

TRADE METROLOGY ACT NO. 77 OF 1973

Assented to: 19 June 1973

Date of commencement: 18 November 1977

ACT

To consolidate and amend the law relating to trade metrology.

1. Definitions

In this Act, unless the context otherwise indicates-

accredited laboratory means any laboratory accredited as contemplated in the Accreditation for Conformity Assessment, Calibration and Good Laboratory Practice Act, 200t (Act No. 19 of 2006);

[Definition of "accredited laboratory" inserted by s. 1 (a) of Act No. 17 of 1993, substituted by s. 1 (a) of Act No. 42 of 1994 and substituted by s. 1(a) of Standards Act No. 8 of 2008]

Board means the Board as defined in section 1 of the National Regulator for Compulsory Specifications Act, 2008;

[Definition inserted by s. 1(b) of Standards Act No. 8 of 2008]

certify, in relation to a measuring instrument, means to stamp, seal or mark, after verification or testing, with a certifying stamp, seal or mark, or to certify in writing in accordance with the provisions of this Act, and the word **re-certify** has a corresponding meaning.

Chief Executive Officer means the Chief Executive Officer contemplated in section 21 of the National Regulator for Compulsory Specifications, 2008;

[Definition inserted by s. 1(c) of Standards Act No. 8 of 2008]

committee means the Metrology Advisory Committee appointed under section 6;

[Definition of "committee" inserted by s. 1 (a) of Act No 15 of 1990.]

contract measuring instrument

[Definition of 'contracting measuring instrument' deleted by s. 1 (b) of Act No. 42 of 1994.]

correct, in relation to any measuring instrument, means correct with due allowance for the limits of error or sensitivity prescribed by regulation;

council

[Definition of "council" deleted by s. 1 (b) of Act No. 15 of 1990.]

director means the Director of Trade Metrology appointed or deemed to be appointed under section 2;

director-general

[Definition of 'director-general' inserted by s. 1 (c) of Act No. 15 of 1990 and deleted by s. 1 (b) of Act No. 42 of 1994.]

examiner means any examiner appointed under section 4;

goods in prepacked form means any commodity made up or packaged in any manner as a single unit or entity prior to the time of sale thereof (irrespective of whether such unit or entity consists of one or more than one item of such commodity and irrespective of whether such unit or entity is wholly or partly enclosed or is unenclosed and irrespective of the

method used to obtain such unit or entity) for the purpose of selling such commodity as such unit or entity, and the word **prepacked**, when used in connection with the word "goods", has a corresponding meaning.

inspector means any inspector appointed under section 3;

measuring instrument means any appliance, equipment, instrument, apparatus or other thing or any combination thereof by means of which a measurement of physical quantity, expressed in any measuring unit or a mathematical function of measuring units, may be made, and includes any appliance, equipment, instrument, apparatus or other thing or any combination thereof by means of which a grading or counting in connection with the measurement of any physical quantity or a counting by means of gravitation may be effected;

[Definition of "measuring instrument" substituted by s. 1 of Act No 34 of 1975]

measuring unit means any unit published or prescribed in terms of section 2 of the Measurement Units and Measurement Standards Act, 2006 (Act No. 18 of 2006), but does not include any such unit which, by regulation made under this Act, is excluded for the purposes of this Act;

[Definition substituted by s. 1(d) of Standards Act No. 8 of 2008]

Minister means the Minister of Trade and Industry;

[Definition of "Minister" substituted by s. 1 (d) of Act No. 15 of 1990 and by s. 1 (b) of Act No. 17 of 1993.]

physical quantity, in relation to measuring, means any concept capable of being measured and of which the magnitude can be expressed in terms of a measuring unit;

prescribed purpose, in relation to the use, possession, manufacture or import of any measuring instrument or in relation to the expression of the quantity of goods, means any purpose prescribed by regulation;

president [Definition of "president" inserted by s. 1 (c) of Act No. 42 of 1994 and deleted by s. 1(e) of Standards Act No. 8 of 2008]

proclamation means any proclamation made under this Act;

registered mechanic

[Definition of "registered mechanic" deleted by s. 1 (a) of Act No. 42 of 1994.]

regulation means any regulation made under this Act;

repair, in relation to any measuring instrument, means any work carried out on, or any adjustment made to, such measuring instrument in order to restore or maintain it in a certifiable condition but not work carried out on, or adjustment made to, a specified measuring instrument if such work or adjustment does not in any way change the meteorological characteristics or the accuracy of such measuring instrument;

[Definition of "repair" inserted by s. 1 (e) of Act No. 42 of 1994.]

repairer, in relation to a measuring instrument, means any person who repairs at such instrument;

[Definition of "repairer" inserted by s. 1 (c) of Act No. 42 of 1994.]

Republic

[Definition of "Republic" deleted by s. 1 (e) of Act No. 15 of 1990.]

SABS Council means the Council of the South African Bureau of Standards referred to in section 6 of the Standards Act, 1993 (Act No. 29 of 1993);

[Definition of "SABS Council" inserted by s. 1 (f) of Act No. 15 of 1990 and substituted by s. 1 (1) of Act No. 42 of 1994.]

sell includes to offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale, or to exchange or to dispose of for any consideration whatever, or to transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid, and the words **seller**, **selling**, **sale** and **sold** have a corresponding meaning;

specified measuring instrument means any measuring instrument of a class or kind specified by the director but not a measuring instrument which has been rejected in terms of section 25;

[Definition of "specified measuring instrument" inserted by s. 1 (g) of Act No. 42 of 1994.]

stamp includes cast, engrave, etch, print or otherwise mark, in such a manner as to be as far as possible indelible;

statutory body means any board, council or body of persons established by or under any law;

[Definition of "statutory body" substituted by s. 1 (h) of Act No. 42 of 1994.]

this Act includes any regulation or proclamation;

trade includes-

- (a) the making, effecting or concluding of any contract, bargain, sale, purchase or transaction, or any payment in connection therewith; or
- (b) any payment for services rendered; or
- (c) the collection of tolls, rates, taxes or other fees, in connection with which any measuring instrument is used;

unauthorised measuring unit means a measuring unit other than a measuring unit as defined in this Act;

uncertified, in relation to a measuring instrument, means not certified or not re-certified if such measuring instrument should under this Act have been certified or re-certified;

vehicle does not include railway rolling stock;

verification officer means any person appointed as such in terms of section 3;

[Definition of verification officer added by s. 1 (c) of Act No. 17 of 1993.]

verify means to certify the accuracy of any measuring instrument on the basis of a relevant national measuring standard as defined in section 1 of the Measuring Units and National Measuring Standards Act, 1977 (Act No. 76 of 1973).

[Definition of "verify" added by s. 1 (c) of Act No. 17 of 1993.]

ADMINISTRATION OF ACT

2. Director and Deputy Director of Trade Metrology

(1) The Board shall appoint a Director of Trade Metrology.

[Sub-s (1) substituted by s. 2 (a) of Act No. 15 of 1990 and substituted by s. 2(a) of Standards Act No. 8 of 2008]

(2) The Board shall appoint a Deputy Director of Trade Metrology, who may, subject to the control and directions of the director or in the absence of the director or if the director is for any other reason unable to perform his duties or if the post of director is temporarily vacant, do anything which may lawfully be done by the director.

[Sub-s. (2) substituted by s. 2 (b) of Act No. 15 of 1990 and substituted by s.2(b) of Standards Act No. 8 of 2008]

(3) Any person who immediately before the date of commencement of this Act held the post of superintendent of weights and measures referred to in section 2 of the Weights and Measures Act, 1958 (Act No. 13 of 1958), shall on such date be deemed to have been appointed as director in terms of subsection (1).

3. Appointment and qualifications of inspectors and verification officers

(1) The Board may from time to time, on the recommendation of the director, appoint inspectors or verification officers to verify or test all measuring instruments or any particular kind of measuring instrument in accordance with the provisions of this Act.

[sub s. (1) substituted by s. 3(a) of Standards Act No. 8 of 2008]

(2) No person shall in terms of subsection (1) be appointed or act as an inspector or verification, unless-

(a) he has shown in undergoing an examination a knowledge of the appropriate provisions of this Act and has, in accordance with a curriculum laid down from time to time by the director in consultation with the committee, passed an examination in-

(i) subjects so laid down; and

(ii) practical work in verifying and testing all measuring instruments or the kind of measuring instrument in question; and

(b) he holds a certificate issued to him by the Board to the effect that he is qualified to act as an inspector or verification officer in respect of all measuring instruments or a particular kind of measuring instrument.

[para (b) substituted by s. 3(b) of Standards Act No. 8 of 2008]

(3) Subject to the provisions of section 22, no inspector shall derive any profit from or be employed in the making, repair, adjusting or selling of any measuring instrument.

(4) No person shall act as an inspector, unless he or she is employed by and acts on behalf of the South African Bureau of Standards, any statutory body contemplated in section 7(1) or is employed by and acts on behalf of any provincial government.

[Sub-s. (4) substituted by s. 1 of Act No. 58 of 1996.]

(5) No person shall act as a verification officer, unless he is employed by and acts on behalf of all accredited laboratory designated in terms of section 7(2) to verify all measuring instruments or the particular kind of measuring instrument in respect of which such verification officer is qualified to act in terms of subsection (1).

- (6) No person shall act as an inspector or verification officer in respect of any particular kind of measuring instrument, unless he holds an appropriate certificate contemplated in subsection (2).

[S. 3 amended by s. 3 of Act No. 15 of 1990 and substituted by s. 2 of Act No. 17 of 1993.]

4. **Appointment of examiners**

The Board may, on the recommendation of the director, appoint examiners to exercise the functions of examiners under this Act.

[S. 4 substituted by s. 4 of Act No. 15 of 1990 and substituted by s. 4 of Standards Act No. 8 of 2008]

5. **Administration of the Act**

- (1) Subject to the control of the Minister, this Act shall be administered by the Board and by the director, inspectors, accredited laboratories, verification officers and examiners, who shall perform their duties under the control of the Board.

[Sub-s. (1) substituted by s. 3 of Act No. 17 of 1993 and substituted by s. 5 of Standards Act No. 8 of 2008]

- (2) The Board may, subject to the conditions it may impose, delegate or assign to the Chief Executive Officer any power or duty conferred or imposed on it by section 3 or 4.

[S. 5 substituted by s. 5 of Act No. 15 of 1990. Sub-s. (2) substituted by s. 3 of Act No. 42 of 1994 and substituted by s. 5 of Standards Act No. 8 of 2008]

6. **Metrology Advisory Committee**

- (1) The Minister shall appoint a Metrology Advisory Committee to assist and advise the director in the performance of his functions under sections 3, 4, 18, 23 and 24 and in connection with such other matters as the Minister may refer to the committee from time to time.

[Sub-s. (1) substituted by s. 4 of Act No. 17 of 1993.]

- (2) The committee shall consist of-

- (a) the director, who shall be the chairman;
- (b) not more than five persons appointed on account of the scientific or technical knowledge or commercial or industrial experience; and
- (c) the Deputy Director of Trade Metrology mentioned in section 2(2), who shall be the vice-chairman.
- (3) When for any reason the chairman is not able to perform his functions as chairman, the vice-chairman shall act as chairman.
- (4) The meetings of the committee shall be held at such times and places as the chairman may determine.
- (5) The person presiding at a meeting of the committee shall determine the procedure at such meeting.
- (6) A member of the committee contemplated in subsection (2)(b) shall hold office for such period, but not exceeding three years, and on such conditions as the Minister may determine.
- (7) A member of the committee may at the expiry of his term of office by effluxion of time, be reappointed.

- (8) The members of the committee who are not in the full-time employment of the State, shall receive such remuneration and allowances as the Minister, in consultation with the Minister of Finance, may determine from time to time.

[S. 6 substituted by s. 6 of Act No. 15 of 1990.]

7. Carrying out of functions may be assigned to statutory bodies or accredited laboratories

- (1) The Minister may, after consultation with the Board, assign in writing to any statutory body or provincial government the carrying out, subject to such conditions and requirements as may be prescribed by regulation, of any function specified in this Act.

[Sub-s (1) substituted by s. 2 of Act No. 58 of 1996 and substituted by s. 6 of Standards Act No. 8 of 2008]

- (2) The Board may in writing, on the recommendation of the director, designate any accredited laboratory to verify all measuring instruments or any particular kind of measuring instrument in respect of which such laboratory is accredited.

[S. 7 substituted by s. 7 of Act No. 15 of 1990 and by s. 5 of Act No. 17 of 1993 and substituted by s. 6 of Standards Act No. 8 of 2008]

CHAPTER II STANDARDS

8. Departmental standards

- (1) The director shall keep in his custody such measuring standards (in this Act referred to as departmental standards) as may be necessary for the purpose of verifying the regional standards.
- (2) The value of a departmental standard shall as accurately as possible represent the value signified by its denomination.
- (3) A departmental standard shall, in regard to accuracy, be verified and certified in accordance with the provisions of subsection (2) by the Council for Scientific and Industrial Research referred to in section 2 of the Scientific Research Council Act, 1962 (Act No. 32 of 1962), and shall be reverified and so certified by the said Council at intervals not exceeding five years.
- (4) The said Council for Scientific and Industrial Research shall render such further assistance in connection with the carrying out of the provisions of this Chapter as the Minister may from time to time request of it.

9. Regional standards

- (1) The director shall cause to be kept at every regional office of metrology under his jurisdiction in the custody of the inspector in charge of such office, such measuring standards (in this Act referred to as regional standards) as he may deem necessary for the purposes of this Act.
- (2) The value of any regional standard shall, with due allowance for such limits of error as may be prescribed by regulation, agree with the value signified by the denomination of such regional standard at the time of verification thereof, and the director shall cause such regional standard to be so verified and certified before being taken into use and thereafter at intervals not exceeding two years: Provided that regional standards of volume made of -lass

and regional standards relating to length, shall be reverified and certified at such intervals as the director may deem fit.

- (3) For the purposes of this Act "regional office of metrology" means any such office established for the purposes of the administration of this Act in any area which the director determines to be a region.

10. **Inspection standards**

- (1) The director shall provide for use by any inspector such measuring standards (in this Act referred to as inspection standards) as may in the opinion of the director be required by such inspector for the purposes of carrying out his duties and functions under this Act.
- (2) The value of an inspection standard shall, with due allowance for the limits of error prescribed by regulation, agree with the value signified by the denomination of such inspection with regional standards and certified accordingly, by the inspector in whose custody the regional standards with which it is so verified are kept in terms of section 9(1).
- (3) Any inspection standard for the testing of mass pieces used for any prescribed purpose shall, before being taken into use and thereafter at intervals not exceeding six months, and any other inspection standard shall, before being taken into use and thereafter at intervals not exceeding one year, be verified or reverified with regional standards and certified accordingly by the inspector in whose custody the regional standards with which any such inspection standard is so verified or reverified are kept in terms of section 9(1): Provided that inspection standards of volume made of glass shall be reverified and certified within such intervals as the director may deem fit.

11. **Measuring instruments used by director, inspectors or examiners shall be inspected and tested**

- (1) Every measuring instrument, other than any regional or inspection standard, used by the director or any inspector or examiner for the purposes of carrying out his duties and functions under this Act, shall be inspected and tested before being taken into use and thereafter at such intervals as may be prescribed by regulation, and a record of every such inspection and testing shall be made and kept by the director or the inspector referred to in section 9(1).
- (2) Any measuring instrument referred to in subsection (1) shall not be used for the carrying out of any duty or function under this Act unless it complies at any inspection and test referred to in subsection (1) with such requirements as may, in respect of any such measuring instrument, be prescribed by regulation.

11A. **Verification standards**

- (1) An accredited laboratory shall provide for use by any verification officer such measuring standards (in this Act referred to as verification standards) as may be required by such verification officer for the purpose of carrying out his or her duties and functions under this Act.
- (2) The value of any verification standard shall, with due allowance for such limits of error as may be prescribed by regulation, agree with the value signified by the denomination of such verification standard at the time of verification thereof.

- (3) Any verification standard for the testing of mass pieces used for any prescribed purpose shall, before being taken into use and thereafter at such intervals as may be prescribed by regulation, and any other verification standard shall, before being taken into use and thereafter at such intervals as may be prescribed by regulation, be verified or reverified, and certified accordingly with such standards as may be approved by the director: Provided that verification standards of volume made of glass shall be reverified and certified within such intervals as the director may deem fit.

[S. 11.A inserted by s. 3 of Act No. 42 of 1994.]

11B. Measuring instruments used by verification officers shall be inspected and tested

- (1) Every measuring instrument, other than any verification standard, used by any verification officer for the purposes of carrying out his or her duties and functions under this Act, shall be inspected and tested before being taken into use and thereafter at such intervals as may be prescribed by regulation, and a record of each such inspection and testing shall be made and kept by the accredited laboratory responsible for providing such measuring instrument to any verification officer.
- (2) No measuring instrument referred to in subsection (1) shall be used for the carrying out of any duty or function under this Act unless it complies at any inspection and test referred to in subsection (1) with such requirements as may, in respect of any such measuring instrument, be prescribed by regulation.

[S. 11B inserted by s. 3 of Act No. 42 of 1994.]

CHAPTER III INSPECTION, EXAMINATION AND CONFISCATION

12. Inspections and examinations

The director shall arrange inspections and examinations in order to prevent the use of any measuring instrument or container which falls within the purview of, and which does not comply with the applicable requirements of this Act, and in order to prevent the sale of goods which, in respect of quantity or the manner in which they are offered for sale, do not comply with the applicable requirements of this Act.

[S. 12 substituted by s. 2 of Act No. 34 of 1975.]

13. Powers of inspection and examination

- (1) Any inspector or examiner or any employee of a statutory body furnished in writing with inspection or examination authority by the director, or any policeman, may conduct investigations to ascertain whether the provisions of this Act are being or have been complied with, and may for that purpose open packages containing goods prepacked for sale.
- (2) Any inspector, examiner or employee referred to in subsection (1), or any policeman, may at all reasonable times-
- (a) enter any place or stop and enter any vehicle-
- (i) in respect of which he has reason to believe that there is on or in it
- (aa) any measuring instrument or container used or intended to be used for any prescribed purpose; or
- (bb) goods for sale; or

[Item (aa) substituted by s. 3 (a) of Act No. 34 of 1975.]

- (ii) in respect of which he has reason to believe that it is connected with
- (aa) any measuring instrument or container used or intended to be used for any prescribed purpose; or
[Item (aa) substituted by s. 3 (b) of Act No. 34 of 1975.]
- (bb) the sale of goods;
- (b) inspect or examine any measuring instrument, container, goods, articles or other thing which may in terms of this Act be inspected or examined, or order that for the purposes of inspection or examination such measuring instrument, container, goods, articles or other thing be placed at his disposal;
[Para. (b) substituted by s. 3 (c) of Act No. 34 of 1975.]
- (c) inspect, verify or test or cause to be verified or tested any measuring instrument or container used for any prescribed purpose or which is subject to any provision of this Act and which is in the possession of any person or is found on any premises;
[Para. (c) substituted by s. 3 (d) of Act No. 34 of 1975.]
- (d) seize and retain any measuring instrument, container, goods, articles or other thing which may be confiscated or seized in terms of this Act;
[Para. (a) substituted by s. 3 (e) of Act No. 34 of 1975.]
- (e) order any person carrying goods for sale, to stop; and
- (f) examine and measure or count the quantity of any goods for sale by means of any measuring instrument referred to in section 11 or by means of any certified measuring instrument found at the place where such goods are found or on any vehicle on which such goods are carried for sale.
- (3) Any person in charge of measuring instruments, containers or goods which are being inspected or examined by any inspector, examiner or employee referred to in subsection (1), or any policeman, or any agent or employee of such person, shall at the request of any such inspector, examiner, employee or policeman render such assistance as may be necessary for the purpose of verifying or testing such measuring instruments or containers or of measuring or counting the quantity of such goods.
[Sub-s. (3) substituted by s. 3 (f) of Act No. 34 of 1975.]
- (4) Any person using any measuring instrument in trade in connection with the measuring of the quantity of goods sold by him shall, on demand of the purchaser of such goods produce such measuring instrument and any document relating to the certification thereof to such purchaser for his examination, unless the measuring instrument in question has by regulation been exempted from certification or re-certification.
[Sub-s. (4) substituted by s. 3 (g) of Act No. 34 of 1975.]
- (5) Any person who-
- (a) fails on demand to produce to, or put at the disposal of, any inspector, examiner or employee referred to in subsection (1), or any policeman, anything in his possession or on his premises which may relate to any inspection or examination; or
- (b) fails on demand to produce for inspection or examination under subsection (1) or (4) any measuring instrument, or any document relating to the certification thereof, in his possession or on his premises; or
- (c) fails to comply with any order given under subsection (2)(e) or any request made under subsection (3); or

- (d) fails on demand to produce to any inspector, examiner or employer referred to in subsection (1), or to any policeman, any invoice, delivery note or other document relating to any measuring instrument or goods which may be inspected or examined by such inspector, examiner, employee or policeman; or
 - (e) hinders or obstructs any inspector, examiner or employee referred to in subsection (1), or any policeman, in the exercise of his powers under this section; or
 - (f) falsely holds himself out to be an inspector, examiner or employee referred to in subsection (1),
- shall be guilty of an offence.

13A. **Powers and duties of verification officers**

- (1) For the purposes of this Act any verification officer may verify and test all measuring instruments or a particular kind of measuring instrument contemplated in section 7(2).
- (2) If any verification officer in the execution of his powers as contemplated in subsection (1) finds that any measuring instrument or kind of measuring instrument does not comply with the requirements of this Act, such measuring instrument or kind of measuring instrument shall be deemed to be rejected in terms of section 25.
- (3) No verification officer shall-
 - (a) consent to the continued use of a measuring instrument that was rejected as contemplated in section 25; or
 - (b) issue a document to the effect that a measuring instrument is certified under this Act if it is not correct and such measuring instrument is not so certifiable; or
 - (c) use a certifying stamp for any purpose other than the prescribed purpose or in a manner other than the prescribed manner, or create the impression that he used or may use a certifying stamp in any other capacity than that of a verification officer; or
 - (d) unless a measuring instrument or a particular kind of measuring instrument has been submitted or made available to him by the owner or user thereof for certification-
 - (i) falsely create the impression with any owner or user that such measuring instrument is subject to certification by him; or
 - (ii) compel any owner or user to have a measuring instrument certified by him.
- (4) Any person who falsely holds himself out to be a verification officer as contemplated in section 3 shall be guilty of an offence.

[S. 3A inserted by s. 6 of Act No. 17 of 1993.]

14. **Withdrawal of certain goods and measuring instruments**

- (1) Any inspector or examiner referred to in section 13(1), or any policeman, who examined any goods or who inspected or examined or caused to be verified or tested any measuring instrument and who found that such goods or measuring instrument did not comply with the requirements of this Act, may order the person in whose possession or on whose premises

such goods or measuring instrument were found, or the agent or employee of such person, to withdraw the whole, or any part, of such goods forthwith from sale or to withdraw any such measuring instrument forthwith from further use or to take such other steps as may be deemed necessary by such inspector, examiner or policeman for the protection of prospective purchasers or of any other persons concerned.

- (2) Any person who fails to comply with any order given under subsection (1) shall be guilty of an offence.

15. **Confiscation of certain articles**

The court convicting any person of an offence under this Act, may confiscate any measuring instrument, goods, articles or other thing in respect of which such offence has been committed.

- (2) Any measuring instrument, goods, article or other thing confiscated under subsection (1) shall be disposed of in such manner as the Minister may direct.

16. **Presumptions regarding use and possession of certain measuring instruments and determination of quantities of goods**

- (1) If in any prosecution for an offence under this Act, it is necessary in order to establish the charge against the accused, to prove-

- (a) that the accused did at any time or place use for any prescribed purpose or have in his possession for such purpose any measuring instrument, and it is proved that at such place and time he performed any activity regarding such purpose and that such measuring instrument was then in his possession, it shall be presumed that the accused at that time used for such purpose or had in his possession for such purpose, such measuring instrument, until the contrary is proved; or
- (h) that the accused did at any time or place sell or have in his possession for sale any goods or articles, and it is proved that at that time and place he carried on trade and that such goods or other articles were then in his possession, it shall be presumed that at that time and place he sold or had in his possession for sale such goods or articles, until the contrary is proved;
- (c) that a notice under section 19(1) should, in respect of any measuring instrument, have been complied with, it shall be presumed that at all relevant times the accused possessed such measuring instrument for a prescribed purpose in the area to which the notice in question applies, until the contrary is proved.

[Para. (c) substituted by s.7 of Act No. 17 of 1993.]

- (2) If in any prosecution for all offence under this Act it is proved that any inspector, examiner or employee referred to in section 13(1), or any policeman, in the exercise of his duties under section 13(2)(f) used any measuring instrument referred to in section 11 or any certified measuring instrument in order to determine the quantity of any goods, it shall be presumed that the quantity so determined is the actual quantity of such goods, until the contrary is proved.

17. **Contents of certain affidavits deemed to be prima facie proof**

If in any prosecution for an offence under this Act the question arises whether any measuring instrument not certified under this Act is not a measuring instrument exempted

from certification or re-certification in terms of section 18(2)(a) or 23, a document purporting to be an affidavit made by a person who in that affidavit alleges-

- (a) that he or she is an inspector in charge of the regional office of metrology for the area in which the measuring instrument in question was found;
- (b) that if the measuring instrument in question were a measuring instrument exempted from certification or re-certification in terms of section 18(2)(a) or 23 it would in the ordinary course of events have come to his or her, the deponent's, knowledge and a record thereof, available to him or her, would have been kept; and
- (c) that there is no such record thereof,

shall, upon its mere production at such prosecution, be prima facie proof that the measuring instrument in question is not a measuring instrument exempted from certification or re-certification in terms of section 18(2)(a) or 23.

[S. 17 substituted by s. 4 of Act No. 34 of 1975, amended by s. 9 of Act No. 17 of 1993 and substituted by s. 4 of Act No. 42 of 1994.]

CHAPTER IV

APPROVAL, VERIFICATION AND CERTIFICATION OF MEASURING INSTRUMENTS

18. Approval of measuring instruments

- (1)(a) If any person desires to sell or make available any new model of a measuring instrument of a class or kind which or of which the material, design or construction is in terms of any regulation required to be approved by the director, he may, with a view to the issue to him of a certificate in terms of subsection (2), submit a specimen of that model to the director who shall examine it with reference to the material from which, the principle according to which and the manner in which it has been made and such other circumstances as he may deem fit, and the director may, before issuing any such certificate, require such alterations to be made to such model as he may deem fit.
- (b) If a certificate has been issued in terms of subsection (2) in respect of a particular model of a measuring instrument, and any person desires to sell or make available for any prescribed purpose in respect of which it is prescribed by regulation that an approved measuring instrument shall be used, a modified model of that measuring instrument, he may submit a specimen of the modified model or of the modified part thereof to the director with a view to endorsing or making an addition to that certificate to the effect that it also relates to the modified model.
- (c) If with a view to the issue of a certificate in terms of subsection (2) any specimen of any new model of a measuring instrument exempted by regulation or in terms of section 23 (2) from the provisions of section 23 (1), is submitted to the director, he may in his discretion agree or refuse to deal therewith in terms of this section.
- (d) The director may, subject to such conditions, limitations or requirements and for such period as he may deem fit, authorise in writing the use or the supply for use for a prescribed purpose, of a specimen of a model of a measuring instrument referred to in paragraph (a) or (b) of this subsection, and such number of such specimens as he may deem fit, before he has approved thereof in terms of subsection (2), and such measuring instrument shall, during the period of such authorisation, be exempt from certification or re-certification under this Act.

[Para. (d) inserted by s. 8 of Act No. 15 of 1990]

- (2)(a) If the director finds a specimen of a model submitted to him in terms of subsection (1) (a) to be suitable for use for any prescribed purpose, he shall approve such model for such use and issue a certificate to that effect: Provided that the director may, subject to the provisions of any regulation made in terms of section 42(1)(k), by means of any such certificate limit the prescribed purposes for which any measuring instrument made according to any such specimen may be used, or impose conditions upon the use of any such measuring instrument, or impose in respect of any such measuring instrument any limitation or condition regarding approval or subsequent certification or re-certification or exemption from certification or re-certification in terms of this Act.
- (b) In any case contemplated by subsection (1)(b), the director may in his discretion make or refuse to make the endorsement or addition desired on or to the certificate in question, and if he makes any such endorsement or addition, the proviso to paragraph (a) shall *mutatis mutandis* apply in respect of the making thereof.
- (3) The director may in his discretion by notice in the Gazette withdraw or amend any certificate issued in terms of subsection (2).
- (4) Any person who without the permission in writing of the director-
- (a) sells or makes available for use for any prescribed purpose any new model of a measuring instrument referred to in subsection (1)(a), before the issue, in terms of subsection (2), of a certificate in respect thereof; or
- (b) alters any model or modified model of a measuring instrument in respect of which a certificate was issued in terms of subsection (2), regarding any portion of the material of which or the mode in which or the principle according to which it has been made, and pretends to any person that the model so altered is the model in respect of which the said certificate was issued; or
- (c) represents to any person that any measuring instrument-
- (i) may be used for any particular prescribed purpose if, under a certificate issued in terms of this section in respect thereof, it shall not be so used; or
- (ii) may be used in a particular manner for any prescribed purpose if, under any condition imposed by such certificate, it shall not be so used in such manner,
- shall be guilty of an offence.
- (5) The director shall, after consultation with the committee, decide on the issue of any certificate referred to in subsection (2) and may cause to be made known particulars of any such certificate in such manner as he may deem fit.
- (6) No measuring instrument made according to-
- (a) any specimen of a model or a modified model in respect of which a certificate or an endorsement of or an addition to a certificate has been refused in terms of subsection (2); or
- (b) any specimen of a model or a modified model in respect of which a certificate has been withdrawn in terms of subsection (3),
- shall be certified or re-certified by any inspector or verification officer.

- (7) No inspector or verification officer shall refuse to certify or re-certify any particular measuring instrument made according to any model or modified model in respect of which a certificate was issued in terms of subsection (2) and has not been withdrawn, on the ground that the material of which or the mode in which or the principle according to which such measuring instrument has been made is such that it is unsuitable for use for any prescribed purpose.

[Sub-s. (7) amended by s. 9 (b) of Act No. 17 of 1993.]

- (8) Any person who submits for any examination in terms of this section any model or modified model of a measuring instrument, shall pay such fees for the examination and the costs incurred by the director in connection therewith, as the director shall charge according to such tariffs of fees and costs as the Minister, in consultation with the Minister of Finance, may prescribe from time to time by notice in the Gazette, and the tariffs so prescribed may provide for payments in respect of the delay or postponement of the examination or the completion thereof at the request of or as a result of an omission by the person who made the submission.

[Sub-s. (8) substituted by s. 1 of Act No. 14 of 1984.]

- (9) Notwithstanding the provisions of this section, the use of any attachment, device or ancillary equipment connected with the use of any approved model of a measuring instrument for any prescribed purpose, may by regulation be made subject to examination and approval by the director on payment of such fees as may be prescribed in the tariff of fees referred to in subsection (8).

19. **Notice in connection with certification or re-certification of measuring instruments**

- (1) The director may by notice in the Gazette in respect of any measuring instrument which in terms of this Act is required to be verified, certified or re-certified-
- (a) prescribe maximum intervals within which all such measuring instruments, or a certain class or kind of such measuring instrument, shall be verified, certified or re-certified; or
 - (b) call upon every person possessing any such measuring instrument to produce such measuring instrument at any accredited laboratory, any regional office of metrology or at the place and time (being not earlier than 14 days after the date on which the notice is published in the Gazette) specified in the said notice, for the purpose of being verified, certified or re-certified, unless it is-
 - (i) a measuring instrument bearing a certifying stamp and is covered by a verification certificate which is valid for the period contemplated in paragraph (a) and for the year to which the notice in question applies; or
 - (ii) a measuring instrument exempted from the provisions of section 23(1) by regulation or in terms of section 23(2) or 18(2)(a); or
 - (iii) a measuring instrument which is fixed in such manner or is of such delicate construction or has such mass that it cannot be conveniently moved; or
 - (iv) a measuring instrument which is kept at a place situated more than 15 km by the shortest route from any accredited laboratory, regional office of metrology or place specified in the said notice; or
 - (v) a measuring instrument having a capacity greater than a capacity prescribed by regulation; or
 - (vi) a measuring instrument of a class or kind exempted by the said notice from the operation thereof.

[Sub-s. (1) amended by s. 5 (a) of Act No. 34 of 1975 and substituted by s. 5 of Act No. 42 of 1994.]

- (2)
[Sub-s. (2) substituted by s. 5 (b) of Act No. 34 of 1975 and deleted by s. 10 (a) of Act No. 17 of 1993.]
- (3) The director may in his discretion take such steps as he may deem expedient to bring any notice published under subsection (1) to the attention of persons affected by it.
[Sub-s. (3) substituted by s. 10 (b) of Act No. 17 of 1993.]
- (4) Any person who fails to comply with a notice published in the Gazette under subsection (1) shall be guilty of an offence.
[Sub-s. (4) substituted by s. 10 (b) of Act No. 17 of 1993.]

20.
[S. 20 amended by s. 6 of Act No. 34 of 1975 and repealed by s. 6 of Act No. 42 of 1994.]

21. Certification and re-certification of measuring instruments

- (1) Any inspector or verification officer shall, at the time and place appointed under section 19, inspect and verify or test every measuring instrument which is produced to him or her for the purpose of verifying, certifying or re-certifying it and shall, after verification or testing and subject to the provisions of subsection (2), verify, certify or re-certify, in such manner as to indicate the year of such verification, certification or re-certification, every such measuring instrument which he or she finds to be correct and to comply with the requirements of this Act.
[Sub-s. (1) substituted by s. 11 of Act No. 17 of 1993 and by s. 7 (a) of Act No. 42 of 1994.]
- (2) Any certified measuring instrument of volume made of clear glass and any certified measuring instrument of length made of material prescribed by regulation need not be re-certified under this section, unless the inspector has reasonable grounds for believing that it has been altered materially since it was certified, or unless the original stamp or certification has been defaced or has become illegible.
- (3)
[Sub-s. (3) deleted by s. 7 (b) of Act No. 42 of 1994.]

22. Fees to be charged by inspectors

- (1) Any inspector shall charge in respect of the verification, testing, adjustment, certification or re-certification of any measuring instrument and costs incurred by him in connection therewith, fees and costs according to such tariffs of fees and costs as the Minister, in consultation with the Minister of Finance, may, if he deems it necessary, prescribe by notice in the Gazette, and the tariffs so prescribed may provide for payments in respect of the delay or postponement of the proceedings concerned or the completion thereof at the request of or as a result of an omission by the person who possesses, uses or maintains the measuring instrument.
- (2) Any accredited laboratory may charge in respect of the verification, testing, adjustment, certification or re-certification of any measuring instrument and costs incurred by it in connection therewith, such fees and costs as may be agreed upon by such accredited laboratory and the person submitting the measuring instrument for certification or re-certification.
[S. 22 substituted by s. 2 of Act No 14 of 1984. Sub-s. (2) added by s. 12 of Act No. 17 of 1993.]

22A. Disposal of fees

- (1) Any fees collected and costs recovered in terms of section 18 or 22(1) shall constitute revenue of the Board and shall be dealt with in accordance with the provisions of the National Regulator for Compulsory Specifications Act, 2008.

[Sub-s. (1) substituted by s. 8 of Act No. 42 of 1994 and substituted by s. 7 of Standards Act No. 8 of 2008]

- (2) Any fees collected and costs recovered in terms of section 22(2) shall constitute revenue of the accredited laboratory concerned.

[S. 22A inserted by s. 9 of Act No. 15 of 1990 and substituted by s. 13 of Act No. 17 of 1993.]

23. **Measuring instruments used for certain purposes to be certified**

- (1) Every measuring instrument used or possessed in connection with any prescribed purpose or any purpose contemplated in section 26 or used or possessed for the verification or testing of any measuring instrument to which the provisions of this Act are applicable, shall be certified or re-certified in accordance with the provisions of this Act unless exempted from certification or re-certification under this Act.
- (2) If the director is satisfied that it is impracticable or unnecessary to certify or re-certify any measuring instrument or any class or make of measuring instrument because of its mode or principle of construction or the manner in or purpose for which it is used or any other special circumstance relating to it or its use, he may issue a certificate in respect of such measuring instrument or such class or make of measuring instrument exempting it from the provisions of subsection (1) or of section 26, subject to such conditions, limitations or requirements as may be prescribed by regulation or as he may in any particular case deem fit to impose.
- (3) The provisions of this Act relating to the certification or re-certification of any measuring instrument or the use or possession of any measuring instrument which has not been certified or re-certified shall, subject to any applicable condition, limitation or requirement prescribed by regulation or imposed under subsection (2), not apply in respect of any measuring instrument exempted from the provisions of subsection (1) or of section 26 by regulation or under the said subsection (2) or belonging to a class or make so exempted.
- (4) The director may at any time cancel any certificate issued under subsection (2): Provided that any person who uses or has in his possession any measuring instrument to which, or belonging to the class or make to which, the certificate relates, shall be exempted from any penalty for using or possessing it for the period between the date of the cancellation of the certificate and the earliest opportunity when he could reasonably cause it to be certified or re-certified.
- (5) Any decision by the director under this section shall be given by him after consultation with the committee.
- (6) Any person who contravenes or fails to comply with any condition, limitation or requirement referred to in subsection (2), shall be guilty of an offence.

[S. 23 substituted by s. 7 of Act No. 34 of 1975.]

24. **Certain measuring instruments not to be certified or re-certified**

- (1) No inspector or verification officer shall certify or re-certify-
 - (a) subject to the provisions of section 18, any measuring instrument which has not been made in accordance with the relevant regulations, or the material or mode of construction or nature or condition or any part of which, in the opinion of such inspector or verification

officer, is such that it is not suitable for use for the prescribed purpose for which it is used or intended to be used;

- (b) any measuring instrument of a class or kind in respect of which the design, material or construction is in terms of the regulations required to be approved by the director, if such approval has not been granted;
- (c) any measuring instrument which does not comply with the requirements of this Act, or with any requirement, relating to it or its use, construction or certification, of which the director may inform the inspector from time to time.

[Sub-s. (1) amended by s. 14 (a) of Act No. 17 of 1993.]

- (2) Any decision of any inspector or verification officer under this section shall be liable to revision by, and subject to appeal to, the committee.

[Sub-s. (2) amended by s. 14 (b) of Act No. 17 of 1993.]

- (3) Any costs incurred by the Board in connection with any appeal which in the opinion of the committee is based on frivolous grounds, shall be borne by the appellant.

[Sub-s. (3) substituted by s. 10 of Act No. 15 of 1990 and substituted by s. 8 of Standards Act No. 8 of 2008]

25. **Defacing of certifying stamp**

- (1) Any inspector or any verification officer shall, in the manner prescribed by regulation, deface the certifying stamp on any measuring instrument which he finds to be false, defective or inaccurate or not to comply with the requirements of this Act or any limitation or condition regarding certification or re-certification in terms of section 18(2)(a) or any requirement made by the director in terms of section 24(1)(c), and thereupon such measuring instrument shall be deemed to be uncertified or rejected.

- (2) Any inspector or any verification officer who defaces any certifying stamp on any measuring instrument referred to in subsection (1) shall at the same time issue to the person in charge thereof a certificate stating the reason for the defacement.

[S. 25 substituted by s. 15 of Act No. 17 of 1993.]

26. **Certification and re-certification of measuring instruments used by State or authorised person**

Any measuring instrument used by the State or any authorised person for the purpose of or in connection with the fixing, collection or determination of tolls, rates, taxes or other fees shall be certified or re-certified in accordance with this Act unless exempted from certification or re-certification under this Act.

[S. 26 substituted by s. 8 of Act No. 34 of 1975.]

CHAPTER V

USE OR POSSESSION OF MEASURING INSTRUMENTS AND CONTAINERS

27. **Restriction on and prohibition of manufacture, import, use or possession of certain measuring instruments and containers**

- (1) Notwithstanding anything to the contrary contained in this Act or any other law, the Minister may by notice in the Gazette restrict or prohibit the manufacture, import, use or possession of any measuring instrument or container to such extent as he may deem necessary for achieving the object of effecting the application of the measuring units of the International System of Units (abbreviated as SI) and any other measuring unit in the Republic.

- (2) Any restriction or prohibition contemplated by subsection (1) may apply-
- (a) in the whole of the Republic or in any specified portion thereof;
 - (b) in respect of the manufacture, import, use or possession of the measuring instrument or container in question in connection with all goods or specified classes or kinds of goods;
 - (c) in respect of any specified class, kind or make of measuring instrument or container or in respect of any such measuring instrument or container manufactured, imported, used or possessed for any purpose.
- (3) The director may in writing, on such conditions and for such period as he may think fit, grant permission to any person to manufacture, import, use or possess any measuring instrument or container in respect of which the provisions of any notice issued under subsection (1) apply.
- (4) Notwithstanding anything to the contrary in this Act contained but subject to the provisions of subsection (3), no person shall in contravention of the provisions of a notice issued under subsection (1) manufacture, import, use or possess any measuring instrument or container.
- (5) Subject to the provisions of this Act or unless permission in writing has been obtained from the director, no person shall use for any prescribed purpose any mass piece or measure of a denomination not permissible under this Act, or any measuring instrument calibrated according to a measuring unit not permitted by this Act for such purpose.
- (6) No person shall use or have in his possession for any prescribed purpose, any measuring instrument-
- (a) not permitted by this Act for such purpose or which is false, defective or inaccurate; or
 - (b) which has not been certified or re-certified if it should have been certified or re-certified under this Act; or
 - (c) which may, according to a certificate issued under section 18(2) in respect thereof, not be so used or so possessed; or
 - (d) otherwise than in accordance with any limitation or condition imposed by such certificate.
- (7) Subject to the provisions of any regulation providing for the continued use of any rejected measuring instrument, any person who, at any place where an act in connection with any prescribed purpose is carried out, has in his possession any measuring instrument which-
- (a) has been rejected in accordance with the provisions of section 25; and
 - (b) is being kept at such place and in such condition that it may, in the opinion of any inspector or examiner, readily be used for such purpose,
 - (c)

[Para. (c) deleted by s. 9 (a) of Act No. 42 of 1994.]

- (8) The Minister shall before the publication of any notice under subsection (1) consult the Board referred to in section 10 of the Measurement Units and Measurement Standards Act, 2006 (Act No. 18 of 2006).

[Sub-s. (8) substituted by s. 9 (b) of Act No. 42 of 1994 and substituted by s. 9 of Standards Act No. 8 of 2008]

28. **Sale, supply and use of uncertified measuring instruments**

- (1)(a) No person shall sell or supply for use for any prescribed purpose any uncertified measuring instrument unless he or she has obtained prior authority in writing for such sale or supply from the director or any inspector authorised by the director.

- (b) The director or inspector concerned may issue such authority if-

- (i) he or she is satisfied that the seller or supplier cannot, without undue delay or inconvenience, cause such instrument to be certified or re-certified before its sale or supply; and
- (ii) the seller or supplier furnishes him or her with a guarantee in writing signed by a repairer to the effect that the instrument is correct and certifiable under this Act;
- (iii) he or she is satisfied as to the sufficiency of the guarantee and the competency of the repairer.

[Sub-s. (1) substituted by s. 10 of Act No. 42 of 1994.]

- (2) The director may grant permission in writing to use any uncertified measuring instrument if, for any reason, it is not possible to carry out the verification and testing required by regulation and if such measuring instrument is correct and certifiable under this Act.

[Sub-s. (2) substituted by s. 10 of Act No. 42 of 1994.]

- (3) Any person who possesses or uses any measuring instrument which he has acquired from a person authorised to sell or supply it in terms of subsection (1), shall be exempted from any penalty for possessing or using it for the period between the date of acquisition and the earliest opportunity when he could reasonably cause it to be certified or re-certified.
- (4) Any person who furnishes a guarantee under subsection (1) in respect of any measuring instrument which is not correct and certifiable under this Act, shall be guilty of an offence.

29. **Prohibition in respect of manufacture or selling of false, defective or inaccurate measuring instruments or containers**

Any person who manufactures, sells or causes to be sold-

- (a) any false, defective or inaccurate measuring instrument; or
- (b) any container intended-
- (i) for measuring in trade; or
- (ii) as a container for the sale of any liquid,

and which does not comply with the requirements of a notice issued under section 27(1) or with the requirements of any regulation applicable thereto,

shall be guilty of an offence.

30. **Measuring instruments to be wholly exposed**

- (1) Any person who, in the presence of the purchaser of any goods and in connection with the measuring of the quantity of such goods, uses any measuring instrument, shall keep such measuring instrument wholly exposed to the view of such purchaser.
- (2) Any person who in retail trade sells any goods prepacked by him, shall, at the request of any purchaser of such goods who wishes to measure the quantity of the goods purchased from such person by such purchaser, make available to such purchaser a certified measuring instrument suitable for measuring the quantity of such goods.
[Sub-s. (2) substituted by s. 9 of Act No. 34 of 1975.]

31. **Certain containers excluded**

If any vessel or container is used or possessed or intended for the measuring off of any liquid, no provision of this Act shall be so construed as to-

- (a) prohibit the use or possession of such vessel or container for the determination of the quantity of any liquid sold therein irrespective of whether or not such liquid is a liquid required by regulation to be sold by volume; or
- (b) subject any person to any penalty for the possession or use of such vessel or container,

provided, in the case of any such vessel or container which is used or possessed or intended for the measuring off of any liquid in the retail trade at the time of sale of such liquid, the denomination of volume of such vessel or container is fixed thereon and such vessel or container complies with the requirements of any regulation applicable thereto.

[S. 31 substituted by s. 10 of Act No. 34 of 1975.]

32. **Presumption**

If in any prosecution for an offence under this Act-

- (a) it is necessary, in order to establish the charge against the accused, to prove that no permission in writing was granted by the director to the accused to do or exempting him from doing anything which, if it had not been for such permission, would be an offence under this Act, it shall be presumed that such permission was not granted, unless the contrary is proved; or
- (b) it is proved that the accused used or had in his possession for any prescribed purpose any measuring instrument which was not permitted by this Act or which was false, defective or inaccurate, the accused shall be presumed to have known that such measuring instrument was not so permitted or was false, defective or inaccurate, unless the contrary is proved,

33. **Offences in connection with measuring instruments**

Any person who-

- (a) forges or counterfeits any stamp or die used for the certifying of any measuring instrument; or
- (b) wilfully falsifies or tampers with a measuring instrument used for any prescribed purpose; or
- (c) otherwise than in the capacity of an inspector, a verification officer or a repairer acting in terms of any regulation and save as provided in section 34, obliterates or removes from any measuring instrument any certifying stamp or seal or any part thereof, or

[Para. (c) substituted by s. 16 (a) of Act No. 17 of 1993 and by s. 11 of Act No. 42 of 1994.]

- (d) inserts in or attaches to any other measuring instrument, any stamp or seal so removed; or
 - (e) otherwise than in the capacity of an inspector or a verification officer, places upon any measuring instrument any stamp or mark purporting to indicate that such measuring instrument has been certified or re-certified; or
[Para. (e) substituted by s. 16 (b) of Act No. 17 of 1993.]
 - (f) sells, utters or disposes of, for use for any prescribed purpose, any measuring instrument which has been tampered with or which has been falsified or on which the certifying stamp or seal has been defaced in terms of section 25; or
 - (g) wilfully commits or is a party to or aids in or incites any other person to the commission of any fraud or deception in the use of any measuring instrument,
- shall be guilty of an offence.

CHAPTER VI REPAIR OF MEASURING INSTRUMENTS AND REGISTRATION OF CERTAIN PERSONS

34. Repair of measuring instruments

- (1) Subject to the provisions of any regulation relating to the defacing or obliteration of any certifying stamp or the breaking of any certifying seal-
 - (a) no persons shall repair any measuring instrument used for any prescribed purpose unless he or she has first permanently obliterated the certifying stamp or seal, including any such stamp defaced under section 25, thereon;
 - (b) any person who has repaired any measuring instrument used for any prescribed purpose shall, unless it is immediately thereafter certified, forthwith notify the director or any inspector authorised by him or her, of such repair and furnish him or her with a guarantee in writing signed by such repairer that such measuring instrument is correct and certifiable under this Act, and the director or such inspector shall, if satisfied-
 - (i) as to the sufficiency of the guarantee and the competency of the repairer; and
 - (ii) that such repairer cannot, without undue delay or inconvenience, cause such instrument to be certified or re-certified immediately after such repair,without delay, issue an authority in writing permitting the use of such measuring instrument until the certification thereof.
- (2) No person shall use for any prescribed purpose any measuring instrument which has been repaired, unless it has immediately thereafter been certified or an authority in writing has in terms of subsection (1)(b) been issued in respect thereof.
- (3) No work carried out on, or adjustment made to, a specified measuring instrument which does not constitute a repair, shall invalidate any current certification in respect of such specified measuring instrument if an inspector or a verification officer issues a certificate to this effect, stating the nature of the work done or the adjustment made.

[S. 34 substituted by s. 12 of Act No. 42 of 1994.]

35.

[S. 35 repealed by s. 13 of Act No. 42 of 1994.]

36.

[S. 36 amended by s. 17 of Act No. 17 of 1993 and repealed by s. 13 of Act No. 42 of 1994.]

CHAPTER VII TRADE DEALING AND SALE OF GOODS

37. Prohibition of false statement as to quantity

- (1) Any person who directly or indirectly makes any false, incorrect or untrue declaration or statement or wilfully misleads any person as to the quantity, expressed by number or in terms of any measuring unit, of any goods or articles in connection with their purchase, sale, counting or measurement or in the computation of any charges for services rendered on the basis of number or measurement, shall be guilty of an offence: Provided that if there is any difference between the actual and any represented quantity, expressed by number or in terms of any measuring unit, of the goods or articles in respect of which any declaration or statement is so made and such difference is permissible in terms of this Act, such declaration or statement shall not be regarded as false, incorrect or untrue merely because of the existence of such difference.
- (2) Any person who sells or causes to be sold anything, the quantity of which is expressed by number or in terms of a measuring unit, of which the actual quantity is short of that demanded of, or represented by, the seller, shall be guilty of an offence unless the shortage is permissible in terms of this Act.

38. Trade dealings to be effected in terms of certain measuring units and by means of certified measuring instruments

- (1) Any contract, bargain, sale, purchase or transaction made or effected in the Republic in respect of any land situated therein or in respect of any interest in land so situated or in respect of any goods, wares, merchandise or other thing or in respect of any services rendered, a quantity of which is expressed in terms of any measuring unit, shall be made or effected in accordance with measuring units prescribed by regulation for such purpose.
- (2) Any tolls, rates, taxes or other fees charged or collected according to measurement of a physical quantity, shall be charged or collected in accordance with such measuring units as may be prescribed by regulation for such purpose.
- (3) No contract, bargain, sale, purchase or transaction shall be made or effected in the Republic by means of any measuring instrument not permitted by this Act or which is false, defective or inaccurate or which, in the case of a measuring instrument which is required under this Act to be certified or re-certified, is uncertified.
[Sub-s. (3) substituted by s. 11 of Act No. 34 of 1975.]
- (4) Subject to the provisions of subsection (5), no person shall import into the Republic any goods, including prepacked goods, the quantity of which is expressed thereon or on any document relating thereto-
 - (a) in terms of any unauthorised measuring unit, unless the equivalent of the quantity so expressed is also expressed in terms of a measuring unit prescribed by regulation for such purpose in the manner prescribed by regulation; or

- (b) in terms of any measuring unit which does not comply with the regulations.
- (5) The provisions of subsection (4) shall not apply to any goods which the director has exempted in writing or in respect of which the importer satisfies the director and the competent customs officer that such goods are being imported for manufacturing purposes and not for sale.
- (6) Any person who expresses the quantity of any goods for sale in a manner or in terms of a measuring unit not prescribed by regulation for such purpose or in terms of any unauthorised measuring unit, shall be guilty of an offence.

39. **Catalogues to be in authorised manner or in terms of certain measuring units**

- (1) No person shall print, publish, make, circulate or cause to be printed, published, made or circulated in the Republic, any catalogue unless the quantity of goods referred to therein is expressed in a manner or in terms of a measuring unit prescribed by regulation in respect of such goods.
- (2) Subsection (1) shall not apply to-
 - (a) any catalogue, emanating from any country outside the Republic and circulated in the Republic, which clearly shows on its outside cover that references in such catalogue to prices and to quantities, expressed in terms of unauthorised measuring units or in any other manner, are not applicable to the Republic; or
 - (b) any catalogue referred to in paragraph (a) which bears a statement on its outside cover showing the equivalent of the measuring unit in terms of which or other manner in which the quantity of any goods set forth in such catalogue shall be expressed in terms of this Act.
- (3) In this section "catalogue" means any return, price list, price current or any journal or other paper containing the price list or price current of goods, the quantity of which is stated therein.

40. **Manner of selling goods**

- (1) No person shall-
 - (a) sell any goods by mass unless by net mass; or
 - (b) sell any fluid in any container unless, with due allowance for the limits of error prescribed by regulation, the actual liquid contents by volume at such temperature as may be prescribed by regulation, are in the manner prescribed by regulation indicated on that container or on any invoice, delivery note or other writing issued in connection with the sale of such fluid in such container; or
 - (c) sell any goods the quantity of which is determined at the time of sale thereof unless such quantity is made known to the purchaser in such manner as may be prescribed by regulation; or
 - (d) sell by mass any prepacked goods unless the net mass of such goods, with due allowance for the limits of error prescribed by regulation, is in the manner prescribed by regulation

indicated on the package or goods or on any invoice, delivery note or other writing issued in connection with the sale of such goods; or

- (e) sell or deliver to a purchaser any goods sold by such person by mass and otherwise than in prepacked form, unless the net mass of such goods is in the manner prescribed by regulation indicated on such goods or on any invoice, delivery note or other writing delivered with such goods.
- (2) The provisions of subsection (1)(d) shall not apply to-
 - (a) any article which, by reason of its being subject to variation in mass owing to its properties or to climatic influences, is specially exempted by regulation from the provisions of that subsection; or
 - (b) any article for which mass is used for the purpose of designating grade or class only.
- (3) The Minister may by regulation exempt any article from any provision of subsection (1), and paragraphs (b) and (d) of that subsection shall not apply to goods taken from bulk and measured at the time of sale in the presence of the purchaser or his agent and sold by volume or net mass determined at such measuring.
[Sub-s. (3) substituted by s. 11 of Act No. 15 of 1990.]
- (4) No person shall sell by mass any article exempted in the manner referred to in subsection (2)(a), unless it is marked on the package or container in which it is sold in the manner prescribed by regulation with a statement giving the net mass of the goods at the time of packing, and unless such goods comply with such conditions, regarding quantity, as may be prescribed by regulation.

41. **Reference to physical quantity and use of certain measuring units**

No person shall, in connection with any prescribed purpose, refer to any physical quantity or use any measuring unit or a multiple or sub-multiple thereof otherwise than in accordance with the applicable provisions of this Act.

CHAPTER VIII GENERAL AND MISCELLANEOUS

42. **Regulations**

- (1) The Minister may make regulations not inconsistent with this Act-
 - (a) providing for the examination of candidates for appointment as inspectors or verification officers, and prescribing the syllabus, conditions and fees in respect of such examinations.
[Para. (a) substituted by s. 18 of Act No. 17 of 1993.]
 - (b) defining the limits of error or sensitivity allowed in any measuring instrument;
 - (c) prescribing conditions for the supply, custody, care, verification and certification of all classes of measuring standards and measuring instruments referred to in sections 8, 9, 10, 11, 11A and 11B;
[Para. (c) substituted by s. 14 (a) of Act No. 42 of 1994.]

- (d) regulating the manner in which the director, any inspector, verification officer, examiner or other person appointed under this Act, or any police officer, shall carry out his duties under this Act;
- [Para. (d) substituted by s. 14 (a) of Act No. 42 of 1994.]
- (e) prescribing the classes or kinds of measuring instruments which shall be approved or certified or re-certified in terms of section 18;
- (f) prescribing the purposes for which only a measuring instrument approved or certified or re-certified in terms of section 18, may be used;
- (g) prescribing the conditions with which any attachment, device or ancillary equipment connected with any model measuring instrument approved in terms of section 18, shall comply;
- (h) prescribing the manner in which any measuring instrument shall be submitted for approval in terms of section 18;
- (i) prescribing the manner in which the examination of any model measuring instrument or part thereof submitted for approval in terms of section 18, shall be carried out;
- (j) prescribing and approving the material, design and construction of measuring instruments or specified models, classes or kinds of measuring instruments;
- (k) limiting the purposes for which certain measuring instruments may be used, and imposing conditions or limitations upon the use of any kind of measuring instrument;
- (l) prescribing the manner in which measuring units may be used;
- (m) prohibiting the expression of any quantity or of the dimensions of any goods in terms of certain measuring units or in any other manner not authorised by this Act;
- (n) prescribing the manner in which any denomination or the symbol of any measuring unit or any multiple or sub-multiple thereof shall be represented on any prepacked goods or on or by any measuring instrument;
- (o) prohibiting the certification, re-certification or use for any prescribed purpose of measuring instruments or specified models, classes or kinds of measuring instruments which are liable to become inaccurate or to result in or facilitate fraud or deception or which are not made in accordance with the relevant specifications or are found to be unsuitable for such prescribed purpose;
- (p) prescribing the times and places at which measuring instruments shall be submitted for inspection and testing with a view to the verification, adjustment, repair, stamping, sealing, certification or re-certification thereof if used for any prescribed purpose;
- (q) exempting from the provisions of section 23(1) or 26 any class or make of measuring instrument or any measuring instrument used for any prescribed purpose or in any particular manner, and prescribing the conditions, limitations and requirements in connection with the maintenance, use or degree of accuracy of any measuring instrument so exempted in terms of such regulations or by the director under section 23(2);

[Para. (q) substituted by s. 12 (a) of Act No. 34 of 1975.]

- (r) prescribing the capacity of measuring instruments exempted from a notice in terms of section 19;
- (s) prescribing the manner in which any certifying stamp or any certificate shall be defaced or cancelled;
- (t) restricting or prohibiting the manufacture, import, use, possession or certification of certain measuring instruments or containers;
- (u) prescribing compulsory use or possession of particular measuring instruments in particular cases;
- (v)
[Para. (v) deleted by s. 14 (b) of Act No. 42 of 1994.]
- (w)
[Para. (w) deleted by s. 14 (b) of Act No. 42 of 1994.]
- (x) prescribing the manner of indicating or determining the quantity, size or number of any goods or articles sold, including any case where such goods or articles are in prepacked form or are measured at the time of sale, and providing for exemption from the duty of so indicating the quantity of any specified goods or articles so sold;
- (y) determining the prescribed purposes for which, and the kinds of goods or articles in respect of which, certain measuring units only may be used for expressing quantity in trade transactions;
- (z) prescribing the conditions on which fluids or solids may be sold by quantity, size or dimensions, and the conditions, relating to temperature, on which fluids shall be sold;
- (aa) prescribing the permissible limits of error or difference which may exist between the actual and represented quantity, size or dimensions of goods or articles, sold by number or in accordance with any measuring unit;
- (bb) prescribing the metric quantity in terms of which any drug or medicine prescribed by any medical practitioner by means of apothecaries' measuring units, shall be dispensed by any chemist and druggist;
- (cc) regulating and controlling the sale or import for sale, in accordance with any measuring unit, of any commodity used by the public, and requiring that such commodity shall only be sold in specified containers or by means of certified or re-certified measuring instruments or in accordance with any measuring unit or by number and shall be prepacked according to a particular scale of quantities, sizes or dimensions;
- (dd) prescribing a list of articles which, by reason of their being subject to variation in mass owing to their properties or to climatic influences or which by reason of the use of mass to designate grade or class only or which for any other reason are exempted from the provisions of this Act relating to the sale of goods by net mass, and prescribing the size of the letters or any other method of indicating the net mass of the contents of containers at the time of packing;
- (ee) prescribing the permissible equivalent in which a measuring unit may be expressed in terms of another measuring unit of the same physical quantity;

- (ff) prescribing the equivalents giving the permissible quantity of goods or articles expressed in terms of the measuring units of one physical quantity as the quantity expressed in terms of the measuring units of another physical quantity;
 - (gg) prescribing tables giving the permissible quantity per container used in trade in respect of fruit, vegetables, agricultural produce and any dry commodities;
 - (hh) prescribing the forms to be used in connection with this Act;
 - (ii) prescribing the permissible denominations of mass pieces and measures and the manner in which such denominations shall be shown on the mass pieces or measures in question;
 - (jj) providing for the continued use of any measuring instrument after rejection thereof by any inspector;
 - (jjA) with regard to any delivery note referred to in section 40;
[Para. (jjA) inserted by s. 12 (b) of Act No. 34 of 1975.]
 - (jjB) prescribing specifications for, and conditions, limitations and requirements in connection with the use or degree of accuracy of, particular containers;
[Para. (jjB) inserted by s. 12 (b) of Act No. 34 of 1975.]
 - (kk) with regard to any other matter which in terms of this Act is required or permitted to be prescribed,

and generally for the more effectual carrying out of the objects and purposes of this Act.
- (2) Any regulation may be made in respect of the whole of the Republic or any part thereof.
 - (3) The regulations may authorise the director to grant exemption in writing from any provision thereof on such conditions and for such period as he may deem fit.
[Sub-s. (3) added by s. 12 (c) of Act No. 34 of 1975 and substituted by s. 3 of Act No. 14 of 1984.]

43. **Offences and penalties**

Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and shall be liable, on a first conviction to a fine not exceeding one thousand rand or imprisonment for a period not exceeding six months, and on a second or subsequent conviction to such fine or such imprisonment or to such imprisonment without the option of a fine.

44. **Acts or omissions by managers, agents or employees**

- (1) Whenever any manager, agent or employee of any person does or omits to do any act which it would be an offence under this Act for such person to do or omit to do, then, unless it is proved that-
 - (a) in doing or omitting to do that act, such manager, agent or employee was acting without the connivance or the permission of such person; and
 - (b) all reasonable steps were taken by such person to prevent any such act or the omission to do any such act; and

- (c) the act or omission charged, whether lawful or unlawful, was not within the scope of the authority or in the course of the employment of such manager, agent or employee,

such person shall be presumed himself to have done or omitted to do that act and shall be liable to be convicted and sentenced in respect thereof, and the fact that he issued instructions forbidding any such act or omission shall not of itself be sufficient proof that he took all reasonable steps to prevent such act or omission.

- (2) Whenever any manager, agent or employee of any person does or omits to do any act which it would be an offence under this Act for such person to do or omit to do, such manager, agent or employee shall be liable to be convicted and sentenced in respect thereof as if he were such person.

45. Disclosure of certain information to protect consumer

- (1) The Chief Executive Officer may, if he or she is of the opinion that it is necessary in the public interest and to protect the consumer, reveal in any manner—

[sub s. (1) substituted by s. 10 of Standards Act No. 8 of 2008]

- (a) any information which in his or her opinion is necessary to prevent the public from being misled concerning any aspect regulated by this Act; or
- (b) the name of a person who in his or her opinion does not comply with any provision of this Act.

- (2) The disclosure referred to in subsection (1) may relate also to the trade name and trade mark of a commodity.

[S. 45 repealed by s. 12 of Act No. 15 of 1990 and inserted by s. 3 of Act No. 58 of 1996.]

46. Repeal of laws

- (1) Subject to the provisions of subsection (2), the laws mentioned in the First Schedule are hereby repealed.
- (2) Any proclamation (other than a proclamation referred to in the Second Schedule), regulation, notice, approval, authority, return, certificate or document issued, made, promulgated, given or granted and any other action taken under any provision of a law repealed by subsection (1), shall be deemed to have been issued, made, promulgated, given, granted or taken under the corresponding provision of this Act.

47. Short title and commencement

- (1) This Act shall be called the Trade Metrology Act, 1973, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the Gazette.
- (2) Different dates may in terms of subsection (1) be fixed in respect of different provisions of this Act.

**First Schedule
LAWS REPEALED**

Number and year of law	Title or subject of law
Act No. 13 of 1958	Weights and Measures Act, 1958
Act No. 26 of 1960	Weights and Measures Amendment Act, 1960

Act No. 44 of 1964	Weights and Measures Amendment Act, 1964
Act No. 55 of 1969	Weights and Measures Amendment Act, 1969
Act No. 78 of 1970	Weights and Measures Amendment Act, 1970
Proclamation No. R333 of 1969	Amendment of Second Schedule to Act No. 13 of 1958
Proclamation No. R334 of 1969	Amendment of Second Schedule A to Act No. 13 of 1958
Proclamation No. R335 of 1969	Amendment of First Schedule to Act No. 13 of 1958
Proclamation No. R127 of 1971	Amendment of Second Schedule to Act No. 13 of 1958

Second Schedule

Number and year of proclamation	Subject of proclamation
Proclamation No. R334 of 1970	Weight per bag
Proclamation No. R217 of 1971	Amendment of Proclamation No. R334 of 1970
Proclamation No. R316 of 1972	Amendment of Proclamation No. R334 of 1970

AMENDMENTS

Trade Metrology Amendment Act, No. 34 of 1975
 Trade Metrology Amendment Act, No. 14 of 1984
 Trade Metrology Amendment Act, No. 15 of 1990
 Trade Metrology Amendment Act, No. 17 of 1993
 Trade Metrology Amendment Act, No. 42 of 1994
 Trade Metrology Amendment Act, No. 58 of 1996
 Standards Act No. 8 of 2008