

The BWMA Guide to the Trading Standards “Metrication Concordat”

British Weights and Measures Association 2004

Introduction – Renewed Enforcement of Metric Regulations

Following the refusal in February 2004 by the European Court of Human Rights to hear the Appeal by greengrocer Steven Thoburn against his conviction for selling loose foods in pounds and ounces, trading standards authorities have again been enforcing the use of metric units by traders. To guide this enforcement, the co-ordinating body for trading standards officers, LACORS, has produced the *Metrication Concordat Advice & Enforcement Pack*. While BWMA welcomes the *Concordat* as a means of clarifying enforcement procedures and providing transparency, BWMA does not share LACORS’ interpretation of the current legal situation. BWMA also has serious misgivings with some of the advice offered, which appears to be mistaken and even mischievous.

The role of BWMA

BWMA campaigns for traders that use lb/oz weighing machines and other non-metric practices. Where traders come under pressure to convert to metric scales and pricing, we seek to avert this by lobbying council officials, enlisting the help of local MPs and MEPs and generating interest in the press. Metric regulations are deeply unpopular with both traders and consumers who believe that local authorities should be concerned with preventing short measure, not deciding what units of measurement people should use. BWMA is also working to achieve a long-term political solution by seeking a repeal of EC Directive 80/181 which requires the use of metric units in the UK.

Assistance for traders, consumers and local councillors

The purpose of this *BWMA Guide* is to critically examine and explain the *Metrication Concordat*. As such, it will assist traders using pounds and ounces in contravention of the disputed metric regulations. It will also be informative for local councillors and members of the public who regard metric enforcement as a misuse of public money, and we explain why there remains uncertainty in the actual legality of metric regulations. Key points in this Guide include:

- While the *Concordat* states that Local Authorities must ensure that, “action is taken over high-profile traders who refuse as a point of principle to comply”, they nonetheless “...enjoy discretion whether or not to prosecute in an individual case”.
- LACORS appears to be unaware of continued legal uncertainty surrounding the metric regulations, and suggests that metric law is now certain. BWMA redresses the balance in the feature, “The High Court Appeal Ruling Explained”.
- LACORS does not endorse the claims of some trading standards officers that lb/oz machines can no longer be tested for reliability, or that “switchable” lb/oz-metric machines may no longer be supplied.

BWMA is a non-profit body that exists to promote parity in law between British and metric units. It enjoys support from across Britain’s political spectrum, from businesses and the general public. BWMA is financed by member subscriptions and donations. Membership is £12 per year.
www.bwma.org.uk

The “Metrication Concordat” in full

(updated and released by LACORS August 2004)

[**BWMA explanatory note:** aside from its brief preamble, the *Concordat* is reproduced here in full. BWMA’s scrutiny and comments are alongside. Although LACORS advice does not bind Local Authorities, it usually receives voluntary support because of the shared desire for consistency. As such, the *Metrication Concordat* represents the nationally recommended procedures and practices for metric enforcement].

1. Preamble

2. Background

BWMA comments

2.1. *The last significant phase of metrication was due to be completed by 1 January 2000 with the removal of the pound and ounce as lawful units of measurement for use for trade for the sale of goods sold loose from bulk. As a result of consultation with all stakeholders, LACORS Concordat Advice was released in December 1999 and aimed to achieve consistent and proportionate enforcement action in accordance with good enforcement and compliance practices. The Advice suggested a sequence of enforcement actions, which are detailed below at paragraph 3.2.*

2.1. LACORS did not consult all stakeholders prior to the release of its previous advice in December 1999. For example, it did not consult BWMA which represented the non-metric trade; BWMA had backing from national associations representing small businesses, the self-employed, market traders and newsagents, as well as over thirty Chambers of Commerce and many individual companies. BWMA also represented consumers, the largest of all stakeholder groups. Market research in February 1999 showed that 72% of consumers preferred pounds and ounces compared to only 15% for kilograms and grams.

2.2 *Completion of the metrication programme has been disrupted by actions taken by the UK Independence Party and others, who obtained a legal opinion to the effect that the legislation implementing the metrication provisions was ultra vires.*

2.2 Commissioning a Legal Opinion does not constitute “disruption”. The UK Independence Party was exercising a legal right in testing the law and was acting on behalf of retailers.

2.3 *LACORS, on behalf of local authorities, obtained leading Counsel’s Opinion, which fully rebutted all legal arguments put in the former Opinion. LACORS therefore reaffirmed its confidence in the vires of the legislation and the subsequent enforcement role and responsibility of Local Authorities.*

2.3 The LACORS Opinion dated August 15th, 2000 was provided by Eleanor Sharpston QC. Ms Sharpston also represented Sunderland City Council in the trial of Steven Thoburn in 2001, and in the High Court Appeal in 2002.

2.4 *Counsel’s Opinion was subsequently proved to be valid when, on 18 Feb 2002, the High Court rejected the defendants’ appeals (Thoburn v. Sunderland City Council etc. EWHC Admin 195 (2002) 166 JP 257) and the law was held to be good. A further application for leave to appeal to the House of Lords was rejected by their Lordships on 15 July 2002.*

2.4 Counsel Eleanor Sharpston’s Opinion was not proved valid by the High Court; it was rejected. See comments on 2.5 below, and the feature *The High Court Appeal Ruling Explained* on page 7 of this Guide.

2.5 *The defendants lodged papers to commence proceedings before the European Court of Human Rights (ECHR), alleging various breaches of the European Convention on Human Rights; these were understood to include right to a fair trial, right of freedom of expression, and right to peaceful possession of property. This process was completed in March 2004 when the ECHR refused to hear the appeal. This issue has now been considered by two levels of an independent judiciary (four separate Magistrates’ Courts and the Divisional Court) and has been refused any further consideration by the House of Lords and the ECHR and therefore there is no legal impediment to the enforcement of the relevant provisions as part of the statutory duty under the Weights & Measures Act 1985.*

2.5 By recounting the various courts and judgments, LACORS gives the impression that traders using pounds and ounces have faced a solid and consistent body of legal opinion to the contrary. This is not so. Of the four magistrate courts, only Sunderland heard full legal argument since the other hearings took place while the Sunderland judgment was *en route* to the High Court. This rendered further hearings at magistrate level irrelevant; for instance, the magistrates sitting in the cases of Dove and Harman said they would make no ruling of their own and would simply defer to the Sunderland judgment pending the outcome of the Appeal. Of the four magistrate rulings, only Sunderland is material, and the legal reasoning on which this conviction was based was overturned by the High Court.

3. Enforcement Action

3.1. Local Authorities must continue to demonstrate their commitment to consistent, proportionate action to ensure that those remaining traders who continue to trade in imperial units through ignorance of the law or misleading media coverage, do convert to selling in metric units, and to ensure that cohesive action is taken over any remaining high profile traders who refuse as a point of principle to comply.

3.2. Enforcement action is likely to be subject to continuing scrutiny by the media and others. LACORS suggests the following enforcement approach and guidance:

i) **Advice and explanation** of the requirements, consider issuing a 28-day notice where applicable (but note that “28 day notices” are only appropriate in respect of the non-conformance of an imperial instrument with the relevant Regulations, rather than failing to comply with s.8);

ii) **Verbal warning** (recorded), consider obliteration of stamp;

iii) **Letter of warning** explaining the possible legal consequences if further non-compliances are detected;

iv) **Consideration of a Formal Home Office Caution**, provided that the Attorney General’s Guidelines are properly considered (although this procedure is not applicable in Scotland, the Procurator Fiscal may issue a warning). If this action is considered and the trader refuses to sign the caution then proceedings should normally be instituted for any offence. However, regard should be had to the provisions of paragraph 3.4 below in relation to the previous issue of a 28-day notice;

v) **Consideration of legal proceedings** - Authorities in England and Wales may wish to consider what action (if any) to take if the trader undertakes to remedy matters immediately upon receipt of a summons. In Scotland, authorities may at a suitable time wish to consider the appropriateness of submitting a report to the Procurator Fiscal;

vi) **Institution of proceedings**, which should include s.8 offences as well as any s.11 offences that may have arisen as a result of action under 2 above. This should avoid the inevitable adverse publicity that will attend suggestions that the authority, whilst seeking to enforce metrication, is not prepared to use the most appropriate offence to do so (See 4.2 below).

3.3 Where Authorities are continuing with existing enforcement action, and where non-compliance appears to have resulted from legal uncertainty, they may wish to issue a notice of intent prior to carrying out inspections. An example of such a notice can be found at Appendix F.

3.4 Where a 28-day notice has previously been issued and follow up action has not been undertaken by the Authority within a reasonable time due to legal uncertainty, a further 28-day notice should be issued and the subsequent statutory provisions followed. In determining what would be a reasonable time, it is relevant to have regard to the fact that the original maximum allowed period of ‘relaxation’ is itself limited to 28 days.

3.1 Metric regulations have never been consistently enforced. In some areas, market traders are targeted because they rely on local authorities for pitches and so present easier targets. In other areas, shopkeepers are put under pressure while supermarkets using non-metric pricing are left unaffected.

3.2 LACORS advises that the term “enforcement” does not necessarily mean prosecution; it can refer to a range of other activities, for instance, the provision of information, guidance and the issuing of warnings. The enforcement actions listed (i to vi) may not occur in sequence. Which one is adopted, if any, depends on the individual case.

Many local authorities have their own internal procedures that determine which actions are carried out, and in what order. Copies of these procedures should be available from the Local Authority. In the event of a trader being advised or instructed to convert to metric, BWMA can undertake the following:

i) **Write to the Principal Trading Standards Officer**, explaining that choice of units constitutes a technical offence only and does not concern fraud or safety. On this point, we can ask them to allocate resources elsewhere.

ii) **Attend any subsequent meeting** that Trading Standards request with the trader, and explain to them why the law is unsound.

iii) **Write on the trader’s behalf** to the local MP, MEP and councillors. Alternatively, we can assist the trader to write.

iv) **Cause the Local Authority discomfort** by drawing the public’s attention to its metric enforcement in the local and national press.

v) **Monitor trading standards officers** to ensure that they do not bypass their own procedures in enforcing metric law, and to make complaints against breaches in procedure via the Authority’s internal complaints process.

vi) **Appeal to the Local Government Ombudsman** in the event of a complaint to the Local Authority not being adequately addressed.

3.3 A notice of intent is a letter that provides the trader with notice of a forthcoming inspection and provides the trader with additional or background information. A trader receiving such a letter relating to non-use of metric units should contact BWMA.

3.4 The term “relaxation” refers the time allowed for compliance by the trader (eg 28 days). LACORS recommends that, where local authorities do not follow up an expired notice within a reasonable time, they should start the process afresh.

3.5 Circumstances may dictate that any or all of the elements above are not applicable. This may occur where the trader concerned has a poor history relating to non-compliance, where a fraudulent practice exists or where it can be demonstrated that a significant unfair trading advantage is occurring or there is consumer detriment (e.g. price comparisons).

3.6 Authorities are advised to have regard to the provisions of Counsel's Opinion in relation to the duty to enforce. The relevant points provide that Local Authorities may not decline to perform their statutory duties under the Act, thus, whilst they enjoy discretion whether or not to prosecute in an individual case, that discretion may not be used to justify a general policy of non-prosecution and must be exercised reasonably. The Code for Crown Prosecutors advises that prosecutors must not be affected by improper or undue pressure from any source and Counsel advises that the exercise of the discretion not to prosecute, principally in order to avoid potential political difficulties, might well amount to 'improper' or 'undue' pressure.

4. Offences and further actions

4.1 Offences for the use of imperial units for trade use are detailed in Appendix C.

4.2 Where possible, Authorities should not take action solely in respect of failing to use lawful units for weighing and/or unit pricing, nor solely in respect of offences for the use of an unjust or unstamped machine after rejection. Coupling both s.8 and s.11 offences will demonstrate that the trader has been given every opportunity to comply with the legislation. Moreover, there may be some danger in omitting offences relating to non-lawful units and proceeding solely with an offence of using unstamped equipment. A further scope for legal confusion could arise if a court is invited to consider proceedings in respect of equipment, where the summons requires the court to treat non-lawful units as though they were in fact lawful ones.

4.3 Where possible, Authorities should consider the use of test purchases to confirm the equipment's use and the use of imperial units, and to determine whether any short weight offences are committed. Quantities should be requested in metric, where possible, to avoid an accusation of 'agent provocateur'. Test purchases and equipment should be checked in, and any deficiencies/errors stated in, metric units (see Appendix B for advice on testing).

3.5 References to "fraudulent practice" and unfairness are wholly inappropriate in advice on metrication, since the legal offences for short measure are different to those for non-use of metric units. Short measure can occur with either metric or imperial and it is an offence in either system: Section 28 of the Weights and Measures Act for authorized (metric) units, and under general trade description legislation for unauthorized (imperial) units.

3.6 Local Authorities also have a duty to enforce the law in other areas, for instance, preventing the sale of counterfeit goods, unsafe food, cigarettes to the under-aged, and so forth. Prosecution of traders for accurately weighing and pricing in pounds and ounces means resources are drawn away from cases concerning fraud and safety with the result that Local Authorities fail to perform their statutory duty in other areas.

4.1 Appendix C is not reproduced here for reasons of space; however, page 8 of this Guide contains specimen offences which illustrate the range of regulations.

4.2 In other words, LACORS does not recommend that action be taken *only* against pricing in imperial, or *only* against the use of imperial machines. Action against these practices should be combined. It is not clear from this advice what action Trading Standards officers are expected to take against traders who have switched to metric weighing scales but, on a point of principle, continue pricing solely in pounds and ounces.

4.3 The suggestion that test purchases be in metric is helpful to imperial traders. Since few genuine customers order in metric, any purchaser asking for "400 grams of apples" is likely to be a Trading Standards officer. In such situations, BWMA recommends weighing and selling in metric if facilities exist, as this will render the test purchase useless. If the trader wishes to serve metric orders in the imperial equivalent, BWMA suggests keeping a conversion chart on permanent display and drawing the customer's attention to the metric equivalent; this will undermine trading standards officers who accuse imperial traders of "confusing" customers by denying them metric information (conversion charts are available from BWMA). Alternatively, the trader is legally entitled to refuse the sale.

5. European Convention on Human Rights

5.1 Traders may attempt to develop the argument that the metrication provisions infringe their rights to freedom of expression under Article 10 of the ECHR. This has been dealt with by the recent decision in the European Court but the following information is provided as background.

5.2 The right to freedom of expression includes the freedom to impart and receive information without interference by public bodies. However, Article 10(2) states that:-

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, ... for the prevention of ... crime, ..., (and) for the protection of ... the rights of others”.

It may be relevant to note that the requirement to sell in metric units does not restrict the right to impart or receive information per se; it only restricts the manner in which the information is imparted. The preamble to the Units of Measurement Directive (80/181/EEC) refers to the importance of units of measurement, to the need for clarity in their use, and to the need to protect consumers, all of which issues are arguably intended to prevent deliberate deception (prevention of crime) and to assist consumers (their right to the provision of consistent information). This was reinforced by the recent decision by the EHCR to refuse an appeal.

5.3 It should be noted that the metrication provisions do not in any event currently prohibit the use of imperial units. The provisions require traders to use metric units and permit traders to use imperial units as supplementary indications until 31 December 2009. The ‘imparting and receiving of information’ is therefore preserved until that date irrespective of any arguments as to the applicability of Article 10(2).

5.4 It must be noted that the units to be used, both metric and imperial, must be the statutory names (gram/kilogram) and the statutory values given. There is no freedom to vary either the name or the value of the units.

END

5.1 Traders do not need to rely on this defence. Traders need only refer to Section 1 of the Weights and Measures Act 1985 (allowing lb/oz), and the fact that the authorities on which this Section was dismissed by the Appeal judge were never presented to the Court (see *The High Court Appeal Ruling Explained*, page 7).

5.2 It is a consistent theme of enforcement agency dogma to associate traditional measurements with unfairness, inaccuracy and fraud. For example, the Food Standards Agency refers to the late Steve Thoburn as a “rogue trader”.¹

Had LACORS confined its comments on the ECHR to 5.1, this would have been sufficient for purposes of updating trading standards officers. Instead, LACORS goes out of its way to link the use of pounds and ounces to “deliberate deception” and “crime”. This evident need by LACORS to demonise traders that use pounds and ounces would surely not be necessary if it was confident of the legality and rationale of the metric regulations.

The final sentence of 5.2 is pure speculation; the ECHR does not provide reasons for refusing to hear Appeals.

5.3 In order to increase public acceptance of the metric regulations, both government and enforcement agencies give the impression that imperial units can still be “used” so long as metric is alongside. This is misleading; the metric regulations do not permit the “use” of imperial units in any meaningful way. Their role as supplementary indications is only that of additional information. Any information, once offered, must be accurate under general trade description legislation, but it is the metric indications only that are authorised for use under weights and measures legislation.

The final sentence is both blasé and disturbing. The imparting and receiving of information is a civil right.

5.4 In other words, 500 grams must be not referred to as a *livre* or a *pfund*, as done by traders in France and Germany without threat of prosecution by the trading standards authorities of those countries.

¹ Published on their website; the FSA was requested by BWMA to remove the reference but refused.

Other essential information for traders

The LACORS Metrication Concordat includes numerous appendices that are not reproduced here for lack of space. However, the main relevant points include the following:

<p>Do Trading Standards have to apply the metric regulations?</p> <p>In 2000, LACORS commissioned a legal opinion which said in its summary: "A local authority cannot decline to perform its statutory duties under the Weights & Measures Act 1985; thus, <i>whilst it enjoys discretion whether or not to prosecute in an individual case</i>, that discretion may not be used to justify a general policy of non-prosecution and must be exercised reasonably" (our emphasis).</p>	<p>Time limits on prosecution</p> <p>LACORS: "For offences related to equipment and units of measurement the time limit is six months from the commission of the offence".</p> <p>For offences relating to unit pricing, "...there is a three-month limit for the institution of proceedings".</p>
<p>Are dual "switchable" scales lawful?</p> <p>Yes: "The situation regarding 'switchable' dual machines has been carefully considered and it is concluded that they can <i>continue to be verified</i>. The imperial indication is not, by definition, a supplementary indication, as it is not present at the same time as the metric indication. The marking requirements of Regulation 17 and the unit pricing requirements of Regulation 20 relate only to the primary indication and not the imperial non-trade use. The imperial indication is considered to be 'additional customer information' which is prohibited by neither the Regulations nor the Act. There are no grounds to bar the facility on the grounds that it facilitates fraud since it would probably be correct. Therefore, Type Approval certificates can still be issued for such machines. The illegal use for trade of the 'switching' facility under s.8 then becomes a matter for enforcement".</p>	<p>Can imperial equipment still be tested for reliability?</p> <p>Yes: "It is not possible to legally test imperial instruments using imperial standards as they are no longer traceable and have no legal standing within the weights and measures system. However, <i>there appears to be no bar to the testing of imperial indications by the application of the equivalent metric standards</i>. When testing equipment following a deficient test purchase, the equivalent metric standards should be applied, ie to test the machine at '1lb', metric standards of, eg 453.6g would be applied and errors stated in metric. The actual degree of precision of any particular conversion would, of course depend upon, e.g. the accuracy class of the instrument, the deficiency under investigation etc. Where officers wish to determine the accuracy of equipment for information purposes, the imperial ranges could best be checked using metric weights on the scale and determining the appropriate imperial equivalent".</p>

Powers of officials

In relation to equipment, including weights:
At all reasonable times and subject to production, if requested, of credentials, trading standards officers may: **enter premises** (not dwellings); **inspect and test** weighing or measuring equipment used for trade; and **seize and detain** any article that they have reasonable cause to believe is liable to forfeiture (Section 79, Weights and Measures Act 1985; Regulation 38 of the Non-automatic Weighing Instruments Regulations 2000). **Any equipment that has been seized must be returned if no proceedings ensue.**

In relation to unit pricing tickets: Trading standards officers may: enter premises (not dwellings); inspect and take samples of goods; inspect and take copies of documents; take test purchases; seize goods or documents required as evidence; seize goods for examination (Prices Act 1974). Proceedings cannot take place unless a notice has been served on the trader within 30 days of the alleged offence, and there is a three-month limit for the institution of proceedings.

Dual unit "switchable" scales

BWMA is pleased to report that dual unit switchable weighing machines are available from the following suppliers:

Evans Weighing and Food Equipment,
Soroba, The Drive, Ifold, Billingshurst, West Sussex RH14 0TD; tel 01403 752855;
www.evansweighing.com

Bristol Scale Service Company, 156-158 Wells Road, Knowle, Bristol BS4 2AG; tel 0117 9774163/9711385; fax 0117 9779389;
www.bristolscales.co.uk

Lb/oz scales are also available from the USA:

Itin Scale Co, Inc., 431 Avenue U, Brooklyn, NY 11223 USA; tel 001 718 3365900;
www.itinscales.com

Avery Berkel, 1758 Genesis Drive, Suite A, LaPorte, IN 46350, USA; tel 001 800 2371886;
www.averyberkelusa.com

The High Court Appeal Ruling explained

Contrary to information provided by LACORS, the arguments of the Prosecuting Counsel were not upheld by the High Court at the Appeal on February 18th 2002. Prosecuting Counsel, acting on behalf of Sunderland City Council, argued that, in passing the European Communities Act 1972 (ECA 1972), Britain had entrenched EC law within the UK legal system and given it primacy over UK legislation. Thus, statutory instruments passed under ECA 1972, requiring metric, took precedence over the Weights and Measures Act 1985 allowing lb/oz, even though the Weights and Measures Act 1985 (W&M 1985) was more recent.

The High Court rejected this argument, saying that EC law could not take effect without UK statutes. Lord Justice Laws said in his judgment: "*The British Parliament...being sovereign, cannot abandon its sovereignty. Accordingly, there are no circumstances in which... [EC law can be elevated] to a status within...English domestic law to which it could not aspire by any route of English law itself*".

The High Court also rejected Prosecuting Counsel's argument that W&M 1985 did not allow for the use of imperial units. For instance, Prosecuting Counsel said that Section 1 of W&M 1985¹ was only a defining section and did not confer the right to use the pound and yard. It was also argued that Section 1 referred to the pound and yard only as "supplementary indications" (ie not authorised for use in trade). These notions were dismissed by the High Court which ruled that W&M 1985, "...confirms the continuing legality of the use of the yard and the pound alongside that of the metre and kilogram, without predominance of either system".

Prosecuting counsel further suggested that W&M 1985 did not repeal ECA 1972 because it was a **consolidation Act** (ie it consolidated rather than changed earlier legislation, meaning that it did not conflict with, and therefore repeal, the metric provisions of ECA 1972). The High Court was non-committal on this point; Lord Justice Laws said, "I think that this is very likely correct" but added, "I may be wrong".

The High Court therefore recognised two key points: Britain's membership of the EC did not lift ECA 1972 above later Acts, and that W&M 1985 provided for the use of lb/oz. The combination of these two points should have meant that the Appeal by Steven Thoburn and other traders was successful.

How were the convictions upheld?

The Appeals were rejected because Lord Justice Laws created a "hierarchy of Acts", whereby ECA 1972 was "constitutional" and W&M 1985 "ordinary". He said that ECA 1972 took precedence over the W&M 1985, even though W&M 1985 was more recent. Lord Justice Laws said that the authority for a hierarchy of Acts lay in Britain's own common law: "*We should recognise a hierarchy of Acts of Parliament: as it were "ordinary" statutes and "constitutional" statutes ... Ordinary statutes may be impliedly repealed. Constitutional statutes may not ... I think the test could only be met by express words in the later statute ... A constitutional statute can only be repealed ... by unambiguous words on the face of the later statute*".

In other words, Lord Justice Laws said that ECA 1972 could not be repealed by *implication*, that is, by way of conflict in the intention of the two Acts (i.e. ECA 1972 requiring metric and W&M 1985 allowing lb/oz). For W&M 1985 to repeal any part of ECA 1972, he said, it must refer to ECA 1972 *expressly in its text*. Lord Justice Laws declared W&M 1985 void because it did not refer to ECA 1972.

Continuing uncertainty in the legality of the metric regulations

None of the authorities² cited by Lord Justice Laws for a "hierarchy of Acts" was ever discussed in Court, since they were not among the arguments presented by Prosecuting Counsel. Consequently, traders were deprived of making representations on the very point on which the case turned. Had the Defence Counsel been able to make submissions on these authorities, he could have pointed out that none of them dealt with a conflict between earlier and later statutes. Indeed, in one of them (Withim 1998), the presiding judge was none other than Lord Justice Laws himself who said that there was "no hierarchy of rights in English Law".

By ruling in the way that he did, Lord Justice Laws acted unconstitutionally, since the effect of his judgment was to displace Parliament's will as the sole means of determining the law. According to his ruling, it is no longer enough for Parliament to declare its intention in an Act (in this case, "the pound or kilogram shall be the unit of measurement"). Parliament's intention now depends on the inclusion of a clause that might say, "...this repeals the metric provisions of ECA 1972". Under British constitutional law, such a clause is superfluous; of course new Acts repeal earlier Acts. It is not necessary for Acts to say that they are intended to be law; Acts are the law - and the most recent Act of Parliament on choice of units says the pound or the kilogram, the yard or the metre, shall be the units of measurement for use in the United Kingdom.

¹ Section 1(1): "The yard or the metre shall be the unit of measurement of length and the pound or kilogram shall be the unit of measurement of mass..."

² Simms [2000] 2 AC 115 per Lord Hoffmann at 131, Pierson v Secretary of State [1998] AC 539, Leech [1994] QB 198, Derbyshire County Council v Times Newspapers Ltd. [1993] AC 534, and Witham [1998] QB 575

Specimen metric offences

What sort of crimes might imperial traders be accused of? LACORS provides the following specimen offences to assist trading standards officers in their understanding of metric law.

i) Failure to Use Lawful Units

That the defendant on *(date)* at *(place)* in the said *(area)* did by *(circumstances eg selling certain goods, namely, apples, by weight)* use for trade a unit of measurement, namely the *(unit)*, which was not included in Parts I to IV of Schedule 1 to the Weights and Measures Act 1985. Contrary to Sections 8(1) and 8(4) of the said Act.

ii) Use of Unstamped UK Equipment

That the defendant on *(date)* at *(place)* did by *(circumstances eg selling certain goods, namely, apples, by weight)* use for trade certain prescribed weighing equipment, namely, a *(description)* which had not been passed as fit for such use by an Inspector of weights and measures or an approved verifier and did not bear a stamp indicating that it had been so passed. Contrary to Sections 11(2) and 11(3) of the Weights and Measures Act 1985.

iii) Use of an Imperial-Only Unit Price

That the defendant on *(date)* at *(place)* in the said *(area)* did by *(circumstances eg displaying a sign stating 'APPLES 45p/lb')* indicate that a product, namely, *(product)* was or might be for sale to a consumer without there being indicated the unit price of the product in compliance with Article 5(1) of the Price Marking Order 1999 in that the unit price, namely *(unit price)* was not indicated by reference to the kilogram. Contrary to Paragraph 5 of the Schedule to the Prices Act 1974 [BWMA note: similar

offences would be pricing per ¼ lb rather than 100g, per foot rather than per metre, and per sq yard rather than per sq metre].

iv) Use of a More Prominent, etc Imperial Unit Price

That the defendant on *(date)* at *(place)* in the said *(area)* did by *(circumstances eg displaying a sign stating 'APPLES 45p/lb, £1.00/kg')* indicate that a product, namely *(product)* was or might be for sale to a consumer without there being indicated the unit price of the product in compliance with Articles 5(1) and 7(3) of the Price Marking Order 1999 in that the unit price indication, namely *(unit price)*, did not predominate and the supplementary imperial price indication, namely *(imperial indication)*, was expressed in characters larger than the unit price. Contrary to Paragraph 5 of the Schedule to the Prices Act 1974 [BWMA note: in other words, this means it is an offence if the price per lb is larger or more prominent than the metric price].

As explained elsewhere in this Guide, BWMA does not agree that the above offences apply to imperial units. It is worth noting, however, that some retail uses of measurements are not covered by metric regulations at all, and for which UK units may be used on their own and without intervention by trading standards officers. These are known as “descriptive” uses, and relate to the *dimensions* of goods, for example: the dimensions of furniture, the widths of TV screens, the length of saws, the diameter of fans, the capacity of freezers and microwaves, and so on.

LGA describes metric as low priority

The Local Government Association represents local authorities of England and Wales, and lobbies to promote local government. Like LACORS, its guidance is advisory. In July 2004, the LGA's Deputy Chairman Cllr Peter Chalke told Trading Standards Officers that there were more important issues than enforcing metric. He said: "Trading Standards Officers need to concentrate efforts into the areas that most effectively protect and advise the public. I personally do not think that the prosecution of traders who continue to use imperial measures can ever be one of those priorities ... These cases, although technically enforcing the law, hardly have public support and often harm the credibility of local government".

HM Opposition to restore lb/oz

The **Conservative Opposition** has pledged to “reinstate the right to sell in pounds and ounces”. The Conservatives say that, “...since goods sold are for domestic sale only, there should be no difficulty in allowing the use of pounds and ounces for loose goods to continue. Whether traders choose to sell in imperial or metric units should be a matter between them and their consumers” (letters, 19/1/04, 1/7/04).

The UK Independence Party opposes compulsory use of metric units, and its MEPs support efforts to repeal legislation at an EU level.

Useful addresses

Local Authorities Coordinators of Regulatory Services (LACORS), 10 Albert Embankment, London SE1 7SP, tel: 020 7840 7200, www.lacors.gov.uk

Local Government Association, Local Government House, Smith Square, London SW1P 3HZ, tel: 020 7664 3000, www.lga.gov.uk

Metric Martyr Defence Fund, PO Box 526, Sunderland SR1 3YS, tel: 07776 202045, www.metricmartyrs.co.uk

Department of Trade & Industry, 1 Victoria Street, London SW1H 0ET, tel: 020 7215 5000, www.dti.gov.uk

UK Independence Party, 123 New John Street, Birmingham B6 4LD, tel: 0121 333 7737, www.ukip.org

Conservative Party, Conservative Central Office, 25 Victoria St, London SW1H 0DL, tel: 020 72229000, www.conservatives.com