

National Measurement Office

A Hampton Implementation Review Report

November 2009

National Measurement Office

This review is one of a series of reviews of regulatory bodies focusing on the assessment of regulatory performance against the Hampton principles and Macrory characteristics of effective inspection and enforcement. It was carried out by a review team drawn from the Better Regulation Executive, from the Food Standards Agency and the Food and Environment Research Agency, in April 2009.

Further information about the reviews can be found at:

<http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementingprinciples/reviewing-regulators/page44054.html>

EXECUTIVE SUMMARY AND CONCLUSIONS

Key findings from the review:

Overall the Review team found the National Measurement Office (NMO) to be an open and accessible regulator that has both a good level of engagement with established stakeholders and is responsive to requests for advice and assistance. The technical expertise of the NMO is widely recognised, well respected and trusted. Stakeholders in the business and enforcement communities that the Review team met were positive about the NMO and its performance.

Stakeholders responded positively to the NMO's approach to consultation on regulations and their use of stakeholder feedback. However, it was clear to the Review team that the NMO could make greater efforts to examine stakeholder reach and management, in particular to reach smaller businesses that may feel impacts of regulatory changes.

The weights and measures legislation (Weights and Measures Act 1985) is possibly a victim of its own success to date but this may have led to a degree of complacency in respect of the consistency of enforcement by local authority Trading Standards Officers (TSOs). Despite the obvious importance of accurate and fair metrology to consumers and business alike, the risk for errors is relatively small due to the upstream controls on instruments and crucially the harms from any such failure are, for the most part, likely to be relatively slight. Overall metrology has a low profile, which has contributed to patchy enforcement by local authorities.

The Review Team heard and saw a good deal that suggested that the recent focus (required by Treasury rules) on income generation and full cost recovery might be distracting the NMO from its core enforcement liaison activity. However, the NMO can rightly point to the fact that commercial activity is a relatively small part of their overall work (2% in 2007/09) and also to the fact that they have increased staffing levels in the enforcement team. The Review team were very impressed by the enforcement of the ROHS regulations, which clearly operate in line with Hampton principles.

The Review team make a number of recommendations (see following section) about how the NMO might build

further on what we consider to be a very robust base. Whilst the Review team recognise that the NMO does not have the legal authority to control the priority that local authorities give to weights and measures (nor the professional choices and interests of TSOs) we did feel that NMO could take a stronger influencing role in particular around the consistency of enforcement (e.g. inspections).

Main issues for follow-up identified during the review:

Stakeholders in the weights and measures industry would welcome greater leadership to raise the profile of the importance of metrology at home and in Europe, particularly given the current economic climate.

The NMO could take greater ownership of the legislation by clearly articulating the outcomes it wishes to see from inspection and enforcement, and ensuring that these are achieved consistently. The Review team felt that the NMO could do more to promote metrology with Local Authorities and with individual TSOs who do not currently see it as a priority, particularly in areas where there are real risks for consumers. The Review team were not persuaded by the argument put by a senior NMO staff member that the spectre of a TSO “around the corner” was sufficient to encourage compliance with the regulations.

A clear message from the NMO was that the current legislation - the Weights and Measures Act 1985 - is not fit for purpose. The Review team agree with this view but with the following caveats:

- Whilst the legislation is almost 25 years old and the business and consumer environment is very different now, the essentials of metrology and its regulation have not changed
- The Review team were not provided with - and nor could we find - any evidence that the perceived limitations of the current Act is causing significant problems in practice; TSOs interested in metrology use the Act well and NMO staff are well versed in its use

The NMO Senior Management believes that a ‘new’ Act is needed to replace the Weights and Measures Act 1985. The Review team agree that the existing legislation is in some ways not fit for purpose but considers that NMO can achieve its regulatory aims using a Legislative Reform Order. This would be the

most realistic option in the context of pressures on Parliamentary time and competing political priorities. The challenge to NMO is to dedicate sufficient time and resource to a review project to support this.

INTRODUCTION

Introductory background information about the regulator such as the rationale for establishing it:

At the time of the Review the National Measurement Office (NMO) was an Executive Agency of the Department for Innovation, Universities and Skills (DIUS) with responsibility for ensuring that all trade measurements are accurate, legal, and fair to buyer and seller. DIUS was later merged with BERR to form the Department for Business, Innovation and Skills (BIS).

NMO's policy work is funded via the Legal Metrology programme, managed by the Department's former National Measurement System Policy Unit (NMSPU) but which is now part of the new expanded Agency at NMO. The Legal Metrology Programme runs for three years and is formulated and monitored by the NMO 'Programmes' team and the Legal Metrology Advisory Group consisting of weights and measures stakeholders.

The NMO is responsible for UK weights and measures policy on behalf of BIS ministers. NMO also performs the examination and approval of new weighing and measuring equipment to be used for trade, to establish compliance with the requirements of the Weights and Measures Act 1985 and relevant European legislation. Equipment ranges from railway weighbridges to supermarket scales and from beer glasses to petrol pumps. Many of the measuring instruments are total systems incorporating microprocessor-based control and management features. A consultancy service is available to manufacturers at all stages of development of equipment prior to application for type approval.

The NMO maintains traceability in trade measurement on behalf of the Secretary of State. It maintains mass, volume and length standards, which are used to re-verify Trading Standards Departments' standards on a five year cycle. In addition NMO provides calibration and testing services with United Kingdom Accreditation Service (UKAS)-accredited laboratories in Teddington for customers from industry.

NMO is also responsible for the enforcement of RoHS Regulations (Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008) in the UK since the

regulations were fully implemented on the 1st July 2006. Working in partnership with the policy lead at BIS (The Department for Business, Innovation & Skills), NMO is the UK Enforcement Authority for the RoHS Regulations. These Regulations implement EU Directive 2002/95 which bans the placing on the EU market of new electrical and electronic equipment containing more than agreed levels of lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyl (PBB) and polybrominated diphenyl ether (PBDE) flame retardants.

Each year in the UK, nearly £212 billion worth of retail goods are sold on the basis of the measurement of their quantity. This equates to £4 billion a week. In addition, goods worth £280 billion are weighed and measured at the industrial/business-to-business level¹. NMO is responsible for providing services that ensure that the system of weights and measures is fair, accurate and legal. This is a fundamental part of a sustainable trading economy and enables consumers and businesses to be confident that they are getting what they pay for. Consumers rely on the confidence of a system of correct weights and measures. Similarly, businesses need to know that they are trading in a fair marketplace.

NMO performs its role by engaging in the following principal activities:

- Preparing weighing and measuring legislation under the Weights and Measures Act 1985 and European Communities Act 1972 to protect the consumer and competitiveness of the marketplace;
- Representing the UK in the European Community and in the International Organisation for Legal Metrology and developing recommendations and agreements that help companies trade to common standards across borders;
- Maintaining traceability in trade measurement via mass, length and volume standards and using them to verify local authority standards on a five year cycle; and

¹ Analysis of the Economics of Weights and Measures Legislation, Deloitte June 2009.

- Achieving conformity of weighing and measuring instruments in use for trade to directives and regulations by, providing type approval and other certification services.

The main activities of the NMO fall under the following headings:

Weights and Measures Regulation

The purpose of regulating weights and measures is to ensure that consumers have the information on quantity that they need to make informed purchasing decisions and to ensure that businesses can feel confident that they are trading in a fair marketplace. NMO is responsible for all weights and measures legislation.

International Policy Making

The focus on the impact on businesses and their customers in domestic policy-making also needs to be maintained by NMO within the EU and international standards making forums. NMO engages with international organisations such as WELMEC (the Western European Legal Metrology Cooperation when it was founded but now more geographically spread) and OIML (International Organisation of Legal Metrology) to influence the harmonisation of standards and guidance to provide a level playing field that allows UK businesses to reduce costs and compete globally.

Type Approval

NMO offers a type approval service to manufacturers of weighing and measuring equipment, which enables this equipment to be used in legally controlled applications. Manufacturers of new, and often innovative, weighing and measuring instruments are supported by NMO from the design stage and through the type approval process so that their products can come to market as quickly as possible.

Weights and Measures Enforcement

Responsibility for the enforcement of weights and measures legislation in England, Scotland and Wales rests with the approximately 200 local authority Trading Standards Departments. NMO works closely with these Departments and with the Trading Standards Institute and LACORS on developing policy on measuring instruments in use for trade. NMO has the responsibility for the implementation of EU Directives on measuring instruments, pre-packages,

specified quantities, and units of measurement and provides the focus for legal metrology in the UK.

RoHS - Protection of Our Environment

The RoHS Directive stands for “the restriction of the use of certain hazardous substances in electrical and electronic equipment”. This Directive restricts the use of lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyl (PBB) and polybrominated diphenyl ether (PBDE) flame retardants in new electrical and electronic equipment, for the purpose of reducing the amount of harmful waste in electrical and electronic equipment destined for landfill. NMO has delivered RoHS enforcement since the UK Regulations were fully implemented on the 1st July 2006.

Self Verification

This allows manufacturers, installers and repairers of weighing and measuring equipment to apply to the Secretary of State for approval to conduct their own verification of weighing and measuring equipment under Section 11A of the Weights and Measures Act 1985 (formerly a task exclusively carried out by Inspectors). NMO grants approvals on behalf of the Secretary of State. This provides greater flexibility for businesses in three areas associated with the testing, passing and stamping of weighing and measuring equipment as fit for use for trade.

Other Certification Services

The main aim of this service is to provide manufacturers with a route to place their weighing and measuring instruments on the UK, European, and global markets. NMO provides services for:

- ISO 9001 certification
- Audit under Section 11A of the Weights and Measures Act 1985
- Self verification under European Directives

Calibration

NMO supports industry and trade by providing a calibration service to UK industry and to local authority Trading Standards departments. Accurate calibration provides a service to many in the UK, especially to the pharmaceutical industry where people’s health depends on the very accurate measurement methods used. Other customers include tape manufacturers and customers from the petrochemical industry, where NMO is responsible for calibrating dip tapes used to

measure oil levels in large oil refinery tanks.

Accuracy of Gas and Electricity Meters

From April 2009, NMO is responsible for the design approval, accuracy testing and performance monitoring of gas and electricity meters; this includes ensuring that the UK's metering policies and practices are aligned with the European Union Measuring Instruments Directive.

The legislation establishing the regulator:

NMO is charged with overseeing the Weights and Measures Act 1985 on behalf of the Secretary of State. This Act, and its predecessors, has formed the backbone of the work of the Agency in ensuring fair trade in the marketplace.

The 1985 Act establishes a hierarchy of standards of weight, length, area, volume and capacity. NMO maintains the high-level standards that are used to calibrate the (lower-level) standards held by local authorities that are in turn used to check their 'working' standards used for ensuring that all weighing and measuring equipment in use for trade is accurate. A very wide range of equipment is involved, from the barrow boy's vegetable scale, to sophisticated bulk fuel metering systems and computerised packing equipment in factories.

The weight and correct labelling of all goods sold by quantity is also controlled, and Trading Standards are involved in ensuring that consumers do not receive short weight, or measure and, and in respect of pre-packed goods, that the EU Average Quantity System is observed.

This involves covert 'test purchases' in the former case, and the use of sophisticated statistical techniques and electronic weighing equipment with computers, in the latter. Trading Standards also conducts examinations of all persons carrying out weighing on public weighing equipment and issues certificates of competence where appropriate.

NWML was previously an Executive Agency of DTI. In June 2007 it became part of the Department for Innovation, Universities and Skills and is now (from June 2009) part of the Department for Business, Innovation and Skills. The National Measurement Office was created in April 2009 by merging the

functions of DIUS NMSPU (National Measurement System Policy Unit) with NWML (National Weights and Measures Laboratory).

The regulator's statutory remit or objectives:

The NMO mission is:

'To provide the legal metrology infrastructure necessary to facilitate fair competition, support innovation, promote international trade and protect consumers, health and the environment.'

The NMO's stated objectives for 2008-2009 are:

1. To ensure that Ministers can fulfil their statutory obligations under Weights & Measures and related legislation
2. To promote better regulation and enforcement in legal metrology, both in the UK and internationally
3. To provide world class statutory and commercial metrology services
4. To promote innovation in businesses with which NMO works
5. To satisfy BIS's requirements concerning the effective enforcement of RoHS
6. To ensure that meters used to measure gas and electricity conform to requirements
7. To provide internal services that deliver efficiency savings and meet the other needs of the Agency

The regulator's budget:

NWML is a non-profit making, net running cost Executive Agency, with income/expenditure for 2008/09 of £4.447 m. Of this the Legal Metrology Programme accounted for £2.83m with RoHS enforcement (on behalf of BIS) £0.45 m, gas/electricity metering (on behalf of OFGEM) £0.39 m, a statutory income of £0.71 m, and a commercial income of £0.11 m.

Number of staff (including breakdown of policy and frontline staff):

In 2008/09 the agency employed 48 full time equivalent staff. The Regulation Directorate employed 20 staff, of which 7.3 are policy, 4 on RoHS enforcement, and the remainder on weights and measures liaison & enforcement-related issues. The Services Directorate employed 17 staff working on weights and measures infrastructure services: certification services for manufacturers of instruments, calibration services for local authorities and UK businesses, and utilities covering gas & electricity

metering controls. The remaining staff providing management and support services for the Agency.

The sectors and number of businesses regulated either directly or indirectly:

Measurement – and its fairness and accuracy – is relevant to the majority of business. The NMO as a result has an extremely wide reach and plays a role across almost all business sectors. The primary businesses that NMO regulates are, of course, those that produce and maintain measurement equipment of one form or another. Their reach, however, extends (mainly through TSOs on the ground) to all areas of business activity where such measurement equipment is in use (e.g. packaging, point of sale weighing etc).

THE HAMPTON VISION

Both the Hampton and Macrory reports are concerned with effective regulation – achieving regulatory outcomes in a way that minimises the burdens imposed on business. Key to this is the notion that regulators should be risk-based and proportionate in their decision-making, transparent and accountable for their actions and should recognise their role in encouraging economic progress.

Any findings relevant to whether the regulator is risk-based:

Weights and Measures legislation: In line with legal metrology practice world-wide, the NMO operates on the principle that most risks lie upstream (i.e. with manufacturers of metrology equipment rather than with businesses in the market place), and that enforcement and engagement activities should be focussed here. This is because one instrument controls many thousands of individual transactions and if the equipment is compliant then the risk of incorrect measure for these transactions is very low. This dramatically reduces the need for inspections and/or test purchases. The alternative i.e. de-prescription of instruments would cost the economy an additional £2.0-3.6 m per annum with a reduction in the current level of consumer protection.

The team were given four examples of how risk assessment has been used in the policy process:

1. A high-level risk assessment is made when deciding whether to regulate a particular kind of instrument or not; for example NMO decided not to regulate Liquid Petroleum Gas (LPG) dispensers or checkweighers because the risks of non-compliance are low enough to justify non-prescription (these instruments are regulated in most other EU countries).
2. European instruments legislation applies to putting new instruments on the market. In-service controls fall to the discretion of the member state. Unlike virtually all other EU member states, the UK have taken a risk-based approach to in-service inspection by enabling the enforcement authorities to decide when to inspect instruments (i.e. on the basis of risk); this is in contrast to most other EU states that have implemented a statutory inspection/re-verification period (for which a fee is payable by the business).
3. During EU negotiations of the measuring

instruments directive, the UK argued against wholesale prescription of all measuring instruments – and instead proposed a system of optionality whereby a member state is free to prescribe or not i.e. on the basis of risk. This proposal was accepted and incorporated into the directive.

4. The accuracy classes of instruments are regulated according to the financial risk of error when measuring different products. For example a lower class of instrument (cheaper) is permitted when trading sand/ballast or landfill waste compared to the higher classes required when trading precious metals/jewels.

TSOs have their own risk assessment framework that identifies generic risk areas for enforcement, and these are modified on a case-by-case basis by TSOs at the local level. NMO have produced an instruments-based risk matrix which shows inspectors those instruments that are more likely to be non-compliant (thus a reduced frequency of inspection).

ROHS: the NMO has developed a risk assessment approach in this aspect of its work that is based on company culture and performance rather than product type. It operates on the principles of *risk x likelihood* of occurrence. This would seem to be appropriate given the very large and diverse regulated community affected by the fairly new legislation. The NMO has a project-based approach to targeting different product groups and works through this in a logical and systematic way. NMO has developed computer-based systems to assist it with targeting companies and capturing information, and has a very useful website. The NMO is clearly demonstrating this Hampton characteristic in enforcement of the ROHS legislation.

Any findings relevant to whether the regulator is transparent and accountable:

Weights and Measures legislation: enforcement is entirely devolved to the 202 local (weights and measures) authorities who have their own enforcement policies. We found no evidence to show that the NMO attempts to influence enforcement to ensure it is consistently applied across the UK, or to evaluate results of enforcement activities against the NMO's desired outcomes. However, where TSOs seek advice and support from NMO it is clear that this is both readily forthcoming and is of a high quality.

Whilst the NMO website and publications are both

accessible and clear it was apparent to the review team that the NMO experiences difficulty in engaging public interest in the work that they do despite continuing attempts to do so, although they had some recent success with the Royal National Institute of Blind People (RNIB).

ROHS: the NMO has a very clear and structured approach to enforcement of ROHS, with a range of tools at its disposal. It appears to approach enforcement in a pragmatic and proportionate way. To date no cases have ended with court action being taken which indicates the approach is being effective.

Any findings relevant to whether the regulator encourages economic progress:

Weights and Measures legislation: The businesses that the Review team spoke to said that for individual businesses there is very little regulatory burden associated with the legislation, so it does not *per se* impede economic progress. However, the effect of inaccurate weights and measures being used for trade, whilst not necessarily high at the level of the individual transaction can be significant for the economy as a whole. Every week around £4 billion worth of retail goods are sold in the United Kingdom on the basis of the measurement of their quantity.

The administrative burden of Weights and Measures legislation is actually quite high aggregated across the UK economy as a whole. BRE data suggests that these total some £130 million annually.

Changes to the packaged goods legislation led to significant and very well received cost savings for the industry (£129 million, putting it in at 4th place in the Government's 'Top Ten Simplification Measures 2008²'). However, the review team also found evidence to indicate there are risks that the potential economic impacts of new/revised legislation on downstream businesses may not be fully appreciated because of the focus on upstream businesses. NMO offers up to 3 days free advice for new innovators to inform them about what they need to do to ensure their equipment meets current regulatory requirements, which provides positive support for economic progress. The Review team identified a gap between the good approach taken with equipment manufacturers compared to the more inconsistent approach taken to enforcement at the point of sale (which is down to the

² Making it Simple, Annual Review 2008 – Better Regulation Executive

discretion of particular local authorities).

ROHS: NMO has adopted a proactive approach to engagement with business. Proportionate use of the suite of enforcement tools supports businesses as they strive to comply with the (new) legislation.

DESIGN OF REGULATIONS

Hampton principles

All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all parties should be consulted when they are being drafted.

When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed.

Key findings on
Design of
Regulations:

Note: **ROHS** is out
of scope, BIS is the
policy maker.

The Weights and Measures Act is nearly 25 years old and has been added to through statutory instruments in a piecemeal fashion, largely driven by European Directives. The NMO has sought to completely review implementation in the UK but Ministers have not chosen to take this forward to date. Established businesses and TSOs work reasonably comfortably with the Act but it is generally thought that it is difficult for new entrants to get to grips with it.

The NMO consults stakeholders early and is responsive to comments received, and is open and easy to engage with. There is unanimous consensus that there is a very high level of technical expertise within NMO, and they are appropriate owners of the legislation. The NMO Policy team has received training in analysis and use of evidence, impact assessment, and economics for non-economists.

For the activity of EU market surveillance of measuring instruments (not to be confused with in-service inspections carried out by trading standards), NMO are the enforcement authority.

The reach of consultations appears not to be as broad as it might be, in particular smaller front line businesses that do not belong to trade bodies appear not to be effectively engaged. However, NMO regulations have a clearly defined purpose, are well designed following consultation and development of IAs to assess the impacts. Regulations are understood by business and enforcers.

NMO has a role in Europe negotiating outcomes for UK. In several instances this has been very positive, e.g. Pre-packaged Goods Units of Measurement

Directive, and Measuring Instruments Directive (MID). Some 90% of regulations come from Europe which limits the ability to make changes. One example that NMO provided was how they influenced EU regulations during the negotiation of the MID. The UK argued for an 'optionality' clause that gave member states the option of prescribing instruments as an alternative to the Commission's proposal for mandatory full prescription. This suggestion was agreed by member states and the Commission amended the directive. NMO is also a leading member of WELMEC – an administrative co-operation within the EU that is recognised by the Commission. The UK made input to the technical Annexes of the directive removing unnecessary detail and ensuring that 'essential requirements' were indeed 'essential'. NMO involved trade associations in these negotiations (UKWF, PRA, FEF, PPMA). NMO is an active member of the Commission's 'Measuring Instruments Working Group'.

Background information such as the regulator's role in developing regulations:

NMO is responsible for drafting all statutory instruments for implementing EU Directives into UK legislation and for secondary legislation under powers of the Weights and Measures Act.

The Weights and Measures Legislation dates from 1985 and feedback from NMO, industry and Enforcement was that it needed updating, although the Review team found no evidence that it wasn't working. The deficiencies in the legislation that concern NMO appear to the Review team to be just the type that would benefit from a Legislative Reform Order. The challenge here is for the NMO and the sponsors in BIS to dedicate sufficient time and resource so that a robust project to achieve this can be taken forward.

Any examples of significant good regulatory practice:

The NMO undertakes early consultation with stakeholders, and is very open to engaging with all stakeholders, on telephone and in person.

The NMO is amenable to implementing changes if new legislation is not operating as anticipated.

Self verification has reduced the burden on industry.

An example of good regulatory practice that was described to us relates to the Measuring Instrument Directive (MID) 2004/22/EC which came into force on the 30 October 2006. The MID is a European Directive that covers a number of different measuring instrument

types including automatic weighing instruments, fuel dispensers, material measures, and utility meters. The aim of the MID is to create a single market in measuring instruments for the benefit of manufacturers and, ultimately, consumers across Europe.

The MID enables a manufacturer to obtain a single approval certificate which is valid throughout the whole of Europe. In addition, the MID provides manufacturers with a range of conformity assessment routes to gain certification and access to the European market.

A further example is the Packaged Goods Regulations 2006 which set out a complete regime for the average system of quantity control applied to packaged goods. The NMO successfully removed a large number of prescriptive requirements from the previous legislation, with a reduction of £129m in administrative burdens annually.

Review findings: The purpose of the legislation is clearly understood. Metrology is recognised as being an essential foundation for fair trading in UK, and as such must be regulated. The legislation is as clear as it can be, given that it is largely driven from Europe, and revision in UK has been resisted.

The extent to which the review team believes the regulator is acting in line with the Hampton principles:

Consultation by the NMO is timely and wide with plenty of opportunity given for stakeholders to comment. Stakeholders' comments are often taken into consideration in re-drafting. The Review team had some concerns that the entire stakeholder base is not always reached, particularly small companies that do not belong to an established trade body, and which have potential to be negatively impacted. Reliance on email correspondence may not suit all stakeholders. The Review team found limited evidence that robust cost-benefit analyses are undertaken, impact assessments are produced for all new regulation/simplification and are approved by Better Regulation trackers before ministerial sign-off, although revisions to the packaged goods legislation was estimated to offer £129 million savings to industry.

The review team also found little evidence that the effectiveness of regulations is reviewed post-implementation. This is mainly explained by NMO engagement tends to be 'upstream' (i.e. working with instrument manufacturers and trade associations) which NMO believes ensures compliance

'downstream'. There is certainly some merit to this approach (for example, it allows enforcement activity to focus on suspected rogue traders) but this approach means that NMO are somewhat remote from enforcement activity. A consequence is that NMO are not able to evidence their belief that enforcement on the ground by local authorities is consistent with Hampton principles. Impact Assessments are used in the decision making process, but evidence was found that impact of proposals and how regulations will be enforced was not always taken into account.

For Weights and Measures, NMO achieves its regulatory approach through its delivery partners in local authorities, but the NMO does not formally engage in influencing how these bodies achieve its outcomes. The Review team concluded from the evidence they were given that the NMO stakeholder database should be reviewed to ensure that NMO consultations are reaching those businesses affected 'downstream' and help them to contact their hardest to reach stakeholders (e.g. independent petrol retailers).

ADVICE AND GUIDANCE

Hampton principle

Regulators should provide authoritative, accessible advice easily and cheaply.

Key findings on
Advice and
Guidance:

Weights and Measures legislation: As policy makers the NMO issues guidance to industry on the legislation itself and not on achieving compliance. Stakeholders commented that it would be helpful to receive generic advice from the NMO on the type of behaviours and approaches that would demonstrate compliance.

TSOs issue advice and guidance on compliance, and their local authority's enforcement policy. The NMO does not have any direct influence on this process but does produce good tailored advice. The NMO also makes good use of seminars to disseminate information to industry and LAs.

Stakeholders told the review team that the NMO is very approachable and accessible, providing good advice and guidance over the phone.

Whilst accurate and fair metrology is important to consumers and business alike, the risk for errors is relatively small. More crucially the harms from any such failure are for the most part likely to be relatively minimal; a failure of metrology in most circumstances will not lead to people being seriously harmed, although there are some exceptions to this. Overall metrology has a low profile, which has contributed to patchy enforcement by local authorities nationally. The NMO very clearly follows the Code of Practice on Guidance and has equally clearly taken on board the recommendations from the Anderson Review. However, the Review team were struck by the difference between the direct advice, face-to-face and over the telephone, available (which stakeholders value highly) and the rather ordinary, limited guidance published on the NMO website.

ROHS: the NMO issues simple but clear guidance on the ROHS legislation. The NMO was very proactive in raising awareness and issuing advice before the legislation came into force, giving businesses ample opportunity to take measures to become compliant.

The ROHS website provides a lot of useful information, including decision trees as to whether a business's products are within scope or not. The NMO offers anonymous advice via a telephone and email, and has a smart e-system for making sure all enquiries are answered appropriately and can be tracked.

The NMO provides an annual report to BIS on the outcome of its enforcement activities, which provides indirect indication of the efficacy of its advice and guidance.

Background information such as the means by which the regulator provides advice and guidance:

Weights and Measures legislation: advice and guidance is issued to local authorities by LACORS. The NMO does not issue advice directly on achieving compliance, or business behaviours that would achieve compliance. Under the Weights and Measures Act 1985 the NMO is prohibited from providing guidance to Local Authorities.

ROHS: the ROHS website provides a lot of useful information, including decision trees as to whether a business's products are within scope or not. The NMO offers advice via a telephone and email, and has a smart e-system for making sure all enquiries are answered appropriately.

Any examples of significant good regulatory practice:

Weights and Measures legislation: the Agency offering SMEs up to 3 days free advice through 'Measurement for innovators' is an example of good practice that is popular with stakeholders.

NMO have implemented the Code of Practice for Guidance and the requirements of the Government Response to the Anderson Review for all new and revised guidance from 1st April 2009.

RoHS: both the RoHS website and the RoHS stakeholder enquiry management system are excellent examples of good practice. The RoHS enquiry line is popular and businesses feel able to ring up and ask for advice.

Review findings:

The extent to which the review team believes the regulator is acting in line with the Hampton principle:

Weights and Measures legislation: although the NMO issues guidance on the legislation itself, NMO does not have strategic ownership of the guidance issued to achieve compliance. Advice and guidance on weights and measures is available on the website and by businesses telephoning in but there is no formal evaluation of guidance and its penetration undertaken.

One issue noted by the Review team is how

businesses find out about new proposals (this is usually from LA inspectors). The NMO works through LAs on disseminating guidance to business, but the nature of NMO's relationship with LAs is not always clear. In addition, guidance is often technical and is not tailored to meet the diverse size of businesses affected by the legislation.

ROHS: the review team did not have opportunity to meet with stakeholders for the ROHS legislation, however, from discussions with NMO staff and from review of the ROHS website and reports, the NMO appears to be acting closely in line with Hampton principles in this area of its work.

DATA REQUESTS

Hampton principle

Businesses should not have to give unnecessary information or give the same piece of information twice.

Key findings on Data Requests:

Weights and Measures legislation: the NMO does not request any data from business.

ROHS: ROHS is risk based, joined up and compliant with the Regulators' Compliance Code. The NMO audits companies' approach to business management rather than reviewing specific data. Companies enter a secure web area on the ROHS website and submit their company information. Businesses are requested to submit data for products they are marketing, and selections of these are reviewed to see if they match the company's assertions about their products. This seems a perfectly reasonable and pragmatic approach.

Background information such as the data required by the regulator; the means by which business can return data, etc:

Weights and Measures legislation: the NMO does not request any data from business.

ROHS: Data is requested as described above. Companies can provide information in the medium that is easiest for them, e.g. email, fax, face-to-face.

Any examples of significant good regulatory practice:

ROHS data requests are proportionate and are delivered in a way that encourages and facilitates timely and accurate responses.

Review findings:

Weights and Measures legislation: The NMO acts in line with the Hampton principle because it does not request information from businesses.

The extent to which the review team believes the regulator is acting in line with the Hampton principle:

ROHS: the evidence gathered suggests that the NMO is acting in line with the Hampton principles in its enforcement of the ROHS legislation. The review team did not meet any ROHS stakeholders, so this comment is based on information gathered from discussions with NMO staff and from review of the ROHS website and reports.

INSPECTIONS

Hampton principle

No inspection should take place without a reason.

Key findings on
Inspections:

Weights and Measures legislation: Local Authorities are responsible for policy on inspections. Each LA determines its own policy on the level of inspections under the Weights and Measures legislation.

Stakeholders and the enforcement community recognise that the legislation provides a critical foundation to trading. However, as metrology has few significant impacts on public safety, enforcement by TSOs is inevitably inconsistent across the country. There are some exceptions to this (e.g. medical weighing instruments in hospitals) where accuracy is critical for correct delivery of drugs.

The NMO recognises that enforcement is inconsistent and patchy across the country, and is driven by resource and local policy, but does not seek to directly influence this.

The Review team found the relationship between LACORS and NMO to be very good, with an understanding of common aims. The Review team also found that LAs would welcome the NMO raising its profile and taking more overarching responsibility on weights & measures enforcement, including putting enforcement outcomes back into its objectives.

ROHS: Inspections are targeted at businesses that do not demonstrate behaviours that are led by quality management systems but these inspections are not considered a big burden by industry.

Any relevant background information such as the number of inspections and the number of businesses inspected; the regulator's risk model etc

Weights and Measures legislation: LACORS has its own risk assessment framework, which informs which business activities TSO inspections should target – metrology is rarely high on the risk register. Each TSO then applies a local level of risk assessment, which provides opportunity for metrology inspections to be further downgraded.

TSOs undertaking inspections under the Weights & Measures legislation must be specially qualified to do so. Businesses generally have a good relationship with the TSOs and know what they are looking for in

an inspection.

The level of inspections was not reported by industry stakeholders to be a burden; in fact some stakeholders consider the level to be low and would welcome an increase in the number of visits, particularly if these were short, audit-type visits.

The review team recognises that as metrology is (for the most part) not a health and safety issue, it necessarily becomes low priority for resources.

ROHS: The ROHS risk assessment framework determines where inspections are targeted. Businesses that do not demonstrate behaviours that are led by some form of quality management system are judged to be higher risk. ROHS will provide advice to all businesses affected by the legislation. Numbers of inspections and outcomes are published in a report to BIS annually.

Any examples of significant good regulatory practice:

Weights and Measures legislation: where weights and measures is actively enforced, the TSOs demonstrate excellent technical understanding of the field, and work well with businesses to help achieve compliance.

ROHS: The ROHS inspectors liaise closely with local TSOs regarding business intelligence.

Review findings:
The extent to which the review team believes the regulator is acting in line with the Hampton principle:

Weights and Measures legislation: LACORS and the TSOs appear to be working in line with Hampton principles in enforcement of the Weights & Measures legislation.

Inspections on Weights & Measures are not a big burden. Some industry stakeholders would welcome more inspection to ensure they are on the right track – although there is recognition that the level of risk (according to LACORS National Risk Framework) is low.

The review team considered that the NMO could take a more active role in influencing the enforcement of weights and measures regulations by LAs to raise the profile of metrology and try to achieve more consistent enforcement across the country.

ROHS: the ROHS inspectors appear to be acting in line with Hampton principles for inspection. The review team did not meet any ROHS stakeholders, so this

comment is based on information gathered from discussions with NMO staff and from review of the ROHS website and reports. ROHS inspection is risk based and proportionate.

SANCTIONS

Hampton & Macrory principles

The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.

Regulators should be transparent in the way in which they apply and determine administrative penalties.

Regulators should avoid perverse incentives that might influence the choice of sanctioning response.

Regulators should follow up enforcement actions where appropriate.

Key findings on
Sanctions:

Weights and Measures legislation: enforcement is entirely the responsibility of TSOs in LAs. As the policy authority, the NMO does not take an active role. Sanctions in law are very clear.

ROHS: there are a suite of enforcement actions available to the ROHS team. RoHs has proportionate and varied options for sanctions which are used thoughtfully by inspectors. Business is given time to comply with transparency in decision handling process. Alternatives to formal sanctions are considered on a risk basis.

Background
information such as
a summary of
sanctions available
to the regulator and
any data on
sanctions imposed
by the regulator:

Weights and Measures legislation: sanctions are laid down in the legislation and LAs are left to make their own judgements on putting these into practice: the NMO does not enter into these assessments, or provide advice and guidance. TSOs can utilise other legislation to apply civil sanctions. Some TSOs stated they would welcome guidance from the NMO on when to use these options, others stated that they are happy to make these decisions themselves. Similarly, some TSOs stated they would find the expanded suite of enforcement powers, available under the Regulatory Enforcement and Sanctions Act 2008 (Macrory powers), useful in helping to find equitable outcomes, while others were happy to work with what they currently have. TSOs recognised it is appropriate to be able to demonstrate they have taken other 'administrative' steps before resorting to the Weights and Measures Act. One example was provided where a case had been pursued to the courts by a LA.

ROHS: the enforcement team has specified a range of

clearly articulated options available under the ROHS regulations. The approach to enforcement is published on the ROHS website, and process and solutions are fully articulated in the ROHS annual report. The ROHS team works with non-compliant stakeholders to encourage them to achieve compliance. The policy appears to be working effectively, and to date it has not been necessary to engage in any criminal cases.

Any examples of significant good regulatory practice:

ROHS: there is a clearly specified suite of enforcement options available before resorting to prosecution and public disclosure. If ROHS guidance is followed they do not prosecute.

Review findings:
The extent to which the review team believes the regulator is acting in line with the Hampton principles and Macrory characteristics:

Weights and Measures legislation: enforcement responsibility and policy is devolved to TSOs and LAs. The NMO has no involvement with enforcement. As far as we were able to tell, stakeholders and the industry have a good appreciation of the enforcement approach taken by TSOs and LAs. However, as this varies between each LA it is not possible to comment in the context of Hampton and Macrory.

ROHS: the NMO appeared to the Review team to be acting in line with Hampton principles and Macrory characteristics.

FOCUS ON OUTCOMES

Hampton principle

Regulators should measure outcomes and not just outputs.

Key findings on Focus on Outcomes: **Weights and Measures legislation:** The NMO had seven objectives for its business in 2008/09. Criteria for successful operation of the legislation was not clear to the Review team and did not obviously feature in these objectives.

The Review team felt that the NMO could be more visible and provide greater leadership when designing regulations, in particular seeking to raise their own profile with stakeholders.

The view of all stakeholders that the review team spoke with was that NMO could and should take a more active role in raising the profile of weight and measures and do more to represent the interests of business – particularly in the EU.

Industry stakeholders told the Review team that they would like to see NMO take a lead role in interdepartmental affairs. Some businesses said they use NMO as their main route to Government.

ROHS: outcome and means of measurement is clear.

Background information such as the regulator's key objectives:

Weights and Measures legislation: Key objectives under this legislation:

1. To ensure that Ministers can fulfil their statutory obligations under Weights and Measures and related legislation;
2. To promote better regulation and enforcement in legal metrology, both in the UK and internationally;
3. To provide world class statutory and commercial metrology services; and
4. To promote innovation in businesses with which NMO works.

It was not clear to the Review team how these are translated into outcomes for NMO, or what targets are measured. Performance is not measured in terms of regulatory outcomes and costs to the regulated entities (though stakeholders reported the regulatory burden is low). NMO commissioned customer satisfaction survey “Vanilla research” to identify key areas of interest to ‘customers’. In mitigation the Review team fully accepts that the NMO has found the general public difficult to engage on metrology issues both at individual level and at consumer organisation level.

The NMO holds an annual conference and regional meetings for TSOs, bi-annual meetings with TSI and LACORS, and attends LACORS annual conferences. NMO also runs competency based training courses for TSOs and these are both popular and well regarded, although some feedback was that this was expensive.

NMO is working with the Local Better Regulation Office (LBRO) to gather information and aims to increase self-regulation by industry and is working with OIML and WELMEC to influence metrology in Europe and internationally.

All NMO staff are consulted on development of annual corporate objectives meaning that business is driven by staff, not just the Directors, and means that NMO staff understand the purpose of the business.

It was apparent to the review team (from both what stakeholders told us and from NMO internal papers that we were given sight of) that weights and measures is not given as high priority as other ‘commercial’ activities and the direction of travel is clearly down the commercial route. The focus on income generation appears to reflect the HMT requirements on regulatory bodies generally to achieve full-cost recovery and to avoid cross-subsidy.

It was not clear to the Review team whether inspection activity is being focused on areas of greatest risk. The NMO could improve further by providing greater strategic direction to local authorities. NMO have been working with BIS on the Consumer Law Review “Call for Evidence” submitting policy proposals for weights and measures simplification that have been published in the Consumer White Paper (e.g. through working with BIS on the Consumer White Paper to include weights and measures).

ROHS: Key objective for ROHS is 'To satisfy BIS's requirements concerning the effective enforcement of RoHS'. The underlying objective is to increase the levels of compliance with ROHS regulations in the electrical and electronic equipment sector. Enforcement is aimed at product types, using an annual project-based approach. Outcomes are reported in terms of direct enforcement activities and results of independent testing in its annual report to BIS.

The extent to which the review team believes the regulator is acting in line with the Hampton principle:

Weights and Measures legislation: the fact that the Vanilla research shows that the public have a high degree of confidence in weights and measures is a good indicator that the legislation is working effectively. The legislation also operates with a commendably low regulatory burden on industry, a fact strongly supported by stakeholders that the review team met. NMO staff have a clear understanding of the purpose of the business. However, outcomes are not articulated clearly enough in terms of measurable targets and linkage with Hampton principles could be improved.

ROHS: the NMO appears to be enforcing the ROHS regulations very much in line with Hampton principles: outcomes are clear and the NMO is accountable and independent. The review team did not meet any ROHS stakeholders, so this comment is based on information gathered from discussions with NMO staff and from review of the ROHS website and reports.

**Appendix 1:
Review team
membership**

Graeme Sandell is Assistant Director for Health and Social care in the Better Regulation Executive. Prior to this Graeme worked as Head of Policy for the Foundation Trust Network at the NHS Confederation. He has previously worked for various third sector organisations in the health, social care, criminal justice and education sectors.

Chris Edwards is a member of the Food Standards Agency Better Regulation Team. Before joining the FSA he worked in the Better Regulation Executive. He has previously worked in Prime Ministers Delivery Unit and various other posts in the Cabinet Office and HM Treasury.

Sarah Hugo is currently Head of Defra's GM Inspectorate, which is based at the Food and Environment Research Agency. Prior to this Sarah worked in core Defra as Secretary to a NDPB, and spent fifteen years working in scientific research in the UK and overseas.

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