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GOVERNMENT NOTICE

DEPARTMENT OF TRADE AND INDUSTRY

No. 419

8 April 2002

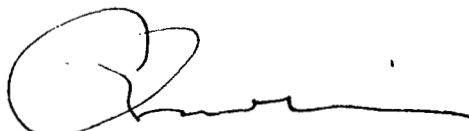
**TRADE METROLOGY ACT, 1973
(ACT NO. 77 OF 1973)**

I, Alexander Erwin, the Minister of Trade and Industry do hereby publish for general comment amendments to the Trade Metrology Act, 1973 (Act No. 77 of 1973) as set out in the Trade Metrology Amendment Bill together with the explanatory memorandum attached hereto.

Interested persons are invited to submit written comments within a period of 30 days from the date of this notice to:

Director: National Consumer Affairs Office
Department of Trade and Industry,
Private Bag x 84,
PRETORIA,
0001
Fax No. 012 322 8489

For Attention: Mrs Tsele- Maseloanyane



Alexander Erwin, MP
Minister of Trade and Industry

REPUBLIC OF SOUTH AFRICA

**TRADE METROLOGY AMENDMENT
BILL, 2002**

(AS INTRODUCED)

MINISTER OF TRADE AND INDUSTRY

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.

BILL

To amend the Trade Metrology Act, 1973, so as to amend definitions; to change the provisions made for standards; to prescribe new verification intervals for standards; to amend headings of sections; to substitute the word council by the word committee; to increase the penalties paid as a result of a contravention.

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, section 1 of Act 17 of 1993 and section 1 of Act 42 of 1994.

1. by the substitution for the definition of "specified measuring instrument" of the following definition: " 'specified measuring instrument' means any measuring instrument of a class or kind specified by the director or any measuring instrument having a valid verification status and which has been repaired without having an affect on its accuracy or invalidating its status as a verified instrument, but not a measuring instrument which has been rejected in terms of section 25;"

Repeal of sections 8 and 9 of Act 77 of 1973.

2. Sections 8 and 9 of the principal Act are hereby repealed.

Amendment of section 11 A of Act 77 of 1973, as inserted by section 3 of Act 42 of 1994.

3. Section 11 A of the principal Act is hereby amended-

- (a) by the renumbering of section 11A to section 8; and
- (b) by the substitution for subsection (1) of the following subsection:

“(1) The director or an accredited laboratory designated in terms of section 7 (2) shall provide for use by any inspector or verification officer such measuring standards (in this Act referred to as verification standards) as may be required by such inspector or verification officer for the purpose of carrying out his duties and functions under this Act.”; and

(c) by the substitution for subsection (3) of the following subsection:

“(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.”.

Amendment of section 11 B of Act 77 of 1973, as inserted by section 3 of Act 42 of 1994.

4. Section 11 B of the principal Act is hereby amended-

(a) by the renumbering of section 11 B to section 9; and

(b) by the substitution for the heading of the following heading:

“Measuring instruments used by inspectors, and verification officers shall be inspected and tested”; and

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

“(1) Every measuring instrument, other than any verification standard, used by any inspector or 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 director or accredited laboratory responsible for providing such measuring instrument to any inspector or verification officer.

Amendment of section 10 of Act 77 of 1973.

5. Section 10 of the principal Act is hereby amended-

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

“(1) The director and any organization appointed by the minister in terms

of section 7 (1) shall provide for use by an inspector or examiner such measuring standards (in this Act referred to as inspection standards) as may in the opinion of the director be required by such inspector or examiner for the purpose of carrying out his duties and functions under this Act.”; and

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

“(2) The value of an inspection standard shall, with due allowance for the limits of error prescribed by regulation, agree with the value signified by the denomination of such inspection standard at the time of verification thereof **[and shall be verified with regional standards and certified accordingly by the inspector in whose custody the regional standards with which it is so verified are kept in terms of section 9 (1)]**.”; and

(c) by the substitution for subsection (3) of the following subsection:

“(3) Any inspection standard **[for the testing of masspieces used for any prescribed purpose]** shall, before being taken into use and thereafter at intervals not exceeding **[six] twelve** months, **[and any other inspection standard shall, before being taken into use and thereafter at intervals not exceeding one year]** be verified or reverified with such standards as may be approved by the director **[regional standards and certified accordingly by the inspector in whose custody the regional standards with which any such inspection standard is so verified or reverified are kept in terms of section 9 (1)]**: Provided that inspection standards of volume made of glass shall be reverified and certified within such intervals as the director may deem fit.”

Amendment of section 11 of Act 77 of 1973.

6. Section 11 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every measuring instrument, other than any **[regional or inspection standard] masspiece or measure**, used by the director or any inspector or examiner for the purposes of carrying out his 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 every such inspection and testing shall be made and kept by the director or **[the inspector referred to in section 9 (1)]** organization appointed in terms of section 7(1).

Amendment of section 18 of Act 77 of 1973, as amended by section 1 of Act 14 of 1984.

7. Section 18 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) The director shall, after consultation with the **[council] committee**, decide on the issue of any certificate referred to in subsection (2) and may cause to be made known particulars of any such certificate in such manner as he may deem fit.”.

Amendment of section 22 of Act 77 of 1973, as amended by section 2 of Act 14 of 1984 and section 12 of Act 17 of 1993.

8. Section 22 of the principal Act is hereby amended by the substitution for the heading of the following heading: “Fees to be charged by inspectors and accredited laboratories.”.

Amendment of section 23 of Act 77 of 1973, as amended by section 7 of Act 34 of 1975.

9. Section 23 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

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

Amendment of section 24 of Act 77 of 1973, as amended by section 10 of Act 15 of 1990 and section 14 of Act 17 of 1993.

10. Section 24 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) Any decision of any inspector under this section shall be liable to revision by, and subject to appeal to, the **[council] committee**.

(3) Any costs incurred by the SABS council in connection with any appeal which in the opinion of the **[council] committee** is based on frivolous grounds, shall be borne by the appellant.

Amendment of chapter VI of Act 77 of 1973 as amended by section 12 of Act 42 of 1994.

11. The heading of chapter VI is hereby substituted by the following heading:

“Repair of Measuring Instruments [and Registration of Certain Persons]”

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, section 18 of Act 17 of 1993 and section 14 of Act 42 of 1994.

12. Section 42 of the principal Act is hereby amended by the substitution for subsection (1) (c) of the following subsection:

“(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]**.”

13. Section 43 of the principal Act is hereby amended by the substitution therefor of the following section:

“43. Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and shall, be liable on a first conviction to a fine not exceeding **[one] two hundred thousand** rand or imprisonment for a period **[not exceeding six months,] decided by the court,** and on a second or subsequent conviction to such fine or **[such]** imprisonment without the option of a fine.”

EXPLANATORY MEMORANDUM

TITLE: TRADE METROLOGY AMENDMENT BILL, 2002

1. Summary

The purpose of the amendments to the Act is to amend definitions, to change the provisions made for standards, to prescribe new verification intervals for standards, to amend headings of sections, to substitute the word "council" by the word "committee" and to increase the penalties paid as a result of a contravention.

2. Discussion

2.1 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, section 1 of Act 17 of 1993 and section 1 of Act 42 of 1994

The definition of "specified measuring instrument" is amended to include certain instruments and remove the necessity for the Director of Trade Metrology to specify each instrument concerned. When the need arose for the definition in 1993, it was not envisaged that there would be a major administrative burden. The envisaged change will remove the said burden by broadening the definition to include instruments, which would normally be specified separately by the Director of Trade Metrology.

2.2 Repeal of sections 8 and 9 of Act 77 of 1973

Repeal of sections 8 and 9, which require the maintaining of departmental and regional standards respectively. These are no longer required as the South African Bureau of Standards (SABS) laboratory standards are directly traceable to the national standards at a higher accuracy class than previously required. Previously, SABS was responsible for traceability of standards but they now work in terms of the SANAS accreditation.

2.3 Amendment of section 11A and 11B of Act 77 of 1973, as inserted by section 3 of Act 42 of 1994

Sections 11A and 11B are renumbered as Sections 8 and 9 respectively and amended to include standards used by SABS inspectors. These sections previously only applied to accredited laboratories and now that

SABS 1697 and SABS 1698, which deal with verification standards, have been published, all standards used in terms of the Act must comply with these. This will level the playing field between SABS and Accredited Laboratories.

2.4 Amendment of section 10 of Act 77 of 1973

Section 10 is amended to bring it in line with section 7.1, which was amended by Act 58 of 1996. This sets out the responsibility of any organization providing an inspection function in terms of the Act, for providing the necessary standards and rectifies an anomaly, which previously existed.

2.5 Amendment of section 11 of Act 77 of 1973

Section 11 is amended to bring it in line with the new sections 8 and 9 and the amended section 10. The new section 10 refers to measuring standards therefore section 11 needs to be amended to remove any reference to regional and inspection standards. The repealed of section 9 referred to regional standards, whereas the new section 9 does not, requiring the deletion of the reference. The amendment also now includes other organizations that may be appointed under the Act and who should also use accurate instruments.

2.6 Amendment of section 18 of Act 77 of 1973, as amended by section 1 of Act 14 of 1984

Section 18 is amended by replacing the word "council" with "committee.". With the transfer of the trade metrology function to the SABS in 1991 the word "council" in the Trade Metrology Council was in conflict with the SABS council and it was decided to change the name to the Trade Metrology Committee. During the aforementioned amendment the changing of the word "council" to "committee" where it appeared in various section of the Act, was omitted.

2.7 Amendment of section 22 of Act 77 of 1973, as amended by section 2 of Act 14 of 1984 and section 12 of Act 17 of 1993

The heading of section 22 is amended to bring it in line with the contents, which were amended by Act 17 of 1993. The amendment of 1993 included a section 22(2) which allowed for accredited laboratories to charge for the verification of measuring instruments but the heading was not amended. The proposed amendment rectifies the situation as not only inspectors charge fees.

2.8 Amendment of Section 23 of Act 77 of 1973, as amended by Section 7 of Act 34 of 1975

Section 23 is amended by replacing the word "council" with "committee" for reasons specified in paragraph 4.6 above.

2.9 Amendment of Section 24 of Act 77 of 1973, as amended by Section 10 of Act 15 of 1990 and Section 14 of Act 17 of 1993

Section 24 is amended by replacing the word "council" with "committee" in subsections (2) and (3) for the reasons specified in paragraph 4.6 above

2.10 Amendment of chapter VI of Act 77 of 1973 as amended by Section 12 of Act 42 of 1994

The heading of chapter VI is amended to bring it in line with the contents, which were amended by Act 42 of 1994. The registration of registered mechanics was withdrawn in 1994 and replaced with accredited verification companies and all sections of Chapter VI referring to the said registered mechanics were deleted by section 12 of Act 42 of 1994, however the heading was not changed.

2.11 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, Section 18 of Act 17 of 1993 and section 14 of Act 42 of 1994

Sections 11a and 11b have been renumbered to sections 8 and 9 respectively and the amendment to section 42 deletes sections 11a and 11b, which no longer exist.

2.12 Amendment of Section 43 of Act 77 of 1973

Section 43 of the Act is amended to increase the penalty for contravention of the Act from one thousand to two hundred thousand Rand. This is necessary as the current fine is no deterrent and is paid gladly.
