

THE METROLOGY ACT, 2017

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GOVERNMENT OF ZAMBIA

ACT

No. 6 of 2017

Date of Assent: 12th April, 2017

An Act to continue the existence of the Zambia Weights and Measures Agency, rename it as the Zambia Metrology Agency and re-define its functions; establish the Board of the Agency and provide for its functions; provide for the designation, keeping and maintenance of national measurement standards; provide for the use of measurement units of the International System of Units and other units; provide for consumer protection, health, safety and environmental management through legal metrology measures; repeal the Weights and Measures Act, 1994; and provide for matters connected with, or incidental to, the foregoing.

[13th April, 2017

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Metrology Act, 2017, and shall come into operation on such date as the Minister may appoint by statutory instrument.

Short title and commencement

2. In this Act, unless the context otherwise requires—

Interpretation

“accreditation” means a third party attestation related to a conformity assessment body conveying formal demonstration of its competence to carry out specific conformity assessment tasks;

“AFRIMETS” means the Intra-Africa Metrology System established in 2006;

“Agency” means the Zambia Metrology Agency referred to in section 3;

“associate” has the meaning assigned to it in the Anti-Corruption Act, 2012;

Act No. 3 of 2012

Act No. of
2017

“BIPM” means the *Bureau International des Poids et Mesures* (International Bureau of Weights and Measures), the permanent institute established under the *Metre Convention* to coordinate international research in physical units and standards and to administer the inter laboratory comparisons of national metrology institutes;

“Board” means the Board of the Agency established under section 7;

“Bureau” means the Zambia Bureau of Standards continued under the Standards Act, 2017;

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

“certification” means the issuance of a written statement by a third party based on a decision following a review, that the specified products, processes, systems or persons have fulfilled specified requirements;

“certified reference material” means reference material, accompanied by a certificate, one or more of whose property values are certified by a procedure which establishes traceability to an accurate realisation of the unit in which the property values are expressed, and for which each certified value is accompanied by an uncertainty at a stated level of confidence;

“CGPM” means the *Conférence Générale des Poids et Mesures* (General Conference on Weights and Measures) of the member states of the *Metre Convention*;

“Chairperson” means the Chairperson of the Board appointed under section 7;

“CIPM” means the *Comité Internationale des Poids et Mesures* (International Weights and Measures Committee) overseeing the BIPM;

“CIPM Mutual Recognition Arrangement” means the arrangement signed by member States under the *Metre Convention* for the mutual recognition of national

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

“commodity” has the meaning assigned to it in the Standards Act, 2017;

Act No. of
2017

“conformity assessment” in relation to a measuring instrument means the testing and evaluation of the instrument to ascertain whether or not the instrument, an instrument lot or production series of an instrument complies with a requirement under this Act or any other written law;

“correction” means a value added algebraically to the uncorrected result of a measurement to compensate for systematic error;

“Emoluments Commission” means the Emoluments Commission established by the Constitution;

Cap. 1

“Executive Director” means the person appointed as Executive Director under section 10;

“former Agency” means the Zambia Weights and Measures Agency established under the repealed Act;

Cap. 403

“Fund” means the Metrology Fund established under section 3;

“IEC” means the International Electrotechnical Commission;

“industrial metrology” means the application of measurement science to manufacturing and other processes and their use in society ensuring the suitability of measuring instruments, their calibration and quality control of measurements;

“international standard” includes a normative document published by the International Organisation for Standardisation (ISO), the International Electrotechnical Commission (IEC), the International Telecommunications Union (ITU) and the International Organisation for Legal Metrology (OIML);

“International System of Units, (SI)” means the coherent system of units adopted and recommended by the CGPM;

“ISO” means the International Organisation for Standardisation;

“legal metrology” means that part of metrology that is concerned with units and accuracy of measurement in relation to the mandatory technical and legal requirements that guarantee the transparency of economic transactions, health, safety, the environment and law enforcement;

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

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

“Metre Convention” means the International Metrology Treaty established in 1875;

“metrology” means the science of measurement;

“metrologist” means a person appointed as a metrologist under section 35;

“national accreditation focal point” means the office that coordinates accreditation on behalf of a regional accreditation body;

“OIML” means the *Organisation Internationale de Metrologie Legale* (International Organisation for Legal Metrology);

“premises” means any land, building or other structure, and includes a train, boat, ship, aircraft, vehicle, trailer or other conveyance;

“pre-packaged commodity” means a commodity that is made up as a unit or entity and whose quantities have been determined and indicated on its label before being offered for sale, irrespective of whether the unit or entity is enclosed in a container, wrapped in any manner or unenclosed;

“product” has the meaning assigned to it in the Standards Act, 2017;

“realise” in relation to a national measurement standard, means the physical determination of the measuring unit from its international definition provided in terms of physical constants, or the determination of a highly reproducible measurement standard based on a physical phenomenon;

- “reference material” means material or substance one or more of whose property values are sufficiently homogeneous and well established to be used for calibration of an apparatus, the assessment of a measurement method or for assigning values to materials;
- “regulatory agency” means a person or body, except a professional body, which by law, is empowered to regulate a business activity in which measurement is applied in any sector, and includes a Minister;
- “relative” has the meaning assigned to it in the Anti-corruption Act, 2012; Act No. 3 of 2012
- “repealed Act” means the Weights and Measures Act, 1994; Cap. 403
- “responsible person” in relation to a measuring instrument, means the person in whose possession, control or use the measuring instrument is found;
- “SADC MEL” means the Southern African Development Community Cooperation in Legal Metrology established under the Southern African Development Community (SADC) Protocol on Trade;
- “SADC MET” means the Southern African Development Community Cooperation in Measurement Traceability established under the Southern African Development Community (SADC) Protocol on Trade;
- “scientific metrology” means metrology dealing with the organisation and development of measurement standards and with their maintenance;
- “secondary standard” means a measurement standard established through calibration with respect to a primary measurement standard for a quantity of the same kind;
- “Secretary” means the person appointed as such under section 10;
- “sell” includes offer, advertise, expose, keep, have in possession or prepare for sale and to exchange or dispose of for valuable consideration;
- “service” means a service provided for remuneration and at the request of a recipient of the service, and includes the process used to deliver the service;
- “standard” means a document approved by a recognised body that provides, for common and repeated use, rules, guidelines or characteristics for products and their related

processes or production methods, including terminology, symbols, and packaging, marking or labelling requirements as they apply to a product, its related process or production method;

“supplier” means the manufacturer, merchant, distributor, importer or agent who places a commodity or measuring instrument on the market;

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

“trade” includes a contract, bargain, sale or dealing generally in a transaction for valuable consideration in pursuance of which goods are weighed, measured or counted, but does not include any contract or bargain for sale of or dealing in land or interest in land;

“trade metrology” means measurement related to trade transactions where a measuring instrument is the basis for the trade transactions;

“type approval” means a decision based on an evaluation report that a type of measuring instrument complies with the relevant statutory requirements and is suitable for use in the regulated area in a manner that it is expected to provide reliable measurement results over a defined period of time;

“uncertainty” means a parameter associated with the result of a measurement that characterises the dispersion of values that could reasonably be attributed to the measurement;

“verification” means a procedure, other than type approval, which includes the examination and marking or issuing of a verification certificate that ascertains and confirms that the measuring instrument complies with statutory requirements;

“working standard” means a measurement standard that is routinely used to calibrate or verify measuring instruments or measuring systems; and

“WTO” means the World Trade Organisation.

PART II

THE ZAMBIA METROLOGY AGENCY

3. (1) The Zambia Weights and Measures Agency established under the repealed Act shall continue to exist as if established under this Act and is re-named as the Zambia Metrology Agency.

Renaming of Zambia Weights and Measures Agency as Zambia Metrology Agency Cap. 403

(2) The Agency is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and with power, subject to the other provisions of this Act, to do all such acts and things as a body corporate may, by law, do or perform.

(3) The provisions of the First Schedule apply to the Agency.

4. (1) The seal of the Agency shall be such device as may be determined by the Board and shall be kept by the Secretary.

Seal of Agency

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or any other person authorised in that behalf by a resolution of the Board.

(3) A contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Agency by the Secretary or any other person generally or specifically authorised by the Board in that behalf.

(4) A document purporting to be a document under the seal of the Agency or issued on behalf of the Agency shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

5. (1) The function of the Agency is to establish a national measurement system traceable to the international measurement systems so as to attain the international recognition of the national measurement system.

Functions of Agency

(2) Despite the generality of subsection (1), the functions of the Agency are to—

- (a) oversee scientific, industrial and legal metrology in accordance with this Act and any other written law;
- (b) promote the equitable use of measurements in commercial transactions and law enforcement and protect society from the consequences of false measurements;
- (c) facilitate the use of correct measurements in industry, trade, labour, health, safety, environmental management and other activities that utilise measurement;

- (d)* promote the reliability of measurement-based activities in the Republic;
- (e)* increase opportunities for companies to participate in international science and technology transfer through metrology;
- (f)* facilitate national, regional and international trade;
- (g)* develop metrological standards for use in Zambia;
- (h)* promote public education and the nation wide use of metrology;
- (i)* identify sectors where the use of metrological standards is mandatory;
- (j)* carry out market research in order to identify the changing needs and trends in metrology;
- (k)* use market and marketing research for accurate data which can be used to formulate new strategies and policies;
- (l)* establish and maintain metrology laboratories;
- (m)* participate and represent Zambia in international, regional and foreign bodies with similar functions to the Agency;
- (n)* monitor, evaluate and review regional and international metrology programmes; and
- (o)* encourage networking and sharing of metrological information in the region.

(3) The Agency shall, in relation to scientific and industrial metrology—

- (a)* realise, maintain and act as custodian of the national measurement standards according to the needs of the private and public sectors and in accordance with international practice;
- (b)* participate in regional and international inter-comparisons to determine the accuracy of national measurement standards;
- (c)* disseminate units of measurement and maintain a traceability chain; and
- (d)* pursue the inclusion of the national calibration and measurement capabilities in the relevant international and regional mutual recognition arrangements.

(4) The Agency shall, in relation to legal metrology—

- (a) type approve weighing and measuring equipment used in commercial transactions, law enforcement, health and safety services and environmental management in accordance with established standards;
- (b) ensure the use of type measuring equipment in commercial transactions, law enforcement, health and safety services and environmental management, including the relevant calibration and verification of the measuring equipment in use;
- (c) evaluate and approve pre-packaging of commodities intended for and provided to the market place in accordance with relevant standards;
- (d) keep and maintain secondary standards and other working standards; and
- (e) regulate the manufacture, repair and sale of measuring instruments.

(5) The Agency shall, in relation to coordination and communication at the national level—

- (a) collaborate with the Bureau and the national accreditation focal point to ensure coordinated support for the national quality infrastructure;
- (b) convene technical advisory fora to facilitate the dissemination of international best practice and gather input from commerce and industry;
- (c) establish specialist technical committees to provide input to the process of developing and implementing legal, scientific and industrial metrology measures and standards;
- (d) co-operate and enter into agreements on metrology with State institutions;
- (e) disseminate information on metrology to the public and private sectors;
- (f) promote the concept of all aspects of metrology;
- (g) establish pre-market and post-market surveillance systems; and
- (h) obtain information from manufacturers and suppliers of measuring equipment and commodities falling within the scope of legal metrology regulation.

- (6) The Agency may, in relation to services—
- (a) assess and test measuring equipment to determine compliance with relevant standards;
 - (b) calibrate measuring equipment traceable to national measurement standards;
 - (c) promote the creation of a national calibration service to ensure access to traceable calibrations through accredited laboratories;
 - (d) calibrate and verify measuring equipment subject to legal metrology control;
 - (e) enter into agreements with conformity assessment service providers to inspect, test and certify measuring instruments;
 - (f) develop, certify or provide reference materials; and
 - (g) issue certificates in relation to measuring equipment and reference materials.

(7) The Agency may, in relation to control over the supply of weighing and measuring equipment, establish and impose registration requirements for suppliers, service persons and service agencies that install, adjust, maintain, calibrate and verify measuring instruments falling within the scope of legal metrology requirements as provided for by this Act.

(8) The Agency may determine the fees payable for any calibration, verification, testing, type approval or inspection conducted for the purposes of this Act.

(9) The Agency shall operate as the legal, scientific and industrial metrology authority for Zambia with regard to national, regional and international metrology activities and obligations.

Relations
and
co-operation
with
regulatory
agencies and
other
authorities

6. (1) The Agency shall liaise, consult, collaborate and co-operate with relevant regulatory agencies and other authorities in Zambia and may, for such purposes, have joint programmes, plans, strategies and policies.

(2) The Agency and other regulatory agencies and authorities shall apply an integrated metrological approach to achieve the objectives of subsection (1) and shall, in so doing—

- (a) promote the use of international metrological standards, wherever possible;
- (b) facilitate bilateral and multilateral agreements related to metrology;

- (c) establish and enforce public health standards and regulations, in liaison with relevant authorities;
- (d) undertake inspection and certification of commodities that are subject to this Act;
- (e) promote the application of metrology and disseminate metrology information; and
- (f) maintain statistics related to the application of metrology.

(3) The Agency may, in relation to international and regional cooperation—

- (a) represent and co-ordinate representation of Zambia on the AFRIMETS, BIPM, OIML, SADC MET and SADC MEL and other regional and international organisations that deal with scientific, industrial and legal metrology issues;
- (b) organise participation for Zambia in the relevant international or regional metrology committees; and
- (c) co-ordinate, interact and manage international, regional and bilateral interaction with other metrology institutes and authorities.

7. (1) There is constituted a Board for the Agency which shall comprise the following part-time members appointed by the Minister:

Board of
Agency

- (a) a representative of the Ministry responsible for industry;
- (b) a representative of the Attorney-General;
- (c) a representative of the National Institute for Scientific and Industrial Research;
- (d) a representative of higher education institutions nominated by the Minister responsible for higher education; and
- (e) three persons with experience and knowledge in matters relevant to this Act.

(2) The Minister shall appoint the Chairperson of the Board from amongst the members of the Board who are not public officers.

(3) The members of the Board shall elect the Vice-Chairperson from amongst themselves.

(4) A person shall not be appointed as a member of the Board if that person—

- (a) is not a citizen of Zambia;
- (b) is an undischarged bankrupt;
- (c) has a mental or physical disability that makes the person incapable of performing the functions of a member; or

(d) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a period exceeding six months without the option of a fine.

(5) The provisions of the First Schedule apply to the Board.

Functions of Board

8. (1) Subject to the other provisions of this Act, the Board shall provide strategic policy direction to the Agency.

(2) Despite the generality of subsection (1), the functions of the Board are to—

(a) promote effective corporate governance of the Agency;

(b) formulate the policies, programmes and strategies of the Agency;

(c) approve the annual workplan and activity reports of the Agency; and

(d) approve the annual budget estimates and financial statements of the Agency.

(3) The Minister may enter into a performance contract with the Board for a specified period, which shall be consistent with the provisions of this Act.

Delegation of functions and directions

9. (1) The Board may, subject to any conditions imposed and guidelines issued by it, delegate any of its functions to the Executive Director.

(2) The Minister may give to the Board general or specific directions, which are consistent with the provisions of this Act, relating to the discharge of its functions and the Board shall give effect to those directions.

Executive Director, Deputy Executive Director and other staff

10. (1) The Board shall appoint an Executive Director for the Agency on such terms and conditions as the Emoluments Commission may determine.

(2) The Executive Director shall be the chief executive officer of the Agency and shall be responsible, under the direction of the Board, for the day-to-day administration of the Agency.

(3) The Executive Director shall attend the meetings of the Board and may address those meetings but shall not vote on any matter before the Board.

(4) The Board may appoint, on such terms and conditions as it may determine, the Deputy Executive Director, the Secretary and such other staff as it considers necessary for the performance of the functions of the Agency and Board.

(5) The Secretary shall perform corporate secretarial duties for the Board and such other functions as the Board may determine, under the direction of the Board and the Executive Director.

PART III

NATIONAL MEASUREMENT UNITS

11. A person shall not, without reference to the standard unit of measurement, in relation to any goods and services—
- Standard unit of measurement
- (a) quote a price or charge;
 - (b) issue or exhibit a price list, invoice or other document;
 - (c) state a quantity in an advertisement, poster or document;
 - or
 - (d) indicate the net quantity of a commodity on a package.
12. (1) The legal units of measurement, the symbols of those units and the rules relating to the use of units and their symbols shall be—
- Units of measurement
- (a) the units, their symbols and the rules of the International System of Units, SI, prescribed by the Minister, by statutory instrument; and
 - (b) such other units not covered by the International Systems of Units, SI, other symbols of those units and the rules relating to the use of those units and their symbols as the Minister may prescribe, by statutory instrument, for applications required by the necessity of international trade, air or maritime navigation, health care or for safety reasons.
- (2) The definitions of the base or derived units of the statutory instrument, their multiples, subdivisions and symbols shall comply with the recommendations of the *Metre* Convention and international standards.
13. (1) A person shall use legal units in trade, documentation and advertisements for commodities, services, publications or training except—
- Prohibition of use of certain units of measurement
- (a) in documents of and references to products produced and services carried out before the coming into operation of this Act;
 - (b) when referring to non-legal units in a historical perspective in publications and training; or
 - (c) in documents, publications or marking of commodities that are intended for users in countries with different systems of units.

(2) The Minister may, by statutory instrument, make provision for the granting of exemption from any of the provisions of subsection (1), for a specified time and a specific area of activity.

Equivalence
of certain
units

14. The Minister may, by statutory instrument, after consultation with the Agency, determine the equivalence of any unit expressed in any other unit of the same quantity, and that equivalence shall, for all purposes, be deemed to be the equivalent of the unit in question.

PART IV

NATIONAL MEASUREMENT STANDARDS

National
measurement
standards

15. (1) The Minister may, by statutory instrument, declare any measurement standard as a national measurement standard.

(2) A national measurement standard may be a—

- (a) primary measurement standard that independently realises a measurement unit; or
- (b) measurement standard traceable to an international standard set by the BIPM.

(3) The value of the national measurement standard in relation to the measurement unit shall—

- (a) be the value declared as such by the Agency;
- (b) have stated uncertainties; and
- (c) be accepted as the most accurate value.

(4) A measurement standard which is not a national measurement standard or a measurement carried out by that measurement standard shall, for the purposes of measurements for a legal purpose, be traceable to one or more national measurement standards through an unbroken chain of comparisons stating uncertainties, and carried out by the Agency or an accredited facility.

Maintenance
of national
measurement
standards

16. (1) Subject to subsection (2), the Agency shall—

- (a) keep and maintain all national measurement standards declared under section 15;
- (b) provide measurement traceability to other measurement standards; and
- (c) keep and maintain the instruments necessary for bringing national measurement standards into being and implement the procedures connected with the standards.

(2) Where the Agency, for financial or technical reasons, cannot keep and maintain a specific national measurement standard, the Minister may, in consultation with the Agency, designate another organisation as the custodian of the national measurement standard.

(3) The Minister may, in the public interest and on the recommendation of the Agency, withdraw the designation provided for in subsection (2).

(4) The Agency may establish and maintain, as necessary, a system of providing certified reference materials traceable to national measurement standards.

17. A reference measurement or analysis performed for a legal purpose by the Agency stating the uncertainties of measurements and traceable to national measurement standards or certified reference materials traceable to national measurement standards recognised under the CIPM Mutual Recognition Arrangement shall be regarded as the true value.

National
reference
measurements

18. (1) The Agency shall issue a certificate stating the outcome of a measurement or analysis regarding any matter specified in this Act.

Certificates

(2) The certificate provided for in subsection (1) shall be signed by the Executive Director or another officer of the Agency authorised by the Board.

PART V

LEGAL METROLOGY MEASUREMENT STANDARDS

19. The units of measurement used for the implementation of the legal metrology provisions of this Act shall be in accordance with the national measurement standards provided for in section 15.

Units of
measurement

20. All measurement standards used for legal metrology shall be traceable to the national measurement standards.

Measurement
traceability

21. (1) The Executive Director shall cause to be kept at the head office or another designated place, such inspection and verification measurement standards as are necessary for the purposes of this Act.

Inspection
and
verification
measurement
standards

(2) The Executive Director shall arrange for the comparison and calibration, and the correction if necessary, at intervals not exceeding one year, of the verification and inspection measurement standards with the national measurement standard or other suitably accurate standards traceable to the national measurement standards.

(3) A measuring instrument used by an officer for carrying out the officer's duties and functions under this Act shall be inspected, tested and calibrated before its use and thereafter at such intervals as may be recommended by the manufacturer or as prescribed by statutory instrument, and the Executive Director shall cause to be kept a record of every inspection, test and calibration by the Agency.

PART VI

CONTROL OF MEASUREMENTS AND MEASURING INSTRUMENTS

Regulations
for
controlled
measuring
instruments

22. (1) The Minister may, by statutory instrument, after consultation with the Board and subject to subsection (2), make regulations to specify the metrological performance and technical requirements of measurements and measuring instruments.

(2) The Minister shall, before making the regulations referred to in subsection (1), consult with the Minister responsible for the regulation of the import, sale or supply of a commodity or measuring instrument that is the subject of the regulations.

(3) The Minister may, where necessary, after consultation with the Board, revise the regulations referred to in subsection (1).

(4) The Minister may, after consultation with the Agency, exempt specific measuring instruments from the requirements of this section on application by the user of the measuring instrument.

(5) The Minister may, in the public interest, grant an exemption under subsection (4) for a specified purpose and period.

Technical
requirements
of controlled
measuring
instruments

23. (1) The regulations referred to in section 22 shall—

(a) define the metrological requirements, including the required measurement uncertainty and the control and supervision requirements applicable to those measurements in order to ensure confidence in the measurement results;

(b) have the results of the measurements expressed in measurement units as provided for in section 19 and be traceable as specified in section 20; and

(c) specify, when necessary, a measuring method.

(2) The regulations referred to in section 22 may, where necessary and for specific applications—

(a) include the criteria of the measuring instrument such as the accuracy class, measurement range and scale divisions;

- (b) require the provision of adequate protection against misuse, fraud and incorrect interpretation of the results;
- (c) prescribe the correct installation, usage and maintenance under specified conditions, including the initial verification and reverification at specific intervals to ensure the correct functioning of the measuring instruments;
- (d) include measures, such as sealing marks, to be taken to restrict access to certain parts or functions of the measuring instruments, including software, in order to prevent unauthorised adjustments or interventions;
- (e) prescribe the requirements applicable to persons who take the measurements;
- (f) require records of the measurement operations to be available to the Agency;
- (g) require the issuance of certificates for the results of the measurements;
- (h) require records for the traceability of measurement results to be available to the Agency; and
- (i) define controls to be applied by the Agency regarding the activities of the persons who take the measurements.

(3) The regulations referred to in subsection (1) shall be based, as far as is practicable, on international or regional standards, norms and recommendations such as those published by the OIML, ISO and IEC or SADC MEL.

24. (1) The Agency shall type approve a measuring instrument covered by this Act before it is permitted to be used in trade, law enforcement, health, safety and environmental management related measurements.

Type
approval of
measuring
instruments

(2) A person who requires to use for trade, or intends to import, manufacture, assemble, sell or distribute for use a new type, make, model or design of a measuring instrument covered by this Act shall submit the type or pattern of that measuring instrument to the Agency, with all the technical documentation regarding the instrument as specified by the Agency to expedite the type approval.

(3) The Executive Director shall cause the measuring instrument submitted for type approval to be inspected and tested by a laboratory, as appropriate, against the requirements of the relevant regulations provided for in section 22 for that type of measuring instrument.

(4) The laboratory conducting the inspection and testing provided for in subsection (3) shall be technically competent, appropriately accredited and approved by the Executive Director.

(5) The Executive Director may, without prejudice to subsection (3), consider test reports and type approval certificates from other countries that are OIML compliant as evidence of compliance of the submitted measuring instrument against the requirements of the relevant regulations provided for in section 23.

(6) Where the Executive Director is satisfied with the make, marking, model or design and the general performance of an instrument, the Executive Director shall issue a type approval certificate for that type or pattern that is valid for the specified model and is not transferable to measuring instruments that have been modified in any way or technically upgraded, whether by the manufacturer or another person.

(7) The Agency shall maintain a database, which is publicly accessible, of all the type approved certificates issued, together with the technical detail necessary to identify the specific type of measuring instrument.

Placement
into service
and
verification
of measuring
instruments

25. (1) Where a measuring instrument is offered for sale, sold or placed on the market for use, subject to the legal metrology requirements provided for in this Act, the seller shall inform the buyer about the seller's legal metrology requirements and status and offer the measuring instruments appropriate for the intended use.

(2) The responsible person shall, before placing a measuring instrument covered by this Act into service, ensure that the measuring instrument is—

(a) issued with a type approval certificate as provided for in section 24;

(b) correctly installed and is used and operated under the specified conditions;

(c) calibrated and verified in accordance with the relevant regulation provided for in section 22; and

(d) sealed or bears the control marks provided for in section 30.

(3) The responsible person shall—

(a) ensure that the measurement equipment—

- (i) after being correctly installed, calibrated and verified, sealed or marked, is not tampered with, adjusted or otherwise interfered with so as to render the equipment's usage unsuitable for the intended purpose or invalidate its calibration and verification;
 - (ii) is operated in accordance with the operating instructions provided by the manufacturer or supplier; and
- (b) cause the reverification of all measuring instruments in use covered by this Act to be conducted at intervals no longer than those provided for in the relevant regulations provided for in section 22.

(4) A measuring instrument that no longer complies with the verification requirements provided for in subsection (2) shall immediately be withdrawn from service by the responsible person and disposed of or otherwise dealt with in a manner that prevents the use of the measuring instrument.

(5) The Agency or a designated organisation shall conduct the verification of measurement equipment covered by this Act.

(6) Where a measurement equipment is found in the possession of a person carrying on trade, or on any premises which are used for trade, that person or an occupier of those premises, as the case may be, shall be deemed to be the responsible person for that measurement equipment for the purposes of this Act, unless the contrary is proven.

(7) Subsection (6) applies to measurement equipment used in law enforcement, health, safety and environmental management.

26. (1) The Agency may establish, maintain and provide calibration services to the public and the private sector as approved by the Board.

Calibration
and
inspection
services

(2) A calibration service shall be provided on a user pays principle.

(3) The Agency may enter into contracts with the public and private sectors for the provision of inspection services.

(4) The Agency shall, in order to ensure the integrity of the inspection services—

- (a) appoint qualified staff with sufficient knowledge of the relevant sectors;

- (b) establish suitable infrastructure to enable it to perform the required tests; and
- (c) operate quality management systems in accordance with the relevant international standards.

Designated
legal
metrology
organisations

27. (1) The Executive Director may, after determining an organisation's technical proficiency and legal status and with approval of the Board, designate the organisation to conduct testing, servicing, maintenance, calibration or verification of measurement equipment covered by this Act.

(2) The obligations of a designated legal metrology organisation shall be contained in a written contract between the organisation and the Agency, and shall include its continued and demonstrable compliance with the designation requirements.

(3) The technical proficiency of a legal metrology organisation to be designated shall be determined against the criteria of the latest edition of ISO/IEC 17025 or ISO/IEC 17020 as relevant, and accreditation by an internationally recognised accreditation body shall be the preferred manner of determining its technical competency.

(4) The legal status of a legal metrology organisation to be designated shall be determined in accordance with specified criteria, including registration status as a firm, corporate or incorporate body, whether the organisation is established or registered under a written law or whether the organisation is a division or department of a public body, and such other criteria as the Executive Director may specify with the approval of the Board.

(5) The designated organisations may charge such fees for services as the Executive Director may approve, as prescribed.

(6) The Executive Director may, with the approval of the Board, revoke the designation of a legal metrology organisation if the organisation—

- (a) fails to comply with its contractual obligations; or
- (b) indicates that it will no longer provide the contractual services.

(7) The Agency shall publish in the *Gazette*—

- (a) the companies designated as legal metrology organisations, including the names, addresses, registration numbers and scope of activities; and
- (b) the name, address and registration numbers of any companies whose designations are revoked.

PART VII

CONTROL OF PRE-PACKAGED COMMODITIES

28. (1) The Minister may, by statutory instrument, after consultation with the Board, make regulations to specify the list of, and requirements for, pre-packaged commodities offered for sale for which control shall be implemented in accordance with this Act.

Regulations
for
controlled
pre-packaged
commodities

(2) The regulations referred to in sub-section (1) shall prescribe—

- (a) the authorised sizes and labelling requirements of the nominal content of the pre-packaged commodities, expressed in the measurement units provided for in section 21;
- (b) the tolerable deficiencies of individual pre-packaged commodities from the nominal value and requirements for the conformity assessment of the pre-packaged commodities, including sampling plans, test procedures, statistical methods and other relevant guidance for the authorities and suppliers;
- (c) the quality systems to be applied by the supplier of the pre-packaged commodities;
- (d) the records of control operations to be kept by the manufacturer or supplier for inspection by legal metrology;
- (e) the marks, including those of trading partners, which indicate conformity or compliance of the pre-packaged commodities to the regulatory requirements;
- (f) the procedures and criteria for control to be exercised by the Agency on pre-packaged commodities and on the suppliers of pre-packaged commodities, including registration of manufacturers and importers; and
- (g) any other requirements that the Minister considers necessary for purposes of this Act.

(3) All the measurement results involving measuring instruments and measurement standards used for the controls provided for in subsection (2) shall be traceable as required by section 20.

29. (1) The regulations provided for in section 28 for pre-packaged commodities shall set out the legal metrological requirements and control provisions applicable to the quantity or content of pre-packaged commodities offered for sale.

Pre-
packaged
commodities

(2) The Minister may, where necessary, after consultation with the Board, revise the list referred to in section 28 by adding new commodities to the list, revising the pre-packaging requirements of listed commodities or removing commodities from the list.

(3) The regulations referred to in subsection (1) shall, as far as is practicable, be based on the recommendations of the OIML, the norms published by SADCMEML or relevant national standards published by the Bureau under the Standards Act, 2017.

Act No. of
2017

Registration
and
responsibilities
of pre-
packaging
companies

30. (1) A local supplier of prepackaged commodities, or person wishing to pre-package commodities covered by this Act shall, before offering or exposing the pre-packaged commodities for sale, apply to the Agency for registration in the prescribed manner and form.

(2) A local supplier referred to in subsection (1) shall provide the Agency with the required information and be subjected to an audit of its—

- (a) control over and calibration of the packing, filling or metrology equipment that is intended to be used in determining the quantity of the commodities pre-packaged;
- (b) marking of the pre-packaged commodities for compliance with stated requirements in relevant product standards or with this Act; and
- (c) records demonstrating continued compliance with the legal metrology requirements for pre-packaged commodities as required by this Act.

(3) The Executive Director shall register a person or local supplier of pre-packaged commodities if the Executive Director determines, on information submitted, that the person or local supplier can pre-pack commodities in compliance with the requirements of this Act, and shall inform the person or local supplier accordingly within fourteen days from the date of application for registration as a supplier of pre-packaged goods.

(4) A manufacturer shall not manufacture or offer or expose for sale any pre-packaged commodities without registration by the Agency.

(5) An importer of a pre-packaged commodity shall be registered by the Agency after providing evidence of marks of conformity affixed under the relevant legal metrology regulations of the country of origin or under conformity marking systems set up by accredited certification bodies, samples of the pre-packaged commodities to be imported for testing, or other evidence acceptable to the Executive Director, that the pre-packaged commodities comply with this Act and other standards applicable to the specific products.

(6) The Agency shall, in cooperation with the Zambia Revenue Authority, conduct customs audits on imported pre-packaged product shipments or consignments to ensure their compliance with this Act.

(7) Imported pre-packaged commodities that do not comply with the legal metrology requirements of this Act shall not be allowed to enter Zambia and shall be pre-packed in a manner that complies with the requirements of this Act or be ordered to be returned to the country of origin by the importer.

PART VIII THE METROLOGY FUND

31. (1) There is established the Metrology Fund for purposes of metrological development and management.

Establishment
of
Metrology
Fund

(2) The Fund shall consist of—

- (a) such monies as may be appropriated by Parliament for the purposes of the Fund;
- (b) monies collected from such fees and levies as the Minister responsible for finance may prescribe, in consultation with the Minister;
- (c) such monies as may be received by the Fund from donations and grants from any source, with the approval of the Minister;
- (d) such other monies as may vest in, or accrue to, the Fund; and
- (e) such other monies as may, by or under any other law, be payable to the Fund.

32. (1) The Minister may, by statutory instrument, on the recommendation of the Agency, make regulations to provide for—

Administra-
tion of Fund
and accounts

- (a) the administration and management of the Fund;
- (b) the activities that the Fund shall finance and the manner of financing the activities; and

(c) any other matter necessary for the efficient operation, administration and management of the Fund.

(2) The Minister shall ensure that prudent controls are established for the Fund relating to—

(a) fiscal controls and accounting procedures governing the Fund;

(b) reporting procedures for matters relating to the Fund; and

(c) investment of the monies of the Fund.

(3) The Board shall cause to be kept proper books of account and other records relating to the accounts of the Fund.

(4) The Fund shall be audited annually by the Auditor-General.

Annual
report and
statement of
income and
expenditure

33. (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Ministry responsible for metrology shall submit to the Minister responsible for finance a report concerning the activities relating to the Fund during the financial year.

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Fund and there shall be appended to the report—

(a) an audited statement of financial position;

(b) an audited statement of comprehensive income; and

(c) such other information as the Minister responsible for finance may require.

(3) The Minister responsible for finance shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay the report before the National Assembly.

PART IX

QUALITY ASSURANCE

Appointment
of
metrologists

34. (1) The Board may, on such terms and conditions as the Emoluments Commission may determine, appoint suitably qualified persons as metrologists for the purpose of ensuring compliance with this Act.

(2) The Board shall provide a metrologist with a certificate of appointment, in the prescribed form, which shall be *prima facie* evidence of the inspector's appointment as such.

(3) A metrologist shall, in performing a function under this Act—

- (a) be in possession of the certificate of appointment referred to in subsection (2); and
- (b) show the certificate of appointment to a person who requests to see it or who is subject to an investigation under this Act.

(4) The duties of a metrologist are to—

- (a) verify weights, measures and weighing and measuring instruments;
- (b) care for and maintain any standard equipment under the metrologist's care;
- (c) keep records and make such reports as the Executive Director may require;
- (d) give effect to the directions of the Executive Director in accordance with this Act; and
- (e) generally exercise and perform such powers and duties as may be conferred or imposed on a metrologist by this Act or any other written law.

35. (1) A metrologist may, with a warrant, at any reasonable time, enter upon any premises and—

Powers of entry and search

- (a) search the premises, including a private dwelling, where a commodity, product, measuring instrument, measuring equipment, information, records or documents which are relevant to an investigation are kept;
- (b) search a person on the premises if there are reasonable grounds to believe that the person has personal possession of a commodity, product, measuring instrument, measuring equipment, document, record or article that has a bearing on an investigation, except that a person shall only be searched by a person of the same sex;
- (c) examine a commodity, product, measuring instrument, measuring equipment, document or article found on the premises that has a bearing on an investigation;
- (d) require information to be given about a commodity, product, measuring instrument, measuring equipment, document, record or article by—
 - (i) the owner of the premises;
 - (ii) the person in control of the premises;

- (iii) a person who has control of the commodity, product, measuring instrument, measuring equipment, document, record or article; or
 - (iv) any other person who may have the information;
 - (e) take extracts from, or make copies of, a book, record or document found on the premises that has a bearing on an investigation;
 - (f) use a computer system on the premises, or require assistance of a person on the premises, to use that computer system to—
 - (i) search any data contained in, or available from, the computer system;
 - (ii) reproduce any record from the data; or
 - (iii) seize any output from the computer for examination and copying; or
 - (g) attach and, if necessary, remove from the premises for examination and safeguarding a commodity, product, measuring instrument, measuring equipment document or article that appears to have a bearing on an investigation.
- (2) A metrologist who removes a commodity, product, measuring instrument, measuring equipment, document or article from any premises in accordance with subsection (1) shall—
 - (a) issue a receipt for the commodity, product, measuring instrument, measuring equipment, document or article to the owner of, or person in control of, the premises; and
 - (b) return the document or article as soon as practicable after achieving the purpose for which it was removed.
- (3) A metrologist shall furnish the Agency with a written report and any other information relating to an inspection as the Board may require.
- (4) Nothing in this section requires a person to disclose or produce information or a document if the person would in an action in a court be entitled to refuse to disclose or produce the information or document.

36. (1) A metrologist may, in the performance of any functions under this Act—

Powers of
inspection
and seizure

- (a) inspect or examine a measuring instrument, measuring equipment, product, package, commodity, article or other thing which may be inspected or examined for purposes of this Act;
- (b) order that a measuring instrument, measuring equipment, product, package, commodity, article or other things be placed at the metrologist's disposal for the purpose of inspection or examination;
- (c) inspect, verify or test or cause to be verified or tested a measuring instrument, measuring equipment, product, or package used for any prescribed purpose or which is subject to a provision of this Act and which is in the possession of a person or is found on any premises;
- (d) seize and retain for use as evidence, a measuring instrument, measuring equipment, product, package, commodity, article or other thing found to be used, retained, offered or exposed for sale in violation of this Act;
- (e) examine and measure and count the quantity of a commodity for sale by using—
 - (i) a measuring instrument of the Agency traceable to national measurement standards;
 - (ii) a certified measuring instrument found at the premises where the commodity is found; or
 - (iii) a vehicle on which the commodity is transported for sale;
- (f) inspect a process or service carried on in or upon the premises in respect of which measuring instruments are applied;
- (g) at any time, demand from a person immediately or at a time and place fixed by the metrologist, the production of a commodity, product, measuring instrument, measuring equipment, book, notice, record, list or other document which is in the possession, custody or under the control of that person;
- (h) make copies of, or extracts from, a book, notice, record, list or other document relating to a measuring instrument;
- (i) require from a person referred to in paragraph (g) an explanation of any record or entry in the book, record notice or document;

- (j) seize any commodity, product, measuring instrument, measuring equipment, book, notice, record, list or other document which the metrologist believes may afford evidence of an offence under this Act;
- (k) order a person to appear before the metrologist immediately or at a time and place fixed by the metrologist, and at that time and place question that person with regard to a matter which the metrologist is investigating; or
- (l) check any relevant document of a manufacturer or supplier or a measuring instrument, measuring equipment to determine whether that manufacturer or supplier has paid the applicable fees or levies.

(2) A metrologist who enters and inspects any premises or private dwelling in accordance with this section shall have strict regard to safety and security measures, decency, order and respect for each person's right to dignity and privacy.

Inspection
by joint
committee

37. (1) The Board may, constitute a joint committee of regulatory agencies for purposes of carrying out an inspection under this Act.

(2) A joint committee carrying out an inspection under subsection (1) shall have the same powers and obligations vested in, or conferred on, a metrologist under this Act.

Conduct of
inspections
and
assessments

38. The Executive Director shall ensure that inspections and assessments are undertaken by the Agency in order to prevent—

- (a) the use of measuring instruments which do not comply with the provisions of this Act or any other written law; and
- (b) the sale of commodities which, in respect of the quantity or the manner in which they are offered for sale, do not comply with the provisions of this Act or any other written law.

Rebuttable
presumptions
regarding
measuring
instruments
and pre-
packages

39. (1) Where there is a measuring instrument or pre-package in any premises from which buying and selling is commonly carried out, there shall be a rebuttable presumption that the measuring instrument or prepackage is regularly used for the business purpose of those premises.

(2) Where there is a measuring instrument subject to legal metrology control used for health, safety, law enforcement or environmental management in any premises in which or from which measurements are commonly carried out, there shall be a rebuttable presumption that the measuring instrument is used for its intended purpose.

40. (1) Despite anything to the contrary in this Act, a person who imports, manufactures or sells a commodity or measuring instrument in respect of which a legal metrology measure is in force shall, at the written request of the Agency, within the period stated in the request, at that person's own cost—

Samples and information

- (a) transmit to the Agency such samples, as may be specified in the request, of the commodity for inspection, testing or analysis; or
- (b) furnish to the Agency such information as the Agency may specify with regard to the commodity or its manufacture.

(2) The Agency may inspect and provide for testing or analysis a sample obtained under this Act in order to determine whether the pre-packaged commodity, measuring instrument or component complies with, has the characteristics or has been manufactured in accordance with, the requirements of the applicable metrology standard.

(3) Where a sample obtained under subsection (1) is damaged or destroyed during the process of examining, inspection, testing or analysis, the Agency shall not be liable for the damage to or destruction of that sample except in a case of negligence.

(4) The result of an inspection, test or analysis of a sample of a product or measuring instrument shall, unless the contrary is proved, be deemed to be valid for the whole consignment or batch from which the sample was obtained.

41. (1) The Executive Director may, where the Executive Director has reasonable grounds to suspect that a commodity, measuring instrument, consignment or batch of a commodity or measuring instrument does not comply with a requirement of this Act, direct in writing a person who is in possession or control of the commodity, measuring instrument, consignment or batch to keep it in that person's possession or control at or on any premises specified in the directive, until the directive is withdrawn by the Executive Director in writing.

Non-compliance with legal metrology regulations

(2) Where the Agency finds that a commodity referred to in subsection (1) does not comply with a requirement of this Act, the Executive Director may direct, in writing, that—

- (a) the importer of the commodity or measuring instrument return it to its country of origin;

(b) the consignment or batch of the commodity or measuring instrument be confiscated, destroyed, re-worked or dealt with in such other manner as the Executive Director may direct.

(3) The Executive Director shall inform the Board and the Minister, in writing, on any action taken in terms of subsection (2) within seven days of taking the action.

(4) The directive provided for in subsection (1) expires thirty days from the date that it takes effect, unless it is withdrawn, or replaced by a directive provided for in subsection (2).

(5) The Minister may, by statutory instrument, prescribe the manner in which the Executive Director shall issue directives for purposes of subsections (1) and (2).

PART X

OFFENCES AND PENALTIES

Prohibition of publication or disclosure of information to unauthorised persons

42. (1) A person shall not, without the consent, in writing, given by or on behalf of the Agency, publish or disclose to an unauthorised person, the contents of a document, communication or information which relates to, or which has come to the knowledge of the person in the course of that person's duties under this Act.

(2) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to another person, commits an offence.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Offences by officers or employees of Agency

43. (1) A metrologist who willfully or negligently permits the importation, exportation or offer for sale of a measuring instrument or commodity in contravention of the provisions of this Act commits an offence.

(2) An officer or employee of the Agency commits an offence who—

(a) submits or causes the submission of a false inspection report or a false or misleading document for purposes of this Act; or

(b) with intent to receive a gift or any other benefit or to injure another person, holds or delays the decision or action that is brought before the officer or employee for purposes of this Act.

44. (1) A person who intends to be employed as a technician, fitter or contractor in relation to a measuring instrument for the purposes of this Act shall apply to the Executive Director for certification in the prescribed manner and form.

Certification of technician, fitter and contractor

(2) The Executive Director shall certify a person as a technician, fitter or contractor if the person meets the requirements of this Act and can manufacture, install or repair weighing or measuring instruments.

45. (1) A person shall not employ an uncertified technician, fitter or contractor to carry out any installation works or to service or repair a weighing or measuring instrument.

Prohibition of employment of uncertified technician, fitter or contractor

(2) A person who employs an uncertified technician, fitter or contractor commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or imprisonment for a term not exceeding one year, or to both.

46. A person commits an offence who—

General offences

- (a) contravenes or fails to comply with a provision of this Act, or a directive, order, condition, requirement, determination or request made under this Act;
- (b) falsely presents a product or service to be a commodity or service that complies with the provisions of a standard or this Act;
- (c) refuses or fails to pay any fees or levies provided for under this Act that are lawfully due or payable;
- (d) impersonates or falsely presents oneself to be a metrologist for the purposes of this Act or as a person acting under an order of a metrologist;
- (e) knowingly or negligently gives a metrologist false or misleading information;
- (f) refuses or fails to answer to the best of that person's knowledge any relevant question which a metrologist has in the performance of the metrologist's functions put to that person;
- (g) refuses or fails to comply with a lawful requirement, demand or order of a metrologist under this Act; or

(h) delays, hinders or obstructs a metrologist in the performance of the metrologist's functions under this Act.

Offence by
body
corporate or
unincorporate
body

47. Where an offence under this Act is committed by a body corporate or unincorporate body, and the director, manager or shareholder of that body is suspected to have committed the offence and is charged of that offence, that director, manager or shareholder of the body corporate or unincorporate body is liable, upon conviction, to the penalty specified for the offence, unless the director, manager or shareholder proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director, manager or shareholder or that the director, manager or shareholder took reasonable steps to prevent the commission of the offence.

Admission
of guilt

48. (1) A metrologist may, where satisfied that a person has committed an offence for which the penalty does not exceed two hundred thousand penalty units or where a person has admitted the commission of an offence under this Act for which the penalty does not exceed two hundred thousand penalty units, summarily demand from the person the payment of a fine not exceeding one hundred thousand penalty units in respect of the offence.

(2) A metrologist shall, where the metrologist demands a payment under subsection (1), inform the person against whom the demand is made of the right to admit or dispute the liability.

(3) A person from whom payment of a fine has been demanded under subsection (1) may elect to admit liability and pay the fine or dispute liability.

(4) The payment of a fine shall operate as a bar to any further criminal proceedings against the person making the payment in respect of the offence concerned.

(5) A metrologist who receives payment of a fine shall give a receipt to the person making the payment in such form as may be prescribed.

(6) A metrologist commits an offence who receives a payment under this section and—

(a) fails to issue a receipt to the person making the payment as required under subsection (5);

(b) fails to account for any payment made under this section;
or

(c) in any manner, misuses or puts to personal use any payment made under this section.

(7) A metrologist who commits an offence under subsection (1) is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

49. A person who commits an offence under this Act for which a penalty is not provided is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or imprisonment for a term not exceeding two years, or to both.

General
penalty

50. Proceedings for an offence under this Act shall not be instituted except by or with the written consent of the Director of Public Prosecutions.

Consent of
Director of
Public
Prosecutions

PART XI

GENERAL PROVISIONS

51. (1) A person aggrieved with a decision of the Agency under this Act may appeal to the Minister within thirty days of the receipt of the decision of the Agency.

Appeals

(2) The decision of the Minister on an appeal under this section shall be subject to appeal to the High Court.

52. Where it is necessary for the purposes of this Act to determine the importer of a measuring instrument or commodity it shall be presumed, unless the contrary is proved, that the person named on the import transaction documents of the measuring instrument or commodity as the importer, is the importer of that measuring instrument or commodity.

Pre-
sumption as
to importer
of measuring
instrument
or
commodity

53. (1) A person who repairs a verified or rejected measuring instrument shall permanently remove the verification stamp or rejection mark on that measuring instrument and shall, before the instrument is used for trade, cause it to be verified by a metrologist within fourteen days of the repair of the measuring instrument.

Use of
repaired
measuring
instruments

(2) Where a metrologist is unable to verify the repaired measuring instrument submitted to the metrologist under subsection (1) within the specified period, the person who has the repaired measuring instrument in that person's possession or charge may apply to the metrologist for written authority to use the unverified measuring instrument.

(3) A metrologist may, on application made under subsection (2) upon payment of a prescribed fee and submission of a report on the measuring instrument by the applicant, authorise, in writing, the use of the unverified measuring instrument for a period of twenty-one days from the date of the authorisation pending verification of that measuring instrument.

Acts not to be interpreted as assurances or guarantees

54. (1) Nothing done by the Minister, the Agency, the Board, a member of the Board, the Executive Director or an employee of the Agency in the performance of a function under this Act in connection with any measuring instrument or commodity shall be construed as an assurance or a guarantee of any nature in respect of that measuring instrument or commodity.

(2) A manufacturer or supplier is accountable for the integrity of a measuring instrument or commodity in respect of which this Act applies, irrespective of an inspection or certification by the Agency in respect of that measuring instrument or commodity.

Burden of proof

55. (1) In any proceedings under this Act in which it is necessary, in order to establish a charge against a person, to prove that a notice or order in respect of a measuring instrument has been complied with, it shall be presumed, unless the contrary is proved, that the measuring instrument was used in trade at all relevant times by that person in the area to which the notice or order in question relates.

(2) For the purposes of this Act where goods are found on any premises or in any vehicle used by any person for trade the goods shall, unless the contrary is proved, be presumed to be on or in the premises or vehicle for sale.

(3) A measuring instrument is, unless the contrary is proved, presumed to be in the possession of a person for use for the purpose of trade where the measuring instrument is found—

(a) in the possession of that person when the person is carrying on trade; or

(b) on premises used for trade by that person, whether or not the premises are open or enclosed.

Judicial notice

56. A document purporting to be signed by a metrologist and certifying that a weighing or measuring instrument specified in the document was inspected or examined and compared with the standard by the metrologist on a specified date and stating the finding of the examination or inspection shall be received in any court on production by a person as *prima facie* evidence of the facts stated in the document.

Forfeiture Act No. 19 of 2010

57. A measuring instrument or a commodity seized under this Act is liable to forfeiture in accordance with the Forfeiture of Proceeds of Crime Act, 2010.

58. The fact that a measuring instrument or commodity complies with or is alleged to comply with this Act or has been alleged to be manufactured, calibrated, adjusted or dealt with in accordance with this Act shall not give rise to an action, claim or demand against the Agency or the Board or against a member, officer or employee of the Agency unless negligence can be proven against the member, officer or employee.

Limitation
of liability

59. The Minister may, prescribe anything, by statutory instrument which by this Act is required to be prescribed or is necessary for the carrying out of the provisions of this Act.

Regulations

60. (1) The Weights and Measures Act, 1994, is repealed.

Repeal of
Cap. 403

(2) Despite subsection (1), the Second Schedule applies to the savings and transitional arrangements.

FIRST SCHEDULE
(Section 3(3) and 7(5))

PART I

THE ZAMBIA METROLOGY AGENCY ADMINISTRATION OF AGENCY

Tenure of
office and
vacancy

1. (1) A member shall hold office for a period of three years and may be re-appointed for one further period of three years.

(2) A member may resign upon giving one month's notice, in writing, to the Minister.

(3) The office of a member becomes vacant if the member—

(a) dies;

(b) resigns;

(c) is absent, without reasonable excuse, from three consecutive meetings of the Board of which the member has had notice without the prior approval of the Board;

(d) is adjudged bankrupt;

(e) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a period exceeding six months without the option of a fine;

(f) is removed by the Minister; or

(g) has a mental or physical disability which makes the member incapable of performing the functions of a member.

(4) A member shall, on the expiration of the period for which the member is appointed, continue to hold office until a successor is appointed, but in no case shall the further period exceed four months.

(5) The Minister shall, whenever the office of a member becomes vacant before the expiry of the term of office, appoint another person in place of that member but that person shall hold office as a member only for the unexpired part of the term of the Board.

(6) The Minister shall, as far as practicable when appointing members of the Board in accordance with subsection (1), ensure that there is fifty percent representation of each gender.

Proceedings
of Board

2. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

(2) The Board shall meet for the transaction of business at least once in every three months at such places and times as the Board may determine.

(3) A meeting of the Board may be called by the Chairperson upon giving notice of not less than fourteen days, and shall be called by the Chairperson if one-third or more of the members so request in writing, except that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) Five members shall constitute a quorum at a meeting of the Board.

(5) There shall preside at a meeting of the Board—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson;
and

(c) in the absence of the Chairperson and the Vice-Chairperson, such other member as the members present may elect for the purpose of that meeting.

(6) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote.

(7) A member appointed under section 7(1)(a) or (b) who is for any reason unable to attend a meeting of the Board, may, in writing, nominate another person from the same organisation to attend the meeting in that member's stead and that person shall be deemed to be a member for the purpose of that meeting.

(8) The Board may invite a person whose presence is in its opinion desirable to attend and to participate in the deliberations of the meeting of the Board, but that person shall have no vote.

(9) The validity of any proceedings, acts or decisions of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

(10) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and every meeting of any committee of the Board.

3. (1) The Board may, for the purposes of performing its functions, establish such committees as it considers necessary and delegate to any of those committees any of its functions.

Committees
of Board

(2) The Board may appoint as members of a committee persons who are or are not members of the Board, except that at least one member of the Board shall be a member of a committee.

(3) Despite the generality of subsections (1) and (2), the Board may appoint special committees, composed of some members of the Board and persons representing relevant regulatory agencies, to carry out inspections under this Act or perform such other regulatory functions that require collaborative effort with other regulatory agencies.

(4) A person serving as a member of a committee shall hold office for such period as the Board may determine.

(5) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.

Emoluments

4. A member of the Board or any committee of the Board shall be paid such emoluments as the Emoluments Commission may determine.

Disclosure of interest

5. (1) A person who is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration, and in which matter that person or that person's relative or associate is directly or indirectly interested in a private capacity shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to that matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subparagraph (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Immunity

6. An action or other proceeding shall not lie or be instituted against a member of the Board, a member of a committee of the Board or a member of staff of the Agency for, or in respect of, an act or thing done or omitted to be done in good faith in the exercise or performance, of any of the powers, functions or duties conferred under this Act.

PART II
FINANCIAL PROVISIONS

7. (1) The funds of the Agency shall consist of such monies as may—
- Funds of Agency
- (a) be appropriated by Parliament;
 - (b) be paid to the Agency by way of fees, grants or donations; or
 - (c) vest in or accrue to the Agency.
- (2) The Agency may, subject to the approval of the Minister—
- (a) accept monies by way of grants or donations from any source within or outside Zambia;
 - (b) raise by way of loans or otherwise, such monies as it may require for the discharge of its functions; or
 - (c) in accordance with the regulations made under this Act, charge and collect fees for services provided by the Agency.
- (3) There shall be paid from the funds of the Agency—
- (a) the emoluments of the members of staff of the Agency;
 - (b) such reasonable travelling and other allowances for the members and the members of any committee of the Board when engaged in the business of the Agency, at such rates as the Emoluments Commission may approve; and
 - (c) any other expenses incurred by the Agency in the performance of its functions under this Act.
- (4) The Board may, with the approval of the Minister, invest in such manner as it considers appropriate such funds of the Agency that it does not immediately require for the discharge of its functions.
8. The financial year of the Agency shall be a period of twelve months ending on 31st December in each year.
- Financial year
9. (1) The Agency shall cause to be kept proper books of accounts and other records relating to its accounts.
- Accounts and audit
- (2) The accounts of the Agency shall be audited annually by the Auditor-General or an auditor appointed by the Auditor-General.
- (3) The Auditor-General's fees shall be paid by the Agency.
10. (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Agency shall submit to the Minister a report concerning its activities during the financial year.
- Annual report

(2) The report referred to in subparagraph (1) shall include information on the financial affairs of the Agency and there shall be appended to the report—

(a) an audited statement of financial position;

(b) an audited statement of comprehensive income; and

(c) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly.

SECOND SCHEDULE

(Section 60 (2))

SAVINGS AND TRANSITIONAL PROVISIONS

1. (1) A person who, before the commencement of this Act, was an employee of the former Agency, shall be transferred to the service of the Agency as an employee of the Agency as if employed under this Act.

Staff of
former
Agency

(2) Nothing in this Act affects the rights and liabilities of any person employed or appointed by the former Agency before the commencement of this Act.

(3) The Minister shall, by statutory instrument, on the commencement of this Act provide for the transfer of employees of the Bureau responsible for metrology to the Agency on terms that are not less favourable than those enjoyed by the person while in the service of the Bureau.

(4) The service of the persons referred to in subparagraphs (1) and (3) shall be treated as continuous service.

2. (1) On or after the commencement of this Act, there shall be transferred to, vest in and subsist against the Agency by virtue of this Act and without further assurance all assets, rights, liabilities and obligations as the Minister may specify which immediately before that date were the assets, rights, liabilities and obligations of the former agency.

Transfer of
assets and
liabilities

(2) Subject to subparagraph (1), every deed, bond and agreement, other than an agreement for personal service, to which the former Agency was a party immediately before the commencement of this Act, whether or not of such a nature that rights, liabilities and obligations could be assigned shall, unless its subject matter or terms make it impossible that it should have effect as modified, as provided under this paragraph, have effect as if—

(a) the Agency had been party to it;

(b) for any reference to the former Agency there were substituted, with respect to anything falling to be done on or after the commencement of this Act, a reference to the Agency; or

(c) for any reference to any officer of the former Agency, not being a party to it and beneficially interested, there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to such officer of the Agency as the Agency shall designate.

(3) Where under this Act, any assets, rights, liabilities and obligations of the former Agency are deemed to be transferred to the Agency in respect of which transfer a written law provides for registration, the Agency shall make an application, in writing, to the appropriate registration authority for registration of the transfer.

(4) The registration authority, referred to in subparagraph (3), shall make such entries in the appropriate register as shall give effect to the transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register and shall endorse the deeds relating to the title, right or obligation concerned and no registration fees or other duties shall be payable in respect of the transaction.

(5) The Minister shall, by statutory instrument, on the commencement of this Act provide for the transfer of such assets, liabilities, rights and obligations of the former agency relating to the functions to be performed by the Agency.

Legal
proceedings

4. (1) Any legal proceedings or application of the former Agency pending immediately before the commencement of this Act by or against the former Agency may be continued by or against the Agency.

(2) After the commencement of this Act, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the former Agency, may be instituted by or against the Agency.
