

# OFFICE OF THE PRESIDENT

No. 2117 9 December 1994

## NO. 42 OF 1994: TRADE METROLOGY AMENDMENT ACT, 1994.

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:

### General Explanatory Note:

Words in ***bold italic*** indicate omissions from existing enactments.

Words in *italic* indicate insertions in existing enactments.

### ACT

To amend the Trade Metrology Act, 1973, so as to insert, delete or amend certain definitions; to make provision for verification standards and the inspection and testing of measuring instruments used by verification officers; to repeal the provisions with regard to registered mechanics and the repair, servicing, maintenance and certification of contract measuring instruments; to further regulate the certification, recertification and repair of measuring instruments; and to further regulate the sale, supply and use of uncertified measuring instruments; and to provide for matters connected therewith.

(Afrikaans text signed by the President.) (Assented to 25 November 1994.)

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:-

### **Amendment of section 1 of Act 77 of 1973, as amended by section 1 of Act 34 of 1975, section 1 of Act 15 of 1990 and section 1 of Act 17 of 1993**

1. Section 1 of the Trade Metrology Act, 1973 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the substitution for the definition of "accredited laboratory" of the following definition:

"'accredited laboratory' means any laboratory accredited as contemplated in section 3(***k***) (*c*) of the Standards Act, **1982 (Act No. 30 of 1982)** 1993 (*Act No. 29 of 1993*);";

(b) by the deletion of the definitions of "contract measuring instrument" and "director-general";

(c) by the insertion after the definition of "prescribed purpose" of the following definition: " '*president*' means the president referred to in section 10 of the Standards Act, 1993 (*Act No. 29 of 1993*);";

(d) by the deletion of the definition of "registered mechanic";

(e) by the insertion after the definition of "regulation" of the following definitions; " '*repair*', in relation to any measuring instrument, means any work carried out on, or any adjustment made to, such measuring

*instrument in order to restore or maintain it in a certifiable condition but not work carried out on, or adjustment made to, a specified measuring instrument if such work or adjustment does not in any way change the metrological characteristics or the accuracy of such measuring instrument; ,repairer', in relation to a measuring instrument, means any person who repairs such instrument;"*;

(f) by the substitution for the definition of "SABS Council" of the following definition: " 'SABS Council' means the Council of the South African Bureau of Standards **mentioned** referred to in section **I 6** of the Standards Act, **1982 1993 (Act No. 29 of 1993)**;"

(g) by the insertion after the definition of "sell" of the following definition: " '*specified measuring instrument*' means any measuring instrument of a class or kind specified by the director but not a measuring instrument which has been rejected in terms of section 25;" and

(h) by the substitution for the definition of "statutory body" of the following definition: " 'statutory body' means any board, council or body of persons established *by or* under any **Act of Parliament or any ordinance of any provincial council or of the Legislative Assembly of the territory of South West Africa** law;"

### **Amendment of section 5 of Act 77 of 1973, as substituted by section 5 of Act 15 of 1990 and amended by section 3 of Act 17 of 1993**

2. Section 5 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: "(2) The SABS Council may, subject to the conditions it may impose, delegate or assign to the **director-general** *president* any power or duty conferred or imposed on it by section 3 or 4."

### **Insertion of sections 11A and 11B in Act 77 of 1973**

3. The following sections are hereby inserted in the principal Act after section 11:

#### **"Verification standards**

*11A. (1) An accredited laboratory shall provide for use by any verification officer such measuring standards (in this Act referred to as verification standards) as may be required by such verification officer for the purpose of carrying out his or her duties and functions under this Act.*

*(2) The value of any verification standard shall, with due allowance for such limits of error as may be prescribed by regulation, agree with the value signified by the denomination of such verification standard at the time of verification thereof.*

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

#### **Measuring instruments used by verification officers shall be inspected and tested**

*11B. (1) Every measuring instrument, other than any verification standard, used by any verification officer for*

*the purposes of carrying out his or her duties and functions under this Act, shall be inspected and tested before being taken into use and thereafter at such intervals as may be prescribed by regulation, and a record of each such inspection and testing shall be made and kept by the accredited laboratory responsible for providing such measuring instrument to any verification officer.*

*(2) No measuring instrument referred to in subsection (1) shall be used for the carrying out of any duty or function under this Act unless it complies at any inspection and test referred to in subsection (1) with such requirements as may, in respect of any such measuring instrument, be prescribed by regulation."*

**Substitution of section 17 of Act 77 of 1973, as substituted by section 4 of Act 34 of 1975 and amended by section 8 of Act 17 of 1993**

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. If in any prosecution for an offence under this Act the question arises whether any measuring instrument not certified under this Act is not a measuring instrument exempted from certification or recertification in terms of section 18(2)(a) or 23, *or from periodical recertification by reason of such measuring instrument's being a contract measuring instrument referred to in section 19(1)(a)* a document purporting to be an affidavit made by a person who in that affidavit alleges-

(a) that he *or she* is an inspector in charge of the regional office of metrology for the area in which the measuring instrument in question was found;

(b) that if the measuring instrument in question were a measuring instrument exempted from certification or 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 *or her*, the deponent's, knowledge and a record thereof, available to him or her, would have been kept; and

(c) that there is no such record thereof, shall, upon its mere production at such prosecution, be prima facie proof that the measuring instrument in question is not a measuring instrument exempted from certification or 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).*".

**Amendment of section 19 of Act 77 of 1973, as amended by section 5 of Act 34 of 1975 and section 10 of Act 17 of 1993**

5. Section 19 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The director may by notice in the Gazette *call upon every person possessing in respect of* any measuring instrument which in terms of this Act is required to be verified, certified or recertified-

*(a) prescribe maximum intervals within which all such measuring instruments, or a certain class or kind of such measuring instrument, shall be verified, certified or recertified; or*

(b) *call upon every person possessing any such measuring instrument to produce such measuring instrument at any accredited laboratory, any regional office of metrology or at the place and time (being not earlier than 14 days after the date on which the notice is published in the Gazette) specified in the said notice, for the purpose of being **inspected and verified**, certified or recertified, unless it is-*

(a) (i) a measuring instrument bearing a certifying stamp covered by a verification certificate which is valid for the period contemplated in paragraph (a) and for the year to which the notice in question applies [or a contract measuring instrument]; or

(b) (ii) a measuring instrument exempted from the provisions of section 23(1) by regulation or in terms of section 23(2) or 18(2)(a); or

(c) (iii) a measuring instrument which is fixed in such manner or is of such delicate construction or has such mass that it cannot be conveniently moved; or

(cA)(iv) a measuring instrument which is kept at a place situated more than 15 km by the shortest route from [a] any accredited laboratory, regional office of metrology or place specified in the said notice; or

(d) (v) a measuring instrument having a capacity greater than a capacity prescribed by regulation; or

(e) (vi) a measuring instrument of a class or kind exempted by the said notice from the operation thereof."

### **Repeal of section 20 of Act 77 of 1973**

6. Section 20 of the principal Act is hereby repealed.

### **Amendment of section 21 of Act 77 of 1973, as amended by section 11 of Act 17 of 1993**

7. Section 21 of the principal Act is hereby amended-

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

(b) by the deletion of subsection (3).

### **Amendment of section 22A of Act 77 of 1973, as inserted by section 9 of Act 15 of 1990 and amended by section 13 of Act 17 of 1993**

8. Section 22A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: "(1) Any fees collected and costs recovered in terms of section 18 or 22(1) shall constitute revenue of the SABS Council and shall be dealt with in accordance with the provisions of the Standards Act, **1982 (Act No. 30 of 1982) 1993 (Act No. 29 of 1993)**".

### **Amendment of section 27 of Act 77 of 1973**

9. Section 27 of the principal Act is hereby amended-

(a) by the deletion of paragraph (c) of subsection (7); and

(b) by the substitution for subsection (8) of the following subsection: "(8) The Minister shall before the publication of any notice under subsection (1) consult the board referred to in section 6(1) of the Measuring Units and National Measuring Standards Act, 1973, or, if there is no such board, the Council of the South African Bureau of Standards referred to in section 4 6 of the Standards Act, **1962 (Act No. 33 of 1962) 1993 (Act No. 29 of 1993)**, and the **Council for Scientific and Industrial Research Board of the CSIR** referred to in section 2 7 of the Scientific Research Council Act, **1962 (Act No. 32 of 1962) 1988 (Act No. 46 of 1988)**".

### **Amendment of section 28 of Act 77 of 1973**

10. Section 28 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

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

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

(i) he *or she* is satisfied that the seller or supplier cannot, without undue delay or inconvenience, cause such instrument to be certified or recertified before its sale or supply; and **if**

(ii) the seller or supplier furnishes him *or her* with a guarantee in writing signed by a **registered mechanic repairer** to the effect that the instrument is correct and certifiable under this Act; and

(iii) *he or she is satisfied as to the sufficiency of the guarantee and the competency of the repairer.*

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

### **Amendment of section 33 of Act 77 of 1973 as amended by section 16 of Act 17 of 1993**

11. Section 33 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

(c) otherwise than in the capacity of an inspector, a verification officer *or* a repairer **or a registered mechanic** acting in terms of any regulation and save as provided in section 34, obliterates or removes from any measuring instrument any certifying stamp or seal or any part thereof; or".

### **Substitution of section 34 of Act 77 of 1973**

12. The following section is hereby substituted for section 34 of the principal Act:

## "Repair of measuring instruments

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

(a) no persons shall repair any measuring instrument used for any prescribed purpose unless he *or she* has first permanently obliterated the certifying stamp or seal, including any such stamp defaced under section 25, thereon;

(b) any person who has repaired any measuring instrument used for any prescribed purpose shall, unless it is immediately thereafter certified, forthwith notify the director or any inspector authorized by him or her, of such repair and furnish him *or her* with a guarantee in writing signed by *a registered mechanic such repairer* that such measuring instrument is correct and certifiable under this Act, and the director or such inspector shall, if satisfied-

(i) as to the sufficiency of the guarantee and the competency of the repairer; *shall and*

(ii) *that such repairer cannot, without undue delay or incon-venience, cause such instrument to be certified or recerti- fied immediately after such repair,* without delay, issue an authority in writing permitting the use of such measuring instrument until the certification thereof.

(2) No person shall use for any prescribed purpose any measuring instrument which has been repaired, unless it has *immediately* thereafter been certified or an authority in writing has in terms of subsection (1)(b) been issued in respect thereof *or, in the case of any contract measuring instrument, it is in terms of section 36(6) deemed to be certified.*

(3) *No work carried out on, or adjustment made to, a specified measuring instrument which does not constitute a repair, shall invalidate any current certification in respect of such specified measuring instrument if an inspector or a verification officer issues a certificate to this effect, stating the nature of the work done or the adjustment made."*

## Repeal of sections 35 and 36 of Act 77 of 1973

13. Sections 35 and 36 of the principal Act are hereby repealed.

## Amendment of section 42 of Act 77 of 1973, as amended by section 12 of Act 34 of 1975, section 3 of Act 14 of 1984 and section 18 of Act 17 of 1993

14. Section 42 of the principal Act is hereby amended-

(a) by the substitution for paragraphs (c) and (d) of subsection (1) of the following paragraphs, respectively: (c) prescribing conditions for the supply, custody, care, verification and certification of all classes of measuring standards and measuring instruments referred to in sections 8, 9, 10, *and* 11, *11A and 11B*;

(d) regulating the manner in which the director, any inspector, *verification officer*, examiner or other person appointed under this Act, or any *policeman police officer*, shall carry out his *or her* duties under this Act;"; and

(b) by the deletion in subsection (1) of paragraphs (v) and (w).

**Short title and commencement**

15. This Act shall be called the *Trade Metrology Amendment Act, 1994*, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

---