



House of Commons

Committee of Public Accounts

**Department of Trade
and Industry:
Regulation of weights
and measures**

**Thirty-eighth Report of
Session 2002–03**



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*Report, together with formal minutes,
oral and written evidence*

*Ordered by The House of Commons
to be printed 2 July 2003*

HC 581

Published on 10 July 2003
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

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Summary

About £1 billion worth of retail goods are sold every week by weight or volume. The use of accurate weights and measures is therefore crucial for consumer protection and the operation of a fair market place. To maintain the confidence of consumers and businesses in weights and measures the Government regulates the units and standards of measurement for trade; the design and use of weighing and measuring equipment; the provision of quantity information; and the sale of goods by quantity.

The Department of Trade and Industry (the Department) and the National Weights and Measures Laboratory (the Laboratory), an Executive Agency of the Department, are responsible for establishing and maintaining the regulatory framework, and ensuring that the legislation is enforceable. The primary legislation is the Weights and Measures Act 1985, which is intended to ensure that defined standards apply to weights and measures used for trade across the country. Enforcement of the legislation relating to the design of weighing and measuring equipment falls to the Laboratory; and for all other aspects to over 200 local authority Trading Standards Departments.

On the basis of a Report by the Comptroller and Auditor General, we took evidence from the Department and the Laboratory¹ on 26 March 2003. We considered the relevance and enforceability of the legislation; the regulatory burdens faced by consumers and businesses; the variations in the level and effectiveness of local enforcement work; and the contribution the regulation of weights and measures makes to achieving consumer protection and fair market objectives.

We draw the following main conclusions from our examination.

- The Department should have acted more quickly in updating and simplifying the legislation to protect consumer interests. Much of weights and measures legislation is up to 40 years old as the Weights and Measures Act 1985 largely consolidates earlier Acts dating back to 1963. Anomalies have arisen over time. For example, writing paper must be sold by number of sheets but photocopying and typing paper need not. In 1998, the Better Regulation Task Force told the Department that legislation on packaged goods was too complex and did not aid consumer protection. The Department is only now introducing changes to the legislation through a Regulatory Reform Order which is not expected to be in force until 2004. The uncertainty inherent in outdated and complicated legislation undermines effective enforcement, and the Department needs to establish a realistic timetable for essential improvements and adhere to it.
- Local enforcement should be sufficiently consistent to achieve effective consumer protection and a fair market place across the country. There is too much variation in the level and effectiveness of local authority enforcement work. For example, the proportion of high risk premises visited by local authorities ranged between 2% to 100%. Whereas some authorities were visiting very few high risk premises, others

¹ C&AG's Report, *Department of Trade and Industry: Regulation of weights and measures* (HC 495, Session 2002–03)

were visiting them more than once a year. Differing local circumstances will lead to a degree of acceptable variation between local authorities, who need to decide what emphasis they give to trading standards work, including weights and measures enforcement. But they need to operate within a common framework with parameters set by the Department, in the interests of achieving consistent levels of consumer protection. The Department should use the National Performance Framework and its powers under the Best Value regime to set limits on the degree of local variation in weights and measures enforcement work, and assess the performance of local authorities in achieving such standards.

- The Department does not know enough about the burdens created by weights and measures legislation. The only quantified assessments by the Department of the costs and benefits of proposed legislative changes relate to sales of beer and cider. It has not estimated the total costs which the legislation places on businesses, how far these costs are passed on to the consumer or the benefits to consumers. The Department recognises the importance of striking the right balance between under- and over-regulation, but it needs to be better informed if it is to know whether that balance is being achieved.

1 Weaknesses in the legislation

1. The use of weights and measures for trade is governed by the Weights and Measures Act 1985 and a number of European Community Directives and Regulations. But the 1985 Act largely consolidates Weights and Measures Acts of 1963, 1976 and 1979. As a result, anomalies have arisen and the legislation has failed to keep up with some developments in technology and retail behaviour. For example, writing paper needs to be sold by number of sheets but photocopying paper does not; and goods such as Do-It Yourself products which were only sold wholesale in the past can now be bought retail in the same quantities but remain outside the legislation.²

2. The legislation has also become increasingly complex. In 1998 the Better Regulation Task Force told the Department that weights and measures legislation on packaged goods was too complex and did not aid consumer protection. Since then the European Community Directives which introduced the average quantity system on packaged goods run to 12 pages, but the United Kingdom legislation implementing these Directives comprises more than 100 pages of primary and secondary legislation, plus guidance notes for packers and inspectors and codes of practice for certain industry sectors. The Department believed that some complexity was unavoidable as consumer behaviour changed and to provide an adequate regulatory framework for consumer protection. The Department is now working on a Regulatory Reform Order on packaged goods and to consolidate seven orders on pre-packaged foodstuffs, but these are not expected to be in force until 2004.

3. Complex legislation is also harder to enforce in a consistent manner, as highlighted by the ‘froth on beer’ issue. The Department has failed to achieve a consensus between trade groups and Trading Standards Departments on how much liquid there should be in a pint of draught beer or cider, despite three consultation exercises, over the last 15 years.³ Throughout this period, the Department has not been able to reconcile the need to avoid excessive regulation with the desire to provide adequate consumer protection. Following the last exercise in 2002 on whether measures should be defined as 95% or 100% liquid, the matter is currently with Ministers.⁴ Consumers can ask for a top-up to 100% liquid, but the Department has been reluctant to legislate to ensure consumers receive 100% liquid because of difficulties in finding a solution which satisfies both the trade and consumers.⁵ This situation has gone on for far too long, and it remains most unsatisfactory that when buying a pint of beer consumers still do not know whether or not they are entitled to expect a full pint of liquid.

4. Current legislation on beer measures dates from the 1963 Act which is silent on whether the gas in the head of froth is part of the measure. Subsequent case law failed to remedy this uncertainty. The licensing trade has favoured voluntary guidelines that liquid should form at least 95% of a pint of beer. However, surveys in 1997 showed that the guidelines were

2 C&AG's Report, para 3.3; Qq 53, 55

3 Qq 122–123, 137–139

4 Qq 3–5

5 Qq 5, 38, 42, 144–151

widely disregarded and that in specific areas up to 70%⁶ of ‘pints’ had less than this quantity of liquid.

5. The Department estimated that licensees who serve less than full liquid measures sell about 200 million more ‘pints’ per year than they buy. The estimated annual value of such short measure is about £130 million at wholesale prices. Retail customers are, therefore, losing an even greater amount.⁷ Licensees who do provide 100% liquid in a pint of beer are at a competitive disadvantage compared to those who do not.⁸ Enforcement by local Trading Standards Officers in licensed premises has been made more difficult by the reluctance of the courts to convict unless less than 90% of liquid is served. On the basis of local authority surveys, around 20% of pints on average are made up of less than 95% of liquid.⁹

6. The Department recognised the importance of striking the right balance between under- and over-regulation. Consumers needed regulation to help ensure they were not being short-changed; and businesses needed it to maintain competitiveness and productivity.¹⁰ The Department has carried out Regulatory Impact Assessments to determine the costs and benefits which specific legislative proposals are likely to present to consumers and businesses. Assessments in 1999 covered proposals to modernise the law on the sale of goods sold by quantity; and in 2000 and 2002 proposals to tighten consumer protection against short measure draught beer and cider sales. Early assessments lacked any quantification of what those costs and benefits might be. However, the 2002 assessment of draught beer and cider did include extensive quantification of costs.¹¹

7. In 1998, the Better Regulation Task Force attempted to identify the total burden of the regulatory framework on businesses but without success.¹² The Department has not made further attempts, despite the Task Force pointing out the burdensome nature of aspects of weights and measures legislation¹³ and evidence that many consumers did not use quantity information provided when buying food.¹⁴

8. Petrol illustrates the difficulties in securing cost-effective regulation. Petrol is supplied by oil companies to retailers on the basis of volume which is affected by ambient temperature and vapour loss. The Petrol Retailers Association has argued that retailers receive less fuel from oil companies than they have to pay for because by the time petrol is sold at the petrol station it has cooled. Vapour loss on delivery also results in less fuel being delivered than was loaded into the road tanker. The Petrol Retailers Association has estimated that the total loss of revenue to small retailers as a result of ‘warm’ delivery is £80 million a year.

6 C&AG’s Report, Figure 10; Q 38

7 Qq 1, 39–42

8 Q 2

9 Qq 104–107; 142; 152–154

10 Qq 37, 50, 54, 68

11 C&AG’s Report, para 2. 5

12 Qq 58–59

13 Better Regulation Task Force (1998), *Better Regulation Task Force Review: Consumer Affairs*, Central Office of Information, p10

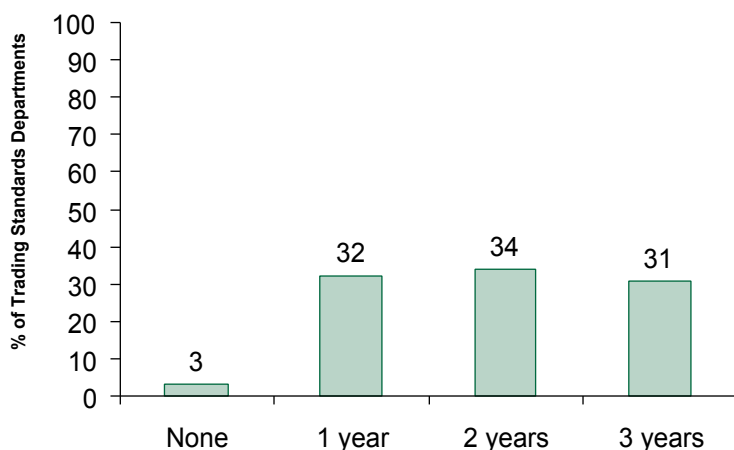
14 Lennard D, V W Mitchell, P McGoldrick and E Betts (2001), *Why consumers under-use food quantity indicators*, *The International Review of Retail, Distribution and Consumer Research*, 11(2), pp 177–199

9. The Laboratory is carrying out research to assess whether the introduction of ‘standard temperature accounting’ could ensure that the amount of fuel delivered to the petrol station and the amount which is sold are calculated on the same basis. It is also developing a means to meter delivery from road tankers to the petrol forecourt.¹⁵ The Department will consider the case for legislation when the outcome of that research is known.

2 Local Enforcement Work

10. Enforcement of the legislation governing the design of weighing and measuring equipment falls to the Laboratory; but enforcement of all other aspects of weights and measures legislation is the responsibility of 202 local authority Trading Standards Departments. The Weights and Measures Act 1985 requires local authorities to provide the Department with annual 'section 70' returns on the results of local enforcement work.¹⁶ In 1999, the Audit Commission highlighted the need for a more comprehensive performance framework for Trading Standards Departments,¹⁷ and this was reflected in the Government's Consumer White Paper published in the same year.¹⁸ With the development of a new framework, the Department stopped chasing local authorities who did not provide the returns after 1998–99 and only around 30% of authorities provided the returns between 1998–99 and 2000–01 (**Figure 1**). The Department did not regularly analyse those that it did receive.¹⁹

Figure 1: The percentage of Trading Standards Departments providing section 70 returns for the years 1998–99 to 2000–01



Source: C&AG's Report, Figure 8

11. The new National Performance Framework for Trading Standards Services was only introduced in April 2002. The Department has therefore had increasingly inadequate information on the effectiveness of local weights and measures enforcement. The Department's limited analysis of this information was partly a reflection of concerns about the consistency of local data and the reliability of national figures. The Department expected the Framework to leave it much better informed about trading standards work generally at the local level, although it makes less explicit provision for information on weights and measures enforcement. The Department is currently consulting interested parties as to what information specific to weights and measures enforcement it should receive. It is too early to know whether all local authorities will provide the required information as it is no longer a statutory obligation. By October 2002, 87% of authorities

16 C&AG's Report, paras 1.5, 2.11

17 Audit Commission (1999), *Measure for measure: the best value agenda for trading standards services*, p100

18 Department of Trade and Industry (1999), *Modern Markets: Confident Consumers*, Chapter 7

19 C&AG's Report, para 2.11, Figure 8; Qq 9–12

had sent in Service Delivery Plans for 2002–03, but performance information returns were not due until after April 2003 and the Department’s analysis of them will not be reported until September 2003.²⁰

12. The Department’s lack of data on local weights and measures enforcement work has meant that it could not determine whether local authorities were enforcing the legislation effectively and consistently, or, therefore, whether common standards of consumer protection and fair trading applied across the country. For example, the Department did not know how many of the 700,000 premises using weights and measures for trade were in the high risk category. Nor could it estimate the proportion of those premises likely to be using weights and measures fraudulently. The Department took the view that it was not its role to determine which premises should be classified as high, medium or low risk. Nor did it need such information because it was for individual local authorities to decide to take enforcement action. In reaching these decisions, authorities took into account both guidance from the Local Authority Co-ordinators of Regulatory Services and local priorities.²¹ The Department also did not collect information on the level of fines imposed for breaches of weights and measures legislation.²²

13. In addition the Department was not aware of large variations both in levels of enforcement activity and failure rates between different authorities. The frequency with which business premises are subject to enforcement actions by Trading Standards Department is determined by the risk they present across the range of trading standards work. The Local Authority Co-ordinators of Regulatory Services recommends that high risk premises should be subject to appropriate enforcement actions once a year, subject to local discretion. Despite this guidance, in 2000–01, on average, only 56% of high risk premises were visited by Trading Standards Departments for all inspection purposes. And in the same year, the average percentage of premises liable for inspection for weights and measures purposes which were actually visited ranged from 16% in County Councils to nearly 40% in Scottish Authorities (**Figure 2**). And the proportion of high risk premises visited by local authorities in 2000–01 ranged from between 2% to 100%. Whereas some authorities were visiting very few high risk premises, others were visiting them more than once a year.²³

14. Figure 2 highlights differences in average levels of non-compliance with weights and measures legislation by type of local authority. For example, the rate at which weighing and measuring equipment, when first installed, was found not to comply with approved designs, was on average 39 times higher in Unitary Authorities than it was in London Boroughs. Similarly, there were large variations underlying these average rates. For example, in 2000–01, the percentage of packages sampled at packaging plants in Unitary Authorities whose weight or volume was found to be outside acceptable tolerances ranged widely from 100% down to 6%. The Department agreed that such variations were unacceptable, but it did not know why they existed.²⁴

20 C&AG’s Report, para 4.15; Qq 10, 20–22

21 Qq 24–32

22 Qq 69–76

23 C&AG’s Report, paras 4.10–4.11, Figure 11; Q 157

24 C&AG’s Report, Figure 14; Qq 16–18, 43, 101

Figure 2: Variations in average weights and measures enforcement activity and levels of non-compliance with legislation, by type of local authority, 2000–01

	County Councils	Unitary Authorities	London Boroughs	Metropolitan Boroughs	Scottish Authorities	Welsh Authorities
% of premises liable for inspection for metrological purposes actually visited	16.1	16.6	21.2	28.4	39.4	28.4
% of equipment failed at verification stage	1.6	3.9	0.1	0.4	3.6	2.0
% of equipment failed when inspected	3.3	2.5	4.2	5.2	8.1	3.1
% of samples of packages failed when inspected at packaging plants	10.1	15.3	10.1	12.7	5.7	5.2
% of items failed when tested at retail outlets	6.0	9.9	5.5	8.6	4.2	20.0

Note: Figures based on 13 returns from County Councils; 14 from Unitary Authorities; nine from London Boroughs; 18 from Metropolitan Boroughs; 23 from Scottish authorities; and four from Welsh authorities.

Source: Comptroller and Auditor General's Report, Figure 11

15. The Department also did not know why failure rates for packages tested at packaging plants were largely higher than for items tested in retail outlets. It suggested that Trading Standards Departments might target their enforcement action at packaging plants based on assessment of risk, whereas the checks in shops would be done on a broader sampling basis. But the Department could not say whether the figures indicated that certain products were usually underweight or that individual packages of all products were underweight. Nor could it say whether the high average failure rates for items tested in retail outlets by Trading Standards Departments (for example, almost 10% in Unitary Authorities, and 20% in Welsh Authorities) were representative of the actual level of non-compliance at the local level.²⁵

3 Contributing to Consumer Protection and Fair Market Objectives

16. The Department is responsible for achieving the Government's objectives on consumer protection and fair trading. Enforcement by local authority Trading Standards Departments is intended to ensure that weights and measures legislation contributes effectively to achieving those objectives. Successive governments have taken the view that national trading standards, including those on weights and measures, were most effectively enforced by local authorities. There will inevitably be local differences in how local authorities seek to enforce weights and measures legislation to reflect local priorities, but the Department confirmed that all local authorities had to apply the same trading standards as part of a national framework. In practice, however, the degree of variation which existed in the levels of enforcement activity by individual local authorities raised questions about whether it was all due to different local circumstances.²⁶

17. The Department can intervene only if a local authority fails to provide best value in trading standards work, including weights and measures enforcement, as indicated by its performance against the relevant Best Value indicators. However, the current indicator for trading standards work is recognised as inadequate for identifying whether Best Value has been achieved. Trading Standards work is also not covered by the system of Comprehensive Performance Assessment introduced in 2002. Therefore the Department cannot secure change if local enforcement of weights and measures legislation is weak.²⁷

18. There are inconsistencies in the Department's exercise of its responsibilities for overseeing the effectiveness of local enforcement. On the one hand it does not see local Trading Standards Departments as part of a national enforcement service over which it needs to have overall management responsibility. On the other hand it is developing the National Performance Framework which is intended to raise the performance of local authorities on trading standards work and promote consistent enforcement. It is also developing Consumer Direct, a national helpline which will allow consumers to complain, making it easier to identify trends in fraudulent behaviour on a national scale. And since 2000–01, the Department has been providing £1 million each year to support the training and development of Trading Standards professionals through the funding of scholarships. The scheme is managed by the Local Authority Co-ordinators of Regulatory Services; and £713,000 and £831,000 was spent in 2001–02 and 2002–03 respectively. A further £500,000 has been provided by the Department through the Trading Standards Institute to develop distance learning materials, which will be available in June 2003, to support the professional development of Trading Standards Officers.²⁸

26 Qq 155–156

27 C&AG's Report, para 4.14

28 Qq 31, 49, 79, 107–112; Ev 17 (Q 107)

Conclusions and recommendations

The relevance and enforceability of the legislation

1. The Department has recently identified anomalies and gaps in weights and measures legislation which have arisen from the normal development of products, consumer interests and retail practices. In updating the legislation, the Department should seek the necessary flexibility to keep pace with changes in technology and retail behaviour by framing the law to allow appropriate use of secondary legislation.
2. The Department plans to make a Regulatory Reform Order and a consolidated food order to make it easier to target enforcement at businesses who deliberately sell short weight or short measure goods. The Department should now reform the legislation to address gaps and anomalies relating to non foodstuffs, such as requiring nails to be sold by weight or number but not screws or tacks.
3. The current legislation is also complex, partly because of cumulative amendments and partly because some aspects of weights and measures are inherently complicated. Consolidation of legislation can help to reduce complexity. The Department should periodically review business awareness and understanding of the legislation to see whether its attempts to simplify have succeeded.
4. Uncertainty over the interpretation of legislation hinders its effectiveness. The Department should clear up the uncertainty about what constitutes a 'full pint' of beer and cider. We take the view that a pint of beer should mean a full pint of liquid. Even if there is still to be variation in what consumers receive, its limits should be clearly defined so that enforcement can be consistent and so that consumers can know what they are entitled to expect.

Consistent and effective local enforcement

5. In recent years only 31% of local authorities have consistently provided statutory annual returns to the Department, showing enforcement activity and results. The Department did not follow up this shortfall because it intended to introduce a new information and performance measurement regime for Trading Standards Departments. Now that the National Performance Framework has been introduced, the Department should encourage all Trading Standards Departments to provide the information required, in ways that do not place an unnecessary bureaucratic burden on local authorities.
6. The new National Performance Framework for Trading Standards was introduced in April 2002. For 2002–03 the Framework provided a better overall view of the work of Trading Standards Departments, but asked for less information on weights and measures enforcement. As a result of the first year's experience, the Department is consulting interested parties over the range of information on weights and measures that it should receive. The Department should identify what basic information on weights and measures activities and results it will need to monitor the effectiveness of legislation and improve enforcement.

Formal minutes

Wednesday 2 July 2003

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon

Mr Brian Jenkins

Mr Ian Davidson

Mr David Rendel

Mr Frank Field

The Committee deliberated.

Draft Report (Department of Trade and Industry: Regulation of weights and measures), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 18 read and agreed to.

Conclusions and recommendations read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Thirty-eighth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (Reports)) be applied to the Report.

Adjourned until Wednesday 10 September at 3.30 pm

Witnesses

Wednesday 26 March 2003

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Sir Robin Young KCB, and **Mr Jonathan Rees**, Department of Trade and Industry, and **Dr Jeffrey W Llewellyn**, and **Mr Richard Frewin**, National Weights and Measures Laboratory

Ev 1

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