
GENERAL NOTICE

NOTICE 1004 OF 2012

DEPARTMENT OF TRADE AND INDUSTRY

LEGAL METROLOGY BILL FOR GENERAL COMMENT

The Legal Metrology Bill, as set out in the Schedule hereto, is hereby published for public comment.

Any person who wishes to submit representations or comments in connection with the Bill is invited to do so by not later than 16h00 on **18 January 2013**. Comments received after this time may not be considered.

All representations and comments must be submitted in writing to the Director:
Technical Infrastructure: Industrial Development Division.

By post to:

The Director: Technical Infrastructure

Industrial Development Division

Department of Trade and Industry

Attention: Anna-Marie Lötter

Private Bag X 84

Pretoria 0001

By e-mail to alotter@thedti.gov.za

REPUBLIC OF SOUTH AFRICA

LEGAL METROLOGY BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary
of Bill published in Government Gazette No. ... of ... 2012) (The English text is the
official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B —2012]

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BILL

To provide for the administration and maintenance of legal metrology technical regulations in order to promote fair trade and in order to protect public health and safety and the environment; and to provide for matters connected therewith.

PREAMBLE

Whereas it is desirable to—

- promote fair trade and to protect public health and safety and the environment;
- provide for the implementation of a regulatory and compliance system for legal metrology by the National Regulator for Compulsory Specifications and for the administration and maintenance of legal metrology technical regulations; and
- provide for market surveillance by the National Regulator for Compulsory Specifications in order to ensure compliance with legal metrology technical regulations,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

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

"Commission" means the Commission of the National Regulator for Compulsory Specifications contemplated in section 6 of the National Regulator for Compulsory Specifications Act;

"Commissioner" means the Commissioner contemplated in section 21 of the National Regulator for Compulsory Specifications Act;

"correct", in relation to any measuring instrument, means correct with due allowance for such limits of error or sensitivity as may be prescribed;

"distinctive mark" means a mark associated with a voluntary scheme contemplated in section 36;

"importer" means an importer defined in section 1(1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964)

"initial verification" means verification of a new measuring instrument that has not been previously verified;

"legal metrology technical regulation" means a legal metrology technical regulation declared or amended by the Minister in terms of section 15(1)(a), (b) or (c);

"market surveillance inspector" means any inspector appointed in terms of section 6;

"manufacture" includes produce, assemble, alter, modify, adapt, convert, process or treat.

"measuring instrument"—

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

as intended in Section 15.

"measuring unit" means any unit published or prescribed in terms of section 2 of the Measurement Units and Measurement Standards Act, 2006 (Act No. 18 of 2006), and includes any prescribed internationally accepted unit;

"Minister" means the Minister of Trade and Industry;

"National Regulator" means the National Regulator for Compulsory Specifications for South Africa established by section 3(1) of the National Regulator for Compulsory Specifications Act;

"National Regulator for Compulsory Specifications Act" means the National Regulator for Compulsory Specifications Act, 2008 (Act No. 5 of 2008);

"person responsible for repairs" means any person who is registered in terms of section 10 to repair a measuring instrument;

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

"premises" means any land or any building or other structure, and includes any train, boat, ship, aircraft or any other vehicle;

"prescribe" means prescribe by regulation;

"prescribed purpose" means such purpose as may be prescribed in relation to—

- (a) the use, possession, manufacture or import of any measuring instrument;
- (b) the manner and result of measurement in the fields of trade, health, safety and environment and any other measurement of a legal nature; and
- (c) the expression of the quantity of any product;

"regulation" means any regulation made in terms of section 37 of this Act;

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

"Repair Body", means any person

- a) who fulfills prescribed requirements for a repair body and
- b) designated in terms of Section 9 of this Act to repair measuring instruments

"reverification ", in relation to any measuring instrument, means verification following the initial verification and includes—

- (a) verification done after repair that affects the current verification status;
- (b) verification at the request of the user;

"SABS" means the South African Bureau of Standards referred to in section 3 of the Standards Act, 2008 (Act No. 8 of 2008);

"SANS" means a South African National Standard approved by the SABS in accordance with the Standards Act, 2008 (Act No. 8 of 2008);

"sell" includes to offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale, or to exchange or to dispose of for any consideration whatever, or to transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid;

"this Act" includes any regulation.

"trade" includes—

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

"type approval" means a decision that a type of measuring instrument complies with the relevant requirements of this Act and is suitable for use for a prescribed purpose in such a way that it is expected to provide reliable measurement results over a defined period of time;

"unauthorised measuring unit" means a measuring unit other than a measuring unit permitted by this Act;

"unverified", in relation to a measuring instrument, means not verified or not reverified, if such measuring instrument should under this Act have been verified or reverified;

"verification body" means any person—

- (a) accredited in terms of section 22 read with sections 23 and 24 of the Accreditation for Conformity Assessment, Calibration and Good Laboratory Practice Act, 2006 (Act No.19 of 2006), to verify measuring instruments; and designated in terms of section 7 of this Act to verify measuring instruments or
- (b) designated in terms of section 7 of this Act to verify measuring instruments without accreditation where no accreditation scheme is available.

"verification mark" means a mark that is as far as is possible indelible and that indicates that a measuring instrument has been verified;

"verification officer" means a person appointed in terms of section 8;

"verify" means the procedure of examination and issuing of a verification certificate and, if required, marking with a verification mark, that ascertains and confirms that the measuring instrument complies with a legal metrology technical regulation, and includes initial verification and reverification.

CHAPTER I

APPLICATION AND ADMINISTRATION OF ACT

Application of Act

2. This Act applies to measurable products and services, measurements in trade, health, safety and the environment and measuring instruments used for a prescribed purpose.

Administration of Act

3. Subject to the control of the Minister, this Act is administered by the National Regulator.

Functions of National Regulator

4. (1) The National Regulator must—
- (a) make recommendations to the Minister with regard to legal metrology technical regulations;
 - (b) administer and maintain legal metrology technical regulations;
 - (c) carry out market surveillance through inspections in order to monitor compliance with legal metrology technical regulations;
 - (d) enforce compliance with legal metrology technical regulations;

- (e) Ensure access to and maintain the equipment required for market surveillance inspection, verification and type approval examination purposes;
- (f) approve and verify measuring instruments;
- (g) control the repair of measuring instruments;
- (h) provide calibration services for measuring standards;
- (i) inform the South African commerce, industry and the public about legal metrology technical regulations;
- (j) establish and maintain the necessary expertise on an internationally acceptable level;
- (k) participate and represent South Africa at international and regional level;
- (l) co-ordinate, interact and manage the international, regional and bilateral interaction with other institutes responsible for legal metrology;
- (m) issue certificates that permit instruments or products to be sold or services to be supplied; and
- (n) provide for compliance schemes and must control the use of distinctive marks and verification marks.

(2) The National Regulator may—

- (a) establish specialist consultative committees to provide input into the process to interpret and implement legal metrology technical regulations;
- (b) obtain membership of, participate in and develop relationships with regional and international bodies having any objects similar to the functions of the National Regulator;

- (c) participate in the International Organization for Legal Metrology, established by the "Convention establishing an International Organisation of Legal Metrology" done at Paris on 12 October 1955, and any other institute responsible for legal metrology;
- (d) enter into agreements with service providers to inspect, examine, test, verify or analyse samples on behalf of the National Regulator; and
- (e) obtain the cooperation of other organs of state, and enter into agreements with them.

Delegation of functions by Commission

5. (1) The Minister may, subject to such conditions as it may impose, delegate or assign to the Commissioner any power or duty conferred or imposed on it by this Act.

(2) The Commissioner may, subject to such conditions as he or she may impose, delegate or assign any power or duty—

- (a) conferred or imposed on him or her in terms of this Act; or
- (b) delegated or assigned to him or her by the Minister in terms of subsection (1), to any market surveillance inspector or verification officer.

Appointment of market surveillance inspectors

6. (1) The Commissioner must appoint a suitably qualified person as market surveillance inspector, in general or for a specific purpose.

(2) The Commissioner may appoint an employee of the National Regulator or of any prescribed service provider as a market surveillance inspector.

(3) The Commissioner must furnish a market surveillance inspector appointed in terms of this section with a certificate signed by the Commissioner stating that the market surveillance inspector has been appointed as an inspector, in general or for a specific purpose, as the case may be.

Designation of verification bodies

7. The Commissioner must designate a verification body in the prescribed manner to verify measuring instruments in accordance with this Act.

Appointment of verification officers

8. (1) The Commissioner must appoint a verification officer to verify measuring instruments of any particular kind in accordance with this Act.

(2) The Commissioner may appoint an employee of the National Regulator or any designated verification body as a verification officer.

(3) The Commissioner must furnish a verification officer with a certificate stating that the verification officer may undertake verifications in terms of the Act.

Designation of repair bodies

9. The Commissioner must designate a repair body in the prescribed manner to repair measuring instruments of any particular kind in accordance with this Act.

Registration of persons responsible for repairs

10. (1) The Commissioner must register any person as the person responsible for the repair of measuring instruments of any particular kind in accordance with this Act.

(2) Requirements for registration and proof of competence are as prescribed.

(3) The Commissioner must furnish a person responsible for repairs with a certificate stating that the person may undertake repairs in terms of the Act.

Registration of importers, manufacturers and persons who offer for sale any prescribed measuring instrument, product or service

11. Any importer, manufacturer or any person who offers for sale any prescribed measuring instrument, product or service must register in the prescribed manner and is subject to any relevant legal metrology technical regulation.

Advisory Forum

12. (1) The Minister must establish an Advisory Forum with a balance of interests consisting of representatives of organisations who have an interest in the matters contemplated in this Act.

(2) The Advisory Forum must advise the Minister on—

- (a) matters in respect of which the National Regulator could play a role ; and
- (b) any other matter on which the Minister requests advice.

(3) The Commission must establish a constitution and, if necessary, rules for the Advisory Forum.

Funds of National Regulator in respect of legal metrology

13. (1) For the purposes of this Act, the funds of the National Regulator consist of—

- (a) money appropriated by Parliament for that purpose;
- (b) fees charged in terms of section 17(3)(b);
- (c) income derived from its services; and
- (d) money received from any other source.

(2) The Minister, at the recommendation from the Commission and with the approval of the Minister of Finance, must set the amounts for fees by notice in the *Gazette* to be charged in terms of section 17(3)(b).

(3) Amounts set in terms of subsection (2) must include fees for type approval, verification, and calibration, and may provide for payments in respect of the delay of the proceedings as a result of an omission by the person who submits a measuring instrument for type approval, verification or calibration .

Fees charged by designated bodies

14. (1) A verification body may charge such fee as may be agreed upon by that verification body and the person submitting the measuring instrument for verification in respect of the verification of a measuring instrument contemplated in section 23.

(2) A repair body may—

(a) charge such fees as may be agreed upon by that repair body and the person submitting a measuring instrument for repair; as

CHAPTER II

LEGAL METROLOGY TECHNICAL REGULATIONS

Legal metrology technical regulations

15. (1) The Minister may, in respect of any measuring instrument or any product or service which may affect trade, public safety or the health environment, or in respect of any other prescribed purpose, on the recommendation of the Commission and by notice in the *Gazette*—

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

- (2) A notice under subsection (1)(a), (b) or (c)—
- (a) must contain full particulars of the specification, provision or amendment;
 - (b) comes into operation on a date fixed in the notice, which date may not be less than two months after the date of publication of the notice; and
 - (c) may fix different dates on which different provisions of a legal metrology technical regulation come into operation.

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

(4) The Minister may not publish a notice under subsection (1)(a), (b) or (c), unless a preliminary notice has been published in the *Gazette*—

- (a) setting out full particulars of the proposed a legal metrology technical regulation or amendment; and
- (b) in which interested persons are invited to comment on the proposed legal metrology technical regulation in writing by not less than two months after the date of the publication of the preliminary notice.

Declaration or amendment of legal metrology technical regulations

16. (1) A proposal to declare or amend a legal metrology technical regulation in terms of section 15(1)(c) must be submitted to the National Regulator in writing and be motivated by the person proposing that declaration or amendment .

(2) The National Regulator must, if the proposal referred to in subsection (1) is feasible—

- (a) request SABS to draft a SANS that may be applied in respect of the proposal contemplated in subsection (1); and
- (b) agree on a time limit with SABS, by which time such SANS must be duly published by SABS.

(3) If a proposal referred to in subsection (1) is feasible and no SANS is published by SABS in terms of subsection (2)(b), the National Regulator must proceed with the prescribed consultation process.

Effect of declaration as legal metrology technical regulations

17. (1) No person may import, sell or supply a measuring instrument, product or render a service to which a legal metrology technical regulation applies, except in accordance with that legal metrology technical regulation.

(2) No person may import or sell a measuring instrument or product, or render a service, to which a legal metrology technical regulation applies, unless—

- (a) the measuring instrument, product or service complies with, or has been manufactured in accordance with, the legal metrology technical regulation, or both; and
- (b) if applicable, the distinctive mark referred to in section 36(1) has been applied to the measuring instrument or product in the prescribed manner and the measuring instrument, product or service has been marked in accordance with any requirements in terms of section 36(2).

(3) Any person who imports, sells or supplies a measuring instrument, product or service to which a legal metrology technical regulation applies must—

- (a) keep such records as may be prescribed; and
- (b) pay such fees to the National Regulator as may be prescribed.

(4) Subject to such criteria as may be prescribed, the National Regulator may issue a written exemption to a person from the provisions of subsection (2)(a).

Measuring instrument, product or service not conforming to legal metrology technical regulation

18. (1) If the National Regulator finds that a measuring instrument, product or service does not conform to the legal metrology technical regulation concerned, the National Regulator may direct in writing that such measuring instrument, product or service must be confiscated, destroyed or dealt with in such other manner as the National Regulator may direct.

(2) Any cost incurred by the National Regulator for the confiscation, destruction or otherwise dealing with the measuring instrument, product or service contemplated in subsection (1) may be recovered from the person using such measuring instrument or product, or rendering such service.

(3) The National Regulator must inform the Minister in writing of any final action taken in terms of this section within 21 days of such action being taken.

CHAPTER III

MEASURING STANDARDS

Measuring standards used by market surveillance inspectors, verification officers and persons responsible for repairs

19. The National Regulator or any approved service provider, designated verification body or repair body must provide such measuring standards as may be prescribed for use by any market surveillance inspector, verification officer or person responsible for repairs for the purposes of the performance by his or her functions under this Act.

CHAPTER IV

MARKET SURVEILLANCE INSPECTIONS

Powers of market surveillance inspectors

20. (1) In order to monitor and enforce compliance with the provisions of this Act, and subject to the conditions of his or her appointment, a market surveillance inspector may, at any reasonable time and without prior notice, enter any premises, other than a private dwelling, or stop any vehicle in or upon which—

(a) a measuring instrument, product or service in respect of which there is a legal metrology technical regulation, is—

- (i) manufactured or sold;
 - (ii) stored, kept for sale or used in the course of any business; or
 - (iii) stored for any purpose in connection with the import or the export of the measuring instrument, product or service;
- (b) any manufacture, sale, use or storage is reasonably suspected; or
- (c) any records with regard to the import, manufacture, sale or use of any measuring instrument, product or service referred to in paragraph (a) or (b) are kept.

(2) A market surveillance inspector referred to in subsection (1) may—

- (a) Inspect any measuring instrument, products or other thing which may in terms of this Act be inspected, or order that for the purposes of inspection such measuring instrument, products or other thing including documentation pertaining to the inspection, be placed at his or her disposal.
- (b) seize and retain subject to subsection (8) or suspend the use or provision of any measuring instrument, product or service which does not conform to or has not been manufactured or provided in accordance with a legal metrology technical regulation that applies to it or any record document or certificate pertaining to such measuring instrument product or service;
- (c) order a person offering any measuring instrument or product for sale, to stop such offering;
- (d) order the person in whose possession or on whose premises or vehicle such non-compliant measuring instrument, product or service was found, or the agent

or employee of such person, to withdraw the whole, or any part, of such product or service from sale or to withdraw such measuring instrument from further use or sale or to take such other steps as that market surveillance inspector may deem necessary.

(3) A market surveillance inspector referred to in subsection (1) may enter a private dwelling or any place other than a place referred to in subsection (1) only—

- (a) with the consent of the owner or occupier; or
- (b) if authorised to do so by a warrant issued in terms of subsection (4).

(4) A warrant contemplated in subsection (3) may be issued by a judge or a magistrate if it appears from written information given by the market surveillance inspector on oath or affirmation that there are reasonable grounds for believing that a contravention of this Act has been or is being committed within the area of jurisdiction of that judge or magistrate.

(5) The warrant contemplated in subsection (3) must specify the parameters within which the market surveillance inspector may perform an entry, search or seizure.

(6) A market surveillance inspector entering any premises or vehicle referred to in subsections (1) and (3) may be accompanied by an interpreter.

(7) A market surveillance inspector who enters and inspects any premises or vehicle under this section must conduct the entry and inspection with strict regard for decency and order, and with regard to each person's right to dignity, freedom, security and privacy.

(8) A market surveillance inspector who removes anything from a premises or a vehicle being searched must—

- (a) issue a receipt for it to the owner or person in control of the premises or vehicle; and
- (b) return it as soon as practicable after it has served the purpose for which it was removed.

(9) Any person, or any agent or employee of such person, in charge of a measuring instrument, product or service that is being inspected by any market surveillance inspector referred to in subsection (1) must at the request of any such market surveillance inspector, render such assistance as may be necessary for the purposes of the inspection by the market surveillance inspector.

(10) A market surveillance inspector must deface, in the prescribed manner, the verification mark on any measuring instrument which—

- (a) he or she finds to be false, defective or inaccurate; or
- (b) does not comply with any—
 - (i) requirement of this Act;
 - (ii) limitation or condition regarding verification in terms of section 17(2)(a); or
 - (iii) prescribed requirement contemplated in section 21(2)(b).

(11) (a) Any measuring instrument contemplated in subsection (10) must be regarded as unverified or rejected.

(b) The market surveillance inspector who defaces any verification mark on any measuring instrument contemplated in subsection (10) must at

the same time issue to the person in charge of the measuring instrument a certificate stating the reason for the defacement.

CHAPTER V

TYPE APPROVAL AND VERIFICATION OF MEASURING INSTRUMENTS

Type approval of measuring instruments

21. (1) Every type of measuring instrument used for a prescribed purpose is subject to type approval unless exempted in terms of this Act.

(2) (a) A type of measuring instrument contemplated in subsection (1) that is not exempted must be submitted for type approval in accordance with the prescribed requirements.

(b) If the type of measuring instrument contemplated in paragraph (a) complies with the prescribed requirements the Commissioner must issue a type approval certificate.

(3) The Commissioner may withdraw or amend any certificate issued in terms of subsection (2)(b) if the measuring instrument no longer complies with the requirements.

(4) The period of validity of a certificate issued in terms of subsection (2)(b) is as prescribed.

Type approval offences

22. A person is guilty of an offence if he or she, without the written permission of the Commissioner—

- (a) sells or makes available for use any new type of a measuring instrument contemplated in section 21(2)(a) before the issue of a certificate in respect of the new type in terms of section 21(2)(b);
- (b) alters any model or modified type of a measuring instrument in respect of which a certificate was issued in terms of section 21(2)(b) with regard to any portion of the material of which or the mode in which or the principle according to which the measuring instrument was made, and pretends to any person that the type so altered is the type in respect of which a certificate in terms of section 21(2)(b) was issued; or
- (c) represents to any person that a measuring instrument may be used—
 - (i) for a particular purpose whilst it may not be so used in terms of this section; or
 - (ii) in a particular manner whilst it may not be so used in terms of this section.

Verification of measuring instruments

23. (1) All measuring instruments, including those used by the State for a prescribed purpose, are subject to initial verification and reverification in accordance with the relevant legal metrology technical regulations, unless the measuring instrument is exempted from initial verification or reverification in terms of this Act.

(2) Measuring instruments must be submitted for verification at the prescribed time and in the prescribed manner.

Powers of verification officers

24. (1) For the purposes of this Act, a verification officer may verify any measuring instrument or a particular kind of measuring instrument for which he or she is appointed in terms of this Act.

(2) A verification officer may not repair any prescribed measuring instrument. SLA to check please as this is not actually a power but gives rise to the offence.

(3) (a) If a verification officer in the exercise of his or her powers contemplated in subsection (1) finds that the measuring instrument in question does not comply with the requirements of this Act, the verification officer must reject such measuring instrument by defacing the verification mark in the prescribed manner.

(b) A measuring instrument whose verification mark has been defaced in terms of paragraph (a) must be regarded as unverified.

(c) A verification officer who defaces any verification mark on any measuring instrument in terms of paragraph (a) must immediately after he or she has defaced the verification mark issue to the person in charge of the measuring instrument in question a certificate stating the reason for the defacement and a copy of that certificate must be submitted to the National Regulator.

(4) If a verification officer in the exercise of his or her powers contemplated in subsection (1) finds that the measuring instrument in question complies with the requirements of this Act, he or she must—

- (a) if a verification mark is prescribed apply such verification mark to the measuring instrument in the prescribed manner; and
- (b) at the same time issue to the person in charge of the measuring instrument with a verification certificate.

Offences in connection with verification of instruments

25. (1) Any verification officer who—

- (a) consents to the continued use of a measuring instrument that was rejected in terms of section 24(3)(a);
- (b) issues a document to the effect that a measuring instrument has been verified under this Act if that measuring instrument has not been verified;
- (c) uses a verification mark for any purpose other than the intended purpose;

- (d) fails to reject a measuring instrument which is found not to comply with the requirements of this Act;
- (e) repairs a measuring instrument ;.
- (f) unless a measuring instrument or a particular kind of measuring instrument has been submitted or made available to him or her by the owner or user thereof for verification—
 - (i) falsely creates the impression with any owner or user that a measuring instrument is subject to verification by him or her; or
 - (ii) compelled any owner or user to have a measuring instrument verified by him or her,

is guilty of an offence.

(2) Any person who—

- (a) forges or counterfeits any stamp or die used for the verification of any measuring instrument;
- (b) wilfully falsifies or tampers with a measuring instrument used for any prescribed purpose;
- (c) otherwise than in the capacity of a market surveillance inspector, a verification officer or a person responsible for repairs acting in terms of any regulation and save as provided in section 26, obliterates or removes from any measuring instrument any verification mark or any part thereof;

- (d) otherwise than in the capacity of a verification officer, places upon any measuring instrument any mark purporting to indicate that such measuring instrument has been verified;
- (e) sells, utters or disposes of, for use for any prescribed purpose, any measuring instrument that has been tampered with or that has been falsified or on which the verification mark has been defaced in terms of section 24(3)(a); or
- (f) wilfully commits or is a party to or aids in or incites any other person to the commission of any fraud or deception in the use of any measuring instrument, is guilty of an offence.

CHAPTER VI

REPAIR OF MEASURING INSTRUMENTS

Functions of persons responsible for repairs

26. (1) A person responsible for repairs and who wishes to issue a guarantee contemplated in subsection (3)(b) must be—

- (a) employed by a designated repair body; and
- (b) registered in terms of section 10.

(2) The person registered in terms of Section 26(1)(b) may not verify any prescribed measuring instrument.

(3) Subject to any prescribed instructions relating to the defacing, obliteration or breaking of any verification mark—

- (a) the person responsible for repairs may not repair any measuring instrument used for any prescribed purpose unless he or she has first permanently obliterated any verification mark, including a mark defaced in terms of section 24(3)(a), thereon;
- (b) the person responsible for repairs who has repaired any measuring instrument used for any prescribed purpose must furnish a guarantee signed by him or her to the user or the owner of that measuring instrument that the measuring instrument is correct and verifiable under this Act, unless that measuring instrument is immediately after the repair verified by a verification officer who is not associated with the person responsible for repairs who carried out the repair.

(4) A guarantee issued in terms of subsection (3)(b) is valid for a prescribed period.

(5) A copy of the guarantee contemplated in subsection (3)(b) must be forwarded to the National Regulator in the prescribed manner.

(6) (a) No person may use for any prescribed purpose any measuring instrument that has been repaired, unless the measuring instrument has been verified or a guarantee in writing has in terms of subsection (3)(b) been issued in respect of the measuring instrument.

(b) If a person relies on a guarantee contemplated in paragraph (a) that person must ensure that the measuring instrument is verified before the expiry of the guarantee.

(7) Work carried out on, or an adjustment made to, a measuring instrument that does not constitute a repair, does not invalidate any current verification in respect of that measuring instrument as long as the person who worked on or adjusted the measuring instrument issues a prescribed certificate to this effect, stating—

- (a) the nature of the work done or the adjustment made; and
- (b) the serial number and date of issue of the current valid verification certificate pertaining to that instrument.

Offences by persons responsible for repair, repair bodies and users

27. (1) A person who is not registered in terms of section 10 and who repairs a measuring instrument is guilty of an offence.

(2) A person registered in terms of Section 26(1)(b) who verifies any prescribed measuring instrument is guilty of an offence

(3) A repair body that is not designated in terms of section 9 and that repairs a measuring instrument is guilty of an offence.

(4) A person who contravenes or fails to comply with section 26(3)(a) or section 26(3)(b) is guilty of an offence.

(5) Any person who uses a measuring instrument for any prescribed purpose that has been repaired without having it immediately thereafter verified, is guilty of an offence unless that measuring instrument is covered by a guarantee contemplated in section 26(3)(b).

(5) Any person who uses a measuring instrument for a prescribed purpose after the guarantee contemplated in section 26(3)(b) has expired is guilty of an offence unless that measuring instrument has been verified before the expiry of that guarantee.

CHAPTER VII

MANNER OF USE, POSSESSION OF OR SALE OF MEASURING INSTRUMENTS AND PRODUCTS

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

28. Notwithstanding anything to the contrary in this Act or any other law, the Minister may by notice in the *Gazette* restrict or prohibit the manufacture, import, use or possession of any measuring instrument to such extent and under such conditions as may be necessary in order to achieve the object of effecting the application of measuring units of the International System of Units and any other prescribed measuring unit in the Republic.

Sale, supply and use of unverified measuring instruments

29. (1) (a) No person may sell or supply for use for any prescribed purpose any unverified measuring instrument if such measuring instrument must be

verified in terms of the Act unless he or she has obtained prior authority in writing for such sale or supply from the Commissioner.

(b) The Commissioner may issue such authority only if—

- (i) he or she is satisfied that the seller or supplier cannot, without undue delay or inconvenience, cause such instrument to be verified before its sale or supply; and
- (ii) the seller or supplier furnishes the Commissioner with a guarantee in a prescribed format and under such conditions as may be prescribed to the effect that the instrument is correct and verifiable under this Act.

(2) No person may use an unverified measuring instrument unless he or she has obtained the permission of the Commissioner.

(3) Notwithstanding subsection (2), a person who has acquired an unverified measuring instrument from a person contemplated in subsection (1)(a) and covered by an permission contemplated in (1) (b), may use such measuring instrument but he or she must before any expiry date given on the authority , or otherwise at the earliest opportunity, cause it to be verified.

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

30. (1) A person who manufactures, sells or causes to be sold—

- (a) any false, defective or inaccurate measuring instrument; or

(b) any measuring instrument intended for measuring for a prescribed purpose; which does not comply with the requirements of a notice issued under section 28 or with the requirements of any applicable legal metrology technical regulation is guilty of an offence.

(2) Any person who—

- (a) furnishes a guarantee under section 29(1)(b)(ii) in respect of any measuring instrument which is not correct and verifiable under this Act; or
 - (b) contravenes or fails to comply with section 29(2),
- is guilty of an offence.

Measuring instruments to be wholly exposed

31. (1) Any person who, in the presence of the purchaser of any product and in connection with the measuring of the quantity of such product, uses any measuring instrument, must keep such measuring instrument wholly exposed to the view of such purchaser.

(2) Any person who uses any measuring instrument in the presence of a person in respect of whom the first mentioned person provides a service must keep such measuring instrument wholly exposed to the view of the person in respect of whom the first mentioned person provides a service.

(3) Any person who uses any measuring instrument other than in the presence of a person in respect of whom the first mentioned person provides a service, must grant

free access to such measuring instrument and its indications to any person affected by or to whom the measurement applies .

(4) Any person who in the retail trade sells any product prepacked by him or her must, at the request of the purchaser of such product who wishes to measure the quantity of the product purchased, make available to that purchaser a verified measuring instrument suitable for measuring the quantity of the product in question.

Prohibition of false statement as to quantity

32. (1) Subject to subsection (2), any person who directly or indirectly makes any false, incorrect or untrue declaration or statement or wilfully misleads any person as to the quantity, expressed by number or in terms of any measuring unit, of any product or article in connection with its purchase, sale, counting or measurement or in the computation of any charges for services rendered or for any other measurement of a legal nature on the basis of number or measurement, is guilty of an offence.

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

(3) Any person who sells or causes to be sold anything, the quantity of which is expressed by number or in terms of a measuring unit, of which the actual quantity is short of that demanded of, or represented by, the seller, is guilty of an offence unless the shortage is permissible in terms of this Act.

(4) Any person who directly or indirectly makes any false, incorrect or untrue declaration of a measurement value for a measurement in respect of the delivery of a service or any other measurement of a legal nature is guilty of an offence.

Measurement for prescribed purpose to be effected in terms of certain measuring units and by means of verified measuring instruments

33. (1) Any contract, bargain, sale, purchase or transaction made or effected in the Republic in respect of any land situated therein or in respect of any interest in land so situated or in respect of any product, service rendered or measurement for any other prescribed purpose, a quantity of which is expressed in terms of any measuring unit, must be made or effected in accordance with a prescribed measuring unit for such purpose.

(2) Any tolls, rates, taxes, fines or other fees charged or collected according to measurement of a physical quantity, must be charged or collected in accordance with such measuring units as may be prescribed.

(3) No measurement for a prescribed purpose may be made or effected in the Republic by means of any measuring instrument not permitted by this

Act or which is false, defective or inaccurate or which, in the case of a measuring instrument which is required under this Act to be verified, is unverified.

(4) Subject to subsection (5), no person may import into the Republic any goods, including prepacked products, the quantity of which is expressed thereon or on any document relating thereto in terms of any unauthorised measuring unit, unless the equivalent of the quantity so expressed is also expressed in terms of a measuring unit prescribed by regulation for such purpose.

(5) Subsection (4) does not apply to any products which the Commissioner has exempted in writing or in respect of which the importer satisfies the Commissioner and the competent customs officer that such products are being imported for manufacturing purposes and not for sale.

(6) Any person who expresses the quantity of any products for sale in a manner or in terms of a measuring unit not prescribed for such purpose or in terms of any unauthorised measuring unit, is guilty of an offence.

Advertisement of measurable products and services

34. (1) No person may advertise any measurable product or service to which this Act applies unless any measurement referred to in the advertisement is expressed in a manner or in terms of such measuring unit as may be prescribed for that product or service or unless he or she has obtained prior authority in writing from the Commissioner.

(2) A person that contravenes or fails to comply with subsection (1) is guilty of an offence.

(3) For the purposes of this section, "advertisement" means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person seeks to bring any information to the attention of all or part of the public.

Manner of selling products

35. (1) No person may—

- (a) sell any product by mass unless by net mass;
- (b) sell any fluid unless, with due allowance for any prescribed limit of error, the actual liquid contents by volume at a prescribed temperature are indicated in the prescribed manner on the packaging or on any invoice, delivery note or other writing issued in connection with the sale of such fluid;
- (c) sell any product the quantity of which is determined at the time of sale thereof unless such quantity is made known to the purchaser in such manner as may be prescribed;
- (d) sell by mass any prepacked product unless the net mass of such product, with due allowance for such limits of error as may be prescribed, is indicated in the prescribed manner on the package or product or on any invoice, delivery note or other writing issued in connection with the sale of such product; or

- (e) sell or deliver to a purchaser any product sold by such person by mass and otherwise than in prepacked form, unless the net mass of such product is indicated in the manner prescribed on such product or on any invoice, delivery note or other writing delivered with such products.

(2) (a) The Minister may exempt from subsection (1)(d) any product—

- (i) that is subject to variation in mass owing to its properties or to climatic influences; or
- (ii) for which mass is only used for the purposes of designating grade or class.

(b) Notwithstanding paragraph (a) the product contemplated in—

- (i) paragraph (a)(i) must comply with such conditions, regarding quantity, as may be prescribed; and
- (ii) paragraph (a)(ii) must comply with such requirements as may be prescribed.

(3) Subsection (1)(b) and (d) does not apply to products taken from bulk and measured at the time of sale in the presence of the purchaser or his agent and sold by volume or net mass determined at such measuring.

CHAPTER VIII

COMPLIANCE SCHEMES AND USE OF MARKS

Compliance schemes and use of distinctive marks and verification marks

36. (1) The Minister may, on the recommendation of the Commission, introduce or abolish compliance schemes and, if deemed necessary, an associated distinctive mark to supplement the regulation of quantity in prepackages or any other matter pertaining to this Act.

(2) The Minister must publish the requirements for a scheme contemplated in subsection (1) and any distinctive mark associated therewith by notice in the *Gazette*.

(3) The Commissioner must authorise the design and issue verification marks and protective seals for use by verification officers, as prescribed, and maintain a register thereof,

(4) The Commissioner must authorize and maintain a register of protective seal designs used by persons responsible for repairs and employed by a repair body.

(5) A distinctive mark that has been established in terms of subsection (1) or a verification mark authorised and issued in terms of subsection (3) or a protective seal authorized in terms of subsection (4), must be regarded as a mark the use of which is prohibited in terms of section 15(1) of the Merchandise Marks Act, 1941 (Act No. 17 of 1941), except by the National Regulator or persons or bodies authorised by the National Regulator to use such mark.

CHAPTER IX

GENERAL AND MISCELLANEOUS

Regulations

37. (1) The Minister may make regulations regarding—
- (a) any matter that may or must be prescribed in terms of this Act;
 - (b) conditions for the supply, custody, care and verification of all classes of measuring standards and measuring instruments referred to in this Act;
 - (c) the classes or kinds of measuring instruments that may be type approved or verified in terms of this Act;
 - (d) the purposes for which a measuring instrument type approved or verified in terms of this Act may be used;
 - (e) the conditions with which any attachment, device or ancillary equipment connected with any model measuring instrument type approved in terms of this Act must comply;
 - (f) the manner in which the type approval examination of any model measuring instrument or part thereof submitted for type approval in terms of section 17, must be carried out;
 - (g) the material, design and construction of measuring instruments or specified models, classes or kinds of measuring instruments, and the approval of such material, design and construction;

- (h) the imposition of conditions or limitations on the use of any kind of measuring instrument;
- (i) the prohibition of the certification, recertification or use for any prescribed purpose of measuring instruments or specified models, classes or kinds of measuring instruments which are liable to—
 - (i) become inaccurate; or
 - (ii) result in or facilitate fraud or deception,or which are not made in accordance with the relevant specifications or are found to be unsuitable for such prescribed purpose;
- (j) the conditions under which fluids or solids may be sold by quantity, size or dimensions, and the conditions relating to temperature under which fluids must be sold;
- (k) 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;
- (l) the 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 may only be sold in specified containers or by means of verified or reverified measuring instruments or in accordance with any measuring unit or by number and must be prepacked according to a particular scale of quantities, sizes or dimensions;
- (m) the creation of a list of products 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 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;
- (n) the size of the letters or any other method of indicating the quantity of the contents of containers at the time of packing;
 - (o) the permissible equivalent in which a measuring unit may be expressed in terms of another measuring unit of the same physical quantity;
 - (p) 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;
 - (q) tables giving the permissible quantity per container used in trade in respect of fruit, vegetables, agricultural produce and any dry commodities;
 - (r) the forms to be used in connection with this Act;
 - (s) the permissible denominations of masspieces and measures and the manner in which such denominations shall be shown on the masspieces or measures in question;
 - (t) the continued use of any measuring instrument after rejection thereof by any inspector;
 - (u) any invoice, delivery note or other documentation referred to in section 35;

- (v) specifications for, and conditions, limitations and requirements in connection with the use or degree of accuracy of, particular vessels; and
- (w) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) The regulations may authorise the Commissioner to grant exemption in writing from any provision thereof on such conditions and for such period as he or she may deem fit.

(3) Any regulation prescribing fees must be made with the concurrence of the Minister of Finance.

Penalties

38. Any person who contravenes or fails to comply with any provision of this Act is guilty of an offence and if convicted of an offence under this Act is liable to a fine or imprisonment for a period not exceeding one year and on a second or subsequent conviction to a fine or imprisonment for a period not exceeding two years.

Acts or omissions by managers, agents or employees

39. (1) Whenever any manager, agent or employee of any person does or omits to do any act which it would be an offence under this Act for such person to do or omit to do, then, unless it is proved that—

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

such person must be regarded as having done or omitted to do that act himself or herself and is guilty of that offence and liable to be convicted and sentenced in respect of that offence.

(2) The fact that the person contemplated in subsection (1) issued instructions forbidding any such act or omission is not of itself sufficient proof that he or she took all reasonable steps to prevent such act or omission.

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

Disclosure of certain information

40. (1) The Commissioner may, if it is necessary in the public interest and to protect the public and the environment, reveal in any manner—

- (a) any information that it is necessary to reveal in order to prevent the public from being misled concerning any aspect regulated by this Act; and
- (b) the name of a person who does not comply with any provision of this Act.

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

Confidentiality of certain information

41. Any person who is or was concerned in the performance of any function in terms of this Act, may not disclose any information which he or she obtained in the performance of such a function, except—

- (a) to the Minister;
- (b) to any person who of necessity requires it for the performance of his or her functions in terms of this Act;
- (c) if he or she is a person who of necessity supplies it in the performance of his or her functions in terms of this Act;
- (d) if such information is required in terms of any law or as evidence in any court of law; or
- (e) to any competent authority which requires it for the institution, or an investigation with a view to the institution, of any criminal prosecution.

Repeal and amendment of laws and transitional provisions

42. (1) Subject to the provisions of subsection (2), the laws mentioned in the first column of the Schedule are hereby repealed or amended to the extent set out in the third column of the Schedule.

(2) Any proclamation, regulation, notice, approval, authority, return, certificate or document issued, made, promulgated, given or granted and any other action taken under any provision of a law repealed by subsection (1), must be regarded as having been issued, made, promulgated, given, granted or taken under the corresponding provision of this Act.

Short title and commencement

43. This Act is called the Legal Metrology Act, 2012, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule**LAWS REPEALED***(Section 42)*

Short title of law	Number and year of law	Extend of repeal
Trade Metrology Act, 1973	Act No. 77 of 1973	The whole
Trade Metrology Amendment Act, 1975	Act No. 34 of 1975	The whole
Trade Metrology Amendment Act, 1984	Act No. 14 of 1984	The whole
Trade Metrology Amendment Act, 1990	Act No. 15 of 1990	The whole
Trade Metrology Amendment Act, 1993	Act No. 17 of 1993	The whole
Trade Metrology Amendment Act, 1994	Act No. 42 of 1994	The whole
Trade Metrology Amendment Act, 1996	Act No. 58 of 1996	The whole

LAWS AMENDED

Short title of law	No and year of law	Extent of repeal or amendment
National Regulator for Compulsory Specifications Act, 2008	Act 5 of 2008	Replace " Board " means the Board of the National Regulator for Compulsory Specifications appointed in terms of section 6; with " Commission "

	Section 6 - 10 as well as 21-23 wholly repealed and replaced by the following Sections: Appointment of Commissioner 6. (1) The Minister must appoint a person with suitable qualifications and experience to be the Commissioner for a term of five years. (2) The Minister may re-appoint a person as Commissioner at the expiry of that person's office. (3) The Commissioner, who is the Chief Executive Officer of the Commission, is responsible for the general administration of the Commission and for carrying out any functions assigned to it in terms of this Act, and must— (a) perform the functions that are conferred on the Commissioner by or in terms of this Act; (b) manage and direct the activities of the Commission; and (c) supervise the Commission's staff. (4) The Minister must, in consultation with the Minister of Finance, determine the Commissioner's remuneration, allowances, benefits, and other terms and conditions of employment. (5) The Commissioner may, on three month's written notice addressed to the Minister, resign as Commissioner. (6) The Minister may remove the Commissioner from office for— (a) serious misconduct; (b) permanent incapacity; (c) engaging in any activity that may undermine the integrity or standing of the Commission; or (d) any other legitimate ground that justifies the removal of the Commissioner. Appointment of Deputy Commissioner and staff of the Commission 7. (1) The Commissioner, in consultation with the Minister,
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	must appoint a person with suitable qualifications and experience to be the Deputy Commissioner for a term of five years. (2) Section 6(2), (4), (5) and (6) of section 6 apply to the Deputy Commissioner, read with such changes as are required by the context. (3) The Deputy Commissioner must perform the functions of the Commissioner whenever— (a) the Commissioner is unable for any reason to perform those functions; or (b) the office of Commissioner is vacant. (4) The Commissioner may— (a) appoint staff, or contract with other persons, to assist the Commission in carrying out its functions; and (b) in consultation with the Minister and the Minister of Finance, determine the remuneration, allowances, benefits, and other terms and conditions of appointment of each member of the staff.
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		Replace Section 11 with the following: (1) The Minister may appoint one or more specialist committees to advise the Commission on the management of its resources, or the performance of its functions. (2) The Minister may assign specific powers to the members of a specialist committee for the purposes of performing any function contemplated in subsection (1). (3) A specialist committee may – (a) be established for an indefinite term, or for a period determined by the Minister when the committee is established; and (b) determine its own procedures. (4) A specialist committee established under this section must – (a) perform its functions impartially and without fear, favour or prejudice; and (b) consist of – (i) not more than eight persons who are independent from the Commission and are appointed by the Minister to serve for a period of not more than five years, as determined by the Minister when the person is appointed; and (ii) not more than two senior employees of the Commission designated by the Commissioner. (5) To be appointed or designated as a member of a specialist committee in terms of this section, a person must – (a) be a fit and proper person; (b) have appropriate expertise or experience; and (c) have the ability to perform effectively as a member of the committee. (6) The members of a specialist committee
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		must not – (a) act in any way that is inconsistent with subsection 4(a) or expose themselves to any situation in which the risk of a conflict may arise between their responsibilities and any personal financial interest; or (b) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person. (7) A member ceases to be a member of a specialist committee if the – (a) member resigns from the committee; (b) Minister terminates the person's membership because the member no longer complies with subsection (5) or has contravened subsection (6); or (c) member's term has expired. (8) A member of a specialist committee who has personal or financial interest in any matter on which the committee gives advice must disclose that interest and withdraw from the proceedings of the specialist committee when that matter is discussed. (9) The Commission must remunerate and compensate for expenses – (a) a member mentioned in subsection (4)(b)(i), as determined by the Minister; and (b) a member designated as contemplated in (4)(b)(ii), to the extent that the member's remuneration and expense compensation as an employee of the Commission does not extend to that person's services as a member of the specialist committee.
		Section 12 replace Board with Minister

		Section 13 – replace Board with Commission
		Section 15 - replace Board with Commission
		Replace Section 25 with the following
		(1) The Commissioner may delegate any power conferred on him or her, or any duty assigned to him or her under this Act, to any other person with appropriate knowledge and experience who is under the control of the Commissioner. (2) A delegation or assignment under subsection (1) must be in writing and— (a) may be subject to any conditions or restrictions determined by the Commissioner; (b) does not prevent the exercise of the relevant power by the Commissioner; and (c) may be withdrawn or amended by the Commissioner.
		Transitional provisions
		The Board of the NRCS cease to exist on the date that the Legal Metrology Act becomes effective.