

Guidance on the use of Metric Units of Measurement and the EC Units of Measurement Directive

April 2008

Preamble

This guidance updates and replaces previous LACORS Guidance, Concordats and Enforcement Packs on Metrication, and presents the current position, as of June 2007.

There are no changes of substance from the original advice, and it takes into account the decision, made in 2004 by the European Court of Human Rights in relation to the metrication appeals.

1. Summary

- 1.1 This guidance seeks to provide practical enforcement assistance for officers on the metrication provisions. When references are made to “enforcement” they relate to the whole range of activities including the provision of advice and guidance, issue of warnings etc and not simply to prosecutions.
- 1.2 This new guidance replaces and incorporates the earlier Concordat Advice into its provisions.
- 1.3 The enforcement pack contained within the appendices to this guidance are intended to ensure clarity and consistency of information supplied both to officers and business. The pack contains advice on:
 - The history of metrication from 1994
 - Metrication legal provisions
 - Metrication offences in relation to imperial equipment
 - Enforcement powers in relation to imperial equipment
 - Price Marking Orders
 - Notice of intent
 - Draft specimen offences

2. Background

- 2.1 The last significant phase of metrication was due to be completed by 1 January 2000 with the removal of the pound and ounce as lawful units of measurement for use for trade for the sale of goods sold loose from bulk. As a result of consultation with all stakeholders, LACORS Concordat Advice was first released in December 1999 and aimed to achieve consistent and proportionate enforcement action in accordance with good enforcement and compliance practices. The Advice suggested a sequence of enforcement actions, which are detailed below at paragraph 3.2.
- 2.2 Completion of the metrication programme was disrupted by actions taken by the UK Independence Party and others, who obtained a

legal opinion to the effect that the legislation implementing the metrication provisions was ultra vires.

- 2.3 LACORS, on behalf of local authorities, obtained leading Counsel's Opinion, which fully rebutted all legal arguments put in the former Opinion. LACORS therefore reaffirmed its confidence in the vires of the legislation and the subsequent enforcement role and responsibility of Local Authorities.
- 2.4 Counsel's Opinion was subsequently proved to be valid when, on 18 February 2001, the High Court rejected the defendants' appeals (Thorburn v. Sunderland City Council etc. EWHC Admin 195 (2002) 166 JP 257) and the law was held to be good. A further application for leave to appeal to the House of Lords was rejected by their Lordships on 15 July 2002 (unreported, but see The Guardian, 16 July 2002).
- 2.5 The defendants lodged papers to commence proceedings before the European Court of Human Rights, alleging various breaches of the European Convention on Human Rights; these were understood to include right to a fair trial, right of freedom of expression, and right to peaceful possession of property. This process was completed in March 2004 when the EHCR refused to hear the appeal. This issue has now been considered by two levels of an independent judiciary (Four separate Magistrates' Courts and the Divisional Court) and has been refused any further consideration by the House of Lords and the European Court of Human Rights and therefore there is no legal impediment to the enforcement of the relevant provisions as part of the statutory duty under the Weights & Measures Act 1985.

3. Enforcement Action

- 3.1 Local Authorities must continue to demonstrate their commitment to consistent, proportionate action to ensure that those remaining traders who continue to trade in imperial units through ignorance of the law or misleading media coverage, do convert to selling in metric units, and to ensure that cohesive action is taken over any remaining high profile traders who refuse as a point of principle to comply.
- 3.2 Enforcement action is likely to be subject to continuing scrutiny by the media and others. LACORS suggests the following enforcement approach and guidance:
 - advice and explanation of the requirements, consider issuing a 28-day notice where applicable (but note that "28 day notices" are only appropriate in respect of the non-conformance of an imperial instrument with the relevant Regulations, rather than failing to comply with s.8);
 - verbal warning (recorded), consider obliteration of stamp;
 - letter of warning explaining the possible legal consequences if further non-compliances are detected
 - consideration of a Simple Caution (formerly a Home Office caution), provided that the Attorney General's Guidelines are properly

considered (although this procedure is not applicable in Scotland, the Procurator Fiscal may issue a warning). If this action is considered and the trader refuses to sign the caution then proceedings should normally be instituted for any offence. However, regard should be had to the provisions of paragraph 3.4 below in relation to the previous issue of a 28-day notice

- consideration of legal proceedings - Authorities in England and Wales may wish to consider what action (if any) to take if the trader undertakes to remedy matters immediately upon receipt of a summons. In Scotland, authorities may at a suitable time wish to consider the appropriateness of submitting a report to the Procurator Fiscal
 - institution of proceedings, which should include s. 8 offences as well as any s.11 offences that may have arisen as a result of action under 3.2 above. This should avoid the inevitable adverse publicity that will attend suggestions that the authority, whilst seeking to enforce metrication, is not prepared to use the most appropriate offence to do so (See 4.2 below).
- 3.3 Where Authorities are continuing with existing enforcement action, and where non-compliance appears to have resulted from legal uncertainty, they may wish to issue a notice of intent prior to carrying out inspections. An example of such a notice can be found at Appendix F.
- 3.4 Where a 28-day notice has previously been issued and follow up action has not been undertaken by the Authority within a reasonable time due to legal uncertainty, a further 28-day notice should be issued and the subsequent statutory provisions followed (see Appendix B). In determining what would be a reasonable time, it is relevant to have regard to the fact that the original maximum allowed period of 'relaxation' is itself limited to 28 days.
- 3.5 Circumstances may dictate that some, or all, of the elements above are not applicable. This may occur where the trader concerned has a poor history relating to non-compliance, where a fraudulent practice exists or where it can be demonstrated that a significant unfair trading advantage is occurring or there is consumer detriment (e.g. price comparisons).
- 3.6 Authorities are advised to have regard to the provisions of Counsel's Opinion in relation to the duty to enforce. The relevant points provide that Local Authorities may not decline to perform their statutory duties under the Act, thus, whilst they enjoy discretion whether or not to prosecute in an individual case, that discretion may not be used to justify a general policy of non-prosecution and must be exercised reasonably. The Code for Crown Prosecutors advises that prosecutors must not be affected by improper or undue pressure from any source and Counsel advises that the exercise of the discretion not to prosecute, principally in order to avoid potential

political difficulties, might well amount to 'improper' or 'undue' pressure.

4. Offences and further actions

- 4.1 Offences for the use of imperial units for trade use are detailed in Appendix C.
- 4.2 Where possible, Authorities should not take action solely in respect of failing to use lawful units for weighing and/or unit pricing, nor solely in respect of offences for the use of an unjust or unstamped machine after rejection. Coupling both s. 8 and s.11 offences will demonstrate that the trader has been given every opportunity to comply with the legislation. Moreover, there may be some danger in omitting offences relating to non-lawful units and proceeding solely with an offence of using unstamped equipment. A further scope for legal confusion could arise if a court is invited to consider proceedings in respect of equipment, where the summons requires the court to treat non-lawful units as though they were in fact lawful ones.
- 4.3 Where possible, Authorities should consider the use of test purchases to confirm the equipment's use and the use of imperial units, and to determine whether any short weight offences are committed. Quantities should be requested in metric, where possible, to avoid an accusation of 'agent provocateur'. Test purchases and equipment should be checked in, and any deficiencies/errors stated in, metric units (see Appendix B for advice on testing).

5. European Convention of Human Rights

- 5.1 Traders may attempt to develop the argument that the metrication provisions infringe their rights to freedom of expression under Article 10 of the ECHR. This has been dealt with by the recent decision in the European Court but the following information is provided as background.
- 5.2 The right to freedom of expression includes the freedom to impart and receive information without interference by public bodies. However, Art. 10(2) states that:-

"The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, ... for the prevention of ... crime, ..., (and) for the protection of ... the rights of others"

It may be relevant to note that the requirement to sell in metric units does not restrict the right to impart or receive information *per se*; it only restricts the manner in which the information is imparted. The preamble to the Units of Measurement Directive (80/181/EEC) refers to the importance of units of measurement, to the need for clarity in their use, and to the need to protect consumers, all of which issues

are arguably intended to prevent deliberate deception (prevention of crime) and to assist consumers (their right to the provision of consistent information). This was reinforced by the recent decision by the EHCR to refuse an appeal.

5.3 It should be noted that the metrication provisions do not in any event currently prohibit the use of imperial units. The provisions *require* traders to use metric units and *permit* traders to use imperial units as supplementary indications. This had been until 31 December 2009, but the EU has recently announced their decision to allow supplementary indications (i.e. imperial units) to be used indefinitely, in addition to metric units which must be used. The 'imparting and receiving of information' is therefore preserved until that date irrespective of any arguments as to the applicability of Art. 10(2).

5.4 It must be noted that the units to be used, both metric and imperial, must be the statutory names (gram/ kilogram) and the statutory values given. There is no freedom to vary either the name or the value of the units.

6. Transactions regulated under the Weights and Measures Act

6.1 Many common consumer goods that are priced and sold by reference to units of measurement (weight, capacity measure, volume, area or length) are regulated by the Weights and Measures Act 1985 and its subordinate legislation. Regulated goods include most groceries (foods and non-foods), and many DIY goods and related products. These regulated products may be sold loose from bulk, packed or pre packed.

6.2 There are a number of exceptions where metric quantities are not required including draught beer and cider, which must be sold in specified imperial quantities, and milk sold in returnable containers, which may continue to be sold by the pint.

6.3 Business may continue to use imperial units as supplementary indications and to display conversion charts if they consider that would be of value to their customers. Traders will also be free to serve (though in metric units) customers who ask for goods in imperial units

6.4 Although the legislative changes have not yet been made, indications are that European Legislation, and hence UK legislation, are likely to be amended to allow UK business to be free to continue to display imperial units as supplementary indications for an indefinite period.

7. Transactions which are not regulated under the Weights and Measures Act

7.1 The majority of commercial transactions in goods, land and services are not regulated by the Weights and Measures Act 1985. These transactions are therefore not subject to any express sanction under

provisions in UK legislation that regulate the use of units of measurement

7.2 Business should, however, recognise that the scope of the EC Units of Measurement Directive is wider than transactions regulated under the Weights and Measures Act. The Directive provides for the use of metric units as the primary system of measurement from 1 January 1995 for "measuring instruments used, measurements made and indications of quantity expressed in units of measurement, for economic, public health, public safety or administrative purposes" (Article 2), unless one of the derogations (set out in appendix 1) which permit the longer use of imperial units applies.

7.3 The following are among the consequences that could follow for those non-regulated transactions that continue to use imperial units:

- Businesses which had hitherto used imperial units in transactions with other Member States could find that they are excluded from those markets until such time as they convert to metric units;
- The validity of a non-regulated transaction involving the use of imperial units could be liable to legal challenge by a party that argued that the transaction should not be upheld or enforced.

8. Derogations

8.1 Some imperial units remain available as the primary system of measurement for certain specific uses:

- The pint for sales of draught beer or cider and for milk sold in returnable containers
- The mile, yard, foot and inch for road traffic signs and for related distance and speed measurements
- The foot in aircraft heights and any other units used in the field of air and sea transport and rail traffic, which have been laid down in international conventions etc (see Article 2 of Directive 80/181)
- The nautical mile and knot for sea and air traffic
- The troy ounce for transactions in precious metals
- The acre for land registration, although current indications are that the European Commission will repeal this provision.

Appendix A

THE HISTORY OF METRICATION FROM 1994

In November 1994 six Statutory Instruments were passed implementing the Units of Measurement Directive 89/617/EEC. They were:

- ❑ The Weights & Measures (Metrication Amendments) Regulations 1994 – SI 1994/1851
- ❑ The Weights & Measures (Packaged Goods and Quantity Marking and Abbreviations of Units)(Amendment) Regulations 1994 - SI 1994/1852
- ❑ The Price Marking (Amendment) Order 1994 – SI 1994/1853 (subsequently replaced by the Price Marking Order 1999 – SI 1999/3042) (Now replaced by The Price Marking Order 2004 – SI 2004/102)
- ❑ The Weights & Measures Act 1985 (Metrication)(Amendment) Order 1994 – SI1994/2866
- ❑ The Weights & Measures (Metrication)(Miscellaneous Goods) (Amendment) Order 1994 – SI 1994/2868
- ❑ The Units of Measurement Regulations 1994 – SI1994/2867

The Directive set out a deadline of 1 January 1995 for national implementation but this had already been breached before the majority of the legislation came into force.

The timetable was:

1 January 1995

- ❑ Spirit drinks to be sold in metric quantities.
- ❑ Wine sold by the glass to be in metric quantities.

7 June 1995

- ❑ Unit pricing for certain goods was to have been in operation. Price Marking Order 1999 eventually brought provisions in.

1 October 1995

- ❑ Dual unit pricing no longer needed unless food sold loose from bulk. (Only where goods sold in metric quantities).
- ❑ The gallon, gill and fractions of it ceased to be legal.
- ❑ Imperial length measures ceased to be legal.
- ❑ Imperial prescribed quantities converted to metric plus additional metric quantities.
- ❑ *The pound and ounce retained only for goods sold loose from bulk.*
- ❑ The pint retained only for draught beer and cider and some foods in returnable containers.
- ❑ Several references to imperial units removed from the Schedules to the W&M Act 1985 dealing with miscellaneous goods.

1 January 2000

- ❑ *The pound and ounce ceased to be legal.*
- ❑ The pint remained for exempted categories (see above).
- ❑ Dual unit pricing for food sold loose from bulk ceased.
- ❑ Supplementary units in imperial units allowed provided they are less prominent, and expressed in characters no larger than the metric indication.

These Statutory Instruments were supplemented, in 1995, by the passing of the Units of Measurement Regulations 1995 – SI 1804.

METRICATION LEGAL PROVISIONS

General

The Weighing Equipment (Non-automatic Weighing Machines) Regulations 2000 (UK Stamped Equipment)

Regulation 9 requires that the machine must comply with the accuracy classifications contained in Schedule 2. These will refer to metric units only after 31 December 1999.

Regulation 17 requires machines to be marked in metric units only, except:

- ❑ Machines first stamped after 1 December 1980 may be denominated in the ounce troy.
- ❑ Machines first stamped before 1 December 1980 may be denominated in tons, cwt, or the qr.
- ❑ Machines first stamped before 1 December 1980 may be denominated in stones. Schedule 11 permits the continued use for trade of the stone for the purpose of making the quantity known to a prospective purchaser, in those cases where goods are weighed in the presence of the purchaser. Note that as this requires the scale to be clearly visible and the transaction to take place 'face to face', this is unlikely to include wholesale transactions of fish.

The situation regarding 'switchable' dual machines has been carefully considered and it is concluded that they can continue to be verified. The imperial indication is not, by definition, a supplementary indication, as it is not present at the same time as the metric indication. The marking requirements of Regulation 17 and the unit pricing requirements of Regulation 20 relate only to the primary indication and not the imperial non-trade use. The imperial indication is considered to be 'additional customer information' which is prohibited by neither the Regulations nor the Act. There are no grounds to bar the facility on the grounds that it facilitates fraud since it would probably be correct. Therefore, Type Approval certificates can still be issued for such machines. The illegal use for trade of the 'switching' facility under s.8 then becomes a matter for enforcement.

Regulation 42 provides that an inspector SHALL obliterate the stamp on equipment which:

- a) Fails to fall within the prescribed limits of error; or
- b) Fails to comply with any other appropriate requirement of the regulations.

If the nature or degree of non-compliance is not, in the Inspector's opinion sufficient to justify the immediate removal of the stamp, he SHALL give to the proprietor or any person in control of the machine a notice calling for the machine to be repaired within an maximum of 28 days.

If the fault has not been put right after the specified period, the Inspector SHALL obliterate the stamp.

Machines in use before 1 November 1988 that are outside the limits of error may remain in use if the error over the first part of the range is within or equal to two divisions.

The Non-automatic Weighing Instruments Regulations 2000 (EC Verified Equipment)

Regulation 4 prevents the use of the instrument for a Schedule 3 application unless the requirements of Regulation 5 are met, which is to say that the instrument meets the essential requirements. The essential requirements refer only to metric units.

Regulation 23 states that an authorised person MAY affix a disqualification sticker to an instrument if satisfied that it:

- a) Falls outside the limits of error as set out in Annex I of the Directive;
or
- b) Otherwise does not comply fully with the requirements applicable to it.

If the degree of non-compliance is such that it appears that a disqualification sticker should not be immediately applied, a notice MAY be issued requiring any person in possession of the instrument to bring it within the limits of error or made to comply with the requirements before the expiry of a maximum of 28 days.

If a notice issued as above is not complied with, the authorised person SHALL affix a disqualification sticker to the instrument.

The situation regarding 'switchable' dual instruments is the same as under the 2000 Regulations, above.

The Weights Regulations 1986

Section 8(1) of the Act requires weights in possession for use for trade to only be of the denominations stated in Part V of Schedule 3.

Regulation 13 only provides for the issue of a 28-day notice requiring the weight to be adjusted where a weight is found to be heavier or lighter than its purported mass by more than the prescribed limit of error.

Where the weight is found to be outside the limits of error on retesting, the inspector SHALL obliterate the stamp.

Reconversion of Metric Equipment

Equipment that is reconverted ceases to comply with the relevant regulations and is subject to rejection/disqualification. The option to give a 28-day notice under the 2000 Regulations does not exist under Regulation 43 for this situation.

Testing of Imperial Equipment

It is not possible to legally test imperial instruments using imperial standards as they are no longer traceable and have no legal standing within the weights and measures system.

However, there appears to be no bar to the testing of imperial indications by the application of the equivalent metric standards. When testing equipment following a deficient test purchase, the equivalent metric standards should therefore be applied, i.e. to test the machine at '1lb', metric standard weights would be applied and errors stated in metric values. The actual degree of precision of any particular conversion would, of course depend upon, e.g. the accuracy class of the instrument, the deficiency under investigation etc.

Where officers wish to determine the accuracy of equipment for information purposes, the imperial ranges could best be checked using metric weights on the scale and determining the appropriate imperial equivalent. However, such information should be supplemental to the offence of using the wrong units.

METRICATION OFFENCES IN RELATION TO IMPERIAL EQUIPMENT

Units of Measurement

Section 8(1)(a) of the Weights and Measures Act 1985 provides that no person shall use for trade any unit of measurement which is not included in Parts I to V of Schedule 1 to this Act.

Section 8(4) makes it an offence to contravene those provisions.

UK Stamped Equipment

Section 11(2) requires prescribed equipment in use for trade to bear a stamp indicating it has passed as fit for use for trade. Section 11(3) makes it an offence to contravene those requirements and the equipment is liable to be forfeited.

EC Verified Equipment

Regulation 4(4) of the Non-automatic Weighing Instruments Regulations 2000 makes it an offence for any person to fail to comply with Regulation 4(1), 4(2) and 4(3), (using an instrument for a Schedule 3 application) in that the essential requirements are not met and the equipment is liable to be forfeited. (NB that it would be sensible to refer to the relevant “application” that the machine was being used for in any summons.)

Weights

Section 8(4) of the Weights and Measures Act 1985 makes it an offence to contravene the units of measurement requirements in Section 8(1) (as above) and weights are liable to be forfeited.

Time Limits

For offences related to equipment and units of measurement the time limit is six months from the commission of the offence.

ENFORCEMENT POWERS IN RELATION TO IMPERIAL EQUIPMENT

UK Stamped Equipment Including Weights

Section 79(1) of the Weights and Measures Act 1985

At all reasonable times and subject to production, if requested, of credentials:

- Inspect and test weighing or measuring equipment, which is, or where Inspector has reasonable cause to believe is, used for trade or in the possession of any person or on any premises for use
- Enter any premises at which Inspector has reasonable cause to believe such equipment is, other than a private dwelling house.

Section 79 (2)

Subject to production, if requested, of credentials;

- Seize and detain any article Inspector has reasonable cause to believe is liable to forfeiture under Part II (weighing & measuring for trade) or Part IV (goods) of the Act.

Section 79(5)

- An inspector entering any premises may take with him such other persons and such equipment as may appear to him necessary.

EC Verified Equipment

Regulation 38(1) of the Non-automatic Weighing Instruments Regulations 2000.

- At all reasonable times and, subject to production if requested of credentials;
- Inspect and test any instrument in manner considered appropriate
- Inspect and take copies of documentation relating to instrument and quality system
- Enter premises except a private dwelling house where Inspector has reasonable cause to believe any instrument or document to be present.

Regulation 38(2)

Subject to production, if requested, of credentials:

- Seize and detain any instrument Inspector has reasonable cause to believe is liable to forfeiture under Regulation 4(4) (essential requirements)
- Seize and detain any document, implement or goods Inspector has reasonable cause to believe is required as evidence.

Notes

Please refer to the relevant sections in O'Keefe: The Law of Weights and Measures, for discussion on 'credentials'.

Any equipment that has been seized is liable to be returned if no proceedings ensue. See

Ghani & Others v Jones [1970] and Chic Fashions (West Wales) Ltd v Jones [1968].

PRICE MARKING ORDER 2004

General Provisions

Article 5 requires that a metric unit price be indicated for products sold from bulk. Article 7(1)(a) requires that this must be unambiguous, easily identifiable and clearly legible. Article 7(1)(b) requires that it must be in proximity to the products, other than in limited, specified circumstances.

Article 7(3) provides that imperial supplementary indications may be given but the metric unit price must predominate and the imperial indication expressed in characters no larger than the unit price.

Article 5 requires that advertisements that show a selling price must also show the metric unit price.

Enforcement

The enforcement of the Order is via the Schedule to the Prices Act 1974.

Paragraph 5(1) makes it an offence to contravene the provisions as outlined above.

Paragraph 9(3) and (4) provides the offences for obstruction and giving false information.

Paragraph 13 provides for the prosecution of Managers/Directors who consent/connive etc.

Defences exist for the Paragraph 5 offence. They are the same as the defences in TDA Sections 23 (fault of other person), 24(1) and 24(2) (mistake, accident etc).

Powers are contained in Paragraphs 3(2), 7, 9(1) and 9(2) of the Schedule. In summary, they allow an officer to:

- ☐ Enter any land or premises (not dwellings)
- ☐ Inspect and take samples of goods
- ☐ Require businesspersons to produce documents
- ☐ Take copies of documents
- ☐ Take test purchases
- ☐ Seize goods or documents required as evidence
- ☐ Seize goods for examination

Paragraph 8 of the Schedule requires a 30-Day Notice and there is a three-month limit for the institution of proceedings.

NOTICE OF INTENT

Dear Sir/Madam

Weights and Measures Act 1985 - Section 8 Price Marking Order 2004 - Article 5

During a recent inspection of your trading premises you were advised that you were failing to comply with the provisions of the above legislation. The purpose of this letter is to advise you of the situation regarding the use of imperial units of measurement for trade use and this Authority's intended course of action.

This Authority recognises the doubts created in people's minds as a result of the legal opinion obtained by the UK Independence Party, which has suggested that the legislation prohibiting the use of imperial units for selling loose goods after 1st January 2000 was illegally made. The main points of that legal opinion are as follows:

- 1) The Weights and Measures Act 1985, which set out the imperial units legal for trade use, was made *after* the European Communities Act 1972, which provided the mechanism for the removal of the pound and ounce after 1st January 2000. As the provisions of these are in contradiction, the Weights and Measures Act impliedly repealed the 1972 Act and the legislation implementing the metrication provisions is therefore illegal.
- 2) The legislation implementing the metrication provisions is illegal as it is not an Act of Parliament and only an Act of Parliament can amend another Act.
- 3) The European Communities Act 1972 cannot constitutionally permit Parliament to bind its successors.

It has further been suggested that Trading Standards Officers continuing to enforce the metrication provisions could be guilty under the Protection from Harassment Act 1997.

In order to restore clarity to the market place, the Opinion of leading Counsel has been obtained on behalf of Local Authority Trading Standards Departments. This Opinion fully rebuts the previous legal opinion, in particular:

- 1) The Weights and Measures Act 1985 did not expressly or impliedly repeal the mechanism for introducing metric units or the European Communities Act 1972. The 1985 Act was purely a consolidating Act and did not change the previous weights and measures provisions and 'repeal' can only take place where the law is changed.

- 2) The implementing provisions were appropriately made, using a sound legal mechanism and gave the proposed effect of implementing the metrication provisions.
- 3) The mechanism for implementing European legislation set out in the European Communities Act 1972 was intended to and directly ensures that the principles of EC law such as primacy, supremacy and direct effect are capable of being invoked by national courts.
- 4) No issue arises out of the Protection from Harassment Act 1997 where Trading Standards Officers are acting under an honestly held view of the validity of the law they are enforcing.

Ultimately it is for a court to decide whether the metrication legislation is valid and it is this Authority's duty to enforce the law until such a time that the court decides otherwise.

This Authority is committed to proportionate enforcement action through offering advice and support to business, and does not wish to pursue action where there is no obvious consumer or business detriment. However, the current situation has created a confusing and unfair market place. Consumers cannot effectively compare prices between two different units of measurement. Businesses that are complying with the law have been disadvantaged both in the money they have invested in converting equipment and by suffering unfavourable price comparisons between their price indications in kilos, which appear to be more expensive than their competitor's ones in pounds.

Consequently, this Authority is under an obligation to address these issues by securing compliance with the legislation. This Authority has, therefore, programmed further inspections for the near future with a view to taking consistent and equitable enforcement action against those traders who continue to fail to comply.

Should you require any further advice or wish to seek clarification in respect of these, or any other matters, please contact ...

LEGAL OPINIONS ON THE VIRES OF THE METRICATION LEGISLATION

Salient Points of the Opinion of Michael Shrimpton

- ❑ Because of the implied repeal of the European Communities Act 1972, the Units of Measurement Regulations 1994 bringing the requirements of EC Directives into force are *ultra vires*.
- ❑ The Weights and Measures Act (Metrication)(Amendment) Order 1994 is similarly *ultra vires* due to 'Henry VIII clauses'.
- ❑ Imperial weights & measures have been expressly authorised by Parliament. No Act of Parliament may be amended except by another Act of Parliament. The Weights & Measures Act 1985 was a consolidation Act and presumed not to alter the law unless the contrary intention appears.
- ❑ Section 2 of the ECA 1972 is a constitutional impossibility. Parliament cannot bind its successors and in the event of conflict a later Act takes precedence.

It has also been suggested that Trading Standards Officers enforcing the metrication provisions would be guilty under The Protection from Harassment Act 1997.

Salient Points of the Rebuttal Opinion of Eleanor Sharpston Q.C.

The opinion given by Ms Sharpston addresses specific questions put to her.

- ❑ The W&M Act 1985 did not expressly, or impliedly, repeal the earlier amending regulations introducing metric units. Nor did it have that effect on the European Communities Act 1972. EC law has primacy over domestic law.
- ❑ Nothing in the process of making the regulations included anything that would lead to a court regarding them as *ultra vires*.
- ❑ If national legislation has not correctly implemented EC Directives, the measures contained in those Directives cannot be enforced directly.
- ❑ A local authority cannot decline to perform its statutory duties under the Weights & Measures Act 1985.
- ❑ The Secretary of State has the domestic law *vires* to alter Schedule 1 to W&M Act 1985 by virtue of Section 1(2).
- ❑ No issue arises out of The Protection from Harassment Act 1997. Trading Standards Officers are unlikely to be held to be committing a criminal offence if they are acting under an honestly held view of the validity of the law they are enforcing.

DRAFT SPECIMEN OFFENCES

Failure to Use Lawful Units

That you the defendant on *(cite date)* at *(cite place)* in the said *(cite area)* did by *(cite circumstances e.g. selling certain goods, namely, apples, by weight)* use for trade a unit of measurement, namely the *(cite unit)*, which was not included in Parts I to V of Schedule 1 to the Weights and Measures Act 1985. Contrary to Sections 8(1) and 8(4) of the said Act.

Use of Unstamped UK Equipment

That you the defendant on *(cite date)* at *(cite place)* in the said *(cite area)* did by *(cite circumstances e.g. selling certain goods, namely, apples, by weight)* use for trade certain prescribed weighing equipment, namely, a *(cite description)* which had not been passed as fit for such use by an Inspector of weights and measures or an approved verifier and did not bear a stamp indicating that it had been so passed. Contrary to Sections 11(2) and 11(3) of the Weights and Measures Act 1985.

Use of an Instrument Bearing a Disqualification Sticker

That you the defendant on *(cite date)* at *(cite place)* in the said *(cite area)* did by *(cite circumstances e.g. selling certain goods, namely, apples, by weight)* use for the determination of mass for a commercial transaction a non-automatic weighing instrument, namely, a *(cite description)* which failed to comply with the requirements of Regulations 4(3) and 5(3) of the Non-automatic Weighing Instruments Regulations 2000 in that the said instrument had been affixed with a disqualification sticker. Contrary to Regulation 4(4) of the said Regulations made under the European Communities Act 1972.

Use of an Instrument Displaying Decimal Pounds

That you the defendant on *(cite date)* at *(cite place)* in the said *(cite area)* did by *(cite circumstances e.g. selling certain goods, namely, apples, by weight)* use for trade a weighing instrument, namely, a *(cite description)* which contravened Regulation 36 of the Non-automatic Weighing Instruments Regulations 2000 in that the said instrument had weight scale intervals expressed in decimal parts of a pound other than as a supplementary indication of the weight of goods. Contrary to Section 15(3) of the Weights and Measures Act 1985.

Price Marking - Use of an Imperial-Only Unit Price

That you the defendant on *(cite date)* at *(cite place)* in the said *(cite area)* did by *(cite circumstances e.g. displaying a sign stating 'APPLES 45p / lb')* indicate that a product, namely, *(cite product)* was or might be for sale to a consumer without there being indicated the unit price of the product in compliance with Article 5(1) of the Price Marking Order 2004 in that the unit price, namely *(cite unit price)* was not indicated by reference to the kilogram. Contrary to Paragraph 5 of the Schedule to the Prices Act 1974.

Price Marking - Use of a More Prominent etc. Imperial Unit Price

That you the defendant on *(cite date)* at *(cite place)* in the said *(cite area)* did by *(cite circumstances e.g. displaying a sign stating 'APPLES 45p / lb, £1.00 / kg')* indicate that a product, namely *(cite product)* was or might be for sale to a consumer without there being indicated the unit price of the product in compliance with Articles 5(1) and 7(4) of the Price Marking Order 2004 in that the unit price indication, namely *(cite unit price)*, did not predominate and the supplementary imperial price indication, namely *(cite imperial indication)*, was expressed in characters larger than the unit price. Contrary to Paragraph 5 of the Schedule to the Prices Act 1974.

Note

The above price marking offence does not appear to be duplicitous. The offence can be made out that either the unit price did not predominate or that the imperial indication was expressed in characters larger than the unit price, or, indeed, that both situations occurred, depending upon the nature of the circumstances.