

Weights and Measures Reform

Discussion paper : Enforcement

Summary

A significant element of the weights and measures regime is how the legislation is enforced. We are seeking general views on any ideas that could lead to a more efficient enforcement delivery system. We are posing some fundamental and challenging questions, not with any specific proposals in mind, but to develop a thorough understanding of what the legislation needs to deliver and how best to deliver it.

Our aim is to identify ways in which we could improve the efficiency of state funded enforcement activity, whilst maintaining its effectiveness and balancing the interests of consumer and business. We would be grateful if you could consider the questions on pages 4 - 6.

Background

Local Weights and Measures Authorities (LWMAs) enforce the provisions in the weights and measures legislation. This activity is funded from local and central taxation i.e. council tax and the Revenue Support Grant and each local authority has autonomy from central government and thus discretion about how much resource to put into the enforcement activity.

Government commissioned research by Price Waterhouse Coopers¹ found that the cost of compliance with weights and measures legislation was £258.7m, once adjusted to take into account Business as Usual costs. Among the costs, it was identified that the cost of an average inspection is £500, including the expense to the business of making a person available to accompany the inspector.

¹ 2005, Price Waterhouse Coopers undertook research to identify the burdens placed on business by legislation.

The National Performance Framework² data for 2005-6 showed that during that year there were 294,323 businesses that could be inspected, of which 84,512 or 28.7% were visited. Taking the average cost per inspection of £500, this equates to a total cost of £42.3m. Of those businesses inspected, 73,877 or 87.64% were compliant.

Most Local Authorities currently operate a risk based approach, prioritising enforcement activity on the basis of an assessment of the risk of the organisation, which has helped in the prioritisation of more scarce resources. However, local authorities employ a generic risk model, rather than focusing on metrology, or weights and measures issues. Organisations that are high risk in terms of metrology could therefore be identified as low or medium risk more generally, and as a result be subject to less frequent inspections.

The current “Home Authority Principle” supplemented by the Primary Authority Mechanism to be introduced by the Regulatory Enforcement and Sanctions Bill’, has been and will continue to be useful in focusing enforcement activity and promoting consistency of message. For example, large supermarkets’ procedures may have been assessed by their home authority and deemed to be low risk, leading to other branches also being deemed low risk.

At the same time, it is commonplace for larger retailers to have maintenance contracts in place to monitor and maintain the accuracy of their measuring equipment. Call-out times have reduced to a matter of hours in some cases. We need to understand the extent of this practice and the impact that it has on the current legislative and enforcement situation.

Reasons to Consider Reform

² Trading Standards inspections data, published by DTI in 2007.

The enforcement regime detailed in the existing Act fails to reflect the current flexible operation of a local authority to deliver necessary services. New consumer research³ has shown that consumers are concerned about items they cannot check themselves which also are of relatively high value such as petrol, but are less concerned with lower value goods bought in circumstances where that can be checked in any case.

In addition, variations in levels of funding from the local authority to the trading standards service, as well as different priorities within the services themselves have caused disparity in levels of enforcement activity. Indeed, the Rogers Review⁴ unusually draws a distinction between weights and measures and other forms of fair trading and set enforcement of the former as a non-priority for Local Governments. As a result of these factors, the overall trend has been towards reduced funding for Weights and Measures enforcement activity. The ageing population of metrology experts in the field may exacerbate the situation.

It is claimed that some Local Weights and Measures Authorities (LWMA) do not have the resources to deliver the full raft of possible weights and measures services. Some have certainly found it more cost effective not to maintain their own local standards. This has led to pooling of resources into regional groupings both in relation to inspection and verification⁵ activities which has alleviated the problem to some extent.

In relation to type approval European legislation has removed the statutory responsibility from the Secretary of State. In areas covered by the Non-Automatic Weighing Instruments (NAWI) Directive and Measuring Instruments Directive (MID) organisations need to become Notified Bodies (NB) to provide the same service, as before, but in a competitive environment. MID has also extended the choice of type approval to include design approval, with the latter

³ Measuring Up, Consumer Perceptions of Weights and Measures Legislation, Alan Terry and Philip Cullum, December 2006

⁴ Better Regulation Executive, Peter Rogers: National Enforcement Priorities for Local Authority Regulatory Services, March 2007

⁵ Passing as fit for use for trade and stamped

linked to approval of the manufacturer's quality system. Similar benefits in relation to the competitive market and design approval are not available to the remaining measuring equipment subject to UK national Weights and Measures legislation.

Under an additional initiative, the Local Better Regulation Office (LBRO) has been set up. Its aim is to minimise burdens on business and work in partnership with Local Authorities and national regulators to deliver a more consistent and co-ordinated approach to business inspection and enforcement. It is not clear how this will input in the field of weights and measures enforcement.

These pressures on the enforcement infrastructure justify a review of current enforcement arrangements. Without reform, the risks ahead include the very real possibility of increased levels of non-compliance, resulting from much less enforcement activity, so as the threat of inspection is reduced and the number of rogue traders taking advantage could increase. We need to understand what the impact of this situation would be on consumers, retailers and local authorities if we are to develop an effective service for the future.

Discussion questions:

We are seeking views generally on any ideas that would lead to a more effective enforcement delivery service in the future. Some of the areas you might like to consider are:

- What is the objective of enforcing the legislation?
- What do you see as the biggest challenges to the enforcement of weights and measures legislation?
- How can these issues in the enforcement of weights and measures legislation be overcome?
- How should weights and measures legislation be most appropriately enforced?
- What structure should be in place to do this?

- Are current compliance rates acceptable? If not, what options are open to regulators to drive rates up?

You may also wish to consider the following, more specific questions.

Please note, the purpose of these more specific questions is to help inform, and no specific proposals are being made at this stage:

- Is there scope for 'approving' retailers' quality management systems as a route to complementing enforcement activity? How might this impact retailers/consumers/the role of LWMA's?
- Is there scope for greater use of risk assessment and targeting?; and
- Could there be a transfer of some activities to the private sector?
- How far is it the responsibility of the retailer to ensure consumers have confidence in the weight or volume of goods they buy? And how far is it the responsibility of Government to 'police' retailers? What is the right balance?
- Are there lessons to be learnt from other enforcement regimes e.g. HSE, FSA, OFT, other countries?
- Would there be benefit in reorganising the delivery of enforcement activity?
- Would there be any benefits of a national structure? How might this work? How would this impact upon retailers/consumers/LWMA's? What are the risks?
- Would there be any benefits of a regional structure? How might this work? How would this impact upon retailers/consumers/LWMA's? What are the risks?
- What about a mixed structure? National/regional or regional/local?
- To what extent would a regional or national enforcement service be suitable for any other area of inspection currently delivered at local level?
- Are there any constraints on retailers that could be removed?
- Are there any constraints on LWMA's that could be removed e.g. duty to appoint a Chief Inspector of weights and measures, statutory

requirement to a specific level of qualification, duty to hold local standards?