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Innovation & Skills

**THE MEASURING EQUIPMENT
(INTOXICATING LIQUOR)**

Consultation on proposed
amendment to Measuring
Instruments (Intoxicating
Liquor) Regulations 2009

GOVERNMENT RESPONSE – AUGUST 2009

Consultation on proposed amendment to the Measuring instruments (Intoxicating Liquor) Regulations Government Response

Introduction and background

1. The consultation sought views on a proposal to amend the Measuring Equipment (Intoxicating Liquor) Regulations 1983 to permit the option of using statistical sampling for the approval and testing of certain intoxicating liquor measuring instruments (ILMI) as an alternative to the current requirement which means that every instrument must be tested and inspected and, if compliant, stamped and passed as fit for use for trade. This requirement to individually test every item represents a more onerous requirement than that which is applicable to capacity serving measures, such as beer glasses, which are regulated under the provisions of the Measuring Instruments Directive by the Measuring Instruments (Capacity Serving Measures) Regulations 2006. The consultation closed on 23 May 2009.
2. The proposal derived from responses to the Prescription Review held in 2007/2008 which produced a request for this amending legislation. The justification given was that the requirement to test every instrument as specified in the 1983 Regulations was now outdated and created an unnecessary burden on business in respect of meeting the legislative requirement. It was clear that there had been significant improvement to the designs, materials and assembly processes used for ILMIs since the 1983 Regulations were made and that such individual testing and inspection was therefore no longer essential for all ILMIs. The response stressed that the existing verification requirements created an excessive and unnecessarily time consuming workload on business. Statistical sampling has long been accepted by industry as giving reliable and accurate inspection results for batches of other measuring instruments e.g. cold water meters and capacity serving measures. In such cases sampling is applied to devices and equipment which are no less complicated than the instruments to which this amendment will apply.
3. The proposal is de-regulatory in that it reduces manufacturing costs by removing the requirement for manufacturers to test and inspect every instrument. However manufacturers will not be obliged to alter their manufacturing methods where they do not anticipate a commercial benefit as 100% testing will continue to remain an option. The draft regulations have been restricted to fixed chamber measuring equipment defined as any measuring equipment containing a fixed chamber or chambers as these measure a preset nominal quantity by capacity and not by flow. It is also not envisaged that the regulations should, in the future, be extended to cover measuring instruments where there is significant distance between the instrument and the delivery of the product being measured e.g. beer meters with a long run between the instrument and the supply source.

4. The proposed regulations would apply to measuring instruments in GB. Northern Ireland has its own weights and measures legislation and could mirror these regulations if they wished to do so.

Responses Received

5. Six responses to the proposals were received. These were made by two manufacturers, two local authorities, the Local Authorities Coordinators of Regulatory Services (LACORS) and the Trading Standards Institute (TSI).

Summary consultation responses

Q1a Do you agree with the proposal to provide an option of statistical sampling for testing certain ILMI?

Five consultees in favour, one against.

Government response

The only opposition raised to the proposal 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. Therefore the Government has decided to go ahead to make the amending legislation.

The Government believes that the objection raised by the manufacturer is not significant because manufacturers will not be obliged to incur any additional costs arising from the adoption of the option to use statistical sampling where there is no perceived advantage in so doing. In such cases their costs would remain unchanged.

Q1b Do you agree that the statistical sampling option should be restricted in application and apply only to fixed chamber measuring equipment defined as any measuring equipment containing a fixed chamber or chambers which measures a preset nominal quantity by capacity (that is, it is not intended that it should be available to instruments such as turbine meters that do not comprise fixed volumes) and which are to be used for the dispense of products such as alcoholic beverages especially spirits?

Five consultees in favour, one against.

There was a clear majority who agreed that the amendment should be restricted to fixed chamber ILMI only. No reasons were given for the opposition to the proposal.

Government response

The regulations will reflect the text of the consultation draft and be restricted to fixed chamber ILMI.

Q1c Do you agree that the statistical sampling option should be restricted in application and apply only to measuring instruments where the supply of liquid is immediately adjacent to measuring instrument (that is it should not be available to instruments such as beer meters) which is to be used for the dispense of products such as alcoholic beverages especially spirits?

Five consultees in favour, one against.

The general view expressed was that it would be necessary to ensure that it was clear that the instrument should be visible to the intending purchaser. Draft regulations should be clarified to require instrument to be “immediately” adjacent to the source of supply.

Government response

The Government does not consider that the draft regulations need to be clarified on this point. Existing legislation on specified quantities for which ILMI are used already includes a requirement that the measuring equipment “is installed in such a position that the delivery of the liquor into the container can readily be seen by customers in that part of the premises where the buyer ordered the liquor” (S.I. 1988 No. 2039). This requirement is considered adequate to ensure that the instrument should be “immediately adjacent” to the source of supply.

The regulatory guidance will clarify that statistical sampling will not be available to instruments such as beer meters.

Q2 Is the draft definition of fixed measuring chamber measuring equipment clear and appropriate for the type of instruments of ILMI to be covered?

Five consultees agree with the definition, one thought the definition left scope for interpretation (specifically in relation to the dispense of wine, bottle pourers and cocktail pourers).

Government response

The Government believes the definition to be clear and appropriate. Further clarification of the scope, which will apply only to verified measuring instruments, will be included in the guidance.

Q3a Would you wish to see the proposed amendment extended to cover other instrument types?

Five consultees opposed the extension to other less simple instruments, one wanted the proposal withdrawn or at the least for the scope extended to cover all forms of metered dispense.

Government response

The Government has considered the responses and does not propose to extend the scope to cover dispense other than by filling a fixed chamber. However, if the suitability for the statistical sampling method can be demonstrated for other types of ILMI, the Government will consider a further amendment of the scope in the future.

Q3b If so what and how should the instruments be defined?

Two consultees considered a wider scope would be difficult to define and could only follow the production of data to show that 100% testing was not necessary. One said that the extension of the scope should be dependent on consideration of individual instruments. Three did not comment.

Government response

The Government will regulate on the basis of the instruments as defined. If, in future, a case can be made for the extension of the availability to statistical sampling to include other instrument types, the definition can be revisited.

Q4 Do you foresee any problems with the draft regulations and, if so, please suggest what you think is needed to avoid them?

Five consultees agreed in principle, one believed the change would potentially result in the placement on the market of inaccurate measures.

Government response

The Government is satisfied that instruments to which the regulations apply can be produced in a manner which will ensure the accuracy of the measures placed in use will be of an appropriate level of accuracy.

Q5a A draft test/sampling method is attached at Annex 2 which will form part of the guidance issued with the regulations. Do you consider that the proposed sample size and acceptance/rejection criteria are suitable? If not what sample size and acceptance/rejection criteria would you suggest/prefer and why?

Four consultees considered the draft sampling plan to be reasonable. One consultee suggested minor clarification and one was concerned about the potential impact on the approach to responsible drinking from inaccurate measures.

Government response

The draft sampling plan has been generally agreed and, subject to minor variations, will form the basis of an acceptable plan under the regulatory requirements. It is not considered that the change in the method of testing the measuring instruments will have any impact on the accuracy of the actual quantities of alcohol measured for dispense.

Q5b Is the draft test method suitable for use by both Approved Verifiers and Inspectors? If not what changes would be necessary to make the method suitable?

Five consultees considered the draft test method to be suitable, the sixth did not comment.

Government response

The Government will proceed on the basis of the draft test method for testing by both Approved Verifiers and Inspectors.

Q5c Do you agree with the acceptance/rejection criteria in the draft test/sampling plan for the proposed regulations? You will see that it suggests that, where the sample fails the test, the whole sample should be subject to 100% testing and any failures should be rejected. Do you anticipate any problems arising from this requirement or can you identify a more effective procedure to deal with failures?

One consultee was content, four consultees wanted clarification in the regulations that where a sample fails the whole batch should be subject to 100% testing, one consultee did not agree with the criteria.

Government response

An extra provision will be included so as to reflect the practice included in the regulations applicable to statistical sampling for capacity serving measures i.e. that, if a lot is accepted, all instruments of the lot are approved, except for those instruments from the sample that were found not to satisfy the tests. This will reflect the requirements in Module F1 of the Measuring Instruments Directive (2004/22/EC) under which capacity serving measures can be subject to statistical sampling.

The regulatory guidance will highlight the fact that, where a batch fails the test, all items in the batch will have to be tested individually.

Q5d As the purpose of the sample to determine whether the batch is acceptable, the tester has to ensure that the instruments in the sample are tested and checked to demonstrate that they meet all the requirements of the Regulations, including that the requirement that the quantity dispensed is within tolerances. It is proposed that testing should be by attributes. Do you consider that testing should alternatively be made by reference to variables or should both possibilities be permitted? If so what are your reasons?

All consultees agreed that testing should be by attributes.

Government response

The Government will proceed on this basis.

Next Steps

6. We intend to introduce amending regulations with an implementation date of 1st October 2009. The single objection raised to the proposal in the consultation response is, in the Government's view, of no significance in the light of the fact that, where there is no clear benefit, there is no requirement to alter existing procedures. 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.

7. The responses to the consultation, except those made in confidence, are available at the National Measurement Office and can be obtained on request. Phone tel 020 8943 7272, or Email registry@nmo.gov.uk

National Measurement Office
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