

REPUBLIC OF SOUTH AFRICA

**MEASURING UNITS AND
NATIONAL MEASURING
STANDARDS AMENDMENT BILL**

(As introduced in the National Assembly)

(MINISTER OF TRADE AND INDUSTRY)

[B 25—98]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
MEETENHEDE EN NASIONALE
MEETSTANDAARDE**

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN HANDEL EN NYWERHEID)

[W 25—98]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Measuring Units and National Measuring Standards Act, 1973, so as to insert and to amend definitions; to amend certain obsolete references and provisions; to clarify the provisions regarding the traceability of measuring standards to national measuring standards; to provide for the issuing of certificates by the Council for Scientific and Industrial Research; and to provide that any such certificate, or a certified copy thereof, produced in criminal proceedings is evidence of the facts contained therein; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 76 of 1973, as amended by section 1 of Act 49 of 1996

1. Section 1 of the Measuring Units and National Measuring Standards Act, 1973 (in this Act referred to as the principal Act), is hereby amended— 5

(a) by the insertion before the definition of “Minister” of the following definition:

“ ‘CSIR’ means the Council for Scientific and Industrial Research, mentioned in section 2(1) of the Scientific Research Council Act, 1988 (Act No. 46 of 1988);” and 10

(b) by the substitution for the definition of “Minister” of the following definition: “ ‘Minister’ means the Minister of **[Economic Affairs]** Trade and Industry;”.

Substitution of section 2 of Act 76 of 1973

2. The following section is hereby substituted for section 2 of the principal Act: 15

“Administration of Act

2. The provisions of this Act shall, subject to the control of the Minister,

be administered by the Director-General: Trade and Industry or any officer in the Department of Trade and Industry authorised thereto by the Director-General.”.

Amendment of section 6 of Act 76 of 1973

3. Section 6 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 5

“(3) Before issuing any notice under section 3, 4 or 5 the Minister shall first consult [a] the board mentioned in subsection (1) of this section, or, if no such board is then in existence [then], the Council of the South African Bureau of Standards mentioned 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 mentioned in section 2 of the Scientific Research Council Act, 1962 (Act No. 32 of 1962)] CSIR.”. 10

Amendment of section 7 of Act 76 of 1973

4. Section 7 of the principal Act is hereby amended— 15

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

“(1) The Minister may by notice in the *Gazette* designate—

(a) any measuring standard described therein [by him], as a national measuring standard;

(b) for the purposes of subsection (5)(b)(ii), any organisation formally recognising the competence of testing and calibration laboratories, certification bodies and inspection bodies to carry out specific tests, certifications or inspections, as an accreditation organisation.”; 20

(b) by the substitution for the words preceding paragraph (a) of subsection (2) of the following words: 25

“The [Council for Scientific and Industrial Research mentioned in section 2 of the Scientific Research Council Act, 1962 (Act No. 32 of 1962)] CSIR shall—”;

(c) by the substitution in subsection (3) for the words “said Council for Scientific and Industrial Research” of the word “CSIR”; 30

(d) by the substitution for subsection (5) of the following subsection:

“(5)(a) A measuring standard which is not a national measuring standard or a measurement carried out by that measuring standard shall, for the purpose of measurement for any legal purpose, be traceable to one or more national measuring standards. 35

(b) Such measuring standard or measurement shall be so traceable if the measuring standard or measurement is related to one or more national measuring standards through an unbroken chain of comparisons—

(i) stating uncertainties; and

(ii) carried out by facilities accredited by an accreditation organisation designated in terms of subsection (1)(b).”; and 40

(e) by the addition of the following subsections:

“(6)(a) The CSIR may issue a certificate regarding any matter mentioned in subsection (3), (4) or (5). 45

(b) Such certificate shall be signed by such person or persons in the CSIR’s service as the board of the CSIR determines.

(c) The board of the CSIR may authorise a person in the CSIR’s service to certify, in the manner the board determines, a copy of such certificate to be true.

(7) In any criminal proceedings a document which purports to be a certificate issued and signed in accordance with subsection (6)(a) and (b) or a copy of such certificate certified in accordance with subsection (6)(c), shall, upon its production, be evidence of the facts contained therein.”. 50

Amendment of section 8 of Act 76 of 1973

5. Section 8 of the principal Act is hereby amended by the deletion of the words “not exceeding five hundred rand”.

Short title

6. This Act is called the Measuring Units and National Measuring Standards Amendment Act, 1998. 5

**MEMORANDUM ON THE OBJECTS OF THE MEASURING UNITS
AND NATIONAL MEASURING STANDARDS AMENDMENT BILL,
1998**

OBJECTS OF BILL

1.1 Numerous legal problems have arisen in recent years around the issue of “traceability” of measuring standards. Section 7(5) of the Measuring Units and National Measuring Standards Act, 1973 (Act No. 76 of 1973 — “the Act”), provides that a measuring standard which is not a national measuring standard shall, for the purpose of measurement for any legal purposes, be traceable to one or more national measuring standards. This provision resulted in persons claiming traceability of their measuring standards via proof that some small component of the measuring standard used to perform a measurement was calibrated and therefore the entire measuring standard must be traceable, while that is not true. Thus, it is proposed that a description of the meaning of “traceable” be included in section 7(5) of the Act. This description includes a component of technical competence that cannot be separated from the equipment calibration requirements if traceability is to be claimed. (See clause 4(a) and (d) of the Bill.)

1.2 Experts from different fields of metrology are regularly requested to appear in court as expert witnesses for certificates issued by the National Metrology Laboratory (“NML”) of the Council for Scientific and Industrial Research (“CSIR”). Appearances as expert witnesses are frequently required in cases of mass calibrations used in the preparation of blood alcohol measurements. It is proposed that provision be made in section 7 of the Act for the issuing of certificates by the CSIR regarding matters mentioned in section 7(3), (4) and (5) of the Act. Furthermore, it is proposed that any such certificate, or a certified copy thereof, upon production thereof in any criminal proceedings, be evidence of the facts contained therein. The first function of this provision is to declare the admissibility as evidence of the certificate and in this way to ensure that the certificate cannot be excluded by a court. Additionally, the provision goes further and determines the probative value of the certificate as evidence — it is evidence which, if accepted by the court, establishes a fact in the absence of acceptable evidence to the contrary. (See clause 4(e) of the Bill.)

1.3 The remainder of the proposed amendments to the Act are of a consequential nature (clauses 1(a) and 4(a), (b) and (c)) or aims to substitute or delete obsolete provisions (clauses 1(b), 2, 3 and 5).

CONSULTATION

2. The following bodies were consulted:
- * National Metrology Laboratory and legal advisers of the CSIR
 - * Attorney-General: Transvaal

PARLIAMENTARY PROCEDURE

3. The State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.