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Whats New**IN THE MATTER OF****LOCAL AUTHORITIES CO-ORDINATING BODY ON FOOD AND TRADING STANDARDS****THE WEIGHTS AND MEASURES ACT 1985****AND****UK IMPLEMENTATION OF THE UNITS OF MEASUREMENT (METRICATION) DIRECTIVES****SUMMARY OF OPINION**

1. The advice of Eleanor Sharpston Q.C. was sought on a number of issues that arise in relation to the adverse reaction by some traders to the recent changes concerning the law of metrication which came into force on 1st January 2000. A summary of this advice is given in relation to the following points:

a. Does the Weights and Measures Act 1985 ("the 1985 Act") imply a repeal of either or both the earlier amending Regulations introducing metric units and/or of the European Communities Act 1972 ("ECA 1972")?

The 1985 Act did not, either expressly or impliedly, repeal the earlier amending Regulations introducing metric units, still less did it have the effect upon the ECA 1972; accordingly, the earlier Regulations, the 1985 Act itself and the two sets of Regulations introduced in 1994¹ which broadly² had the effect of the requiring that metric (S.I) units be used from 1 January 2000 are to be viewed in the light of the obligations accepted by the UK as arising under (superior) EC law:

b. Are any of the relevant amending Regulations *ultra vires* for want of being made under the ECA 1972?

Examination of the various Statutory Instruments to which my attention has been drawn – in particular the Weights and Measures Act 1985 (Metrication) (Amendment) Order 1994 (SI 1994 No 2866) and the Units of Measurement Regulations 1994 (SI 1994 No. 2867) (collectively, "the 1994 metrication Regulations") – does not reveal any factor which, in my view, would be likely to lead a court to conclude that they were enacted *ultra vires*.

c. (On the assumption that the relevant Community obligations have *not* been properly implemented into domestic law), do the EC Directives themselves have direct effect and are national courts required to have regard to them?

Because what is here at issue is the possibility of *criminal* prosecutions of traders who do not comply with the metrication requirements, the ordinary principles of "vertical direct effect" and consistent interpretation give way to the fundamental principle of legal certainty under EC Law; accordingly, if and to the extent that the national implementing legislation does *not* correctly implement the Directives, an "emanation of the State" (such as a local authority) may not invoke the Directives themselves to sustain a criminal prosecution;

d. May a local weights and measures authority exercise discretion in relation to enforcing the metrication laws; if so, what factors may it

properly take into account in determining a general policy on enforcement, and what factors should govern the decision to take formal or informal action in a particular case?

A local weights and measures authority may not decline to perform its statutory duties under the 1985 Act; thus, whilst it enjoys a 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;

e. What is the relevance of the provisions relating to harassment and unlawful intimidation contained, respectively, in the Protection from Harassment Act 1997 and in s. 241 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA 1992")?

The issues under the Protection from Harassment Act 1997 and under a s.241 of the Trades Union and Labour Relations (consolidation) Act 1992 ("TULRCA 1992") are inextricably bound up with, and represent a different way of approaching, the question of whether enforcement of the metrication provisions is, or is not, lawful: if lawful, no issue arises under either provision; if not, the Trading Standards officers are still unlikely to be held to be committing a criminal offence if they are acting under an honestly-held but mistaken view of the validity of the law that they are seeking to enforce.

CONCLUSION

I am firmly of the view that the 1994 metrication Regulations are lawful; and that the local authorities are under a duty to enforce them.

¹ The Weights and Measures Act 1985 (Metrication) (Amendment) Order 1994 (SI 1994 No. 2866) and the Units of Measurement Regulations 1994 (SI 1994 No. 2867).

² The Weights and Measures Act 1985 (Metrication) (Amendment) Order 1994 (SI 1994 No. 2866) and the Units of Measurement Regulations 1994 (SI 1994 No. 2867).

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