

Response to Discussion Paper 1

Introduction

The underlying thesis of the Discussion Paper is that current weights and measures legislation is “incoherent and complicated”, and “difficult for businesses and consumers to understand and costly to comply with”. UKMA concurs with the first part of this view and we would also quote the comment of Lord Justice Laws in the case of *Thoburn vs Sunderland City Council*¹, when he described the law as “a nightmare of a paper chase” and “a maze of cross-references in subordinate legislation”.

A particular example of “incoherent and complicated” legislation with no obvious rationale is the mandating of two different and incompatible systems of measurement for similar purposes – for example, metric measures for draught wine and spirits but imperial for draught beer and cider (but not for bottled or canned beer in the same pub!). A further complexity is that whereas pricing of goods must be per metric unit (e.g. fruit at £ per kilogram), advertised descriptions of goods and their product manuals may use imperial units (e.g. a refrigerator of 6 “cu ft” capacity) . There is also claimed to be doubt over the extent to which metric units are mandatory in advertised unit prices², and there has been some confusion over whether imperial units may be used in the unit pricing of services such as the letting of office floorspace.

However, the most obvious anomaly is the mandating of primarily imperial units for “road traffic signs, distance and speed measurement”³ in the Traffic Signs Regulations and General Directions 2002 (SI 2002, No 3113). Although the detailed Regulations themselves are the responsibility of the Department for Transport, the authorisation for the use of imperial measurement units stems from weights and measures legislation and therefore falls to be considered within this review.

It is UKMA's view that the UK, like every other country in the world, needs a **single** system of measurement units that everybody understands and uses for all purposes. Indeed, this principle was expressed in Magna Carta in 1215: “Let there be one measure of wine throughout our whole realm; and one measure of ale; and one measure of corn ... Of weights also let it be as of measures”⁴. Yet, the continued authorisation or mandating of imperial units of measurement for certain purposes contradicts this principle and prevents the achievement of a single system.

UKMA calls on the Government **as a whole** to address this problem in a co-ordinated way.

We attempt below to respond to the specific questions posed in the Discussion Document.

1. What is the purpose of the weights and measures Act? What are we trying to achieve by legislating in this area?

The primary purpose of weights and measures legislation (including all secondary legislation as well as the primary Act) is to establish a uniform system of weighing and measuring in which everybody has confidence.

Stemming from this overall objective, subsidiary purposes are:

¹ Queen's Bench Division, [2001] EWCH Admin 934 , Case No CO/3308/2001

² See LACORS' advice “Price Marking - Metrication - Instore Displays in Imperial Measures”, 21 May 2001

³ Regulation 5(2)(a) of the Units of Measurement Regulations, SI 1995, No 1804

⁴ Translation from the Latin by W.S.McKechnie (1914)

- a) To enable clear communication between persons and organisations (e.g. between buyers and sellers of goods and services; between architects and builders; between highway authorities and drivers; between recipe-writers and cooks; and between the media and the general public)
- b) To protect consumers from short measure
- c) To promote public safety (via clear, well understood signage)
- d) To ensure clear pricing and labelling of goods for sale, thus enabling consumers to compare “value for money”
- e) To establish a “level playing field” for traders, thus protecting them from unfair competition from less scrupulous traders

We would comment that the above objectives all imply that all persons and organisations should use the **same system** of units of measurement. To permit more than one system (even if for different purposes) increases the chances of confusion and error and creates opportunities for misleading pricing and advertising and even fraud.

2. Why does Government need to intervene? What would be the impact of no legislation?

The establishment of a clear and reliable system of weights and measures is – together with maintaining law and order, and guaranteeing a sound currency - one of the basic functions of government in a civilised country. Without such a system – guaranteed by the government – there is scope for fraud, leading to loss of confidence in weights and measures, resulting in reduced economic activity, unemployment and recession.

While it may be possible to subcontract or privatise some of the associated activities (research, enforcement) there needs to be a basic legal framework established by the government.

3. Is it necessary to control both instruments and transactions?

Both are necessary. Instruments need to be validated and periodically checked in order to ensure their continued accuracy. Transactions need to be monitored and checked in order to ensure that traders are actually using the instruments that have been validated and that they are using them correctly and fairly.

Moreover, European Union Directives, such as the Measurement Instruments Directive (2004/22/EC) and the Price Marking Directive (98/6/EC), also require both instruments and transactions to be controlled.

4. Is the current legislation fit for purpose? If not, what particular areas need to be reconsidered?

There are serious weaknesses and inconsistencies in the current legislation. The fundamental problem is that the scope of the Weights and Measures Act is too narrow and the way in which the Units of Measurement Regulations has been applied does not reflect the broad objectives of the Regulations.

The Weights and Measures Act is limited only to the use of measurement units “for trade”, and is then further restricted to transactions “by reference to quantity”. This therefore excludes the use of measurement units in advertising, product description and

specification, instruction manuals, traffic signs, and health and safety notices.

The Units of Measurement Regulations are intended to implement Directive 80/181/EEC (the Units of Measurement Directive), which they cite explicitly in Regulation 2. This Directive (and hence the Regulations) apply to the use of measurement units for “economic, public health, public safety and administrative purposes”⁵ - except that, where they are governed by international agreements, the fields of air, rail and maritime transport are excluded. The Directive (and the Regulations) mandate the use of metric (SI) units, except that in the UK and Ireland they authorise the use of certain imperial units for “road traffic signs, distance and speed measurement”, draught beer and cider, and milk in returnable containers.

UKMA considers that there is an inconsistency between the Regulations and the Act. As noted above, the scope of the Act is restricted to the use of measurement units “for trade”. This purpose is clearly much narrower than the “economic, public health, public safety and administrative purposes” specified in the Regulations. Advertising and product description are obviously economic purposes. Instruction manuals, safety notices, including health warnings, clearly concern public safety. Public information issued by government departments and agencies, local and health authorities and the police are all for administrative purposes. Yet these are excluded from the Weights and Measures Act⁶.

These limitations and flaws in the legislation mean that in practice the UK has two systems of weights and measures. For the reasons given above, UKMA considers this to be an undesirable situation and one that is untenable and unsustainable in the medium and long term. It should be a clear objective of Government policy to work toward standardising on one single system of measurement – namely, the metric system – and the sooner the better.

Specific measures that should be implemented include the following:

- Advertising, product description and instruction manuals should be brought within the scope of the legislation, as should information issued to the general public by public sector bodies, including their agents and contractors
- The exemptions for “road traffic signs, distance and speed measurement”, draught beer and cider, and milk in returnable containers should be brought to an end as soon as possible. As a result, the Department for Transport will need to make the necessary consequential legislative and physical changes (such as amending or replacing traffic signs).
- There should be a duty placed on all public sector organisations, including government departments and agencies, contractors working on publicly funded projects, and organisations receiving grants or loans from public funds, to work toward becoming exclusively metric.

(It should be noted that, as a result of proposed revisions to Directive 80/181/EEC, “supplementary indications” will continue to be authorised alongside the legal units of measurement. UKMA considers this duplication to be wasteful and confusing and an obstruction to the smooth transition to the general use of a single system. Although

⁵ However, the European Commission has recently proposed that this wording should be deleted, with the result that the Directive and the Regulations will apply to “most fields of human activity” (see the first Recital)

⁶ However, other government advice “Guidance Note on the use of Metric Units of Measurement by the Public Sector”, which can be found at the following URL <http://www.nwml.gov.uk/Docs/Legislation/Units%20of%20Measurement/Gnotes%20for%20public%20sector%20on%20use%20of%20metric.pdf>, indicates that failure to use metric units “could render liable to legal challenge expressions of quantity in future legislation, documentation, etc on the ground of inconsistency with the Units of Measurement Directive”.

“supplementary indications” will continue to be permitted, they should not be encouraged.)

5. How best can we ensure choice and protection for consumers? What is the balance between choice and restriction e.g. prescribed quantities?

In order to make meaningful choices, consumers require accurate and reliable information about the goods and services on offer. This means that traders must be required to provide information in a standard form so that consumers may make comparisons on a fair basis. It is therefore essential to consumer protection that information provided (whether in product description, instruction manuals or advertisements) should use the same measurement units. Indeed this is also in the interest of reputable traders and manufacturers as it protects them from unfair competition from less scrupulous traders and manufacturers giving misleading information.

Unfortunately, this is not the current position. For example, it is impossible to compare the performance of lawnmowers when some traders and manufacturers give the power output in kilowatts, others in “horse power”, while others give the cubic capacity of the engine (in cubic centimetres) or the electrical power (input) rating in kilowatts. Similarly, heating and air conditioning equipment cannot be compared when some manufacturers give data in kilowatts and others in “BTUs” (or more correctly “BTU/h”).

With regard to pricing, the Price Marking Order requires the “unit price” of goods (per kg, metre, litre etc) to be displayed. This applies to “loose goods” sold from bulk by all shops and traders and to packaged goods sold in shops with more than 280 m² floorspace (but not to smaller shops or market traders). UKMA considers that these exemptions are too broadly drawn and should be reduced. We would commend the alternative approach of the Irish Republic, which requires most traders to show the unit price on shelf labels but exempts traders who do not have equipment for printing shelf labels. (See http://www.citizensinformation.ie/categories/consumer-affairs/consumer-protection/pricing/pricing_of_goods_and_services).

Whatever the merits of “prescribed quantities”, this issue has been largely resolved by the recent Directive 2007/45/EC, which will from 2009 prohibit member states from prescribing package sizes (with exceptions for certain goods until 2012 or 2013). UK law will need to be aligned with this Directive by October 2008, and further comment is unnecessary – except on the issue of prescribed quantities of draught alcoholic drinks.

At present consumers are restricted in their choice of draught beer and cider to three imperial sizes (pint, half pint and one third of a pint). UKMA can see no good reason for this restriction and advocates deregulation, so that licensees would be free to offer to dispense draught beer and cider in other convenient amounts such as multiples of 100 ml, provided that the amount dispensed is clearly shown (e.g. by the use of lined glasses) and the unit price (per litre) is displayed. This option is likely to be particularly attractive to restaurants specialising in foreign cuisines and “themed” pubs such as Austrian or German “Bierkeller”.

Finally, although this is not strictly a legislative matter, we would comment that the ending of prescribed quantities for most packaged goods makes it more important than ever that the concept of “unit pricing” should be understood by consumers. If the Government is seriously interested in consumer protection, it should promote and explain this concept by publicity campaigns, and the topic should receive greater emphasis in school syllabuses.

6. Is the balance of responsibility between the state and business right? i.e. how much should the State control directly or how much responsibility and accountability should be passed to the buyers and sellers themselves?

UKMA considers that it is the responsibility of the state to protect the weakest and most vulnerable in society from unfair or misleading trading practices. The weak include:

- children (whose school education is primarily metric)
- the very elderly (who may be confused or suffer from mobility, hearing or eyesight problems)
- persons with learning difficulties (who may be easily deceived by confusing marketing techniques)
- persons on low incomes (whose shopping choices may be restricted)

Weights and measures legislation should be based on the principle that such persons need protection. They would benefit greatly from a single system of measurement units.

It is clearly not normally possible to maintain a separate system of consumer protection for the weak and vulnerable. Thus, although the better educated and more sophisticated consumer may be better able to detect misleading trading practices and compare value for money, the same protections must apply to them.

7. Is there scope to open up weights and measures activities to the private sector?

Although it might be possible for the private sector to train and employ certified Trading Standards Officers (perhaps by analogy with private sector Building Control Officers), there does not appear to be any advantage for consumers in such a change. There is a danger that competition on price between providers could drive down standards, and we would suggest that this option should not be pursued.

8. Is there scope to simplify the traceability of standards, and if so, what would be the benefits?

No comment.

9. Are you aware of areas of the legislation that are no longer relevant due to technological change? What would be an appropriate, alternative response?

No comment.

10. Are there instances where technology has moved on so much that the weights and measures legislation is either no longer required or is standing in the way of innovation?

We know of no such instances.

11. Do you believe the scope of the weights and measures legislation needs to be *extended* in any way to reflect the modern trading environment?

Yes. We have given a number of examples above in response to previous questions, especially in response to Question 4.

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