

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

METROLOGY BILL

(As read a First Time)

(Introduced by the Minister of Industrialisation and Trade)

BILL

- To: **provide for the administration and supervision of metrology; to designate the Namibian Standards Council as the governance board for metrology; to provide for the functions of the Namibian Standards Institution and the appointment of the head of metrology and other professionals in metrology; to provide for legal units of measurements and legal metrology technical regulations, national measurement standards and to ensure their comparability to international measurement standards; to provide for metrological supervision and control; to provide for type approval and verification of measuring instruments, restrictions on use and possession of measuring instruments; to provide for repair of measuring instruments and registration of metrology technicians; to repeal the Measuring Units and National Measuring Standards Act, 1973 and the Trade Metrology Act, 1973; and to provide for incidental matters.**

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BE IT ENACTED as passed by the Parliament, and assented to by the President,
of the Republic of Namibia as follows:

PART 1
INTRODUCTORY PROVISIONS

Definitions

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

“accredited” means accredited in accordance with internationally recognised principles relating to accreditation, whether in Namibia or elsewhere, by any board, council or body, or department or authority of a foreign government, to perform functions with regard to metrology;

“calibration” means a set of operations that establishes, under specified conditions, the relationship between values of quantities indicated by a measuring instrument or measuring system, or values represented by a material measure or a reference material, and the corresponding values realised by standards;

“chief executive officer” means the chief executive officer of the NSI appointed in terms of section 16 of the Standards Act;

“CIPM” means the International Committee of Weights and Measures (*Comite International des Poids et Mesures*) established under the Metre Convention;

“CIPM Mutual Recognition Arrangement” means an arrangement established by the CIPM that provides the technical basis for worldwide acceptance of national

measurement standards and calibration measurement certificates issued by national metrology institutes;

“Committee” means the Metrology Advisory Committee established under section 3;

“conformity assessment”, in relation to a measuring instrument, means a testing and evaluation of measuring instruments to ascertain whether a single instrument, an instrument lot or a production series of instruments comply with prescribed requirements applicable to the instrument type;

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

“Council” means the Namibian Standards Council established by section 6 of the Standards Act;

“head of metrology” means a person appointed as such in terms of section 10(1)(a);

“industrial metrologist” means an industrial metrologist appointed under section 10(1)(b);

“initial verification” means verification of a measuring instrument that has not been verified previously;

“inspector” means any inspector appointed under section 10(1)(b);;

“legal metrology” means the practice and the process of applying regulatory structure and enforcement to metrology, comprising of all activities for which legal requirements are prescribed on measurement, units of measurement, measuring instruments or systems and methods of measurement, these activities being performed by or on behalf of the NSI, in order to ensure an appropriate level of confidence in measurement results in the Namibian regulatory environment;

“legal metrology technical regulation” means a legal metrology technical regulation declared by the Minister under section 13(1);

“legal units of measurement” means any units of measurement required and permitted in terms of this Act;

“mandatory periodic verification” means a verification of a measuring instrument carried out periodically at specified intervals according to the prescribed procedure;

“measurement standard” means a material measure, measuring instrument, certified reference material or measuring system intended to define, realise, conserve or reproduce a unit or one or more values of a quantity to serve as a reference;

“measuring instrument” means a device intended to be used to make measurements, alone or in conjunction with another supplementary device or other supplementary devices;

“Metre Convention” (*Convention du Metre*) means the international treaty dealing with metrology matters signed at Paris on 20 May 1875;

“metrological assurance” means all the regulations, technical means and necessary operations used to ensure the credibility of measurement results in legal metrology;

“metrological control” means the totality of legal metrology activities that contribute to metrological assurance, including the legal control of measuring instruments, metrological supervision and metrological expertise;

“metrological supervision” means control exercised in respect of the placing on the market, import, installation, use, maintenance and repair of measuring instruments, performed in order to check that they are used correctly in terms of metrology legislation and regulations, and includes checking the correctness of quantities indicated on and contained in pre-packages;

“metrology reference standard” means a measurement standard designated for the calibration of other measurement standards for quantities of a given kind in a given organisation or at a given location for the purpose of ensuring documented and unbroken chain of traceability.

“metrology technician” means a person registered under section 35 as a metrology technician;

“Minister” means the Minister responsible for industrialisation and trade;

“Namibian standard” means a Namibian standard as defined in section 1 of the Standards Act;

“NSI” means the Namibian Standards Institution established by section 2 of the Standards Act;

“police officer” means a member of the Namibian Police referred to in section 1 of the Police Act, 1990 (Act No. 19 of 1990);

“pre-packaged product” means any commodity that is made up as a unit or entity and for which its quantity has been determined and indicated on its label prior to being offered for sale, irrespective of whether such unit or entity is enclosed in a container, wrapped in any manner or unenclosed;

“prescribed” means prescribed by regulations made under this Act;

“prescribed purpose”, in relation to the use, possession, manufacture or import of any measuring instrument or in relation to the expression of a measurement quantity, means any purpose that is prescribed or that falls within the scope or purview of this Act;

“protective mark” means a mark placed on a measuring instrument to seal it against any unauthorised modifications, adjustments, removal of parts or tempering;

“regulation” means a regulation made under this Act;

“Standards Act” means the Standards Act, 2005 (Act No. 18 of 2005);

“subsequent verification” means any verification of a measuring instrument after a previous verification, including mandatory periodic verification and verification after repair;

“this Act”, includes regulations made under this Act;

“traceability” means property of the result of a measurement or the value of a standard whereby it can be related to stated references, usually national or international standards, through an unbroken chain of comparisons, all having stated uncertainties;

“type approval” means a decision, based on the procedure described in section 21(5) and an evaluation report, that the type of a measuring instrument complies with the relevant provisions of this Act and is suitable for use in the specific area as required by or under this Act in such a way that it is expected to provide reliable measurement results over a defined period of time;

“verified”, in relation to an instrument, means an instrument that has been subjected to verification by or on behalf of the NSI by an inspector or a verification officer;

“verification” means the procedure described in section 21(6), that includes the examination and marking or the issuing of a verification certificate, that ascertains and confirms that the measuring instrument complies with the provisions of this Act; and

“verification officer” means any verification officer appointed under section 10(1)(b).

PART 2

GOVERNANCE AND ADMINISTRATION OF METROLOGY

Namibian Standards Council: Governance board for metrology matters

2. (1) The Namibian Standards Council is designated as the governance board for metrology responsible for the supervision, control and overseeing the NSI in the exercise and performance of the NSI’s powers and functions in relation to metrology in accordance with this Act.

(2) The Minister may prescribe any additional functions of the Council in relation to metrology.

Metrology Advisory Committee

3. (1) The Council must establish a committee to be known as the Metrology Advisory Committee.

(2) The functions of the Committee are to -

- (a) advise the Council on any matter falling within the scope of this Act;
- (b) provide the chief executive officer in the performance of his or her functions in terms of this Act with -
 - (i) advice of scientific and technical nature; and
 - (ii) assistance on general matters of policy and organisation relating to the functions and activities of the metrology division;
- (c) propose and recommend new projects in the field of legal metrology; and

- (d) advise the Minister on any matter falling within the scope of this Act as the Minister may request the Committee to do so.

(3) The Council may request the Committee to advise the Council on any matter falling within the scope of this Act.

(4) The Committee may, at its own initiative and if it considers it necessary, refer any matter falling within the scope of this Act to the Council for the Council's consideration or recommendation.

Constitution of Committee

4. (1) The Committee consists of five members appointed by the Council, on account of their scientific or technical knowledge, commercial or industrial or legal knowledge and experience.

(2) Members of the Committee may consist of members of the Council and other persons who are not members of the Council.

Term of office of members of Committee

5. A member of the Committee is appointed for a term of three years and is eligible for reappointment at the expiry of that term.

Meetings of Committee

6. (1) The Council must appoint one of its members as chairperson of the Committee to preside at meetings of the Committee.

(2) The Committee must determine the procedures relating to the convening and conducting of its meetings, including the requirements for a quorum, voting procedures, election of acting presiding member, and the keeping and safe-keeping of minutes.

Allowances of members of Committee

7. (1) A member of the Committee who is not in the full-time employment of the State or the NSI is, subject to section 18(2) of the Public Enterprises Governance Act, 2019 (Act No. 1 of 2019), entitled to such allowances, including travel allowances in respect of his or her service as a member, as the Minister with the concurrence of the Minister responsible for finance, may determine.

(2) The remuneration and allowances of the members referred to in subsection (1) may differ according to the different offices a member holds or the different functions a member performs.

Administration of Act

8. (1) The NSI, under the control and supervision of the Council, and subject to the overall supervision of the Minister, is responsible for the administration of this Act.

(2) The chief executive officer, under the supervision and control of the Council -

- (a) exercises and performs the powers and functions conferred and imposed upon the NSI and the chief executive officer by or under this Act or any other law; and
- (b) is assisted by the head of metrology, inspectors, verification officers, industrial and scientific metrologists, and any other staff members of NSI who perform their functions under the supervision and control of the chief executive officer.

Functions and powers of NSI

9. (1) The functions of the NSI in relation to metrology are to -
- (a) provide scientific and industrial metrological services;
 - (b) serve as the national metrology institute for specific physical and chemical quantities;
 - (c) establish, designate and keep, maintain and improve the measurement standards of Namibia and ensure their comparability to international measurement standards;
 - (d) provide metrological traceability for measurement standards and results of measurements;
 - (e) disseminate national measurement standards to calibration and measurement laboratories and, where applicable, directly to measuring and testing laboratories and industry;
 - (f) maintain and provide for the use of the International System of Units and certain other measurement standards in Namibia;
 - (g) conduct type approval of measuring instruments according to metrological requirements;
 - (h) provide metrological supervision;
 - (i) advise on, and participate in, the drafting of technical regulations in the field of legal metrology;
 - (j) register and keep a register of persons and facilities that are required to be registered in terms of this Act;
 - (k) give expert advice to registered persons and facilities for the calibration and repair of measuring instruments;
 - (l) cooperate with inspection bodies authorised by or under any law in Namibia, and provide them with the technical basis for measuring instruments and for pre-packages;
 - (m) represent Namibia in relevant international and regional scientific, industrial and legal metrology organisations or technical committee meetings;

- (n) give effect to the decisions and recommendations of binding international and regional agreements; and
- (o) perform any other functions in the field of scientific, industrial or legal metrology.
- (2) In performing its functions in terms of subsection (1), the NSI may -
 - (a) give expert advice or evidence in legal metrology disputes;
 - (b) participate in relevant regional and international scientific or industrial metrology activities.

Appointment of head of metrology, inspectors, verification officers and scientific and industrial metrologists

10. (1) For the purposes of this Act, and subject to the qualifications contemplated in subsection (2), the chief executive officer -

- (a) must appoint a suitably qualified and experienced staff member of the NSI as the head of metrology;
- (b) may, subject to subsection (6), appoint one or more suitably qualified staff members of the NSI as verification officers, inspectors, scientific metrologists or industrial metrologists; and
- (c) must issue to a person appointed under paragraph (a) or (b) with a certificate of appointment valid for such period and may include such conditions and other particulars as the chief executive officer may consider appropriate in accordance with the NSI human resources policy.

(2) The chief executive officer, may at any time revoke the appointment made under subsection (1) if the chief executive officer is longer satisfied with competency of such person, and the person whose appointment is so revoked must surrender the certificate of appointment to the chief executive officer.

(3) For the purposes of qualification for appointment as an inspector, a verification officer or a scientific or an industrial metrologist under subsection (1), the Council must -

- (a) establish the standard of skill and knowledge, as well as other requirements, needed for a person to qualify as an inspector, a verification officer or a scientific or an industrial metrologist;
- (b) provide for -
 - (i) the holding of examinations to ascertain whether a person possesses sufficient skills and knowledge for the proper performance of the functions of an inspector, a verification officer or a scientific or an industrial metrologist; and
 - (ii) the granting of certificates of qualification to persons who pass such examinations;

- (c) charge such fees for any examination that is held by the Council under this section as the Council, with the concurrence of the Minister, may determine by notice in the *Gazette*; and
 - (d) ensure that a person appointed under subsection (1) continues to meet the requirements contemplated in paragraphs (a) and (b).
- (4) The Council may arrange with some other person or body to hold examinations for the purpose referred to in subsection (3).
- (5) The head of metrology appointed under subsection (1) must undertake metrological supervision subject to the control and directions of the chief executive officer.
- (6) The chief executive officer may appoint an inspector, a verification officer or a scientific or an industrial metrologist who is not in the employment of the NSI on a temporary basis, for the verification or calibration of specific instruments or types of instruments, subject to such conditions as the NSI may determine.
- (7) A person appointed as an inspector or a verification officer may not, in the performance of his or her functions in terms of or exercise of his or her powers under this Act, derive any personal benefit from or be employed in the making, repair, adjusting or selling of any measuring instrument.
- (8) A person may not act as an inspector, a verification officer or a scientific or an industrial metrologist, unless he or she is appointed and acts in accordance with this section.
- (9) A person who contravenes or fails to comply with subsection (7) or (8) commits an offence and is liable to the penalties provided for in section 47(1)(b).

Delegation of powers and assignment of functions

11. (1) The chief executive officer, acting with the written approval of the Council, may subject to such conditions as the chief executive officer may determine, in writing -

- (a) delegate to a staff member of the NSI any power; or
- (b) assign to a staff member of the NSI any functions,

conferred or imposed upon the chief executive officer by or under this Act, except the power or function to make or revoke appointments pursuant to section 10.

- (2) The chief executive officer -
 - (a) is not divested of a power or function delegated or assigned under subsection (1);
 - (b) may, without prejudice to any right, amend or withdraw any decision made in the exercise of the power delegated under subsection (1).

PART 3
LEGAL UNITS OF MEASUREMENT

Legal units of measurement

12. (1) The legal units of measurement to be applied in Namibia, the symbols for the measuring units and the rules in connection with the use of units, symbols and rules are -

- (a) the measuring units and the appropriate symbols and rules of the International System of Units, abbreviated as “SI,” as the Minister may publish by notice in the *Gazette*; and
- (b) in addition to the measuring units, symbols and rules referred to in paragraph (a), such other measuring units, symbols for such measuring units and such rules in connection with their use as the Minister may prescribe.

(2) The definitions of the multiples and subdivisions of the SI and their notation must conform to the recommendations of the Metre Convention and with international standards.

(3) The Minister may prescribe specific requirements and rules for the use of the SI and the use or prohibition of non-SI units, when these are used internationally and are not directly provided by the SI.

(4) The Minister may, by notice in the *Gazette*, prohibit the -

- (a) expression, in the circumstances or for the purposes or in connection with the matters and in respect of the goods, items or things specified in the notice, of the magnitude of physical quantities by means of any measuring unit other than the measuring unit specified in the notice;
- (b) designation, in the circumstances or for the purposes or in connection with the matters and in respect of the goods, items or things specified in the notice, of any measuring unit specified in the notice by means of any symbol other than the symbol similarly specified.

(5) A notice under subsection (4) may provide that the -

- (a) notice applies only in the geographical area specified in the notice;
- (b) Minister may grant exemption from the provisions of the notice on written application made to the Minister, in the prescribed form and manner, by a person affected by the notice.

(6) A person who contravenes or fails to comply with any provision of a notice contemplated in subsection (4) commits an offence and is liable to the penalties provided for by section 47(1)(b).

PART 4
LEGAL METROLOGY TECHNICAL REGULATIONS

Legal metrology technical regulations

13. (1) In respect of any measuring instrument or any product or service which may affect trade, public safety, health or the environment, or in respect of any other prescribed purpose, the Minister may, on the recommendation of the Council but subject to subsection (4), by notice in the *Gazette* -

- (a) declare a Namibian standard or a provision of a Namibian standard to be a legal metrology technical regulation by referring to the -
 - (i) title and the number of that standard only, without indicating the year or edition number, and if that Namibian standard is amended, the amended Namibian standard is deemed to have been incorporated; or
 - (ii) title, number and year or edition number of that Namibian standard;
- (b) declare an amended Namibian standard or an amended provision of a Namibian standard to be a legal metrology technical regulation, if the original declaration was made under paragraph (a)(ii);
- (c) declare or amend a legal metrology technical regulation or make an international standard or a provision of an international standard compulsory by reference, if a Namibian standard or a provision of a Namibian standard referred to in paragraph (a) or (b) is not available; or
- (d) withdraw a legal metrology technical regulation.

(2) A notice under subsection (1) -

- (a) must contain full particulars of the specification, provision or amendment;
- (b) comes into operation on a date determined in the notice, which date may not be less than 60 days after the date of publication of the notice; and
- (c) may determine different dates on which different provisions of a legal metrology technical regulation come into operation.

(3) The Minister may, by notice in the *Gazette*, alter a date referred to in subsection 2(b) or (c).

(4) Before the Minister publishes a notice under subsection (1), the Minister must first publish a preliminary notice in the *Gazette* -

- (a) setting out full particulars of the proposed legal metrology technical regulation or amendment; and

- (b) inviting interested persons to comment in writing on the proposed legal metrology technical regulation within a period of not less than 60 days after the date of publication of the preliminary notice.

PART 5 NATIONAL MEASUREMENT STANDARDS

Traceability of national measurement standards

14. (1) The Minister may, by notice in the *Gazette*, designate any measuring standard described in the notice as a national measurement standard.

(2) The head of metrology must -

- (a) keep and maintain national measurement standards in accordance with the needs of Namibia;
- (b) regularly arrange for the comparison of the national measurement standards referred to in paragraph (a) with the corresponding international measuring standards recognised as such and, if necessary, cause such national measurement standards to be adjusted accordingly; and
- (c) keep and maintain equipment necessary for establishing national measurement standards, and determine the procedures connected with the establishment of the measurement standards.

(3) The value of a national measurement standard in relation to the corresponding international measurement standard is the value determined from time to time by the head of metrology in writing.

(4) The value of a national measurement standard determined in terms of subsection (3) must be regarded as the most accurate value of such national measurement standard.

(5) A measuring standard which is not a national measurement standard, when used as a measurement standard for the purposes of any law or for any other legal purpose, must be traceable to a national measurement standard.

(6) The NSI may recognise as a national measurement standard, a measurement standard that has been established, kept and maintained by an organisation duly authorised by the NSI or by another national metrology organisation that is a signatory to the CIPM Mutual Recognition Arrangement.

(7) The Minister may prescribe in detail the establishment or repeal of measurement standards and the conditions under which a metrology reference standard is recognised or ceases to be recognised as a national measurement standard.

(8) All measurements performed during calibrations must, through reference to standards of a higher hierarchical stage, be traceable to the national measurement standards of Namibia where these exist or in their absence to those recognised by the CIPM Mutual Recognition Arrangement.

Metrology reference standards

15. (1) The head of metrology must keep in his or her custody such metrology reference standards as are necessary for the purpose of ensuring the traceability of the inspection and verification standards in metrology.

- (2) The metrology reference standards are made traceable to -
 - (a) the national measurement standards; or
 - (b) a national measurement standard of another State whose national measurement standard is recognised under the CIPM Mutual Recognition Arrangement.

Working standards

16. (1) The NSI must provide for use by any inspector, verification officer or industrial metrologist such measurement standards as may, in the opinion of the chief executive officer, be required by such inspector, verification officer or industrial metrologist for the purposes of carrying out his or her functions under this Act.

(2) The value of a working standard must be traceable to the metrology reference standards of the NSI or national measurement standard.

(3) The Minister may prescribe requirements for the accuracy and calibration of working standards.

Measuring instruments used by inspectors and verification officers

17. (1) A measuring instrument, other than any working standard, used by an inspector or a verification officer for the purposes of carrying out his or her functions under this Act must be calibrated or verified according to the applicable regulations, before being taken into use and thereafter at such intervals as may be prescribed.

(2) The head of metrology must keep a record of every calibration or verification done under subsection (1).

(3) A measuring instrument may not be used for the carrying out of any function under this Act, unless it complies with subsection (1) and with other requirements as may be prescribed in respect of that measuring instrument.

PART 6

METROLOGICAL SUPERVISION AND CONTROL

Metrological supervision

- 18.** The NSI must undertake metrological supervision to control the -
- (a) 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

- (b) sale of goods which, in respect of the quantity or the manner in which they are sold or offered for sale, do not comply with the applicable requirements of this Act.

Powers of inspectors and verification officers

19. (1) An inspector or a verification officer duly appointed in terms of this Act, in the discharge of his or her functions, may -

- (a) enter and search any industrial establishment or commercial premises or place or any vehicle or vessel, where a measuring instrument or container which is meant to be used for any prescribed purpose, is installed or kept, or where there is reason to believe that it is installed or kept;
- (b) enter any premises or any other place, including stopping a vehicle or vessel, in which any activity in connection with the manufacturing, processing, supplying, distributing, importing or wholesale or retail selling of goods to which the provisions of this Act apply;
- (c) inspect the premises, place, vehicle or vessel referred to in paragraph (a) or (b), and examine and test any such measuring instruments, container or goods found on the premises, place, vehicle or vessel, for the purposes of establishing conformity with this Act;
- (d) apply a non-conformity stamp to the measuring instrument or container if, following any such inspection or testing, a measuring instrument or container is found not to be in conformity with this Act;
- (e) remove from the premises, place, vehicle or vessel for examination, testing and measuring, any goods, measuring instrument or container;
- (f) require the owner, the person in charge or any employee in charge of, or at, the premises, place, vehicle or vessel entered to -
 - (i) provide all reasonable assistance, including personal assistance, equipment or product required to inspect or test an instrument or container; and
 - (ii) produce books, records and written or electronic documents to enable the inspector or verification officer to carry out his or her functions under this Act;
- (g) inspect and copy or take extracts from any such books, records or other documents; and
- (h) in the case of any vehicle or vessel referred to in paragraph (a), request the owner or operator of the vehicle or vessel to bring the vehicle or vessel for examination to a location as may be indicated to him or her by the inspector or verification officer.

(2) An inspector or a verification officer who removes goods, a measuring instrument or container pursuant to subsection (1)(e) must immediately –

- (a) notify the person from whose premises, place, vehicle or vessel the goods, measuring instrument or container are taken, or the authorised representative of that person; and
- (b) issue a receipt to the person referred to in paragraph (a) indicating,

that the goods, measuring instrument or container are taken pursuant to this Act.

(3) An inspector or a verification officer may not enter and search outside the normal business hours of an establishment, unless the inspector or verification officer has been authorised to do so in writing by the chief executive officer, where the chief executive officer has reasonable cause to believe that delay could cause the loss or suppression of any evidence or may otherwise prejudice the outcome of the search.

(4) An inspector or a verification officer may seize and retain -

- (a) any article, measuring instrument, stamp, container or goods which he or she believes to be used or intended to used, possessed or kept in contravention of this Act; or
- (b) any document relating to a measuring instrument or container or any document displayed with any goods offered or exposed for sale which relates to the price or quantity of the goods, and which the inspector or verification officer believes may be required as evidence in any proceedings.

(5) An inspector or a verification officer who removes a measuring instrument, stamp, container, goods or documents pursuant to subsection (4)(a) or (b) must immediately

- (a) notify the person from whose premises, place, vehicle or vessel the measuring instrument, stamp, container, goods or documents are seized, or the authorised representative of that person; and
- (b) issue a receipt to the person referred to in paragraph (a) indicating,

that the measuring instrument, stamp, container, goods or documents are seized pursuant to this Act.

(6) A person who -

- (a) obstructs or impedes an inspector or a verification officer in the exercise of the inspector or officer's functions, or does not comply with a requirement specified by an inspector or a verification officer in carrying out any of the inspector's or officer's functions under this Act;
- (b) refuses or fails to give an inspector or a verification officer any assistance or information which the inspector or verification officer may request in the performance of any the of inspector's or officer's functions under this Act; or
- (c) intentionally or without having taken reasonable steps to ascertain the correctness or accuracy of any statement, makes an incorrect or a false or misleading statement, either verbally or in writing, to an inspector

or, a verification officer who is engaged in carrying out any of the of inspector's or officer's functions under this Act,

commits an offence and is liable to penalties provided for in section 47(1)(b).

(7) Where an inspector or a verification officer finds that a measuring instrument or a measurement standard fails to give the correct measurement which it purports to give or is otherwise faulty, the inspector or verification officer must deface or remove the verification mark and issue a certificate stating the reason for defacement or removal in accordance with section 27.

(8) A person who, for a prescribed purpose, uses a measuring instrument or a measurement standard whose verification mark has been defaced or removed in terms of subsection (7) and for which a rejection certificate has been issued, commits an offence and is liable to the penalties provided for in section 47(1)(b).

(9) The chief executive officer or the head of metrology may exercise any of the powers conferred on an inspector or a verification officer under this section as if the chief executive officer or head of metrology were an inspector or a verification officer.

(10) In the course of any entry and search under this section, the inspector or verification officer may request the assistance of a police officer or an interpreter.

(11) In the exercise of any powers conferred by this section, the inspector or verification officer must, if so requested, provide proof of his or her appointment.

(12) The inspector or verification officer may be accompanied by a police officer or an interpreter and take such instruments as are necessary for the purpose of carrying out his or her functions under this Act.

Metrological controls of measuring instruments

20. (1) For the purposes of this section, "measuring instrument", includes any measuring instrument used or offered for use for a prescribed purpose by private or public undertakings.

(2) A measuring instrument used or intended to be used for a prescribed purpose is subject to metrological controls provided for in Part 7.

(3) Only a measuring instrument that has successfully undergone the prescribed list of controls and such other controls as may be established by the NSI may be used for a prescribed purpose.

(4) A person who imports, manufactures, repairs, sells, hires, uses or otherwise deals in any measuring instrument referred to in subsection (1), must -

- (a) inform the head of metrology of any activity that the person intends to undertake with the measuring instrument; and
- (b) apply to the head of metrology to be registered as the person undertaking such activity, within such period as the chief executive officer may determine by notice in the *Gazette*, and different periods may be determined for different categories or classes of measuring instruments.

(5) For the purpose of subsection (4), the head of metrology must maintain a register of registered persons, and the head of metrology may require any such person to furnish the head of metrology with any information, documentation and undertakings as the head of metrology may consider fit.

(6) Where, in the special circumstances of any particular case, it appears to the head of metrology that it would be impracticable or unnecessary that a particular measuring instrument be subjected to metrological controls in terms of this section, the head of metrology may, in writing exempt the measuring instrument from such controls.

(7) The head of metrology may attach any conditions, including a time limit, to the exemption granted under subsection (6).

(8) A person who –

- (a) contravenes or fails to comply with, subsection (3) or (4)); or
- (b) contravenes, or fails to comply with, any condition attached to an exemption granted under subsection (7),

commits an offence and is liable to the penalties provided for in section 47(1)(b).

PART 7

APPROVAL AND VERIFICATION OF MEASURING INSTRUMENTS

Conformity assessment of measuring instruments

21. (1) The Minister may prescribe the kinds, types or designations of measuring instruments requiring mandatory periodic verification or type approval.

(2) The conformity assessment of a measuring instrument includes -

- (a) type approval;
- (b) initial verification;
- (c) verification after repair or modification;
- (d) mandatory periodical verification;
- (e) supervision of the procedures affecting the use or operation of measuring instruments,

and may also include such controls as the NSI may determine.

(3) The head of metrology must certify whether or not the measuring instrument has successfully undergone the conformity assessment procedures contemplated in subsection (2).

(4) The owner or user of a measuring instrument must, before placing the instrument on the market or putting the instrument to use in Namibia, submit the instrument to the head of metrology for it to be -

- (a) type approved, if type approval is required; and

- (b) verified as conforming to the requirements of this Act.

(5) Type approval of a measuring instrument consists of a conformity assessment process that includes evaluation, testing, examination, a pattern description and the issuing of a certificate of type approval as prescribed.

(6) Verification consists of a conformity assessment process that includes evaluation for compliance with a certificate of type approval, testing procedures, issuing of a verification certificate, verification marking or a combination of these as prescribed.

(7) A person may not use a measuring instrument which have not been type approved, if type approval is required in terms of this Act, unless permission to use the measuring instrument has been granted under section 22.

(8) A person may not use a measuring instrument which have not been subjected to initial or subsequent verification, if such initial or subsequent verification is required in terms of this Act, unless the measuring instrument is -

- (a) exempted from such verification in terms of this Act; or
 - (b) covered by a guarantee issued under section 30(2)(b).
- (9) The Minister may prescribe -
- (a) specific types of measuring instruments that require type approval, verification or reverification for purposes of conformity;
 - (b) the means of labelling measuring instruments;
 - (c) the types and forms of verification marks and other signs used to confirm verification;
 - (d) the contents and form of certificates of verification; and
 - (e) the means of indication of the end of the period of validity of verification marks and certificates of verification.

(10) A person who contravenes or fails to comply with subsection (4), (7) or (8) commits an offence and is liable to the penalties provided for in section 47(1)(b).

Type approval of measuring instruments

- 22.** (1) The Minister may prescribe -
- (a) the manner in which any measuring instrument is submitted for type approval;
 - (b) measuring instruments requiring type approval and those exempted from type approval;
 - (c) the manner in which the examination of any model measuring instrument or part of that instrument submitted for type approval is carried out;

-
- (d) the contents of type approval certificates and conditions and limitations of use of measuring instruments that have been type approved;
 - (e) the period of validity of a type approval certificate;
 - (f) the manner in which –
 - (i) the period of validity of a type approval certificate is to be extended;
 - (ii) modifications to existing type approved instruments are handled;
 - (iii) type approval is withdrawn;
 - (g) the design of the mark of type approval;
 - (h) requirements for acceptance of test results issued by an accredited laboratory for type approval purposes; and
 - (i) the review or appeal procedure, if type approval is refused.
 - (2) A person who -
 - (a) without the written permission of the chief executive officer, sells or makes available for use for any prescribed purpose any new model of a measuring instrument referred to in subsection (1) before the issue of a type approval certificate in respect of that instrument;
 - (b) alters any model or modified model of a measuring instrument in respect of which a type approval certificate was issued in terms of subsection (1) regarding –
 - (i) any portion of the material of; or
 - (ii) the mode in which or the principle according to,

which it has been made, and misrepresents to any person that the model so altered is the model in respect of which such certificate was issued; or
 - (c) represents to any person that any measuring instrument may be used -
 - (i) for any particular prescribed purpose if, under a type approval certificate issued in terms of this section in respect of that purpose, it may not be so used; or
 - (ii) in a particular manner for any prescribed purpose if, under any condition imposed by such certificate, it may not be so used in such manner,

commits an offence and is liable to the penalties provided for in section 47(1)(b).

(3) For purposes of subsection (2)(a), the chief executive officer, if satisfied that a type approval certificate in respect of the new model of the measuring instrument will be issued if applied for, may, subject to such conditions that the chief executive officer may consider necessary in each particular case, grant written permission for the measuring instrument to be sold or made available for use by any person before the issue of a type approval certificate for the instrument.

(4) The head of metrology must assign a competent person to evaluate type approval test results and recommend the issuing of a type approval certificate or refusal of type approval to the chief executive officer, and if the chief executive officer is satisfied with such recommendation, the chief executive officer must -

- (a) issue a type approval certificate or refusal notice with reasons for the refusal; and
- (b) cause to be made known particulars of the certificate or refusal notice in such manner as the chief executive officer may consider fit.

(5) An inspector or a verification officer may not verify or re-verify a measuring instrument made according to -

- (a) any specimen of a model or a modified model in respect of which a type approval certificate or an endorsement of, or an addition to, a certificate has been refused; or
- (b) any specimen of a model, or a modified model, in respect of which a type approval certificate has been withdrawn.

(6) An inspector or a verification officer must verify or re-verify any particular measuring instrument made according to any model or modified model in respect of which a type approval certificate was issued and has not been withdrawn.

(7) A person who, in terms of this section, submits for any examination any model or modified model of a measuring instrument must pay such fees for the examination and the costs incurred by the NSI in connection with the examination as may be prescribed.

(8) The NSI may charge according to such tariffs of fees and costs as the Minister may prescribe, and the tariffs so prescribed may provide for payments in respect of the delay or postponement of the examination or the completion of the examination at the request of or as a result of an omission by the person who made the submission.

(9) In addition to the requirements 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 be made subject to -

- (a) examination and type approval as prescribed; and
- (b) payment of such fees as may be prescribed as contemplated in subsection (8).

Notice and schedule in connection with re-verification of measuring instruments

23. (1) In respect of any measuring instrument which, in terms of this Act, is required to be re-verified the chief executive officer may, by notice in the *Gazette*, determine -

- (a) the periods and the manner in which the instruments are submitted for re-verification; and
- (b) the manner in which users of the instruments must notify the chief executive officer of the place at which such instruments are used.

(2) A person who fails to comply with any notice published in terms of subsection (1) commits an offence and is liable to the penalties provided for in section 47(1)(b).

Verification and re-verification of measuring instruments

24. (1) An inspector or a verification officer must inspect and verify or test every measuring instrument which is produced to him or her for the purpose of verification or re-verification, and may -

- (a) subject to subsection (2), verify or re-verify, in such manner as to indicate the year of such verification or re-verification, every such measuring instrument which he or she finds to be correct and to comply with the requirements of this Act; or
- (b) decline to verify or re-verify an instrument found to be incorrect or not to comply with the requirements of this Act.

(2) A verified measuring instrument of volume made of clear glass and any verified measuring instrument of length made from prescribed material need not be re-verified under this section, unless -

- (a) an inspector or a verification officer has reasonable grounds for believing that it has been altered materially since it was verified; or
- (b) the original verification mark has been defaced or has become illegible.

Measuring instruments used for certain purposes to be verified

25. (1) A measuring instrument used or possessed in connection with any prescribed purpose, must be verified, before being taken into use and afterwards re-verified in accordance with this Act, unless exempted from verification or re-verification under subsection (2).

(2) If the head of metrology is satisfied that it is impractical or unnecessary to verify or re-verify any measuring instrument or any class or make of measuring instrument because of -

- (a) its mode or principle of construction or the manner or purpose for which it is used; or
- (b) any other special circumstance relating to it or its use,

the head of metrology may issue a certificate in respect of the measuring instrument or such class or make of measuring instrument exempting it from the provisions for type approval or verification, or both, of this Act.

(3) An exemption granted under subsection (2) may be subject to such conditions, limitations or requirements as may be prescribed or as the head of metrology may in any particular case consider fit to impose.

(4) The provisions of this Act relating to -

- (a) the verification or re-verification of any measuring instrument; or
- (b) the use or possession of any measuring instrument that has not been verified or re-verified,

do not, subject to any applicable prescribed condition, limitation or requirement or imposed under subsection (3), apply in respect of any measuring instrument exempted from subsection (1) or otherwise exempted in terms of this Act.

(5) The head of metrology may at any time cancel any exemption certificate issued under subsection (2), but any person who uses or has in his or her possession any measuring instrument to which, or belonging to the class or make to which, the certificate relates, is exempted from any penalty for using or possessing it, subject to the conditions for verification specified when the exemption is withdrawn.

(6) A person who contravenes or fails to comply with any condition, limitation or requirement referred to in subsection (3) or (5), commits an offence and is liable to the penalties provided for in section 47(1)(b).

Certain measuring instruments not to be verified or re-verified

26. An inspector or a verification officer may not verify or re-verify -

- (a) subject to section 24, a measuring instrument -
 - (i) which has not been made in accordance with the relevant regulations; or
 - (ii) 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) a 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 chief executive officer, if such approval has not been granted; and
- (c) a measuring instrument which does not comply -
 - (i) with the requirements of this Act; or

- (ii) with any requirement, relating to it or its use, construction or verification, of which the chief executive officer may inform the inspector or verification officer from time to time.

Defacing of verification mark

27. (1) An inspector or a verification officer must, in the prescribed manner, deface a verification mark on any measuring instrument which mark he or she finds to be false, defective or inaccurate or not to comply with the requirements of -

- (a) this Act;
- (b) any limitation or condition regarding verification or re-verification in terms of section 25; or
- (c) any requirement stipulated by the chief executive officer under section 26,

and thereupon such measuring instrument is deemed to be unverified or rejected.

(2) An inspector or a verification officer who defaces any verification mark on any measuring instrument referred to in subsection (1) must at the same time issue to the person in charge of the measuring instrument a rejection certificate stating the reason for the defacement.

(3) A person who sells, uses or makes available for use any measuring instrument whose verification mark has been defaced in terms of subsection (1), commits an offence and is liable to the penalties provided for in section 47(1)(b).

Type approval, verification and re-verification of measuring instruments used by State or authorised persons

28. A measuring instrument used by the State, or by any person authorised under any law, for the purpose of, or in connection with -

- (a) the fixing, collection or determination of tolls, rates or taxes; or
- (b) the imposition of fines or other sanctions or other charges,

must be -

- (i) type approved, if type approval is required in terms of this Act or of any other law; and
- (ii) verified or re-verified in accordance with this Act, unless exempted from verification or re-verification under section 25.

PART 8

USE OR POSSESSION OF MEASURING INSTRUMENTS AND CONTAINERS

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

29. (1) Despite anything to the contrary in this Act, the Minister may, by notice in the *Gazette*, restrict or prohibit the manufacture, import, sale, use or possession of any measuring instrument or container to such extent as he or she may consider necessary for achieving the object of effecting the application of the measuring units of the International System of Units or any other measuring unit in Namibia.

(2) A restriction or prohibition contemplated in subsection (1) may apply -

- (a) in the whole of Namibia or in any specified part of Namibia;
- (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; or
- (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 chief executive officer, with the written approval of the Minister and on such conditions and for such period as the chief executive officer may think fit, may in writing 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) Despite anything to the contrary in this Act, but subject to subsection (3), a person may not, in contravention of a provision of a notice issued under subsection (1), manufacture, import, use or possess any measuring instrument or container.

(5) A person may not, unless permission in writing has been obtained from the chief executive officer under subsection (3), use for any prescribed purpose -

- (a) any mass piece or measure of a denomination not permitted under this Act; or
- (b) any measuring instrument or container calibrated according to a measuring unit not permitted by this Act for such purpose.

(6) A person may not use or have in his or her possession for any prescribed purpose, any measuring instrument or container which -

- (a) is not permitted by this Act for such purpose or which is false, defective or inaccurate;
- (b) has not been verified or re-verified, if it is required to be verified or re-verified in terms of this Act; or
- (c) may, in terms of any requirement, regulation or certificate issued in terms of this Act, not be so used or possessed.

(7) A person who contravenes or fails to comply with subsection (4), (5) or (6) commits an offence and is liable to the penalties provided for in section 47(1)(b).

(8) Subject to any regulation providing for the continued use of any rejected measuring instrument or container, a person who, at any place where an act in connection with any prescribed purpose is carried out, has in his or her possession any measuring instrument or container which -

- (a) has been rejected in accordance with section 27; and
- (b) is being kept at such place and in such condition that it may, in the opinion of any inspector or verification officer, readily be used for such prescribed purpose,

commits an offence and is liable to the penalties provide for in section 47(1)(b).

Sale, supply and use of unverified measuring instruments

30. (1) A person may not sell or supply for use for any prescribed purpose any unverified measuring instrument, unless that person has obtained prior written authority for such sale or supply from the head of metrology.

(2) The head of metrology may issue the written authority referred to in subsection (1), if -

- (a) the head of metrology is satisfied that the seller or supplier cannot, without undue delay or inconvenience, cause such instrument to be verified or re-verified before its sale or supply; or
- (b) the seller or supplier furnishes the head of metrology with a guarantee in writing signed by a metrology technician to the effect that the instrument is correct and verifiable under this Act, and the head of metrology is satisfied as to the sufficiency of the guarantee and the competency of the metrology technician.

(3) The head of metrology may grant permission in writing to use any unverified measuring instrument for a specified period, if -

- (a) for any reason, it is not possible to carry out the verification and testing required by regulation; and
- (b) such measuring instrument is correct and verifiable under this Act.

(4) A person who possesses or uses any measuring instrument which he or she has acquired from a person authorised to sell or supply it in terms of subsection (1), is exempted from any penalty for possessing or using it for the period specified in subsection (3).

(5) A person who, without having obtained the written authority issued under subsection (2), sells or supplies an unverified measuring instrument for it to be used for a prescribed purpose in contravention of subsection (1) commits an offence and is liable to the penalties provided for in section 47(1)(b).

(6) A person who, where required to give a guarantee under subsection (2) (b), furnishes a guarantee in respect of any measuring instrument which is not correct and verifiable under this Act commits an offence and is liable to the penalties provided for in section 47(1)(b).

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

31. A person who manufactures, sells or causes to be manufactured or 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,

which does not comply with the requirements of a notice issued under section 29(1) or with the requirements of any applicable regulation,

commits an offence and is liable to the penalties provided for in section 47(1)(b).

Measuring instruments to be wholly exposed

32. (1) A 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 must keep such measuring instrument wholly exposed to the view of such purchaser.

(2) Where during the course of retail trade for the sale of any goods pre-packed by the seller of the goods, the purchaser of the goods requests that he or she wishes to measure the quantity of the goods to be purchased from the seller, the seller of the goods must make available to the purchaser a verified measuring instrument suitable for measuring the quantity of such goods.

(3) Where the user of a measuring instrument to which the provisions of this Act apply has used the measuring instrument to make a measurement in the absence of a person who is affected by the measurement, that user must, on request by the affected person, grant access to the measuring instrument and relevant documentation relating to the measuring instrument and the measurement.

(4) A person who contravenes or fails or refuses to comply with subsection (1), (2) or (3) commits an offence and is liable to the penalties provided for in section 47(1)(b).

Certain containers and vessels excluded

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

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

except that, in the case of any such container or vessel which is used or possessed or intended for the measuring off of any liquid or solid material in the course of retail trade at the time of sale of such liquid or solid material, the denomination of volume of such container or vessel must be fixed on the container or vessel and such container or vessel complies with the requirements of any applicable regulation.

PART 9

REPAIR OF MEASURING INSTRUMENTS AND REGISTRATION OF METROLOGY TECHNICIANS

Repair of measuring instruments

34. (1) Subject to section 27 or any regulation relating to the defacing or obliteration of any verification mark or the breaking of any verification seal -

- (a) a person may not repair any measuring instrument used for any prescribed purpose, unless he or she is a metrology technician and has first permanently obliterated the verification mark or seal, including such verification mark defaced under section 27, on the measuring instrument; and
- (b) any metrology technician who has repaired any measuring instrument used for any prescribed purpose must, unless it is immediately thereafter verified, immediately –
 - (i) notify the head of metrology or any inspector authorised by the head of metrology, of such repair; and
 - (ii) furnish the head of metrology or inspector, as appropriate, with a guarantee in writing signed by that metrology technician that such measuring instrument is correct and verifiable under this Act,

and the head of metrology or inspector must, if satisfied -

- (aa) as to the sufficiency of the guarantee and the competency of the metrology technician; and
- (bb) that such metrology technician cannot, without undue delay or inconvenience, cause such instrument to be verified or re-verified immediately after such repair,

without delay, issue an authority permitting the use of such measuring instrument until the verification of the measuring instrument.

(2) A person may not, for any prescribed purpose, use any measuring instrument which has been repaired, unless –

- (a) the measuring instrument has immediately thereafter been verified; or
- (b) an authority in writing has in terms of subsection (1)(b) been issued in respect of the measuring instrument.

(3) Work carried out on, or an adjustment made to, a specified measuring instrument which does not constitute a repair, does not invalidate any current verification in respect of such specified measuring instrument, if a metrology technician issues a certificate to this effect, stating the nature of the work done or the adjustment made.

(4) A person who contravenes or fails to comply with subsection (1) or (2) commits an offence and is liable to the penalties provided for in section 47(1)(b).

Registration of metrology technicians

35. (1) The Minister may prescribe -

- (a) requirements for the registration of persons as metrology technicians and -
 - (i) the issuing by them of temporary permission for the use of measuring instruments prior to their formal verification; and
 - (ii) the circumstances under which the registration may be withdrawn;
- (b) requirements for the certificate contemplated in section 34(3) and work that does not constitute a repair;
- (c) fees for application for registration as a metrology technician;
- (d) examination fees payable by metrology technicians; and
- (e) annual registration and surveillance fees for metrology technicians.

(2) The chief executive officer must -

- (a) if he or she is satisfied that the registration requirements contemplated in subsection (1) have been met, issue to the applicant a certificate indicating -
 - (i) the particular measuring instrument or the particular class or make of measuring instrument in respect of which the applicant has been registered; or
 - (ii) that the applicant has been so registered in respect of all measuring instruments; and
- (b) keep a register for the purpose of recording the name and such particulars as he or she may consider necessary of every metrology technician that has been registered.

PART 10
LEGAL MEASUREMENTS AND SALE OF GOODS

Prohibition of false statements as to quantity and measurement results

36. (1) A person who, subject to subsection (2) -
- (a) directly or indirectly, intentionally makes a false, incorrect or untrue declaration or statement for any purpose under this Act; or
 - (b) by way of any declaration or statement, intentionally misleads any person -
 - (i) 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
 - (ii) in the computation of any charges for services rendered or for any other prescribed purpose, on the basis of number or measurement,

commits an offence and is liable to the penalties provided for in section 47(1)(b).

(2) If there is any difference between the actual and any presented quantity or measurement result, expressed by number or in terms of any measuring unit, in respect of which any declaration or statement is made in terms of subsection (1) and such difference is permissible in terms of this Act, such declaration or statement may not be regarded as false, incorrect or untrue merely because of the existence of such difference.

(3) If a person 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, that person, then, unless the shortage is permissible in terms of this Act, that person commits an offence and is liable to the penalties provided for in section 47(1)(b).

Measurements to be effected in terms of certain measuring units and by means of verified measuring instruments

37. (1) A contract, bargain, sale, purchase or transaction made or effected in Namibia in respect of -

- (a) any land situated in Namibia or in respect of any interest in land so situated;
- (b) any goods, wares, merchandise or other thing;
- (c) any services rendered; or
- (d) measurements for any prescribed purpose, a quantity of which is expressed in terms of any measuring unit,

must be made or effected in accordance with measuring units prescribed for such purpose.

(2) Any toll, rate, tax, fee or other charge charged or collected or the imposition of fines or other sanctions according to measurement of a physical quantity, must be charged, collected or imposed in accordance with such measuring units as may be prescribed.

(3) A person may not make or effect a measurement which is required to be done in terms of this Act by means of any measuring instrument which -

- (a) is not permitted by this Act;
- (b) is false, defective or inaccurate; or
- (c) is required in terms of this Act to be verified or re-verified, but is not so verified or re-verified.

(4) Subject to subsection (5), a person may not import into Namibia any goods, including pre-packed goods, the quantity of which is expressed on the goods or on any document relating to the goods in terms of -

- (a) any measuring unit not authorised under this Act, unless the equivalent of the quantity so expressed is also expressed in terms of a measuring unit prescribed for such purpose; or
- (b) any measuring unit which does not comply with the regulations.

(5) Subsection (4) does not apply to any goods -

- (a) which the chief executive officer has exempted in writing; or
- (b) in respect of which the importer satisfies the chief executive officer and the competent customs officer that such goods are being imported for manufacturing purposes and not for sale in their current form.

(6) A person may not express the quantity of any goods for sale in a manner or in terms of a measuring unit not prescribed for such purpose or in terms of any measuring unit that is not authorised under this Act.

(7) A person who contravenes or fails to comply with subsection (3), (4) or (6) commits an offence and is liable to the penalties provided for in section 47(1)(b).

Advertisement of measurable products and services

38. (1) A person may not advertise any measurable product or service to which this Act applies, unless -

- (a) the measurement referred to in the advertisement is expressed in a manner or in terms of such measurement unit as may be prescribed for that product or service; or
- (b) the person has obtained prior permission in writing from the chief executive officer to use other units than those prescribed for that product or service.

(2) For the purposes of this section, “advertisement”, in relation to any measurable product or service to which this Act applies, means any commercial communication, information or action brought to the attention of any member of the public.

(3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable to the penalties provided for in section 47(1)(b).

Manner of selling goods

39. (1) A person may not -

- (a) sell any goods by mass, unless the goods are sold by reference to their net mass;
- (b) sell any fluid in any container unless, with due allowance for the prescribed limits of error, the actual liquid contents by volume at such temperature as may be prescribed, are in the manner prescribed 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;
- (c) sell any goods the quantity of which is determined at the time of sale of the goods, unless such quantity is made known to the purchaser in such manner as may be prescribed;
- (d) sell by mass any pre-packed goods, unless the net mass of such goods, with due allowance for the prescribed limits of error, is in the prescribed manner 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, other than in pre-packed form, sold by such person by mass, unless the net mass of such goods is in the prescribed manner indicated on such goods or on any invoice, delivery note or other writing delivered with such goods.

(2) Subsection (1)(d) does 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 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 do not apply to goods -

- (a) taken from bulk and measured at the time of sale in the presence of the purchaser or his or her agent; and
- (b) sold by volume or net mass determined at the time of measuring as described in paragraph (a).

(4) A person may not sell by mass any article exempted in the manner referred to in subsection (2)(a), unless -

- (a) the article is marked on the package or container in which it is sold in the prescribed manner with a statement giving the net mass of the goods at the time of packing; and
- (b) the goods in respect of which the article forms part, comply with such conditions regarding quantity as may be prescribed.

(5) A person who contravenes or fails to comply with subsection (1) or (4) commits an offence and is liable to the penalties provided for in section 47(1)(b)).

Reference to physical quantity and use of certain measuring units

40. (1) A person may not, in connection with any prescribed purpose, refer to any physical quantity or use any measuring unit or a multiple or sub-multiple of a measuring unit other than in accordance with the applicable provisions of this Act.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable to the penalties provided for in section 47(1)(b)).

PART 11 OFFENCES AND PENALTIES

Forgery and false marking

41. Any person who -

- (a) forges or counterfeits any verification mark or protective mark of a type used on any measuring instrument used or intended to be used for any prescribed purpose;
- (b) applies or attaches to any measuring instrument used or intended to be used for any prescribed purpose, a verification mark or protective mark which is forged or counterfeit or which is false or incorrect;
- (c) applies or attaches a verification mark or protective mark to any measuring instrument used or intended to be used for any prescribed purpose, which does not comply with all the requirements under this Act which pertain to such measuring instruments;
- (d) keeps or uses any false or inaccurate measuring instrument or any measuring instrument which does not bear a verification mark or which bears a rejection mark for any transaction to which this Act applies or falling within the scope or purview of this Act; or
- (e) uses, sells, alter or disposes off to another person -
 - (i) any measuring instrument that has a forged, counterfeit, false or an incorrect mark applied or attached to it, which measuring instrument is used or intended to be used for any prescribed purpose; or

- (ii) any mark liable to be confused with marks authorised under this Act,

commits an offence and is liable to the penalties provided for in section 47(1)(a).

Tampering with marks and supply of non-compliant measuring instruments

42. Any person who -

- (a) by any means renders a measuring instrument, used or intended to be used for any prescribed purpose, false or inaccurate;
- (b) for any prescribed purpose, uses, supplies, sells, utters or disposes of -
 - (i) a false or inaccurate measuring instrument; or
 - (ii) any measuring instrument that does not comply with the requirements of this Act which pertain to such instrument;
- (c) not being an inspector, a verification officer or metrology technician authorised under this Act, removes, defaces, obliterates or otherwise changes, any verification mark or protective mark from a measuring instrument used or intended to be used for any prescribed purpose; or
- (d) attaches, affixes or otherwise applies a verification mark or protective mark to a measuring instrument, used or intended to be used for any prescribed purpose, on which the mark was not lawfully intended,

commits an offence and is liable to the penalties provided for in section 47(1)(a).

Removing or breaking of tags, seals and devices

43. Any person who unlawfully removes, defaces, obliterates, breaks or otherwise changes any tag, seal or device that has been placed, affixed or attached by an inspector, a verification officer or a metrology technician to a measuring instrument that is used or is intended to be used for any prescribed purpose commits an offence and is liable to the penalties provided for in section 47(1)(a).

Fraudulent measurements

44. Any person who -

- (a) sells any product by weight, measure or number where the weight, measure or number of the goods sold is less than that purported to be sold or is less than the corresponding weight with the price charged;
- (b) in connection with a measuring instrument used for any prescribed purpose, makes a false record or statement of any measuring; or
- (c) commits any fraud in connection with any measuring by means of a measuring instrument used or is intended to be used for any prescribed purpose,

commits an offence and is liable to the penalties provided for in section 47(1)(a).

Using measuring instruments and measurement standards in contravention of written notice of prohibition

45. (1) Where an inspector or a verification officer finds or suspects that a person is committing an offence by using a measuring instrument or a measurement standard for any prescribed purpose, which instrument or standard -

- (a) fails to give the correct measurement which it purports to give; or
- (b) is otherwise faulty,

the inspector or verification officer may -

- (i) give the person a written notice of prohibition of use, ordering that the measuring instrument or measuring standard may not be used by any person until such time that the notice is withdrawn; or
- (ii) where applicable, remove the measuring instrument or measuring standard from the place where it is currently located.

(2) A person who knowingly acts in contravention of the written notice of prohibition issued under subsection (1) commits an offence and is liable to the penalties provided for in section 47(1)(b).

Acts or omissions by agents, managers or employees

46. (1) Whenever any agent or manager or employee of another person (referred to in this section as “the responsible person”) does or omits to do any act which it would be an offence under this Act for the responsible person to do or omit to do, then, unless it is proved that -

- (a) in doing or omitting to do that act, the agent, manager or employee was acting without the connivance or the permission of the responsible person;
- (b) all reasonable steps were taken by the responsible person to prevent the act or the omission to do the act; and
- (c) the act or omission in respect of which the charge arises, whether lawful or unlawful, was not within the scope of the authority of the agent or was not in the course of the employment of the manager or employee,

the -

- (i) responsible person is presumed to have done or omitted to have done the act and thus commits an offence and is liable to the penalties provided for in section 47(1)(a); and
- (ii) fact that the responsible person issued instructions forbidding the act or omission is not of itself sufficient proof that the person took all reasonable steps to prevent the act or omission.

(2) Whenever any agent, manager or employee of a responsible person does or omits to do any act which it would be an offence under this Act for the responsible person to do or omit to do, the agent, manager or employee commits an offence, as if he or she were the responsible person, and is liable to the penalties provided for in section 47(1)(a).

Penalties

47. (1) A person convicted of an offence -
- (a) under section 41, 42, 43, 44 or 46(1) or (2) is liable to a fine not exceeding N\$300 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment;
 - (b) under this Act, other than an offence referred to in paragraph (a), is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.
- (2) The court convicting a person of an offence under this Act may -
- (a) in accordance with the provisions of section 35 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), order forfeiture to the State of any measuring instrument, goods, articles or other thing in respect of which such offence has been committed and the measuring instrument, goods, article or other thing forfeited may, at the expense of the person so convicted, be disposed of in the manner provided for in that section; or
 - (b) order the person to reimburse the NSI, within such period as the order may stipulate, the expenses incurred in the seizure, transporting, detention, testing, analysis, inspections and examination of measuring instruments and measurement standards involved in the commission of the offence.

PART 12 GENERAL PROVISIONS

Charging of fees and recovery of costs

48. (1) An inspector or a verification officer employed by the NSI on a permanent or temporary basis must, in respect of the testing, adjustment, verification or re-verification of any measuring instrument -

- (a) charge fees in respect of any services rendered in respect of the testing, adjustment, verification or re-verification; and
- (b) recover from the owner of, or the person who has submitted, the measuring instrument for testing, adjustment, verification or re-verification, any costs or expenses incurred by the inspector or verification officer in connection with the testing, adjustment, verification or re-verification,

according to such tariffs of fees and charges as the Minister may prescribe.

(2) The tariffs prescribed under subsection (1) may provide for payments in respect of -

- (a) the fees payable in respect of different types, classes or categories of measuring instruments tested, adjusted, verified or re-verified;
- (b) equipment hire charges; and
- (c) the delay or postponement of the proceedings concerned or the completion of the proceedings at the request of or as a result of an omission by the person whose measuring instrument is being tested, adjusted, verified or re-verified or who possesses, uses or maintains the measuring instrument.

Utilisation of fees and costs

49. Any fees charged or collected and costs recovered in terms of this Act constitute revenue of the NSI and are dealt with in accordance with this Act read with the Standards Act.

Compliance schemes and associated distinctive marks

50. (1) The Minister, on the recommendation of the Council, may by notice in the *Gazette* establish -

- (a) a compliance scheme with all its requirements to promote the effectual carrying out of the objects of this Act; or
 - (b) if considered necessary, an associated distinctive mark with all its requirements to supplement the regulation of the quantity of goods in pre-packaged form or any other matter pertaining to this Act.
- (2) A distinctive mark established in terms of subsection (1), may not -
- (a) be applied to any product or measuring instrument; or
 - (b) be displayed in any advertisement,

unless the application or display is done in accordance with the requirements of the notice referred to in subsection (1).

(3) A person participating in a compliance scheme established in terms of subsection (1) is charged the prescribed fees.

Disclosure of certain information to protect consumers

51. (1) If the chief executive officer is of the opinion that it is necessary in the public interest and to protect the consumer, he or she may reveal in any manner -

- (a) any information which in his or her opinion is necessary to prevent the public from being misled concerning any matter that falls within the scope or purview of 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 contemplated in subsection (1) may relate also to the trade name or trade mark of a commodity.

Review and appeals

52. (1) A person who is aggrieved by a decision of the head of metrology or of an inspector or a verification officer made under this Act may in the manner determined by the NSI, request for an internal review of the decision by the chief executive officer.

- (2) A person who is -
 - (a) aggrieved by a decision of the chief executive officer made under section 19(9), 22(3), 29(3), 35(2), 38(1)(b) or 51 or any other decision of a regulatory or supervisory nature made by the chief executive officer under this Act; or
 - (b) not satisfied with a decision of the chief executive officer after an internal review under subsection (1),

may appeal to the Minister against that decision in the form and manner, and within the period, and on payment of the fees as may be prescribed.

(3) The Minister must consider every appeal lodged in accordance with subsection (2), but may, before deciding on the appeal, by notice in writing refer the matter to the chief executive officer for compliance with subsection (4).

(4) On receipt of a notice under subsection (3), the chief executive officer must –

- (a) furnish the Minister with his or her reasons for the decision appealed against;
- (b) investigate further or make further enquiries into the matter; or
- (c) furnish the Minister with further particulars relating to the matter, as the Minister may require, in the form and manner, and within the period, determined by the Minister in that notice.

(5) After considering the appeal noted under subsection (2) and, where applicable, the reasons for the decision of the chief executive officer and any further particulars furnished to the Minister in terms of subsection (4), the Minister may –

- (a) confirm, set aside or vary the decision of the chief executive officer appealed against; or
- (b) substitute any other decision for the decision referred to in paragraph (a).

(6) The procedures relating to an appeal under this section, including the procedures for obtaining additional information, documentation or evidence relating to the appeal, are as prescribed.

(7) The lodging of an appeal under subsection (2) against a decision of the chief executive officer does not in any way affect the decision of the chief executive officer appealed against, until such time as the Minister makes known in writing his or her decision on the appeal under subsection (5).

(8) Any costs incurred by the chief executive officer or the Minister in connection with any appeal which in the opinion of the Minister is based on frivolous grounds are borne by the appellant.

Regulations

53. (1) The Minister, after consultation with the Council, may make regulations relating to -

- (a) the forms of application, certificate and other documents to be used in connection with this Act;
- (b) the determination of fees and charges charged and the costs that are recoverable by an inspector or a verification officer;
- (c) the requirements for the competency of inspectors and verification officers or industrial and scientific metrologists that are not in the permanent employ of the NSI;
- (d) the limits of error or sensitivity allowed in any measuring instrument;
- (e) the conditions for the supply, custody, care and verification or re-verification of all classes of measurement standards and measuring instruments;
- (f) the manner in which the chief executive officer, head of metrology, any inspector, scientific or industrial metrologist, verification officer, metrology technician or other person appointed under this Act, or any police officer or interpreter, must perform his or her functions under this Act;
- (g) the classes or kinds of measuring instruments which must be approved or verified or re-verified;
- (h) the purposes for which measuring instruments are subjected to metrological controls under the provisions of this Act;
- (i) the conditions with which any attachment, device or ancillary equipment connected with any model measuring instrument must comply;
- (j) the approval of material, design and construction of measuring instruments or specified models, classes or kinds of measuring instruments;

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- (k) the purposes for which certain measuring instruments may be used, and the imposition of conditions or limitations upon the use of any kind of measuring instrument;
 - (l) the manner in which measuring units may be used;
 - (m) the expression of any quantity or dimensions of any goods in respect of certain measuring units or in any other manner not authorised by this Act;
 - (n) the manner in which any denomination or the symbol of any measuring unit or any multiple or sub-multiple of the denomination or symbol is represented on any pre-packed goods or on or by any measuring instrument or for expressing a quantity or measurement result on any document or in any advertisement;
 - (o) the prohibition of the verification, re-verification or use for any prescribed purpose of measuring instruments or specified models, classes or kinds of measuring instruments which are -
 - (i) liable to become inaccurate or to result in or facilitate fraud or deception;
 - (ii) not made in accordance with the relevant specifications; or
 - (iii) found to be unsuitable for such prescribed purpose;
 - (p) the manner in which the chief executive officer must determine the times and places at which measuring instruments are submitted for inspection and testing with a view to the verification, adjustment, repair, marking, sealing, verification or re-verification, if used for any prescribed purpose;
 - (q) the manner in which an exemption from any provision of this Act may be granted by the chief executive officer or the head of metrology in respect of any class or make of measuring instrument or any measuring instrument used for any prescribed purpose or in any particular manner, and the conditions, limitations and requirements in connection with the maintenance, use or degree of accuracy of any measuring instrument so exempted;
 - (r) the capacity of measuring instruments exempted from verification or re-verification as per the provisions of section 25;
 - (s) the manner in which any verification mark or any verification certificate is defaced or cancelled;
 - (t) the restriction or prohibition of the manufacture, import, use, possession or verification of certain measuring instruments or containers;
 - (u) the compulsory use or possession of particular measuring instruments in particular cases;

- (v) 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 pre-packed form or are measured at the time of sale, and the provision of exemption from the duty of indicating the quantity of any specified goods or articles so sold;
- (w) the determination of prescribed purposes for which, and the kinds of goods or articles in respect of which, only certain measuring units may be used for expressing quantity in trade transactions;
- (x) the conditions on which fluids or solids may be sold by quantity, size or dimensions, and the conditions, relating to temperature, on which fluids are sold;
- (y) 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;
- (z) the regulation and control of the sale or import for sale, in accordance with any measuring unit, of any commodity used by the public, and the requirement that such commodity must be -
 - (i) sold in specified containers or by means of verified or re-verified measuring instruments or in accordance with any measuring unit or by number; and
 - (ii) pre-packed according to a particular scale of quantities, sizes or dimensions;
- (aa) the articles which -
 - (i) by reason of their being subject to variation in mass owing to their properties or to climatic influences;
 - (ii) by reason of the use of mass may be used to designate grade or class only; or
 - (iii) for any other reason are exempted from the provisions of this Act relating to the sale of goods by net mass, and the size of the letters or any other method of indicating the net mass of the contents of containers at the time of packing;
- (ab) the permissible equivalent in which a measuring unit may be expressed in terms of another measuring unit of the same physical quantity;
- (ac) 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;
- (ad) the tables giving the permissible quantity per container used in trade in respect of fruit, vegetables, agricultural produce and any dry commodities;

- (ae) the permissible denominations of masspieces and measures and the manner in which such denominations are shown on the masspieces or measures in question;
- (af) the provision for the continued use of any measuring instrument after its rejection by any inspector or verification officer;
- (ag) the delivery note or other document referred to in section 39(1);
- (ah) the specifications for, and conditions, limitations and requirements in connection with the use of, or degree of accuracy of, particular containers;
- (ai) the suitability for use of measuring instruments for certain measurements;
- (aj) the purposes for the use, or possession for use, of any measuring instrument under any applicable provision of this Act;
- (ak) the requirements for compliance schemes and distinctive marks associated with such schemes; and
- (al) generally any matter which in terms of this Act is required or permitted to be prescribed, and generally anything that is necessary or expedient to achieve the objects of this Act but not inconsistent with the general powers conferred under this section.

(2) A regulation may be made in respect of the whole of Namibia or any part of Namibia.

(3) A regulation may authorise the chief executive officer or the head of metrology to grant an exemption in writing from any provision of that regulation on such conditions and for such period as the chief executive officer or the head of metrology may consider fit, but the period may not exceed a period of 12 months or any other period authorised by the Council.

(4) A regulation made this section may create offences for contraventions of the regulation and provide for the imposition of penalties of a fine not exceeding N\$50 000 or imprisonment for a period not exceeding 12 months or of both such fine and such imprisonment.

Repeal of laws and savings provisions

54. (1) The laws specified in the Schedule are repealed to the extent indicated in Column 3 of that Schedule.

(2) Anything made or done under the law repealed by subsection (1) which could be made or done under a corresponding provision of this Act is deemed to have been made or done under that corresponding provision.

- (3) Anything made or done, including –
 - (a) regulations made or other subordinate action taken; and
 - (b) any appointments validly made,

under a provision of the law repealed by subsection (1) remains valid until such time that it is repealed, amended or replaced under any provision of this Act.

Short title and commencement

55. (1) This Act is called the Metrology Act, 2021 and commences on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined in respect of different provisions in terms of subsection (1).

SCHEDULE Laws Repealed (Section 54)

No. and year of law	Title of law	Extent of repeal
Act No. 76 of 1973	Measuring Units and National Measuring Standards Act, 1973	The whole
Act No. 77 of 1973	Trade Metrology Act, 1973	The whole
Act No. 34 of 1975	Trade Metrology Amendment Act, 1975	The whole
Act No. 14 of 1995	Trade Metrology Amendment Act, 1995	The whole
Act No. 17 of 2005	Metrology Amendment Act, 2005	The whole
