising from the smaller number of checks which may need to be made.
One-off	**Yrs**	
£ 0	1	
Average Annual Benefit (excluding one-off)		
£ up to 75,000		**Total Benefit** (PV) **£ up to 75,000**

Other **key non-monetised benefits** by 'main affected groups' There would be benefits in terms of savings in time and resource spent verifying statistical samples, as opposed to every piece of equipment. Even where the financial saving is marginal, the test of the batch will be quicker to get - and reduce any delays processing instruments to market.

Key Assumptions/Sensitivities/Risks Costs and benefits constitutes five manufacturers that make spirit measuring instruments - as the affected group – based on figures from one company

Price Base Year 2008	Time Period Years 1	**Net Benefit Range** (NPV) **£** 65250 - £73100	**NET BENEFIT** (NPV Best estimate) **£ 69175**

What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	1 October 2009
Which organisation(s) will enforce the policy?	W&M Inspectors
What is the total annual cost of enforcement for these	£ 0 -cost neutral
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ N/A

What is the value of changes in greenhouse gas emissions?			£ Not applicable	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro **£0**	Small **£-15,000**	Medium **£0**	Large **£0**
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase £ 0	Decrease £ 0	**Net**	**£** 0

Key: **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 Measuring Equipment (Intoxicating Liquor) (Amendment) Regulations 2009

1. Introduction

This assessment estimates the costs and benefits of the Measuring Equipment (Intoxicating Liquor) (Amendment) Regulations 2009 Regulations ("the proposed Regulations").

2. Purpose and intended effect

2.1 Objective

2.1.1 The proposed Regulations are being produced to amend the Measuring Equipment (Intoxicating Liquor) Regulations 1983. The proposed amendments are specifically intended to align the provisions relating measuring instruments used to deliver intoxicating liquor (other than capacity serving measures) but excluding measuring systems such as beer meters - defined as any measuring equipment containing a fixed chamber (or chambers) which measures a pre-set nominal quantity by capacity), the same nominal capacity and the same manufacturer - with the corresponding provisions of the regulations which implemented the Measuring Instruments Directive (MID) in 2006 in relation to capacity serving measures. This would permit relevant businesses, as approved verifiers, to verify instruments following statistical sampling rather than testing every instrument as is already permissible for capacity serving measures.

2.2 Background

2.2.1 NWML conducted a Prescription Review of all its secondary legislation on measuring instruments made under the Weights and Measures Act 1985 and the European Communities Act 1972 in the period November 2007 to February 2008.

2.2.2 The responses to the consultation included a request from business (a small manufacturer) for an amendment to the existing regulations to permit statistical sampling to replace 100% testing to establish the accuracy of measuring instruments for intoxicating liquor. The facility for statistical sampling is already available to capacity serving measures, such as beer glasses, under regulations implementing the Measuring instruments Directive (the MID). Accordingly a further consultation was issued on the proposal. The consultation document is available from

http://www.nmo.bis.gov.uk/fileuploads/Docs/Legislation/Intoxicating%20liquor/Final_NWML_condocfinal_Intox_liq_Mar_09.pdf

3. Options

Summary

	Option 1 Make proposal		Option 2 Do nothing	
	Per Firm **£**	**Total** **£**	**Per Firm** **£**	**Total** **£**
Costs – One-off **First Year only**	1,900	1,900-9,750 based on one firm only assuming up to 5	N/A	0
Costs – Annual	0	0	16,500	Opportunity cost of 16,500 – 82,500 based on one firm only assuming up to 5
Benefits - Annual	15,000 based on one firm only	Up to 75,000 based on one firm only assuming up to 5	N/A	0

3.1 Option One – make the proposed Regulations

3.1.1 Making the proposed Regulations would broadly align the verification activities of the Measuring Equipment (Intoxicating Liquor) Regulations 1983 available to certain suitable measuring instruments with the MID provisions in the Measuring Instruments (Capacity Serving Measures) Regulations 2006

available to manufacturers of capacity serving measures and thereby bring the former Regulations up to date. The provisions do not apply to beer meters etc for which statistical sampling is not appropriate because accuracy can only be established after the instrument has been properly installed.

3.2 Option Two – do nothing

3.2.1 Doing nothing would mean continuing with the present situation whereby the regime applicable to capacity serving measures is less costly than that available to all other measuring instruments used for alcoholic beverages. In the current market with modern reliability of manufacture, testing every instrument is unnecessary and changing to statistical sampling will present little risk of any increase in inaccurate measurement for the consumer. The costs of compliance with present regulations can therefore be demonstrated to be disproportionately and unnecessarily high.

4. Recommendation

4.1 It is recommended that Option One be followed. This will result in resource cost savings for business by permitting statistical sampling, and much of the resource saving is likely to accrue to customers e.g. the licensed trade. This is in line with government policy to reduce burdens on business wherever possible.

5. Costs and benefits

Sectors and groups affected

5.1 Local Weights and Measures Authorities and approved verifiers i.e. manufacturers, installers and repairers .

Benefits

5.2 The benefits of Option One are due to the reduction in the amount of testing required and the cost savings derived from that reduction. These are assessed to be approximately £15,000 per business per year and up to 5 businesses affected giving an annual total of up to £75,000 and that the new provisions would be broadly consistent with current provisions under the MID Regulations. [See the Small Firms Impact Test and the Competition Assessment below for more about the efficiency savings for industry from the proposed new arrangements.]

5.3 Option Two overall has no perceived benefits. It would leave manufacturers of relevant measuring instruments at a financial disadvantage compared with manufacturers of capacity serving measures who benefit from the less rigorous testing procedures under the MID Regulations.

Costs

5.4 Option One has transitional costs, due to the change from 100% testing to statistical sampling, of approximately £1,900 per firm, but there are no additional annual costs incurred. Transitional costs may include rewriting the quality system, new items required for the process (e.g. signage/labels), implementing the new process, initial post-implementation audit. [See the Small Firms Impact Test and the Competition Assessment below for more about the costs to industry from the proposed new arrangements.] One manufacturer foresaw increased costs of £7,500 per annum but NMO believes this resulted from a misunderstanding of the optional nature of the change which would only require costs to be incurred where an advantage was perceived. Therefore these figures have been disregarded. NMO also recognises the concern expressed by one local authority about the potential loss of income arising from the potential reduction of the number of tests carried out. However NMO considers that the change would be cost neutral because any loss in fees would be balanced by the reduction of time taken to carry out such testing.

6. Analysis and Evidence

6.1 There is sound evidence of cost savings based on the figures provided by one of up to six companies in relation to spirit measuring devices

6.2 A more accurate estimate of the overall resource costs savings from the measure could only be made with fuller unit cost information from other verifiers of similar spirit measuring instruments or any other identified alternative instruments for which the proposed change is suitable.

6.3 The evidence indicates modest net benefits but work to verify these would by disproportionate to the level of benefits expected.

6.4 For a summary of the costs and benefits of this proposal compared to the current situation, see the table below at paragraph 3.

7. Statutory Specific Impact Tests

After initial screening as to the potential impact of these Regulations on race, disability and gender equality, it has been decided that there will be no impact upon minority groups in terms of numbers affected or the seriousness of the likely impact. 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 (SFIT)

The majority of manufacturers in this sector fall within the definition of a “small manufacturer” and so all the costs and benefits identified will apply to a small firm. The previous consultation indicated that the proposal is welcomed by small firms.

9. Competition Assessment

The Competition Assessment was undertaken with regard to the initial verification market. This is divided between a number of small businesses conducting Approved Verification and others who choose the option of third party verification by local authority trading standards officers. The potential savings are available to business. Statistical sampling of the instruments will enable businesses to get the measuring instruments to market more quickly and avoid any delays, improving the environment for competition in this respect.

10. Rural proofing

The proposed Regulations have been scrutinised with the Countryside Agency's rural proofing checklist in mind. No instance of the proposed Regulations impacting upon rural communities or areas has been identified.

11. Carbon Assessment, Other Environment, Health Impacts

Assessment of these indicates that there is no impact in these areas.

12. Enforcement, sanctions and monitoring

12.1. Enforcement of the 1983 Regulations would continue to be carried out on the basis of risk-based inspection by the 200+ local Weights and Measures Authorities based across Great Britain which currently undertake this activity. The proposed amendment would not change the enforcement regime but would mean that all inspectors as well as approved verifiers would be able to test and verify instruments on the basis of a statistical sample.

12.2 It is intended to monitor the effectiveness of the proposed Regulations, and this would be done in conjunction with industry and the Inspectorate. The National Measurement Office holds regular discussions with the weights and measures representatives of the LACORS (Local Authorities Coordinators of Regulatory Services and the Trading Standards Institute twice a year, and with the manufacturers on an ad hoc basis.

12.3 The National Measurement Office (NMO) reviews its legislation on a 3-5 year cycle, and will conduct a post-implementation review. NMO holds regular discussions with weights and measures representatives of LACORS and with manufacturers on an ad hoc basis.

13. Implementation and delivery plan

- The proposed Regulations have been updated in the light of the consultation response.

- The Regulations will enter into force on 1 October 2009, a Common Commencement Date.

- The National Measurement Office has issued guidance to businesses on the proposed amendment to the 1983 Regulations to enable business to prepare for the implementation of this new legislation.

Contact point for enquiries and comments:

Sue Billing

National Measurement Office

Stanton Avenue

Teddington

TW11 0JZ

Email address: sue.billing@nmo.gov.uk

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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	No	No
Other Environment	No	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

Annexes

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