

1.1 CONTROLLED APPLICATIONS

Weights and Measures legislation has, for over a century, required that weighing equipment that is controlled by Regulations and is “in use for trade” should be stamped (verified) before it can be used, and if rejected on inspection, be re-verified before it is brought back into use. The various Weights and Measures Acts that we have seen in the UK have all repeated this legal requirement, the latest being the Weights and Measures Act 1985, and in particular Sections 7 and 11 of that Act.

Often however the term “use for trade” has been difficult to interpret, and in many cases the weighing industry customers have had difficulty in accepting that the equipment they use is really “in use for trade” and for NAWIs the range of controlled applications is wider still. This section discusses both NAWIs and automatic weighing instruments.

Non Automatic Weighing Instruments (NAWIs)

The situation was clouded in 1993 when the Non-Automatic Weighing Instruments (NAWI) Directive came into force. This has since been revised and re-published as the Directive 2009/23/EC. Because it is a European Directive, its scope is not defined by the Weights and Measures Act 1985, and it introduced a number of situations that required the use of verified weighing instruments, some of which went beyond what we in the UK have regarded as trade use in the past. However, as any application that could have been regarded as trade use under the Weights and Measures Act also falls within the controlled applications under the NAWI Directive; the Directive requirements provide the relevant criteria.

The NAWI Directive, and the UK Regulations that implement the Directive (the Non-automatic Weighing Instruments Regulations 2000 (SI 2000/3236)), define six applications that require the use of a verified NAWI. The applications are set out in Article 1.2 (a) of the Directive and are repeated below:

1.2. A distinction is made in this Directive between two categories of instrument use:

(a)

- (1) Determination of mass for commercial transactions.*
- (2) Determination of mass for the calculation of a toll, tariff, tax, bonus, penalty, remuneration, indemnity or similar type of payment.*
- (3) Determination of mass for the application of laws or regulations; expert opinion given in court proceedings.*
- (4) Determination of mass in the practice of medicine for weighing patients for the purposes of monitoring, diagnosis and medical treatment.*
- (5) Determination of mass for making up medicines on prescription in a pharmacy and determination of mass in analyses carried out in medical and pharmaceutical laboratories.*
- (6) Determination of price on the basis of mass for the purposes of direct sales to the public and the making-up of pre-packages.*

Any new NAWI that is brought into use for any of these purposes must be in compliance with the Directive and must be verified.

Categories (1) (2) and (6) correspond to the old definition of “use for trade”, whilst categories (3), (4) and (5) were new to UK legislation when the Directive was introduced. Because these were new requirements for these categories, the UK was allowed a 10 year derogation period for these applications, so the requirement to have verified equipment for them did not take effect until 1st January 2003. Up until then, weighing instruments taken into use for these applications did not have to be either Type Approved or verified. It is therefore possible that old weighing instruments that are not verified will be found being used for these applications

for many years to come. Provided that these instruments were in use before 1st January 2003 then they can continue in use indefinitely.

(Article 1.2 (b) of the Directive deals with NAWIs that are not used for any of the purposes set out in Article 1.2 (a) and is there simply to apply the requirements for such NAWIs to be marked with the manufacturer's name and maximum weighing capacity.)

What is the difference between a NAWI and an AWI?

The general difference between the two is that a NAWI requires the intervention of an operator during the weighing process, for example to deposit on or remove from the load receptor the load to be measured and also to obtain the result.

However, it is not always easy from the above brief definition to determine which requirements the instrument has to meet. In these situations, the following interpretation (taken from section 3.1.9 of WELMEC Guide 2, Issue 5) of the definition of a NAWI or an AWI should be used only when doubt exists in applying the definitions contained in EC Directive 2009/23/EC and the relevant OIML recommendations.

“An instrument capable of performing consecutive weighing cycles without any intervention of an operator is always regarded to be an AWI. If an instrument needs the intervention of an operator, it is regarded to be a NAWI only in the case where the operator is required to determine or verify the weighing result.

Determining the weighing result includes any intelligent action of the operator that affects the result, such as deciding when an indication is stable or adjusting the weight of the weighed product.

Verifying the weighing result means making a decision regarding the acceptance of each weighing result on observing the indication. The weighing process allows the operator to take an action which influences the weighing result in the case where the weighing result is not acceptable.

Note: the necessity to give an instruction to start the weighing process or to release a load is not relevant in deciding the category of instrument.”

Automatic Weighing Instruments

For automatic weighing instruments, the national legislation, the Weights and Measures Act 1985 still applies.

Section 7 of the Act says:

7. “Meaning of ‘use for trade’

(1) *In this Act ‘use for trade’ means, subject to subsection (3) below, use in Great Britain in connection with, or with a view to, a transaction falling within subsection (2) below where –*

- (a) *the transaction is by reference to quantity or is a transaction for the purposes of which there is made or implied a statement of the quantity of goods to which the transaction relates, and*
 - (b) *the use is for the purpose of the determination or statement of that quantity.*
- (2) *A transaction falls within this subsection if it is a transaction for—*
- (a) *the transferring or rendering of money or money's worth in consideration of money or money's worth, or*
 - (b) *the making of a payment in respect of any toll or duty.*

- (3) *Use for trade does not include use in a case where—*
- (a) *the determination or statement is a determination or statement of the quantity of goods required for dispatch to a destination outside Great Britain and any designated country, and*
 - (b) *the transaction is not a sale by retail, and*
 - (c) *no transfer or rendering of money or money's worth is involved other than the passing of the title to the goods and the consideration for them."*

So any automatic weighing instruments that are used in applications that fall under the definition of use for trade as set out in Section 7 come under the control of the Weights and Measures Act 1985. But do they have to be verified? That all depends on what type of automatic weighing instrument it is. For the verification requirements to apply the weighing instrument must not only be "in use for trade", it must also be "prescribed" by Regulations made under Section 11 of the Weights and Measures Act 1985. If both of these conditions are satisfied, then the automatic weighing instrument must be Type Approved under Section 12 of the Act, and verified under Section 11 of the Act.

A new set of regulations were introduced in 2006 that implement the Measuring Instruments Directive (the MID). The types of automatic weighing instruments that are prescribed remain the same and are as follows:

Equipment type	Regulation
Discontinuous totalisers	The Measuring Instruments (Automatic Discontinuous Totalisers) Regulations 2006 SI 2006/1255
Rail-weighbridges	The Measuring Instruments (Automatic Rail-Weighbridges) Regulations 2006 SI 2006/1256
Automatic catchweighers	The Measuring Instruments (Automatic Catchweighers) Regulations 2006 SI 2006/1257
Filling machines	The Measuring Instruments (Automatic Gravimetric Filling Instruments) Regulations 2006 SI 2006/1258
Beltweighers	The Measuring Instruments (Beltweighers) Regulations 2006 SI 2006/1259

The most notable type of automatic weighing instrument that is not "prescribed" i.e. there are no Regulations covering them and therefore they cannot be verified even though they are in use for trade, is automatic checkweighers.

