



House of Commons
Regulatory Reform Committee

Draft Legislative Reform (Verification of Weighing and Measuring Equipment) Order 2008

Seventh Report of Session 2007–08

*Report, together with formal minutes and
written evidence*

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The Regulatory Reform Committee

The Regulatory Reform Committee (previously the Deregulation and Regulatory Reform Committee) is appointed to consider and report to the House on draft Legislative Reform Orders under the Legislative and Regulatory Reform Act 2006. Its full remit is set out in S.O. No. 141, which were approved on 4 July 2007.

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Paragraph (3) of Standing Order No.141 requires us to consider any draft legislative reform order against the following criteria:

... whether the draft legislative reform order —

- (a) appears to make an inappropriate use of delegated legislation;
- (b) serves the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
- (c) serves the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- (d) secures a policy objective which could not be satisfactorily secured by non-legislative means;
- (e) has an effect which is proportionate to the policy objective;
- (f) strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- (g) does not remove any necessary protection;
- (h) does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (i) is not of constitutional significance;
- (j) makes the law more accessible or more easily understood (in the case of provisions restating enactments);
- (k) has been the subject of, and takes appropriate account of, adequate consultation;
- (l) gives rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant;
- (m) appears to be incompatible with any obligation resulting from membership of the European Union.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/regrefcom. A list of Reports of the Committee in the present Session of Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are John Whatley (Clerk), Neil Caulfield (Inquiry Manager) and Liz Booth (Secretary/Committee Assistant). Assistance was also provided for this report by Helen Emes, Assistant Counsel, House of Commons Legal Services Office.

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Contents

Report	<i>Page</i>
Summary	3
What the draft Order proposes:	5
Assessment of the proposal against the tests in the Legislative and Regulatory Reform Act 2006 and in Standing Order No. 141(3)	6
Consultation	7
Consumer protection	7
Impact on local authorities	8
Impact Assessment	9
Procedure	9
Conclusion	10
List of written evidence	11
Formal Minutes relating to the report	18
Reports from the Regulatory Reform Committee in the last and current Session	
<i>inside back cover</i>	

Summary

The Legislative Reform (Verification of Weighing and Measuring Equipment) Order 2008 and Explanatory Document were laid before the House on 20 October 2008 under section 14(1) of the Legislative and Regulatory Reform Act 2006 (LRRRA).

The purpose of the draft Order is to amend the Weights and Measures Act 1985 in order to permit the verification of equipment by approved verifiers after adjustment.

The Department for Innovation, Universities and Skills has recommended that the draft Order should be subject to the affirmative resolution procedure.

We agree and accordingly recommend that the draft Order be approved.

What the draft Order proposes:

1. Many pieces of weighing and measuring equipment, in the UK and throughout the European Economic Area, are subject to a system of prescription.¹ This system regulates the accuracy of the equipment by testing it before it is put on the market and/or when it is first installed (“initial verification”) and when it is repaired or adjusted in a way which may affect its accuracy (“subsequent verification”). Equipment is “stamped” or marked to indicate that it has passed the verification test.²

2. The provisions governing the verification of equipment are contained in a range of legislation and have been subject to a series of changes since the 1985 Act. Before 1993, local authority inspectors carried out all verification. In 1999, the Deregulation (Weights and Measures) Order 1999³ (“the 1999 Order”) amended the Weights and Measures Act 1985 (“the 1985 Act”) and introduced a system of verification by approved verifiers as an alternative to inspectors. A system for auditing approved verifiers, together with inspection, was put in place in order to ensure consumer protection. Regulations to implement the Measuring Instruments Directive⁴ and Regulations to implement the Non-automatic Weighing Instruments Directive⁵ (as amended) have since extended the functions of approved verifiers concerning various types of equipment.

3. “Approved verifiers” are manufacturers, installers or repairers of prescribed equipment. They may apply for approval to verify equipment which they have manufactured, installed or repaired themselves. Final approval is required from the National Weights and Measures Laboratory and is subject to regular renewal.

4. Approved verifiers are restricted by the provisions of section 11A of the 1985 Act, as inserted by the 1999 Order. Currently this section permits subsequent verification only after the approved verifiers have manufactured, installed or repaired equipment. It does not allow for verification of equipment which they have subjected to adjustment.⁶ The draft Order seeks to amend the Weights and Measures Act 1985 in order to overcome this anomalous situation and to permit the verification of equipment by approved verifiers after adjustment.

5. The Department for Innovation, Universities and Skills says that the petrol retailing industry is the only sector likely to be significantly affected by the change.⁷ Petrol pumps need to be adjusted more frequently than many other kinds of equipment, as their accuracy “drifts” due to wear and tear. Retailers are permitted to operate pumps with a margin of error between -0.5% and +1%. The “repair” of equipment includes the fixing of defects or

1 “Prescription” in this case means equipment used for trade which is subject to statutory checking requirements.

2 “Verification” is the term given to the statutory check that equipment operates accurately.

3 S.I. 1999/503

4 Measuring Instruments Directive (2004/22/EC)

5 Non-automatic Weighing Instruments Directive (90/384/EEC) as amended by Directive 93/68/EEC

6 “Adjustment” takes place where equipment which is operating within the legal margin of error is adjusted to make it more accurate.

7 ED p6 para 23

the alteration of settings if a pump is operating outside the permitted margin of error. However, if a pump is operating within that margin, this would not amount to a “repair” but would instead be a simple “adjustment.” The same technical procedure is involved in altering the settings: the difference lies only in the degree to which they are altered.

Assessment of the proposal against the tests in the Legislative and Regulatory Reform Act 2006 and in Standing Order No. 141(3)

6. Section 1 of the LRRA states that the Minister may by Order make any provision which he considers would serve the purposes of removing or reducing any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation. “Burden” is defined by section 1(3) as:

- a) a financial cost;
- b) an administrative inconvenience;
- c) an obstacle to efficiency, productivity or profitability; or
- d) a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

7. The Explanatory Document gives details of a range of burdens which will be removed or reduced by the Order.⁸ Most significant of these is the requirement under the current system that approved verifiers who assess that equipment merely needs to be adjusted must return for a second visit, when the adjustment may take place and a local authority inspector is able to verify and stamp the equipment. In the meantime, the pump must either be withdrawn from use or operate at a setting which is within the permitted margin of error but less accurate than may be possible. If the draft Order is approved, the need for a second visit would be overcome.

8. In identifying that requirement as a significant burden the Department assumes that verification by adjusters is not a permitted option as things stand. However, the contrary might well be argued (i.e. that repair implicitly covers adjustment.) If that is correct, there would be no direct burden to remove or reduce. We accept that the position is unclear and that this uncertainty operates as a burden in itself.⁹

9. We therefore agree that the Order will remove or reduce a burden which results from section 11A of the Weights and Measures Act 1985.

8 ED p10 paras 34-36

9 Note that under section 1(2) of the 2006 Act burdens resulting indirectly from legislation are covered as well as those that result directly from it, and that legislation being hard to understand can itself count as a burden – see section 1(6) as read with section 1(4)

10. Section 3(2) of the LRRA requires the Minister to be satisfied that the draft Order meets certain preconditions. These are that:

- the policy objective could not be satisfactorily secured by non-legislative means;
- the effects of the proposed changes to the law are proportionate to the policy objective;
- the proposed changes strike a fair balance between public and private interests;
- the proposed change to the law does not deprive anyone of a necessary protection;
- it will not prevent anyone from continuing to exercise a right or freedom that they might reasonably expect to continue to be allowed to do;
- it is not of “constitutional significance.”

11. We are charged with assessing whether the pre-conditions in the Legislative and Regulatory Reform Act 2006 (LRRA) have been met, as well as examining various tests (those set out in Standing Order 151, appropriateness for delegated legislation and compatibility with European Union obligations). Having examined these, we believe that the draft Order meets all relevant requirements and tests.

Consultation

12. A consultation paper was published on 29 July 2005 with a consultation period of thirteen weeks.¹⁰ Thirty responses were received. Of these, sixteen responses were received from enforcement agencies, twelve were received from businesses involved in verification or petrol retailing, one response was received from an academic institution and one from a government department.

13. The Explanatory Document gives more details of the consultation exercise. Responses raised two main areas of concern:

Consumer protection

14. Respondents raised concerns that the Order would remove the requirement for local authority inspectors to verify equipment independently. This would therefore remove a layer of protection, as approved verifiers might be subject to a “conflict of interests” whereby they would be inclined to be less thorough than an independent inspector and might also be encouraged by retailers to adjust equipment to the detriment of consumers.

15. The Department has stated that it believes current procedures will continue for auditing and inspecting the actions of approved verifiers, while existing enforcement provisions are sufficient to act as a deterrent against false or unnecessary adjustment.

¹⁰ See ED Annex A for identities of the consultees and ED Annex B for details of the representations received and the government’s response to them

16. Petrol retailers stated that adjustment would take place more frequently if the Order allowed verification by approved verifiers, which would lead to more accurate equipment (which is desirable for commercial reasons) and improvements in spotting leaks.

17. Under the current system, verifiers are approved by a certifying body and by the National Weights and Measures Laboratory (NWML). In addition, their work is subject to auditing and inspection by local inspectors. Approved verifiers will remain subject to this system.

18. During the consultation process in 1996, in advance of the 1999 Order, concerns were raised that the introduction of self-verification by approved verifiers would reduce the level of consumer protection. As a result, a working party was established to monitor the verification of petrol pumps by approved verifiers after the 1999 Order came into force. The working party was formed of representatives from the industry and from enforcement bodies¹¹ – it monitored verification for twelve months, reporting to the Minister in March 2003.

19. The Explanatory Document states that the conclusions of the working party included:

- verification by approved verifiers had not resulted in any reduction of consumer protection.
- there was no technical difference between the actions taken to carry out a “repair” and an “adjustment” of equipment.
- “Consequently, in its report to the Minister, the working party also concluded that there was no technical reason not to permit self-verification of fuel dispensers following the activity of adjustment.”¹²

20. The Department states: “Approved verifiers are subject to stringent quality control and monitoring requirements. They have been carrying out the technically identical task of verification after repair satisfactorily for several years. There is no evidence that consumer protection will be diminished as a result of their work being extended to verification after adjustment.”¹³ In addition, NWML recommends that approval to verify equipment after adjustment should be made conditional upon approved verifiers continuing to inform their local authority of all verifications within five days and also that a programme of checks on approved verifiers should continue to be funded.¹⁴

21. **We support this view.**

Impact on local authorities

22. Respondents also raised concerns that the Order would lead to a reduction in funding for local authority inspectors, who currently charge a fee for verification work, yet an

11 See ED Annex D for the report of the working party on approved verification of liquid fuel dispensers

12 ED p5, paras 19-20

13 ED p1, para 5

14 ED p16, para 62

increased number of inspections would be needed in order to check the work of approved verifiers.

23. The Department has stated that further inspections will not be necessary because future work by approved verifiers would itself involve an element of checking.¹⁵ In addition, the current system of auditing and checking by inspectors was established by the 1999 Order to include verification by approved verifiers after adjustment. The anomaly in the 1999 Order, whereby verification after adjustment is not permitted, seems to have been oversight and not a deliberate provision. The current system of inspections therefore already takes the proposed change into account.

24. **We believe that the proposal has been the subject of, and taken appropriate account of, adequate consultation.**

Impact Assessment

25. The Department estimates that the Order will result in savings of £615,000 per annum. Details are provided in Annex C of the Explanatory Document.

26. Local authorities estimate that they will lose £525,000 per annum from the loss of fees which they currently charge for verification services.¹⁶ The Department points out that those fees are merely intended to cover the cost of providing the service. In addition, as a result of the changes which were introduced by the 1999 Order, local authorities receive annual funding to compensate for the loss of verification fee income and the burden of increased inspections needed to check work carried out by approved verifiers. This figure was originally calculated to include changes resulting from self-verification after adjustment.¹⁷ Despite the later interpretation of section 11A, whereby self-verification after adjustment is not permitted, the method of calculation has not changed.

27. The estimated costs savings in the Impact Assessment will therefore benefit petrol retailers significantly, with approved verifiers also expected to receive some benefit.

Procedure

28. The Explanatory Document recommends affirmative resolution procedure, the ground being that the draft Order - a one- word change - is extremely simple but gave rise to significant initial adverse comment.¹⁸ **We support this recommendation.**

15 ED p14 para 56

16 ED p44, Annex C para 5.2. See also the responses detailed in ED p 25 Annex B para 42

17 ED p26, Annex B para 45

18 ED p7, paras 27-28

Conclusion

29. Having examined the draft Order and assessed whether the pre-conditions in the Legislative and Regulatory Reform Act 2006 have been met, as well as the tests set out in Standing Order No. 151, we believe that the affirmative procedure is appropriate for the draft Order and recommend that it be approved.

List of written evidence

- | | | |
|---|---|----|
| 1 | Letter from Assistant Counsel, House of Commons Legal Services Office to the National Weights and Measures Laboratory | 12 |
| 2 | Letter from National Weights and Measures Laboratory to Assistant Counsel, House of Commons Legal Services Office | 13 |

Annex A

Letter from Assistant Counsel, House of Commons Legal Services Office to the National Weights and Measures Laboratory: request for information

After review of the above draft Order which was laid before Parliament on 20 October 2008, the following questions arise. I should be grateful if you would provide your reply to these by 24 October.

Q 1 Paragraph 21 of the explanatory document states that “it has been accepted that the term “repair”, in relation to verification under the 1985 Act, extends only to action taken in respect of equipment that is not performing within the accuracy requirements of the Regulations that apply to the equipment.”

Why did s.11A of the 1985 Act, as inserted by the 1999 Order, omit any reference to adjustment? What evidence is there to support this interpretation of the term “repair”?

Q 2 The Working Party on Approved Verification of Liquid Fuel Dispensers which reported on 25 March 2003 recommended that self-verification should be permitted after adjustment. Why has this not happened before now?

Q 3 Paragraph 34 of the explanatory document states that there is a burden on equipment owners, as they may be giving away free petrol if a pump continues to operate without adjustment. Is there any evidence to suggest that petrol pumps are more likely to give away free petrol in these cases, as opposed to giving less than the amount for which the consumer is charged?

Q 4 Paragraph 35 of the explanatory document states that, under the current system, there is a burden on approved verifiers when they have to arrange a second visit to adjust equipment when it can be verified by an inspector. Given that the approved verifier will charge a fee for this second visit, why is this a burden?

Q 5 Paragraph 35 of the explanatory document states that “improved ability to detect leakage should have both environmental and health and safety benefits.” Is there any evidence to support the proposition that leakage from pumps which are operating within the permitted margin of error, and which are inspected according to the current system, would be prevented by permitting self verification after adjustment?

Q 6 Paragraph 38 of the explanatory document states that a further benefit of the Order would be to slightly reduce the number of journeys made by car or van, with a corresponding reduction in traffic congestion and carbon emissions. Is there any evidence to support this as a proposed benefit of the Order? If detailed evidence is not available, please provide an estimate.

Q 7 Paragraph 35 (Annex B) of the explanatory document states that if a self-verifier’s fees are higher for work carried out in rural areas, then a retailer could continue to use Local Authority inspectors. Paragraphs 8 and 10 of the Impact Assessment state that a small but beneficial effect on costs is expected for small and rural retailers. As the inspector may charge a lower fee but could not adjust the equipment, how do you reconcile these two statements?

Q 8 Paragraph 5.2 of the Impact Assessment states that local authorities have received compensation for the loss of re-verification work. Please provide further details.

21 October 2008

Annex B

Letter from National Weights and Measures Laboratory to Assistant Counsel, House of Commons Legal Services Office: response to request for information

Q1: Paragraph 21 of the explanatory document states that "it has been accepted that the term "repair", in relation to verification under the 1985 Act, extends only to action taken in respect of equipment that is not performing within the accuracy requirements of the Regulations that apply to the equipment." Why did s.11A of the 1985 Act, as inserted by the 1999 Order, omit any reference to adjustment? What evidence is there to support this interpretation of the term "repair"?

1. NWML sought a view from its then legal adviser in the DTI in 1999, very shortly after the 1999 Order came into force and was given the unequivocal advice that references to "repair" in section 11A of the 1985 Act could not be treated as including "adjustment" (work done to equipment which is already operating within the legal tolerances to make it measure more accurately still). It is unfortunate and very regrettable that this point was not considered and addressed in the drafting of the 1999 Order; however, it is not clear to us now, almost ten years later, why the case of adjustment was not covered in the 1999 Order.

2. The main reason given for the DTI legal advice was that equipment cannot be said to be "repaired" unless it is first considered to be "broken" – i.e., in the context of the statutory regime for control of prescribed weighing and measuring equipment, either because it is not functioning at all, or because it is not fit for use for trade as a result of its failure to comply with one or more of the statutory requirements (e.g. as to accuracy of measurement). Since an instrument which is still functioning within legal tolerances can legally be used for use for trade, it would not be "broken", so that adjustment of such an instrument to make it more accurate than the statutory provisions require would not constitute a repair.

3. Subsequent legal advisers to NWML have seen no reason to disagree with the view expressed by their predecessor as to "adjustment" and "repair". Evidence in support of this view is annexed to these responses. Although the 2003 Working Group report records that "industry questions" the interpretation of "repair" as not including "adjustment" (see paragraph 16 of Annex D to the Explanatory Document), to the best of our knowledge no other legal opinion has been sought on this point, for example by an approved verifier: in more recent discussions with stakeholders, the inadequacy of the drafting of the 1999 Order has been frequently lamented, but no serious attempt has been made to dispute the legal advice given to NWML in relation to it.

Q2: The Working Party on Approved Verification of Liquid Fuel Dispensers which reported on 25 March 2003 recommended that self-verification should be permitted after adjustment. Why has this not happened before now?

4. Although the working party agreed that self-verification should be permitted after adjustment, when the proposed legislative change came to be consulted on as a draft Regulatory Reform Order, there was not complete agreement (see pages 12 to 15 of the Explanatory Document and the summary of consultation responses at Annex B to the Explanatory Document). NWML were advised by the Cabinet Office team dealing with RROs that the issues raised by those consultees who expressed opposition to the proposed change should be resolved before proceeding further with the proposal.

5. The consultation had finished in Autumn 2005. A strategy for resolving the issues raised by stakeholders was formulated in Autumn 2006 and implemented during 2007. Agreement as regards the financial implications for local authorities was only reached during 2008 after NWML and Communities and Local Government had considered further representations from LACORS on this point. Pressure on resources and the need to update some earlier work (for example, the Impact Assessment) has been partly responsible for the time taken since 2003 to reach the stage of laying the LRO.

Q3: Paragraph 34 of the explanatory document states that there is a burden on equipment owners, as they may be giving away free petrol if a pump continues to operate without adjustment. Is there any evidence to suggest that petrol pumps are more likely to give away free petrol in these cases, as opposed to giving less than the amount for which the consumer is charged?

6. It is inherent in the design of most pumps that, unless they are adjusted, they will dispense more, rather than less, than they say they are dispensing as their parts wear over time. This is widely known and acknowledged by the industry, trading standards and NWML.

Q4: Paragraph 35 of the explanatory document states that, under the current system, there is a burden on approved verifiers when they have to arrange a second visit to adjust equipment when it can be verified by an inspector. Given that the approved verifier will charge a fee for this second visit, why is this a burden?

7. The “first visit” will generally be part of a planned maintenance programme, covering all the pumps on a site. The second visit, to deal only with those pumps to be adjusted, will have to be arranged around the availability of trading standards officers. Competition between approved verifiers, who are keen to retain retailers’ business, means that the fee which the approved verifier charges for the second visit may not always be such as to recover the full additional costs of the second visit and the associated “hassle factor”. To the extent that the full additional costs are recovered, the burden which the current law imposes on retailers is that much greater.

Q5: Paragraph 37 of the explanatory document states that "improved ability to detect leakage should have both environmental and health and safety benefits." Is there any evidence to support the proposition that leakage from pumps which are operating within the permitted margin of error, and which are inspected according to the current system, would be prevented by permitting self verification after adjustment?

8. The proposition is not that using the services of approved verifiers, rather than inspectors, to verify pumps after adjustment would, in itself, prevent leakage. Rather, it is argued that permitting self-verification after adjustment would make it more likely that pumps would be adjusted more frequently, because it would be cheaper to do so, and therefore they would measure more accurately.

9. More accurate measurement means that leaks can be detected more easily, through the stock reconciliation process, and dealt with more quickly. This is because the more accurately a pump is known to be measuring, the more likely it is that any mismatch between the amount of fuel which it records as having been dispensed from a storage tank and the amount of fuel which is known to have been delivered to it will be indicative of a leak.

Q6: Paragraph 38 of the explanatory document states that a further benefit of the Order would be to slightly reduce the number of journeys made by car or van, with a corresponding reduction in traffic congestion and carbon emissions. Is there any evidence to support this as a proposed benefit of the Order? If detailed evidence is not available, please provide an estimate.

10. If a pump is adjusted and verified by an approved verifier, all the work (including the initial examination of the pump which reveals the desirability of making an adjustment) can be done in one visit to the retailer’s premises, so that only one journey by car or van is involved. If a pump has to be verified by an inspector after adjustment, there will be at least one additional journey by car or van (that of the inspector), and probably also another additional journey to the site by the approved verifier if the retailer has chosen not to have the adjustment made as soon as the approved verifier identified the potential need for adjustment and it was decided to make it, but to have the approved verifier attend again at the same time as the inspector.

11. It is not possible to arrive at a meaningful estimate of the impact of these extra journeys, which will vary widely in individual cases depending on the location of retailers’ sites relative to where the approved verifiers and inspectors are based and the other places they have to go on the same day, local traffic conditions and the vehicles used.

12. The most recent estimates from the Local Authorities through their representative LACORS (Local Authorities Co-ordinators of Regulatory Services), collected in January 2008, indicate that the local authorities believe that they would lose about 4,500 adjustment verifications per year. If on average 10 nozzles are adjusted on a site per visit this will mean an estimated total of 450 journeys by two individuals (the Trading Standards Officer and the Approved Verifier) totalling an estimated reduction of 900 journeys per year.

Q7: Paragraph 35 (Annex B) of the explanatory document states that if a self-verifier's fees are higher for work carried out in rural areas, then a retailer could continue to use Local Authority inspectors. Paragraphs 8 and 10 of the Impact Assessment state that a small but beneficial effect on costs is expected for small and rural retailers. As the inspector may charge a lower fee but could not adjust the equipment, how do you reconcile these two statements?

13. NWML considers that the proposal is most likely to benefit retailers in rural areas if they are served by self-verifying approved verifiers (see paragraphs 4.2 and 4.4 of the impact assessment, on which paragraph 8 of the impact assessment picks up). Clearly, like other retailers, they are unlikely to derive much benefit from the proposal if they still rely on verification by inspectors. However, the statement referred to as being paragraph 35 (Annex B), which we think is actually in paragraph 62 (Annex B), was our response to a concern raised that fees might increase as a result of the Order; it was not saying that it is NWML's view that fees will increase.

Q8: Paragraph 5.2 of the Impact Assessment states that local authorities have received compensation for the loss of re-verification work. Please provide further details.

14. When the 1999 Order came into force Local Authorities were compensated for potential loss of earnings as a result of that Order. The compensation sum was calculated as a proportion of local authorities' income for all the verification work which was then done by inspectors, including after adjustment, and was paid on that basis.

15. The amount transferred for each of three years (1999/00, 2000/01 and 2001/02) increased each year to take into account the decreased demand for TSO verification following the take up of approved verification. In 2001/02, the final year, the amount transferred was £668,000, of which **£585,000** was the contribution to overheads, i.e. to compensate for loss of verification income. The other part of the total was for the increased inspection activity, which is unaffected by the latest LRO. The amount was transferred by PES and therefore has been part of CLG's baseline allocation ever since.

ANNEX TO LETTER: "ADJUSTMENT" AND "REPAIR"

Dictionary definitions

1. In the *Oxford English Dictionary* (2nd edition) the following meanings given for "adjust" are relevant for present purposes:

- "3a. to arrange or dispose (a thing) suitably in relation to something else, or to a standard or purpose"
- "4a. to arrange or dispose (a thing) suitably in relation to its parts; to put in proper order of position, to regulate, systematize".

2. The *Collins English Dictionary* (2nd edition) gives two relevant meanings of "adjust":

- "1. to alter slightly, especially to achieve accuracy; regulate"
- "3. to put into order".

3. The *OED* gives the following relevant meanings of "repair":

- "1b. (obs) set in order, strengthen"

- “2. restore (a composite thing, structure, etc.) to good condition by renewal or replacement of decayed or damaged parts, or by refixing what has given way; to mend”
 - “3. to renew, renovate (some thing or part); to restore to a fresh or sound condition by making up in some way for previous loss, waste, decay or exhaustion”
 - “6. to set straight, make exact (obs. rare) [only one cited usage, from 1691]”.
4. *Collins* gives one relevant meaning of “repair”: “1. to restore (something damaged or broken) to good condition or working order”.
5. Leaving aside those definitions marked as obsolete, the following points emerge from the dictionary definitions:
- “repair” presupposes that the thing repaired is broken or not in working order before being repaired;
 - if there is any question of overlap between the concepts of “repair” and “adjustment” in the context of weighing and measuring equipment, it is much more likely that “adjustment” includes “repair” than that “repair” includes “adjustment”.

Statutory usage in relation to weights and measures

6. In legislative provisions dealing with mechanical or electronic weighing and measuring equipment, adjustment and repair are often both referred to, in a way which suggests that they are thought of as meaning different things. See for example the following provisions:

- section 16(2) of the Weights and Measures Act 1985;
- regulation 21(1)(c)(i) of the Measuring Instruments (Liquid Fuels and Lubricants) Regulations 2006 (S.I. 2006/1266);
- regulation 8 of the Weights and Measures Regulations 1963 (S.I. 1963/1710) (as substituted by the Weights and Measures (Amendment) Regulations 1972 (S.I. 1972/767)), where it is clear that adjustments are thought of as more minor interventions which do not affect compliance with legal accuracy requirements;
- regulation 8 of the Weights and Measures (Testing and Adjustment Fees) Regulations 1970.

7. Historically, the main focus of weights and measures law was the weights and measures themselves, rather than other “equipment”. Reference was made to “adjustment” of weights and measures, presumably because this is a more natural notion than “repair” when dealing with simple objects which do not “do” anything except conform to a particular physical standard (see for example the Weights and Measures Act 1835, sections 11, 13 and 18; the Weights and Measures Act 1878, section 30).

8. Reference is still made solely to adjustment in the context of such weights and measures: see for example the Weights and Measures Regulations 1963 (S.I. 1963/1710), regulations 60 and 135 (compare the earlier Weights and Measures Regulations 1907, regulations 57, 58, 60, 68).

9. There is a long-standing prohibition on inspectors adjusting weighing and measuring equipment (i.e. mechanical or electronic devices for weighing and measuring), but they are permitted to adjust weights and measures: section 74(1) and (3) of the Weights and Measures Act 1985; compare section 12(1) of the Weights and Measures Act 1889.

10. Where legislation refers to simple weights and measures, it does sometimes refer to the process of bringing a weight or measure within the legal limits of error (as opposed to making it more accurate when it is already within those limits) as “adjustment”. (See the Weights and Measures Act 1985, section 5(9) and the Weights and Measures (Local and Working Standard Linear Measures) Regulations 1986 (S.I. 1986/1684), regulation

2.) However, the concept of adjustment is nowhere invoked in relation to bringing more complex mechanical or electronic weighing or measuring equipment into conformity with prescribed requirements of accuracy.

Conclusion

11. There is nothing in the statutory usage of the terms “adjust” and “repair” which is inconsistent with the picture which emerges from the dictionaries. Putting it at its lowest, the better view (we would say the only tenable view) is that “repair” does not include adjustment “within the legal limits of error”.

12. Even if it were arguable that “repair” included “adjustment”, it would be far from clear that this was the case. Accordingly, the scope of section 11A of the Weights and Measures Act 1985 in its current form would be, at best, ambiguous as regards self-verification by approved verifiers after adjustment, and use of the LRO procedure to clarify the point would still be justified under section 1(5) of the Legislative and Regulatory Reform Act 2006, which provides that a financial cost or administrative inconvenience within the meaning of section 1(2) may result where legislation is hard to understand.

Formal Minutes relating to the report

Tuesday 11 November 2008

Members present:

Andrew Miller, in the Chair

Lorely Burt
John Hemming

Judy Mallaber
Dr Doug Naysmith

Draft Report (Draft Legislative Reform (Verification of Weighing and Measuring Equipment) Order 2008), 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 29 read and agreed to.

Summary agreed to.

Annexes agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

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

[Adjourned till a day and time to be fixed by the Chairman.]

List of Reports from the Committee during the current Parliament

Session 2007-08

First	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007	HC 135
Second	Draft Legislative Reform (Health and Safety Executive) Order 2008	HC 398
Third	Draft Legislative Reform (Consumer Credit) Order 2008	HC 939
Fourth	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2008	HC 940
Fifth	Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda	HC 474-I and II
Sixth	Draft Legislative Reform (Lloyd's) Order 2008	HC 1090

Session 2006-07

First Special	Scrutiny of Regulatory Reform Orders	HC 160
Second Special	Revised Standing Orders	HC 385
First	Proposal for the Regulatory Reform (Game) Order 2007	HC 384
Second	Proposal for the Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007	HC 383
Third	Proposal for the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007	HC 397
Fourth	Proposal for the Regulatory Reform (Deer) (England and Wales) Order 2007	HC 411
Fifth	Draft Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007	HC 611
Sixth	Draft Regulatory Reform (Financial Services and Markets Act 2000) Order 2007	HC 673
Seventh	Draft Regulatory Reform (Game) Order 2007	HC 674
Eighth	Draft Regulatory Reform (Deer) (England and Wales) Order 2007	HC 948