



Act No. 34, 1975

## TRADE METROLOGY AMENDMENT ACT, 1975.

**ACT**

To amend the provisions of the Trade Metrology Act, 1973, relating to definitions; so as to provide for the inspection and examination of certain containers; to limit the right of ascertaining whether a measuring instrument used in trade is certified; to extend the duty to give notice of the place where certain measuring instruments are kept; to provide for the verification or testing and certification or recertification of fixed, delicate or heavy measuring instruments at the place where they are used only; to exclude certain containers from the provisions of the said Trade Metrology Act relating to certification; to provide for the exemption from certification or recertification of certain measuring instruments used by the State or authorized persons; to qualify the duty of retail traders to keep measuring instruments available for the use of purchasers of prepacked goods; and to prohibit the use of certain vessels or containers which do not comply with the requirements of regulations applicable thereto; to amend the said provisions relating to the prohibition of the use in trade dealings of uncertified measuring instruments; so as to extend the power of making regulations; and to provide for incidental matters.

*(English text signed by the State President.)*  
*(Assented to 30 April 1975.)*

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

Amendment of  
section 1 of  
Act 77 of 1973.

1. Section 1 of the Trade Metrology Act, 1973 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "measuring instrument" of the following definition:

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

Substitution of  
section 12 of  
Act 77 of 1973.

2. The following section is hereby substituted for section 12 of the principal Act:

"Inspections and examinations. 12. The director shall arrange inspections and examinations in order to prevent the use of any measuring instrument or container which falls within the purview of, and which does not comply with the applicable requirements of this Act, and in order to prevent the sale of goods which, in respect of quantity or the manner in which they are offered for sale, do not comply with the applicable requirements of this Act."

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Amendment of  
section 13 of  
Act 77 of 1973.

## 3. Section 13 of the principal Act is hereby amended—

- (a) by the substitution of the following item for item (aa) of paragraph (a) (i) of subsection (2):  
“(aa) any measuring instrument or container used or intended to be used for any prescribed purpose; or”;
- (b) by the substitution of the following item for item (aa) of paragraph (a) (ii) of subsection (2):  
“(aa) any measuring instrument or container used or intended to be used for any prescribed purpose; or”;
- (c) by the substitution of the following paragraph for paragraph (b) of subsection (2):  
“(b) inspect or examine any measuring instrument, container, goods, articles or other thing which may in terms of this Act be inspected or examined, or order that for the purposes of inspection or examination such measuring instrument, container, goods, articles or other thing be placed at his disposal;”;
- (d) by the substitution of the following paragraph for paragraph (c) of subsection (2):  
“(c) inspect, verify or test or cause to be verified or tested any measuring instrument or container used for any prescribed purpose or which is subject to any provision of this Act and which is in the possession of any person or is found on any premises;”;
- (e) by the substitution of the following paragraph for paragraph (d) of subsection (2):  
“(d) seize and retain any measuring instrument, container, goods, articles or other thing which may be confiscated or seized in terms of this Act;”;
- (f) by the substitution for subsection (3) of the following subsection:  
“(3) Any person in charge of measuring instruments, containers or goods which are being inspected or examined by any inspector, examiner or employee referred to in subsection (1), or any policeman, or any agent or employee of such person, shall at the request of any such inspector, examiner, employee or policeman render such assistance as may be necessary for the purpose of verifying or testing such measuring instruments or containers or of measuring or counting the quantity of such goods.”; and
- (g) by the substitution for subsection (4) of the following subsection:  
“(4) Any person using any measuring instrument in trade in connection with the measuring of the quantity of goods sold by him shall, on demand of the purchaser of such goods produce such measuring instrument and any document relating to the certification thereof to such purchaser for his examination, unless the measuring instrument in question has by regulation been exempted from certification or recertification.”.

Substitution of  
section 17 of  
Act 77 of 1973.

## 4. The following section is hereby substituted for section 17 of the principal Act:

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

17. (1) If in any prosecution for an offence under this Act the question arises whether any measuring instrument not certified under this Act is not a measuring instrument exempted from certification or recertification in terms of section 18 (2) (a) or 23 or from periodical recertification by reason of such

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measuring instrument's being a contract measuring instrument referred to in section 19 (1) (a), a document purporting to be an affidavit made by a person who in that affidavit alleges—

- (a) that he is the inspector in charge of the regional office of metrology for the area in which the measuring instrument in question was found;
- (b) that if the measuring instrument in question were a measuring instrument exempted from certification or recertification in terms of section 18 (2) (a) or 23 or from periodical recertification by reason of such measuring instrument's being a contract measuring instrument referred to in section 19 (1) (a), it would in the ordinary course of events have come to his, the deponent's, knowledge and a record thereof, available to him, would have been kept; and
- (c) that there is no such record thereof, shall, upon its mere production at such prosecution, be *prima facie* proof that the measuring instrument in question is not a measuring instrument exempted from certification or recertification in terms of section 18 (2) (a) or 23 or from periodical recertification by reason of such measuring instrument's being a contract measuring instrument referred to in section 19 (1) (a).

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

- (a) that he is the inspector in charge of the regional office of metrology for the area in which the measuring instrument which forms the subject of the prosecution, was found;
- (b) that if notice had been given, as contemplated in section 19 (2), of the place where that measuring instrument is kept, it would in the ordinary course of events have come to his, the deponent's, knowledge and a record thereof, available to him, would have been kept; and
- (c) that there is no such record thereof, shall, upon its mere production, be *prima facie* proof that notice has not been given, as contemplated in section 19 (2), of the place where that measuring instrument is kept.”

Amendment of  
section 19 of  
Act 77 of 1973.

## 5. Section 19 of the principal Act is hereby amended—

- (a) by the insertion after paragraph (c) of subsection (1) of the following paragraph:

“(cA) a measuring instrument which is kept at a place situated more than 15 km by the shortest route from a place specified in the said notice; or”;

- (b) by the substitution for subsection (2) of the following subsection:

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

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Amendment of  
section 20 of  
Act 77 of 1973.

6. Section 20 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

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

Substitution of  
section 23 of  
Act 77 of 1973.

7. The following section is hereby substituted for section 23 of the principal Act:

“Measuring  
instruments  
used for  
certain  
purposes to  
be certified.

23. (1) Every measuring instrument used or possessed in connection with any prescribed purpose or any purpose contemplated in section 26 or used or possessed for the verification or testing of any measuring instrument to which the provisions of this Act are applicable, shall be certified or recertified in accordance with the provisions of this Act unless exempted from certification or recertification under this Act.

(2) If the director is satisfied that it is impracticable or unnecessary to certify or recertify any measuring instrument or any class or make of measuring instrument because of its mode or principle of construction or the manner in or purpose for which it is used or any other special circumstance relating to it or its use, he may issue a certificate in respect of such measuring instrument or such class or make of measuring instrument exempting it from the provisions of subsection (1) or of section 26, subject to such conditions, limitations or requirements as may be prescribed by regulation or as he may in any particular case deem fit to impose.

(3) The provisions of this Act relating to the certification or recertification of any measuring instrument or the use or possession of any measuring instrument which has not been certified or recertified shall, subject to any applicable condition, limitation or requirement prescribed by regulation or imposed under subsection (2), not apply in respect of any measuring instrument exempted from the provisions of subsection (1) or of section 26 by regulation or under the said subsection (2) or belonging to a class or make so exempted.

(4) The director may at any time cancel any certificate issued under subsection (2): Provided that any person who uses or has in his possession any measuring instrument to which, or belonging to the class or make to which, the certificate relates, shall be exempted from any penalty for using or possessing it for the period between the date of the cancellation of the certificate and the earliest opportunity when he could reasonably cause it to be certified or recertified.

(5) Any decision by the director under this section shall be given by him after consultation with the council.

(6) Any person who contravenes or fails to comply with any condition, limitation or requirement referred to in subsection (2), shall be guilty of an offence.”.

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Substitution of section 26 of Act 77 of 1973.

8. The following section is hereby substituted for section 26 of the principal Act:

“Certification and recertification of measuring instruments used by State or authorized person. 26. Any measuring instrument used by the State or any authorized person for the purpose of or in connection with the fixing, collection or determination of tolls, rates, taxes or other fees shall be certified or recertified in accordance with this Act unless exempted from certification or recertification under this Act.”

Amendment of section 30 of Act 77 of 1973.

9. Section 30 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any person who in retail trade sells any goods prepacked by him, shall, at the request of any purchaser of such goods who wishes to measure the quantity of the goods purchased from such person by such purchaser, make available to such purchaser a certified measuring instrument suitable for measuring the quantity of such goods.”

Substitution of section 31 of Act 77 of 1973.

10. The following section is hereby substituted for section 31 of the principal Act:

“Certain containers excluded. 31. If any vessel or container is used or possessed or intended for the measuring off of any liquid, no provision of this Act shall be so construed as to—

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

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

Amendment of section 38 of Act 77 of 1973.

11. Section 38 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) No contract, bargain, sale, purchase or transaction shall be made or effected in the Republic by means of any measuring instrument not permitted by this Act or which is false, defective or inaccurate or which, in the case of a measuring instrument which is required under this Act to be certified or recertified, is uncertified.”

Amendment of section 42 of Act 77 of 1973.

12. Section 42 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (g) of subsection (1) of the following paragraph:

“(g) exempting from the provisions of section 23 (1) or 26 any class or make of measuring instrument or any measuring instrument used for any prescribed purpose or in any particular manner, and prescribing the conditions, limitations and requirements in connection with the maintenance, use or degree of accuracy of any measuring instrument so exempted in terms of such regulations or by the director under section 23 (2);”

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- (b) by the insertion of the following paragraphs after paragraph (j) of subsection (1):  
“(jjA) with regard to any delivery note referred to in section 40;  
(jjB) prescribing specifications for, and conditions, limitations and requirements in connection with the use or degree of accuracy of, particular containers;” and
- (c) by the addition of the following subsection:  
“(3) Any regulation relating to prepacked goods may authorize the director to grant exemption in writing from any provision thereof on such conditions and for such period as he may deem fit.”

Short title.

13. This Act shall be called the Trade Metrology Amendment Act, 1975.