



Republic of Namibia
Annotated Statutes

Trade Metrology Act 77 of 1973 (RSA)

(RSA GG 3969)

brought into force in South Africa and South West Africa, as amended by
Act 34 of 1975, on 18 November 1977 by RSA Proc. R.321/1977 (RSA GG 5806)
(see section 45 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: Section 45, before its repeal in post-independence Namibia, stated "This Act and any amendment thereof shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel." Section 1 defined "Republic" and "statutory body" accordingly.

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Industries) Transfer Proclamation, AG 5 of 1978, dated 30 January 1978. There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Trade Metrology Amendment Act 14 of 1984* (RSA GG 9090) – which was not applicable to South West Africa because it was not made expressly so applicable.

as amended by

Trade Metrology Amendment Act 34 of 1975 (RSA) (RSA GG 4697)

came into force on date of publication: 7 May 1975

Trade Metrology Amendment Act 14 of 1995 (GG 1129)

came into force on date of publication: 16 August 1995

The Act is also substantially amended by the *Metrology Amendment Act 17 of 2005* (GG 3568), which has not yet been brought into force. Therefore, the amendments made by it are not reflected here.

ACT

To consolidate and amend the law relating to trade metrology.

(Afrikaans text signed by the State President)
(Assented to 19th June, 1973)

ARRANGEMENT OF SECTIONS

1. Definitions

CHAPTER I

ADMINISTRATION OF ACT

2. Director and Deputy Director of Trade Metrology
3. Appointment and qualifications of inspectors
4. Appointment of examiners
5. Administration of Act
6. [deleted]
7. Agreement with metrology agency

CHAPTER II

STANDARDS

8. Departmental standards
9. Regional standards
10. Inspection standards
11. Measuring instruments used by director, inspectors or examiners shall be inspected and tested

CHAPTER III

INSPECTION, EXAMINATION AND CONFISCATION

12. Inspections and examinations
13. Powers of inspection and examination
14. Withdrawal of certain goods and measuring instruments
15. Confiscation of certain articles
16. Presumptions regarding use and possession of certain measuring instruments and determination of quantities of goods
17. Contents of certain affidavits deemed to be *prima facie* proof

CHAPTER IV

APPROVAL, VERIFICATION AND CERTIFICATION OF MEASURING INSTRUMENTS

18. Approval of measuring instruments
19. Notice in connection with certification or recertification of measuring instruments
20. Inspector may call upon any person to produce his measuring instruments for inspection and certification or recertification
21. Certification and recertification of measuring instruments
22. Fees to be charged by inspectors
23. Measuring instruments used for certain purposes to be certified
24. Certain measuring instruments not to be certified or recertified
25. Defacing of certifying stamp
26. Certification and recertification of measuring instruments used by State or authorized person

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
28. Sale, supply and use of uncertified measuring instruments

29. Prohibition in respect of manufacture or selling or false, defective or inaccurate measuring instruments or containers
30. Measuring instruments to be wholly exposed
31. Certain containers excluded
32. Presumption
33. Offences in connection with measuring instruments

CHAPTER VI

REPAIR OF MEASURING INSTRUMENTS AND REGISTRATION OF CERTAIN PERSONS

34. Repair of measuring instruments
35. Registration of measuring instrument mechanics
36. Repair of contract measuring instruments by registered mechanics

CHAPTER VII

TRADE DEALINGS AND SALE OF GOODS

37. Prohibition of false statement as to quantity
38. Trade dealings to be effected in terms of certain measuring units and by means of certified measuring instruments
39. Catalogues to be in authorized manner or in terms of certain measuring units
40. Manner of selling goods
41. Reference to physical quantity and use of certain measuring units

CHAPTER VIII

GENERAL AND MISCELLANEOUS

42. Regulations
43. Offences and penalties
44. Acts or omissions by managers, agents or employees
45. [deleted]
46. Repeal of laws
47. Short title and commencement

First Schedule

LAWS REPEALED

Second Schedule

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

[Act 14 of 1995 amends the Act throughout to substitute “Namibia” for “the Republic”.]

Definitions

1. In this Act, unless the context otherwise indicates -

“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 “recertify” has a corresponding meaning;

“contract measuring instrument” means a measuring instrument which any person who is a registered mechanic in respect of that instrument may, by virtue of a certificate issued under section 36(1), (2) or (3), repair without complying with the provisions of section 34(1);

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

[definition of “council” deleted by Act 14 of 1995]

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

“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 Act 34 of 1975]

“measuring unit” means any unit published or prescribed in terms of section 3 of the Measuring Units and National Measuring Standards Act, 1973, but does not include any such unit which, by regulation made under this Act, is excluded for the purposes of this Act;

“metrology agency” means a metrology agency referred to in section 7;

[definition of “metrology agency” inserted by Act 14 of 1995]

“Minister” means the Minister of Trade and Industry;

[definition of “Minister” amended by Act 14 of 1995]

“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;

“proclamation” means any proclamation made under this Act;

“registered mechanic” means any person who is in terms of section 35(1) registered as a mechanic and, in relation to any measuring instrument, any person who is so registered in respect of that measuring instrument or the class or make to which that measuring instrument belongs or of all measuring instruments;

“regulation” means any regulation made under this Act;

[definition of “Republic” deleted by Act 14 of 1995]

“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;

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

[definition of “statutory body” deleted by Act 14 of 1995]

“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;

“unauthorized 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 recertified if such measuring instrument should under this Act have been certified or recertified;

“vehicle” does not include railway rolling stock.

CHAPTER I

ADMINISTRATION OF ACT

Director and Deputy Director of Trade Metrology

2. (1) Subject to the provisions of the laws governing the public service, the Minister shall appoint a Director of Trade Metrology.

(2) Subject to the provisions of the laws governing the public service, the Minister may 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.

(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).

Appointment and qualifications of inspectors

3. (1) Subject to the provisions of the laws governing the public service, the Minister may from time to time appoint inspectors to verify or test all measuring instruments or any particular kind of measuring instrument in accordance with the provisions of this Act, and to perform such other functions as may be assigned to inspectors by this Act.

(2) No person shall in terms of subsection (1) be appointed as an inspector unless he has shown in undergoing an examination a knowledge of the appropriate provisions of this Act and -

- (a) has, in accordance with a curriculum laid down from time to time by the director, 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; or
- (b) has satisfied the Minister that he holds a certificate qualifying him to act as an inspector,

and no person shall act as an inspector in respect of any particular kind of measuring instrument unless he holds a certificate issued to him on the instructions of the Minister to the effect that he is qualified to act as an inspector in respect of all measuring instruments or that kind of measuring instrument.

[subsection (2) amended by Act 14 of 1995]

(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.

Appointment of examiners

4. Subject to the provisions of the laws governing the public service, the Minister may appoint examiners to exercise the functions of examiners under this Act.

Administration of Act

5. Subject to the control of the Minister, this Act shall be administered by the director and by inspectors and examiners who shall perform their duties under the control of the director.

6.

[section 6 deleted by Act 14 of 1995]

Agreement with metrology agency

7. (1) The Minister may enter into an agreement with -
- (a) any board, council or body of persons established by statute whether in Namibia or elsewhere;
 - (b) any department or branch of a foreign government having statutory functions with regard to trade metrology; or
 - (c) any laboratory, workshop or other establishment, whether public or private, and whether in Namibia or elsewhere, which is duly accredited, licensed or otherwise authorised by any board, council or body or department or branch or a foreign government referred to in paragraphs (a) and (b) to perform functions with regard to trade metrology,

to be a metrology agency for the performance of any function under this Act.

(2) The Minister shall give notice in the *Gazette* of any agreement entered into under subsection (1) and any such agreement shall take effect for the purposes of this Act upon its publication.

[section 7 substituted by Act 14 of 1995]

CHAPTER II

STANDARDS

Departmental standards

8. (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, on request of the director, be verified and certified in accordance with the provisions of subsection (2) by a metrology agency and shall be reverified and so certified at intervals not exceeding five years.

[subsection (3) amended by Act 14 of 1995]

(4)

[subsection (4) deleted by Act 14 of 1995]

Regional standards

9. (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 glass 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.

Inspection standards

10. (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 standard at the time of verification thereof and shall be verified 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 masspieces 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.

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

11. (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.

CHAPTER III

INSPECTION, EXAMINATION AND CONFISCATION

Inspections and examinations

12. 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.

[section 12 substituted by Act 34 of 1975]

Powers of inspection and examination

13. (1) Any inspector or examiner or any employee of a metrology agency furnished in writing with inspection or examination authority by the director, or any police officer, 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.

[subsection (1) amended by Act 14 of 1995]

(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
 - (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
 - (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;
- (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;
- (d) seize and retain any measuring instrument, container, goods, articles or other thing which may be confiscated or seized in terms of this Act;
- (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.

[subsection (2) amended by Act 34 of 1975]

(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.

[subsection (3) substituted by Act 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 recertification.

[subsection (4) substituted by Act 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 employee 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.

Withdrawal of certain goods and measuring instruments

14. (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.

Confiscation of certain articles

15. (1) 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.

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

16. (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
- (b) 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; or
- (c) that a notice under section 19(1) or that the provisions of section 19(2) 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 or the provisions of section 19(2) applies, until the contrary is proved.

(2) If in any prosecution for an 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.

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

17. (1) 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 recertification in terms of section 18(2)(a) or 23 or from periodical recertification by reason of such measuring instrument's being a contract measuring instrument referred to in section 19(1)(a), a document purporting to be an affidavit made by a person who in that affidavit alleges -

- (a) that he is the 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 recertification in terms of section 18(2)(a) or 23 or from periodical recertification by reason of such measuring instrument's being a contract measuring instrument referred to in section 19(1)(a), it would in the ordinary course of events have come to his, the deponent's, knowledge and a record thereof, available to him, 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 recertification in terms of section 18(2)(a) or 23 or from periodical recertification by reason of such measuring instrument's being a contract measuring instrument referred to in section 19(1)(a).

(2) In any prosecution under section 19(4)(b) a document purporting to be an affidavit made by a person who in that affidavit alleges -

- (a) that he is the inspector in charge of the regional office of metrology for the area in which the measuring instrument which forms the subject of the prosecution, was found;
- (b) that if notice had been given, as contemplated in section 19(2), of the place where that measuring instrument is kept, it would in the ordinary course of events have come to his, the deponent's, knowledge and a record thereof, available to him, would have been kept; and
- (c) that there is no such record thereof,

shall, upon its mere production, be *prima facie* proof that notice has not been given, as contemplated in section 19(2), of the place where that measuring instrument is kept.

[section 17 substituted by Act 34 of 1975]

CHAPTER IV

APPROVAL, VERIFICATION AND CERTIFICATION OF MEASURING INSTRUMENTS

Approval of measuring instruments

18. (1) (a) Any person desiring to sell or make available -
- (i) 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, shall, with a view to have issued to him or her a certificate in terms of subsection (2);
 - (ii) 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 a measuring instrument in respect of which a certificate has been issued in terms of subsection (2), shall, with a view to have such certificate endorsed or an addition made to it to the effect that it also relates to the modified model,

submit to the director a specimen of that new model, modified model or part thereof, as the case may be, together with the certificate of approval referred to in paragraph (b).

- (b) Any person intending to submit to the director a specimen of a new model of a measuring instrument or a modified model or a modified part of a measuring instrument for the purposes of subparagraph (i) or (ii) of paragraph (a), as the case may be, shall, before the particular specimen is so submitted and on his or her own costs, submit that specimen to a metrology agency for examination, and whereupon the metrology agency shall, if it is satisfied that such specimen is suitable for any prescribed purpose, issue to that person a certificate of approval on such conditions as it may deem necessary.
- (c) The director shall, with due regard to the certificate of approval contemplated in paragraph (a), examine any specimen submitted to him or her under that paragraph 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 the director may deem fit, and he or she may, before issuing any certificate in terms of subsection (2)(a) or endorsing or making an addition to in a certificate in terms of subsection (2)(b), as the case may be, require such alterations to be made to such model, modified model or modified part thereof, as he or she may deem fit.
- (d) 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 or she may in his or her discretion agree or refuse to deal therewith in terms of this section.

[subsection (1) substituted by Act 14 of 1995]

- (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 recertification or exemption from certification or recertification 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)

[subsection (5) deleted by Act 14 of 1995]

- (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 recertified by any inspector.

(7) No inspector shall refuse to certify or recertify 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.

(8) Any person who submits for any examination in terms of this section any model or modified model of a measuring instrument, shall pay, in addition to any such costs as the director may reasonably incur in connection with such examination, such fees as the director shall charge according to such tariff of fees as the Minister, in consultation with the Minister of Finance, may prescribe from time to time by notice in the *Gazette*.

(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 by a metrology agency and 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).

[subsection (9) amended by Act 14 of 1995]

Notice in connection with certification or recertification of measuring instruments

19. (1) The director may by notice in the *Gazette* call upon every person possessing any measuring instrument which in terms of this Act is required to be certified or recertified, to produce such measuring instrument at the place and time (being not earlier than fourteen days after the date on which the notice is published in the *Gazette*) specified in the said notice, for the purpose of being inspected and certified or recertified, unless it is -

- (a) a measuring instrument bearing a certifying stamp for the year to which the notice in question applies, or a contract measuring instrument; or
- (b) 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
- (c) 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
- (cA) a measuring instrument which is kept at a place situated more than 15 km by the shortest route from a place specified in the said notice; or

[paragraph (cA) inserted by Act 34 of 1975]

- (d) a measuring instrument having a capacity greater than a capacity prescribed by regulation; or
- (e) a measuring instrument of a class or kind exempted by the said notice from the operation thereof.

(2) If any person at the beginning of any year has in his possession any measuring instrument which in terms of this Act is required to be certified or recertified, he shall, prior to the fifteenth day of January of that year, in writing notify the inspector in charge of the regional office of metrology designated from time to time for that purpose by the director by notice in the *Gazette*, of the place where such measuring instrument is kept, unless it is a measuring instrument referred to in subsection (1)(a) or (b).

[subsection (2) substituted by Act 34 of 1975]

(3) The director may in his discretion take such steps as he may deem expedient to bring any notice published under subsection (1) or (2) to the attention of persons affected by it.

- (4) Any person who fails to comply with -
 - (a) a notice published in the *Gazette* under subsection (1); or
 - (b) the provisions of subsection (2),

shall be guilty of an offence,

Inspector may call upon any person to produce his measuring instruments for inspection and certification or recertification

20. (1) Any inspector may at any time order any person who for any prescribed purpose uses or possesses any measuring instrument which in terms of this Act is required to be certified or recertified, to produce or otherwise make available to him such measuring instrument at the place where it is so used or possessed or, in the case of any measuring instrument other than a measuring instrument referred to in section 19(1)(c), at such other place, being within 5 km from the place where it is so used or possessed, and at such time as such

inspector may appoint, in order to enable him to verify or test and certify or recertify any such measuring instrument.

[subsection (1) substituted by Act 34 of 1975]

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

Certification and recertification of measuring instruments

21. (1) Any inspector shall, at the time and place appointed under section 19(1) or when any order given by him under section 20(1) has been complied with, inspect and verify or test every measuring instrument which is produced or, in accordance with any such order, otherwise made available to him for the purpose of certifying or recertifying it and shall, after verification or testing and subject to the provisions of subsections (2) and (3), certify or recertify, in such manner as to indicate the year of such certification or recertification, every such measuring instrument which he finds to be correct and to comply with the requirements of this Act.

(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 recertified 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 of certification has been defaced or has become illegible.

(3) Any measuring instrument produced or otherwise made available to the inspector in accordance with any order given under section 20(1) and bearing a clear certifying stamp for the current year or otherwise proved to have been certified for the current year, need not be verified or tested or recertified, unless such inspector has reasonable grounds for believing that it is not correct or does not comply with the requirements of this Act: Provided that no fees shall be charged under section 22 in respect of the verification, testing or recertification of any such measuring instrument which is found by the inspector to be correct and to comply with the requirements of this Act.

Fees to be charged by inspectors

22. Any inspector shall charge in respect of the verification, testing, adjustment, certification or recertification of any measuring instrument fees according to such tariff of fees as the Minister, in consultation with the Minister of Finance, may, if he deems it necessary, prescribe by notice in the *Gazette*.

Measuring instruments used for certain purposes to be certified

23. (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 recertified in accordance with the provisions of this Act unless exempted from certification or recertification under this Act.

(2) If the director is satisfied that it is impracticable or unnecessary to certify or recertify 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 recertification of any measuring instrument or the use or possession of any measuring instrument which has not been certified or recertified 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 recertified.

(5)

[subsection (5) deleted by Act 14 of 1995]

(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.

[section 23 substituted by Act 34 of 1975]

Certain measuring instruments not to be certified or recertified

24. (1) No inspector shall certify or recertify -

- (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, 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.

(2)

[subsection (2) deleted by Act 14 of 1995]

(3)

[subsection (3) deleted by Act 14 of 1995]

Defacing of certifying stamp

25. (1) Any inspector 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 recertification 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 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.

Certification and recertification of measuring instruments used by State or authorized person

26. Any measuring instrument used by the State or any authorized 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 recertified in accordance with this Act unless exempted from certification or recertification under this Act.

[section 26 substituted by Act 34 of 1975]

CHAPTER V

USE OR POSSESSION OF MEASURING INSTRUMENTS AND CONTAINERS

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

27. (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 Namibia.

- (2) Any restriction or prohibition contemplated by subsection (1) may apply -
- (a) in the whole of Namibia 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 masspiece 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 recertified if it should have been certified or recertified 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; and
- (c) is not in terms of section 36(6) deemed to be certified,

shall be guilty of an offence.

(8)

[subsection (8) deleted by Act 14 of 1995]

Sale, supply and use of uncertified measuring instruments

28. (1) No person shall sell or supply for use for any prescribed purpose any uncertified measuring instrument unless he has obtained prior authority in writing for such sale or supply from the director or any inspector authorized by him, who may issue such authority if he is satisfied that the seller or supplier cannot, without undue delay or inconvenience, cause such instrument to be certified or recertified before its sale or supply and if the seller or supplier furnishes him with a guarantee in writing signed by a registered mechanic to the effect that the instrument is correct and certifiable under this Act.

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

(3) Any person who possesses or uses any measuring instrument which he has acquired from a person authorized 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 recertified.

(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.

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

29. 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.

Measuring instruments to be wholly exposed

30. (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.

[subsection (2) substituted by Act 34 of 1975]

Certain containers excluded

31. (1) 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.

[section 31 substituted by Act 34 of 1975]

Presumption

32. 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.

Offences in connection with measuring instruments

33. 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 repairer or registered mechanic 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
 - (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, places upon any measuring instrument, any stamp or mark purporting to indicate that such measuring instrument has been certified or recertified; or
 - (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) willfully 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

Repair of measuring instruments

34. (1) Subject to the provisions of section 36 or of any regulation relating to the defacing or obliteration of any certifying stamp or the breaking of any certifying seal -

- (a) no person shall repair any measuring instrument used for any prescribed purpose unless he 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 authorized by him, of such repair and furnish him with a guarantee in writing signed by a registered mechanic that such measuring instrument is correct and certifiable under this Act, and the director or such inspector, if satisfied as to the sufficiency of the guarantee and the competency of the repairer, shall, 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 thereafter been certified or an authority in writing has in terms of subsection (1)(b) been issued in respect thereof or, in the case of any contract measuring instrument, it is in terms of section 36(6) deemed to be certified.

Registration of measuring instrument mechanics

35. (1) The director shall keep a register for the purpose of recording the name and such particulars as he may deem necessary of every person who applies to him to be registered as a mechanic in respect of a particular measuring instrument or any measuring instrument of a particular class or make or all measuring instruments and who satisfies the director that he is competent to maintain and repair that particular measuring instrument or any such measuring instrument of that particular class or make or all such measuring instruments in such manner as to maintain or render it or them correct and certifiable.

(2) The director shall on the application of any registered mechanic issue to him a certificate indicating the particular measuring instrument or the particular class or make of measuring instrument in respect of which he has been registered in terms of subsection (1) or indicating that he has been so registered in respect of all measuring instruments.

(3) The name of any registered mechanic may be removed from the register and any certificate issued to him under subsection (2) may be cancelled by the director if the director is no longer satisfied as to the competency, referred to in subsection (1), of such mechanic or if any such mechanic has contravened or failed to comply with any provision of this Act.

Repair of contract measuring instruments by registered mechanics

36. (1) (a) If the director is satisfied that any measuring instrument used for any prescribed purpose by any person, is maintained and repaired by a registered mechanic employed by such person, the director may, on the application of such person, issue to him a certificate exempting, subject to the provisions of any regulation, such person and such mechanic in his employ from the provisions of section 34(1) in respect of any repairs to such measuring instrument by such mechanic.

(b) Any person to whom a certificate referred to in paragraph (a) has been issued shall in writing notify an inspector designated in such certificate of any change in the circumstances affecting its issue.

- (2) (a) If the director is satisfied that the maintenance of and all repairs to every measuring instrument maintained and repaired by any person (in this section referred to as a contractor) in terms of any agreement in writing between himself and any person who uses such measuring instrument for any prescribed purpose, are carried out by a registered mechanic being such contractor or his employee, the director may on the application of such contractor issue to him a certificate exempting, subject to the provisions of any regulation, such contractor and any such mechanic in his employ from the provisions of section 34(1) in respect of any repairs to any measuring instrument maintained and repaired by such contractor in terms of any such agreement.
- (b) Any contractor to whom a certificate referred to in paragraph (a) has been issued, shall in writing notify an inspector designated in such certificate of every agreement in writing in terms of which he maintains and repairs any measuring instrument used for any prescribed purpose by any other person and of any change in the circumstances affecting the issue of such certificate.
- (3) (a) If the director is satisfied that the maintenance of and all repairs to every measuring instrument used for any prescribed purpose by any person, other than the owner thereof, are carried out by a registered mechanic being such owner or his employee or agent, the director may on the application of such owner issue to him a certificate exempting, subject to the provisions of any regulation, such owner and any registered mechanic in his employ or acting as his agent from the provisions of section 34(1) in respect of any repairs to any such measuring instrument.

[The word "a" is repeated in the phrase "issue to him a certificate".]

- (b) Any person to whom a certificate referred to in paragraph (a) has been issued, shall in writing notify an inspector designated in such certificate, of the place where any measuring instrument referred to in paragraph (a) is kept and of any change in the circumstances affecting the issue of such certificate.
- (4) Any certificate issued under subsection (1), (2) or (3) may at any time be cancelled by the director if he is no longer satisfied as contemplated in the relevant subsection, or if the person to whom such certificate was issued or any person acting, in the course of his employment or within the scope of his authority, as the employee or agent of that person, contravenes or fails to comply with any provision of this Act.
- (5) Any registered mechanic who has repaired any measuring instrument in respect of which he is by virtue of a certificate issued under subsection (1), (2) or (3) exempted from the provisions of section 34(1), shall satisfy himself that such measuring instrument is correct and certifiable under this Act and, if so satisfied, shall issue a certificate signed by him to the person using such measuring instrument for any prescribed purpose and, if required by regulation, a copy of such certificate to an inspector, to the effect that such measuring instrument has been repaired by him on the date mentioned in the certificate and is correct and certifiable under this Act.
- (6) Any measuring instrument in respect of which a certificate has been issued under subsection (5) shall, as long as it is used for any prescribed purpose by the person to whom such certificate has been issued and until it is thereafter again repaired or is certified or rejected by any inspector, for the purposes of this Act be deemed to be certified.
- (7) If any measuring instrument may be repaired by a registered mechanic who, in respect of such measuring instrument, is by virtue of a certificate issued under subsection (1),

(2) or (3) exempted from the provisions of section 34(1), no other person shall maintain or repair such measuring instrument or perform any act forming part of the work involved in maintaining or repairing it, unless such other person is in writing authorized thereto by the director.

(8) Any person who issues a certificate under subsection (5) in respect of any contract measuring instrument which is not correct and certifiable under this Act, shall be guilty of an offence.

CHAPTER VII

TRADE DEALINGS AND SALE OF GOODS

Prohibition of false statement as to quantity

37. (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.

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

38. (1) Any contract, bargain, sale, purchase or transaction made or effected in Namibia 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 Namibia 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 recertified, is uncertified.

[subsection (2) substituted by Act 34 of 1975]

(4) Subject to the provisions of subsection (5), no person shall import into Namibia any goods, including prepacked goods, the quantity of which is expressed thereon or on any document relating thereto -

- (a) in terms of any unauthorized 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 unauthorized measuring unit, shall be guilty of an offence.

Catalogues to be in authorized manner or in terms of certain measuring units

39. (1) No person shall print, publish, make, circulate or cause to be printed, published, made or circulated in Namibia, 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 Namibia and circulated in Namibia, which clearly shows on its outside cover that references in such catalogue to prices and to quantities, expressed in terms of unauthorized measuring units or in any other manner, are not applicable to Namibia; 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.

Manner of selling goods

40. (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 or her agent and sold by the volume or net mass determined at such measuring.

[subsection (3) amended by Act 14 of 1995]

(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.

Reference to physical quantity and use of certain measuring units

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

CHAPTER VIII

GENERAL AND MISCELLANEOUS

Regulations

- 42. (1)** The Minister may make regulations not inconsistent with this Act -
- (a) providing for the examination of candidates for appointment as inspectors, and prescribing the syllabus, conditions and, if it is deemed necessary, fees in respect of such examinations;
 - (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 and 11;

- (d) regulating the manner in which the director, any inspector, examiner or other person appointed under this Act, or any policeman, shall carry out his duties under this Act;
- (e) prescribing the classes or kinds of measuring instruments which shall be approved or certified or recertified in terms of section 18;
- (f) prescribing the purposes for which only a measuring instrument approved or certified or recertified 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 authorized by this Act;
- (n) prescribing the manner in which any denomination or the symbol of any measuring unit or any multiple or submultiple thereof shall be represented on any prepacked goods or on or by any measuring instrument;
- (o) prohibiting the certification, recertification 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 recertification 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);

[paragraph (q) substituted by Act 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) prescribing the manner in which the competency of any person applying to be registered as a mechanic under section 35 shall be tested, and providing for tests in writing or other tests which any such person may be required to pass before being so registered and for fees payable by such person in respect of such tests;
- (w) prescribing the duties of any person who uses any contract measuring instrument or to whom a certificate has been issued under section 36(1), (2) or (3), or of any registered mechanic who repairs or has repaired any such measuring instrument, including the duty to give notice to the director or any inspector of any intended or completed repairs to any such measuring instrument and, in the case of any such mechanic, the duty to obliterate or not to obliterate, before issuing any certificate under section 36(5) in respect of any such measuring instrument, any stamp thereon;
- (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 recertified 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 masspieces and measures and the manner in which such denominations shall be shown on the masspieces 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;

[paragraph (jjA) inserted by Act 34 of 1975]

- (jjB) prescribing specifications for, and conditions, limitations and requirements in connection with the use or degree of accuracy of, particular containers;

[paragraph (jjB) inserted by Act 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 Namibia or any part thereof.

(3) Any regulation relating to prepacked goods may authorize the director to grant exemption in writing from any provision thereof on such conditions and for such period as he may deem fit.

[subsection (3) inserted by Act 34 of 1975]

Offences and penalties

43. 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 N\$2 000 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.

[section 43 amended by Act 14 of 1995]

Acts or omissions by managers, agents or employees

44. (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.

[section 45 deleted by Act 14 of 1995]

Repeal of laws

46. (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.

Short title and commencement

47. (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.