

MALAWI GOVERNMENT

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ACT

No. 10 of 2016

I assent

PRO. ARTHUR PETER MUTHARIKA

PRESIDENT

24th April, 2016

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An Act to provide for the establishment of a national measurement system, and the establishment of a National Metrology Institute in Malawi; to provide for the improvement of quality of manufactured products, uniformity of measurements, the verification of instruments, weights and measures, protection of the public in relation to health, safety and environmental controls, and for other matters incidental thereto.

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Metrology Act, 2016, and shall come into operation on such date as the Minister may, by notice, publish in the *Gazette*.

Short title and
Commence-
ment

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

Interpretation

“article” includes any liquids, food, chattels, wares, merchandise, commodities and other goods of any description and, where necessary, any article and its package;

“authorized measure” means a unit of weight, length, capacity, area or volume referred to in section 3;

“Board” means the Malawi Bureau of Standards Board established under section 7 of the Malawi Bureau of Standards Act, 2012;

No. 14 of
2012

“calibration” means to determine the relationship between the measured amount and the indicated value and cognate expressions shall be construed accordingly;

“Committee” means the Metrology Committee established under section 12;

“correct” in relation to an instrument, weight or measure, means correct within such limits of error and with such sensitivity as may be prescribed;

“Director General” means the Chief Executive Officer of the Malawi Bureau of Standards appointed under section 24 of the Malawi Bureau of Standards Act, 2012;

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2012

“error” in relationship to an instrument, weight or measure, means the difference between the true value and the indicated value;

“industrial metrology” means that part of metrology which deals with measurements needed for industrial operations such as in production and testing processes;

“Industrial Metrology Officer” means the officer appointed as such under section 11;

“inspector” means a weights and measures inspector appointed under section 11;

“instrument” means a weighing or measuring instrument;

“legal metrology” means that part of metrology relating to activities which result from statutory requirements and concern measurements, units of measurement, measuring instruments and methods of measurement, and which are performed by competent authorities;

“measuring equipment” means device intended to be used to make measurements, alone or in conjunction with supplementary device based on the SI system of measurement, and weighing equipment shall be construed accordingly;

“metrology” means the field of knowledge concerned with measurements also defined as the science of measurement;

“national accreditation system” means a voluntary system which establishes and verifies competency to perform specific activities;

“national measurement system” means a system which provides for the establishment and development of measurement standards, measurements needed for industrial operations and regulatory controls of measurements performed in areas of commerce, trade, industry, health, safety and for environmental controls;

“National Metrology Institute” means the institute established under section 13;

“national standards” means weights or measures intended to ensure traceability to the international standards of weights and measures ;

“pattern-approval” means a decision based on facts from pattern evaluation and involving judgment to admit or not to admit the subject pattern to legal use, and “pattern-approve” shall be construed accordingly;

“pattern evaluation” means an objective process of determining design and metrological facts concerning a pattern of measuring instrument aimed at providing government with the means for assuring the adequacy of measurements covered by law or regulation;

“police officer” means any member of the Malawi Police Service of the rank of Inspector or above;

“prepacked” in relation to an article, means packed or made up in advance ready for sale in a wrapper or container;

“purchaser” includes a person acting on behalf of a purchaser;

“reference standards” means weights and measures intended to ensure traceability to the national standards ;

“rejected” in relation to an instrument, weight or measure, means such instrument, weight or measure has been examined, tested and found not to comply with the requirements of this Act;

“sale by retail” means a sale to a person buying otherwise than for the purpose of resale, but does not include a sale to cater for manufacturing business, as the case may be, and “sell by retail” and “sold by retail” shall be construed accordingly;

“SI Units” means units based on international system of measurement;

“scientific metrology” means that part of metrology which deals with the organization and development of measurement standards and with their maintenance at the highest level of accuracy;

“seal of verification” means a prescribed seal of verification;

“secondary standards” means weights and measures intended to ensure traceability to reference standards;

“sell” includes to offer, advertise, expose, keep, have in possession, or prepare for sale and to exchange or dispose of for valuable consideration, and cognate expressions shall be construed accordingly;

“stamp” includes to cast, engrave, etch, print or otherwise mark in such a manner as to be as far as possible indelible, and shall include a sticker;

“stamp of verification” means a prescribed stamp of verification;

“standards” include national standards, reference standards, secondary standards or working standards;

“tolerance” means the maximum allowable error;

“traceability of measurement” means the property of the results of calibrations and measurements whereby it can be related to the definition of units through an unbroken chain of comparisons all having stated uncertainties and, in the case of legal metrology, traceability being obtained through compliance with maximum permissible errors;

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

“unverified” means not verified or in relation to an instrument, weight or measure, which according to this Act, should have been reverified, but has not been reverified;

“use in trade” in relation to an instrument, weight or measure, means the use thereof for weighing, measuring or counting in trade, and cognate expressions shall be construed accordingly;

“vehicle” includes any carriage, wagon, truck, barrow, cart, or other means of conveyance;

“verify” or “reverify” in relation to an instrument, weight or measure means to examine, test in the prescribed manner and when found correct, stamp with the stamp of verification and where provided with a seal of verification, seal in accordance with this Act, and cognate expressions shall be construed accordingly;

“verification mark” includes a stamp;

“verification officer” means a person appointed as verification officer in terms of section 11;

“weighing instrument” includes scales, balances and all kinds of machines or instruments used for weighing, including those which also compute prices and those which count objects by weighing; and

“working standards” means weights or measures intended to ensure traceability to secondary standards.

PART II—STANDARD WEIGHTS AND MEASURES

Measuring units and prefixes 3.—(1) The measuring units of the SI system shall be those set out in Parts I, II and III of the First Schedule.

(2) The prefixes for multiples and submultiples of the SI units shall be those set out in the Second Schedule.

Standard units 4. The standard units for mass, length, temperature, time, electric current, luminous intensity and amount of substance shall be as follows—

(a) the kilogram (kg) is equal to the mass of the international prototype of the kilogram;

(b) the metre (m) is the length of the path travelled by light in a vacuum during a time interval of $1/299\,792\,458$ of a second;

(c) the second (s) is the duration of 9 192 631 770 periods of radiation corresponding to the transition between the two hyper fine levels of the ground state of the caesium-133 atom;

(d) the ampere (A) is that constant current which, if maintained in two straight parallel conductors of infinite length, of negligible circular cross-section, and placed one metre apart in a vacuum would produce between these conductors a force equal to 2×10^{-7} newton per metre of length;

(e) the kelvin (K) is the fraction $1/273.16$ of the thermodynamic temperature of the triple point of water;

(f) the candela (cd) is the luminous intensity in a given direction of a source that emits monochromatic radiation of frequency 540×10^{12} hertz and has a radiant intensity in that direction of $1/683$ watts per steradian; and

(g) the mole (mol) is the amount of substance of a system which contains as many elementary entities as there are atoms in 0.012 kg of carbon-12:

Provided that when the mole is used, the elementary entities shall be specified and may be atoms, molecules, ions, electrons, other particles, or specified groups of such particles.

5.—(1) The units of weight, length, capacity, area and volume that are lawful for use in trade shall be those specified in the Third Schedule.

Lawful units of weight, capacity, length, area and volume

(2) The physical weights and measures lawful for use for trade shall be those specified in the Fourth Schedule.

6. The values expressed in terms of any units of the imperial standard relating to measure of extension, whether linear, superficial, solid, weight or capacity may be converted into values expressed in terms of the units of the metric system in accordance with the Fifth Schedule.

Conversion of imperial standard units

7.—(1) Standards procured for verification functions shall be under the custody of the National Metrology Institute.

Custody of some standards

(2) Subject to subsection (3), any institution accredited under the national accreditation system may keep standards for calibration purposes.

(3) The institutions referred to in subsection (2) shall not keep national standards.

PART III—CALIBRATION

8.—(1) The Board shall cause—

Period of comparison

(a) all national standards to be calibrated in such manner as it deems fit, at intervals not exceeding ten years;

(b) all reference standards to be calibrated at intervals not exceeding seven years;

(c) all secondary standards to be calibrated in comparison with national standards or reference standards and, if necessary, be corrected and adjusted by a competent body as the Board may direct;

Provided that such calibration shall be carried out at intervals not exceeding five years; and

(d) all working standards to be calibrated in such manner and at least once a year.

(2) The Board shall cause records of calibrations referred to in subsection (1) (a) to (d) to be kept in such form as the Board may direct.

Calibration of
standards and
equipment

9.—(1) The Board shall cause—

(a) all national standards to be calibrated against international standards through national standards of other states or other accredited laboratories;

(b) all reference standards to be calibrated against national standards;

(c) all secondary standards to be calibrated against reference standards; and

(d) all working standards to be calibrated against secondary standards.

(2) The Board shall cause records of the calibrations as referred to in subsection (1) (a) to (d) to be kept in such form as the Board may direct.

Certificate of
calibration

10.—(1) The National Metrology Institute shall issue certificates of calibration standards and precision equipment.

(2) The calibration certificate shall be of the form determined by the National Metrology Institute.

PART IV—ADMINISTRATION

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11.—(1) Subject to subsection (2), the Minister may, in accordance with section 37 of the Malawi Bureau of Standards Act, 2012, appoint persons to perform the functions of weights and measures inspector, verification officer or industrial metrology officer for the purpose of this Act.

(2) A weights and measures inspector shall hold such qualification as may be determined by the National Metrology Institute.

(3) The Director General may appoint an employee of local authority or any organ of state with the prescribed qualifications as Market Surveillance Inspector in general or for a specific purpose.

(4) The Director General shall furnish a Market Surveillance Inspector appointed in terms of this section with a certificate signed by the Director General stating that he or she has been appointed as a Market Surveillance Inspector in general or for a specific purpose as the case may be.

12.—(1) The Board may establish a Metrology Committee in terms of section 16 (1) of the Malawi Bureau of Standards Act, 2012. Establishment, composition and functions of Metrology Committee No. 14 of 2012

(2) The composition and functions of the Committee shall be in line with those provided for in sections 15 and 16 of the Malawi Bureau of Standards Act, 2012.

13.—(1) There is hereby established the National Metrology Institute (hereinafter referred to as the “Institute”). Establishment, of the National Metrology Institute

(2) The Institute shall be responsible for the following—

(a) procurement of standards and testing equipment for proper discharge of functions under this Act;

(b) custody, care and maintenance of standards of the SI system of measurement; and

(c) calibration of precision measuring equipment and standards.

(3) The standards procured in terms of subsection (2)(a) shall comprise the following as declared by the Minister by notice published in the *Gazette*—

(a) national standards;

(b) reference standards;

(c) secondary standards; and

(d) working standards.

(4) Any institution may establish a laboratory to undertake calibration work:

Provided that such laboratory shall be accredited under the national accreditation system.

14.—(1) Any person shall, on payment of the prescribed fee, make a written application to the Malawi Bureau of Standards— Pattern approval

(a) for the issuance of a certificate regarding the suitability for use in trade or commerce of any instrument, weight or measure of a design or pattern specified in the application; or

(b) for the amendment of such certificate if that design or pattern is altered in a manner specified in the application without affecting the principle of the instrument, weight or measure.

(2) If the Malawi Bureau of Standards is satisfied—

(a) as to the suitability for use in trade of any instrument, weight or measure of a manner specified in the application, the Malawi Bureau of Standards shall issue a certificate to that effect;

(b) that the alteration of the design or pattern specified in the application does not affect the—

(i) suitability for use in trade; and

(ii) principle of the instrument, weight or measure,

the Malawi Bureau of Standards shall amend the certificate accordingly:

Provided that the Malawi Bureau of Standards may, in such certificate, limit the purposes of trade or commerce for which any instrument, weight or measure of that design or pattern may be used and restrict or impose conditions upon, the use in trade of any such instrument, weight or measure.

(3) If the Malawi Bureau of Standards at any time finds a design or pattern of an instrument, weight or measure in respect of which a certificate has been issued under this section to have some quality which might render it unsuitable for any purposes of trade or which has become obsolete it may—

(a) cancel such certificate; or

(b) cancel such certificate and, upon the payment of the prescribed fee, issue a fresh certificate in place thereof in which it may limit the purpose of trade or commerce for which the instrument, weight or measure may be used or restrict or impose conditions upon use in trade or commerce of such instrument, weight or measure.

Fees

15. The Minister may, from time to time, by order published in the *Gazette* prescribe amount of fees payable in terms of this Act.

PART V—VERIFICATION OF INSTRUMENTS, WEIGHTS AND MEASURES

Verification of
instruments,
weights and
measures

16.—(1) Every instrument, weight and measure used in commerce, trade, health and safety or environmental controls shall be verified or reverified in accordance with this Act.

(2) Unless otherwise specified, instruments, weights and measures referred to in subsection (1) shall be verified or reverified at intervals not exceeding twelve months or for a lesser period on request by users.

(3) Any person who has in his possession—

(a) any instrument, weight or measure the use of which is for purposes other than trade, may apply to have such instrument, weight or measure verified or calibrated;

(b) any medical equipment or any other instrument, weight or measure specified in the Sixth Schedule, the use of which may affect the health or safety of any person or the use of which is for environmental controls, shall be submitted for verification in terms of this Act; and

(c) any instrument used for regulatory controls shall be produced for verification in terms of this Act:

Provided that instruments, weights and measures specified in subsection 3(b) and (c) shall be verified at intervals stated in the Sixth Schedule.

(4) Where an inspector or a verification officer verifies an instrument, weight or measure in terms of subsections (1) and (3), he shall—

(a) ensure that verification or reverification is done in such a manner as to indicate the year of such verification or reverification or;

(b) issue to the person in charge of such instrument, weight or measure, if so required to do, a written statement to the effect that the instrument, weight or measure has been verified.

17.—(1) An inspector shall reject in the prescribed manner—

Rejection of
instruments,
weights and
measures

(a) any instrument, weight or measure which he finds to be false or defective or incorrect or not to comply with the requirements of this Act.

(b) any measuring instrument of a class or a kind in respect of which the design, material or construction is in terms of the regulations required to be approved by the Director General, if such approval has not been granted.

(2) Where an inspector or verification officer rejects an instrument, weight or measure in terms of subsection (1), he shall—

(a) deface the verification mark or the verification sticker; and

(b) issue to the person in charge of such instrument, weight or measure, if required by him to do so, a written statement giving the reason for the rejection.

(3) Any decision of any inspector or verification officer under this section shall be liable to revision by, and subject to appeal to, the Board.

(4) Any costs incurred by the Board in connection with any appeal which, in the opinion of the Board, is based on frivolous grounds, shall be borne by the appellant.

Verification
publication

18.—(1) An inspector may issue a notice as the Director General may approve, calling upon all persons or any class of persons having instruments, weights or measures in use in trade or commerce within an area specified in that notice to produce the same to the inspector for the purpose of their being verified or reverified at such time and place within that area as may be specified in that notice:

Provided that there shall be an interval of at least fourteen days between the date of publication of the notice and the first day on which any instruments, weight or measure is to be produced in terms of this section.

(2) Subject to subsection (3), any person who fails to comply with the notice referred to in subsection (1) commits an offence and shall, upon conviction, be liable to—

(a) in case of a natural person, a fine of K100,000 or imprisonment for six months; or

(b) in case of a legal person—

(i) a fine of K1,000,000; or

(ii) for every director of the legal person, imprisonment for six months, unless he proves that he did not know of the commissioning of that offence.

(3) A person having, within an area specified in a notice referred to in subsection (1)—

(a) an instrument which—

(i) is fixed;

(ii) has a weighing capacity exceeding 250 kg;

(iii) is of delicate construction; or

(b) an instrument, weight or measure which is ordinarily kept at a place which is not within 40 km of any place specified in that notice,

shall not be guilty of an offence under this section if, upon the publication of that notice, he forthwith in writing notifies the inspector by whom that notice was published of the particulars of such instrument, weight or measure and the place where it is

ordinarily kept and requests that such instrument, weight or measure be verified or reverified at that place.

(4) A verified measure of capacity made of clear glass need not be reverified, unless the inspector has reasonable grounds for believing that it has materially altered since it was last verified or reverified for the last time or unless the stamp of verification has been defaced or become illegible.

(5) An inspector may demand that any person producing or submitting an instrument, weight or measure for verifying or reverifying—

(a) cause it to be taken sufficiently apart to enable him to examine the working parts;

(b) provide auxiliary material necessary for the verification or reverification of any such instrument, weight or measure;

(c) provide transport for the carriage of and labour for the proper and expeditious handling of the standards or any material which is to be used for the verification or reverification of any such instrument, weight or measure; or

(d) cause it to be cleaned if necessary.

(6) If the demand as stipulated in subsection (5) is not complied with, the Inspector may refuse to verify or reverify such instrument, weight or measure.

19.—(1) An inspector, a verification officer, a magistrate or police officer may at all reasonable times—

Powers of
entry and
inspection

(a) enter any premises, market place, vessel, vehicle, ship or any other place other than a private dwelling or stop any vehicle where he has reasonable cause to believe that any measuring instruments, weights and measures is used in trade or commerce safety and environmental controls and cause such instruments, weights and measures to be compared with the standards.

(b) detain any instrument, part of the instruments, weights or measures which, he has reasonable cause to believe that it is being used contrary to this Act.

(2) Any instrument, part of an instrument, weights or measures seized and detained in terms of subsection (1) (b), shall be detained for a period not exceeding ninety days from the date of commission of the alleged offence.

(3) If upon the expiry of the period referred to in subsection (2), no challenge has been instituted against the seizure or detention, the instrument shall be destroyed in a manner deemed appropriate by the Director General.

(4) An inspector may at all reasonable times—

(a) enter into any premises, vessel, vehicle, ship or any other place from which he has reasonable cause to believe that any articles are sold or kept for delivery and may inspect and weigh or measure any article found therein;

(b) order any person delivering any article to stop and may inspect and weigh or measure any such article;

(c) for the purpose of paragraph (a) or (b), use any verified or reverified instrument, weight or measure at any premises, vessel, vehicle, ship or any other place where such article is inspected;

(d) order a seller of any article to produce for inspection and, if the inspector deems it necessary, seize and detain any article, invoice, delivery note or other record kept by such seller relating to the weighing and measuring of such article;

(e) stop a seller from selling any article that does not comply with the requirements of this Act; and

(f) order any person mentioned in paragraph (b) or in charge of any premises, vehicle or ship or any other place mentioned in paragraph (a) to—

(i) provide labour for the handling and weighing of any article in terms of this Act; and

(ii) give his or her details or the details of his employer as deemed appropriate by the inspector.

(5) Documents and articles seized and detained in terms of subsection (4) (d) shall be detained for a period not exceeding ninety days from the date the offence was committed.

(6) If, upon expiry of the period referred to in subsection (5), no challenge has been instituted against the seizure or detention, the articles shall be destroyed in collaboration with the local assemblies and other relevant authorities.

(7) Any person who fails to comply with any order in terms of this section commits an offence and shall, upon conviction, be liable to—

(a) in case of a natural person, a fine of K100,000.00 or imprisonment for six months;

(b) in case of a legal person—

(i) a fine of K1,000,000; or

(ii) for every director of the legal person, imprisonment for six months, unless he proves that he did not know the commissioning of that offence.

(8) When exercising any powers conferred by this section, an inspector shall, if so required, produce a written authority from the Director General.

PART VI—SALE OF ARTICLES AND USE OF INSTRUMENTS, WEIGHTS
AND MEASURES

20.—(1) Subject to subsection (4), every contract made or effected in Malawi for any work, article or thing other than land or interest in land shall, when the same has been or is to be done, sold, delivered, carried or agreed for by weight or measure, be made or effected by reference to an authorized measure.

Contracts to be made by reference to authorized measure

(2) Failure to comply with the requirements of subsection (1) shall render such contract invalid.

(3) Subject to subsection (4), any person who sells any article by reference to an unauthorized measure commits an offence and shall, upon conviction, be liable to—

(a) in case of a natural person, a fine of K200,000.00 or imprisonment for twelve months;

(b) in case of a legal person—

(i) a fine of K2,000,000; or

(ii) for every director of the legal person, imprisonment for twelve months, unless he proves that he did not know the commissioning of that offence.

(4) This section shall not apply to any contract made or effected with a view to the exportation from, or the importation into, Malawi of any article.

21. Subject to this Act, a person shall not sell any article in a wrapper or container marked with an unauthorized measure, unless its correct equivalent in terms of an authorized measure is also marked on that wrapper or container in—

Marking of containers and wrappers

(a) not less conspicuous manner than the unauthorized measure; or

(b) a prescribed manner.

22.—(1) Subject to subsection (4), a person shall not sell any article by any weight other than net weight.

Sale and delivery of articles

(2) Subject to subsections (3) and (4), a person who sells or has sold articles by weight or measure shall not deliver, cause to be delivered or have in his possession or charge for delivery to the purchaser such articles without an invoice or delivery note showing the net weight or measure of such articles:

Provided that where a weight has been prescribed for a sack, bag or pocket of any articles and that article is sold by sack, bag or pocket, it shall be sufficient if the invoice or delivery note contains only the number of such sacks, bags or pockets sold.

(3) Subsection (2) shall not apply to the following—

(a) any article weighed or measured in the sight and presence of the purchaser and delivered to him immediately thereafter; or

(b) any article sold in a wrapper or container on the outside of which or a label securely attached to which is clearly and legibly written or printed the net weight of the measure of such article or the net weight or the measure of such article at the time of packing.

(4) This section shall not apply to any article for which weight is used for the purpose of designating grade or class only.

Prepacked
articles

23.—(1) Subject to subsections (3) and (4), a person shall not sell any prepacked article or goods by weight or measure unless—

(a) the net weight or measure is marked on the wrapper or container in the prescribed manner by reference to an authorized measure;

(b) the name and address of the packer are marked thereon; and

(c) the identity of the product is clearly and indelibly marked.

(2) Subject to subsection (4), any packer, seller, manufacturer or importer shall ensure that the prepackages satisfy the following three conditions—

(a) the average weight or measure of the prepackages shall be equal to or more than the nominal weight or measure;

(b) not more than two and a half per centum of the pre-packages shall fall below the first tolerance limit; and

(c) no prepackages shall fall below the second tolerance limit.

(3) The Minister shall, by notice published in the *Gazette*, prescribe tolerance limits.

(4) Subsections (1) and (2) shall not apply to any article or goods—

(a) weighed or measured in the sight and presence of the purchaser and delivered to him immediately thereafter; or

(b) for which weight is used for the purpose of designating grade or class only.

(5) Subsections (1) (b) and (2) shall not apply where the goods are packed in retail premises for sale direct to consumers and that the packing is not done for other retailers.

(6) Manufacturers and importers of prepacked articles shall register with the Malawi Bureau of Standards.

24.—(1) Where any person in any premises, vessel, vehicle, ship, shop or any other place sells by retail by weight or measure any article, he shall provide a verified instrument or measure and, where necessary, weights capable of weighing such article and shall keep and operate the same in such place and manner that measurements indicated by the instrument or measure are clearly visible to the purchaser at all times:

Use of
verified
instruments,
weight and
measures

Provided that this subsection shall not apply to any person selling bread from a vehicle or a shop.

(2) A person responsible for the management of any mill, refinery, creamery, produce store or other places where agricultural or dairy produce is purchased shall provide a verified instrument and, where necessary, weights capable of weighing such produce, and shall keep and operate the same in such place and manner that the weighing and the weight indicated by the instrument are clearly visible to the person delivering such produce.

25. A person shall not print, publish, make, circulate, or cause to be printed, published, made or circulated any price list, catalogue or other paper containing a statement of price current of articles for sale by weight or measure in Malawi in which measure by weight, length, capacity, area or volume of those articles are expressed otherwise than by reference to an authorized measure or denote or imply a greater or lesser measure of weight, length, area or volume than is denoted or implied by an authorized measure.

Price list

26. Any person who, by any means whatsoever, whether directly or indirectly—

Short quantity
and false
declaration of
quantity

(a) makes a false, incorrect or untrue declaration or statement as to the weight, length, gauge, width, area, capacity, volume, or number of any article in connection with its purchase, sale, weighing or measurement;

(b) sells or cause to be sold anything by weight or measure short of the quantity demanded of, or represented by, the seller; or

(c) fails to comply with the requirements laid down in subsections (1) and (2) of section 23,

commits an offence and shall, upon conviction, be liable to—

(i) in case of a natural person, a fine of K500,000 or imprisonment for five years; or

(ii) in case of a legal person—

(A) a fine of K2,000,000; or

(B) for every director of the legal person, imprisonment for five years, unless he proves that he did not know the commissioning of that offence.

also, unjust
and rejected
instruments,
weights and
measures

27. Subject to this Act, any person who uses in trade, health, safety and environmental control or has in possession or charge for such use—

(a) any instrument, weight or measure the use in trade or commerce, health, safety and environmental control of which is prohibited under this Act or which is false, defective or incorrect;

(b) any unverified or rejected instrument, weight or measure; or

(c) any instrument, weight or measure for any purposes of trade or commerce, health, safety and environmental control—

(i) for which according to a certificate issued under section 14 it may not be used; or

(ii) contrary to any restriction or condition imposed in such certificate,

commits an offence and shall, upon conviction, be liable to a fine of K500,000.00 and to imprisonment for five years.

importation
and sale of
instruments,
weights and
measures

28.—(1) Subject to subsection (2), a person shall not—

(a) import into Malawi any instrument which has not been duly pattern approved according to international recommendations and not accepted by the Malawi Bureau of Standards as satisfying the requirements for verification;

(b) sell any instrument, weight or measure which does not bear a stamp or seal of verification of the year of verification, or immediately preceding the date of sale; or

(c) import into Malawi any of the following instruments—

(i) small face spring balances whether dial or chart, or suspended weighers;

(ii) spring scales of the counter type provided with a hand operated knob;

(iii) spring scales with balancing range exceeding one per centum of the capacity of the instrument;

(iv) tubular spring scales; or

(v) open Beranger counter scales.

(2) Subsection (1) (a) and (b) shall not apply to any instrument, weight or measure of a type which is not ordinarily verifiable and which, when manufactured was not designed for use in trade or commerce.

(3) Any person who fails to comply with the requirements of sub sections (1) and (2) commits an offence and shall, upon conviction, be liable to—

(a) in case of a natural person, a fine of K500,000.00 or imprisonment for five years;

(b) in case of a legal person—

(i) a fine of K2,000,000; or

(ii) for every director of the legal person, imprisonment for five years, unless he proves that he did not know the commissioning of that offence.

29.—(1) Any person who mends or repairs a verified or rejected instrument, weight or measure shall first permanently obliterate the stamp of verification or the rejection mark thereon and before such instrument, weight or measure is thereafter used in trade or commerce, cause the instrument weight or measure to be verified.

Repairs and
installation of
instruments

(2) Any person who intends to install any instrument intended to be used in trade the use of which is likely to attract a fee or penalty shall notify the Director General in writing of his intention to carry out such works.

(3) A person who installs the instrument referred to in subsection (2) shall submit the instrument for verification immediately after installation and before using the instrument.

(4) Any person carrying out repair, amendment or installation works in terms of this section shall hold a licence of competency issued by the Malawi Bureau of Standards.

(5) A company that employs a person carrying out repairs or installations in terms of this section shall be responsible for the payment of the licence of competency fees.

(6) Any person who fails to comply with subsections (1), (3) and (4) commits an offence and shall, upon conviction, be liable to a fine of K500,000.00 and to imprisonment for three years.

PART VII—GENERAL

30. The Minister may make regulations generally for the better carrying into effect the provisions of this Act.

Regulation

31.—(1) Any inspector, verification officer, or industrial metrology officer who—

Offences by
inspectors,
verification
officers, etc.

(a) stamps any instrument, weight or measure not duly verified;

(b) in the course of his duties sells, engages himself in the business of buying and selling of instruments, weights or measures with a view to derive personal benefits;

(c) opens or dismantles any instrument with the purpose of servicing or repairing it, when the servicing and repairing is not his duty; or

(d) stamps any instrument, weight or measure with a view to derive personal benefits,

commits an offence and shall, upon conviction, be liable to a fine of K1,000,000.00 and to imprisonment for six years.

(2) Any inspector, verification officer, or industrial metrology officer who, in the course of his duty, discloses any manufacturing secrets of any company commits an offence and shall, upon conviction, be liable to a fine of K1,000,000.00 and to imprisonment for six years.

ffences
her than by
spectors

32.—(1) Any person—

(a) who makes use of any fraudulent art, device or contrivance for the purpose of evading the provisions of this Act;

(b) who forges or counterfeits or utters or unlawfully has in his possession a forged or counterfeit stamp or die for the verification or reverification of an instrument, weight or measure;

(c) who, save as provided in section 29—

(i) tampers with an instrument, weight or measures; or

(ii) increases or diminishes a weight or measure; used in trade;

(d) other than a verification officer, who places on any instrument, weight or measure any stamp or mark purporting to indicate that such instrument, weight or measure has been verified or reverified; or

(e) who willfully commits or is party to or aids in or incites any other person to the commission of any fraud or deception in the use of any instrument, weight or measure, commits an offence and shall, upon conviction, be liable to a fine of K500,000.00 and to imprisonment for three years.

(2) Any person—

(a) who hinders or obstructs any inspector, verification officer, magistrate or police officer in the discharge of his functions under this Act;

(b) who impersonates an inspector or a verification officer;

(c) other than a verification officer, and save as provided in section 29, who obliterates or removes from any instrument, weight or measure any stamp or seal of verification or part thereof;

(d) who—

(i) in any way, alters any portion of material or weight or principle of construction of any instrument, weight or measure in respect of a design or pattern of which a certificate in terms of section 14 is in force; and

(ii) by any means whatsoever, whether directly or indirectly, represents such altered instrument, weight or measure to any person as an instrument, weight or measure in respect of a design or pattern of which such a certificate is in force; or

(e) who contravenes or fails to comply with any provision of this Act when it is his duty to comply,

commits an offence and shall, upon conviction, be liable to a fine of K500,000.00 or to imprisonment for three years.

33. Upon conviction of any person of an offence under this Act, the court may, if it deems fit, either in addition, to or without inflicting any other penalty, order that— Forfeiture

(a) any article, instrument, weight or measure in respect of which the offence was committed shall be forfeited, unless the owner of such article, instrument, weight or measure or any person acting on his behalf or having a right in that article, instrument, weight or measure shows cause to the contrary; and

(b) the forfeited article, instrument, weight or measure be destroyed after ninety days from the date of forfeiture.

34.—(1) Wherever any manager, agent or employee of any person does or omits to do any act which would be an offence under this Act for the principal to do or omit to do, then, unless it is proved that all reasonable steps were taken by the principal to prevent any act or omission of the kind in question, the principal shall be presumed himself to have done or omitted to do that act and be liable to conviction and sentence in respect thereof. Acts and omissions

(2) Whenever any manager, agent or employee of a principal does or omits to do any act which would be an offence under this Act to do or omit to do, he shall be liable to conviction and sentence in respect thereof as if he were the principal.

(3) Any manager, agent or employee who is liable to conviction due to circumstances referred to in subsection (2) may be convicted and sentenced together with the principal.

safeguards to
traders

35.—(1) In any proceedings under this Act in respect of an alleged deficiency of weight or measure of any prepacked article, the court may disregard any inconsiderable variation in the weight or measure of a single article, and shall have regard to the average weight or measure of a reasonable number of other articles of the same kind, if any, sold by the accused person, or in his possession for the purpose of sale, on the same occasion, and generally to all the circumstances of the case.

(2) It shall be a defence in any proceedings under this Act in respect of an alleged deficiency of weight, length gauge, width, area, capacity, volume or number if the accused person proves that such deficiency was due to an *bona fide* mistake, or an accident, evaporation or drainage, or other causes beyond his control, and despite all reasonable precautions taken by him to prevent the occurrence of such deficiency, or was due to the action of some person over whom he has no control.

documentary
evidence by
inspectors or
verification
officers

36.—(1) A document purporting to be signed by an inspector or a verification officer certifying that an instrument, weight or measure specified therein was inspected or examined and compared with standards by him on a specified date and the finding of his inspection or examination, shall be received in any court on production by any person and without further proof as *prima facie* evidence of the facts therein stated.

(2) A document purporting to be signed by an inspector or a verification officer, certifying that an article specified therein was weighed, measured or counted by him on a specified date and was found to be of a weight, measure or number therein stated, shall be received in any court on production by any person and without further proof as *prima facie* evidence of the facts therein stated.

denial of
proof

37.—(1) In any proceedings under this Act in which it is necessary in order to establish a charge against a person to prove that he did at any time use in trade or commerce or have in his possession or charge for such use, any instrument, weight or measure, he shall, if it is proved that he carried on trade at that time and that such instrument, weight or measure was then in his possession or charge, be presumed, unless the contrary is proved, to have at that time used in trade or commerce or to have had in his possession or charge for such use as the case may be, the said instrument, weight or measure.

(2) 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 under section 18 (1) should in respect of any instrument, weight or measure have been complied with, such instrument, weight or measure shall be presumed, unless the contrary is proved, at all relevant times, to have been used in trade or commerce by that person in the area to which the notice in question relates.

(3) Where an article is found at any premises, vessel, vehicle, ship or any other place which is used by a person for trade or commerce, the article shall, unless the contrary is proved, be deemed, for the purposes of this Act, to be at such premises, vessel, vehicle, ship or any other place for sale.

(4) Where an article packed or made up in a wrapper or a container is found in the possession or control of a person for purposes of trade or commerce, that article shall, unless the contrary is proved, be deemed, for the purpose of this Act, to be a prepacked article.

38. The Malawi Bureau of Standards may, by action in any court of competent jurisdiction, recover the amount of fees payable in terms of this Act. Recovery of fees

39. The Malawi Bureau of Standards shall perform the functions of the Institute, until such a date as the Minister shall, by notice published in the Gazette, appoint for the Malawi Bureau of Standards to cease to perform such functions Transitional provision

40. (1) Subject to subsection (2), the Weights and Measures Act, and the Metrication Act are hereby repealed. Repeal and savings
Cap. 48:04
Cap. 48:08

(2) Any subsidiary legislation made under the Weights and Measures Act repealed by subsection (1) in force immediately before the commencement of this Act— Cap 48:04

(a) shall remain in force, unless in conflict with this Act and shall be deemed to be subsidiary legislation made under this Act;

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

41.—(1) Save as the Minister may by order otherwise provide, nothing in this Act shall make unlawful the use in any transaction, by agreement between parties thereto of any unit between measurement which— Other savings

(a) was customarily used for trade in the transactions immediately before the passing of this Act; and

(b) is not inconsistent with the units contained in the Third Schedule, notwithstanding that the unit in question is not included in the Schedule.

(2) Nothing in this Act shall affect the powers granted by Government before the commencement of this Act, to any institution or any authority with respect to the verification or re-verification of instruments, weights and measures and for the performance of related consumer protection functions.

(3) Nothing in this Act shall affect powers of any person appointed immediately before the commencement of this Act with respect to the examination, regulation, verification or re-verification, and seizure of any articles, instruments, weights and measures.

(4) Where the Malawi Bureau of Standards does not have capacity to calibrate, verify or re-verify instruments, equipment, weights and measures, the Malawi Bureau of Standards shall have the power to engage locally or internationally, accredited institutions or companies to do the calibration, verification or re-verification of instruments and equipment, weights and measures.

SCHEDULES

FIRST SCHEDULE

PART I—SI BASE UNITS

<i>Base quantity</i>	<i>Units</i>	<i>Symbol</i>
length	metre	m
mass	kilogram	kg
time	second	s
intensity of electric current	ampere	A
thermodynamic temperature	kelvin	K
luminous intensity ..	candela	cd
amount of substance ..	mole	mol

PART II—SI DERIVED UNITS WITH SPECIAL NAMES AND SYMBOLS

<i>Derived quantity</i>	<i>SI Derived Units</i>	<i>Symbol</i>
plane angle ..	radian ..	rad
solid angle ..	steradian ..	sr
frequency ..	hertz ..	Hz
force ..	newton ..	N
pressure, stress ..	Pascal ..	Pa
energy, work, quantity ..	joule ..	J
power, radiant flux ..	watt ..	W

<i>Derived quantity</i>	<i>SI Derived Units</i>	<i>Symbol</i>
Electric charge, quantity ..	coulomb ..	C
Electric potential difference, electromotive force ..	volt ..	V
Capacitance ..	farad ..	F
Electric resistance ..	ohm ..	Ω
Electric conductance ..	siemens ..	S
Magnetic flux ..	weber ..	Wb
Magnetic flux density ..	tesla ..	T
Inductance ..	henry ..	H
Celsius temperature	degree Celsius ..	$^{\circ}\text{C}$
Luminous flux	lumen	lm
Illuminance	lux	Lx
Absorbed dose, specific energy, kerma	gray	Gy
Activity	becquerel ..	Bq
Dose equivalent, ambient dose Equivalent, directional dose equivalent, personal dose equivalent, organ equivalent dose	sievert ..	Sv

PART III—ADDITIONAL UNITS OUTSIDE SI THAT ARE ACCEPTED FOR USE WITH SI

<i>Quantity</i>	<i>Name</i>	<i>Symbol</i>	<i>Value in SI units</i>
time	minute ..	min	min = 60s
	hour ..	h	h = 60min
	day ..	d	d = 24h
angle	degree ..	$^{\circ}$	$1^{\circ} = (\pi/180) \text{ rad}$
	minute ..	'	$' = 1^{\circ}/60 = (\pi/10\ 800) \text{ rad}$
	second ..	"	$" = 1'/60 = (\pi/648\ 000) \text{ rad}$
volume	litre ..	L	$L = 1 \text{ dm}^3 = 10^{-3} \text{ m}^3$
mass	tonne ..	t	$t = 10^3 \text{ kg}$
distance	nautical mile. .		1 nautical mile = 1,852m
speed	knot ..		knot = (1852/3600) m/s
area	are ..	a	$a = 10^2 \text{ m}^2$
	hectare ..	ha	$ha = 10^4 \text{ m}^2$
pressure	bar ..	bar	1 bar = $10 \times 10^5 \text{ Pa} = 100 \text{ kPa}$
	standard atmosphere	atm	atm = 101.325 kPa

SECOND SCHEDULE

(s. 3 (2))

SI PREFIXES FOR MULTIPLES AND SUBMULTIPLES

<i>Factor</i>	<i>Prefix name</i>	<i>Symbol</i>
10^1	deka	da
10^2	hecto	h
10^3	kilo	k
10^6	ega	M
10^9	giga	G
10^{12}	tera	T
10^{15}	peta	P
10^{18}	exa	E
10^{21}	zeta	Z
10^{24}	yotta	Y
10^{-1}	deci	d
10^{-2}	centi	c
10^{-3}	milli	m
10^{-6}	micro	μ
10^{-9}	nano	n
10^{-12}	pico	p
10^{-15}	femto	f
10^{-18}	atto	a
10^{-21}	zepto	Z
10^{-24}	yocto	y

THIRD SCHEDULE

(s. 5 (1))

UNITS OF WEIGHT, LENGTH, AREA OR VOLUME LAWFUL FOR TRADE USE

WEIGHT

tonne	..	..	..	= 1000 kilograms
kilogram	..	..	..	= Unit of mass defined in section 4
gram	..	..	..	= 1/1000 kilogram
metric carat	..	..	..	= 1/5 gram
milligram	..	..	..	= 1/1000 gram

LENGTH

kilometre	..	..	..	= 1000 metre
metre	..	..	..	= Unit of length defined in section 4
decimetre	..	..	..	= 1/10 metre
centimetre	..	..	..	= 1/100 metre
millimetre	..	..	..	= 1/1000 metre

CAPACITY

litre	..	..	..	= a cubic decimetre
millilitre	..	..	..	= 1/1000 litre

AREA

hectare	..	..	..	= 10 000 square metres
square centimetre	..	..	..	= 1/10 000 square metres
area	..	..	..	= 100 square metres
square metre	..	..	..	= a superficial area equal to that of square each side of which measures one metre

VOLUME

cubic metre				= a volume equal to that of a cubic each edge of which measures one metre
cubic decimetre				= 1/100 cubic metre
cubic centimetre				= 1/1000 cubic decimeter

FOURTH SCHEDULE

(s. 5 (2))

PART I—PHYSICAL WEIGHTS AND MEASURES LAWFUL FOR USE IN TRADE

20 kg
 10 kg
 5 kg
 2 kg
 1 kg
 500 grams
 200 g
 100 g
 50 g
 20 g
 10 g
 2 g
 1 g
 500 mg
 200 mg
 100 mg
 50 mg
 20 mg
 10 mg
 5 mg
 2 mg
 1 mg
 0.5 metric carat
 1 metric carat
 0.25 metric carat
 0.2 metric carat
 0.1 metric carat
 0.05 metric carat

0.02 metric carat
0.01 metric carat
0.05 metric carat

PART II MEASURES

1. *Graduated glass measures*

2 litres

1 L

500 ml

250 ml

200 ml

100 ml

50 ml

25 ml

Graduated glass measures

20 ml

10 ml

2 ml

1 ml

Measures of capacity other than graduated glass measures 100 litres or above

50 L

20 L

10 L

5 L

2 L

1 L

500 ml

200 ml

100 ml

50 ml

20 ml

10 ml

5 ml

2 ml

1 ml

Dry capacity measure, 50 litre or above

20 L

10 L

5 L

2 L

1 L

500 ml

- 200 ml
100 ml
4. *Measures of Length* 100 metres or above
50 m
30 m
20 m
10 m
5 m
3 m
2 m
1 m
0.5 m
1 dm
1 cm
5. *Volumetric measures*
Measures of any multiple of 0.1m³
6. *Area Measures*
1m² or multiple of 1m²
1m² or multiple of 1dm²
1cm² or multiples of 1cm²

FIFTH SCHEDULE

CONVERSION OF IMPERIAL STANDARD UNITS TO EQUIVALENT METRIC UNITS

<i>Imperial standard units</i>	<i>metric units</i>
1 yard	=0.9144 metre exactly
1 pound	=0.45359237 kilogram exactly
1 gallon	=4.54609 cubic decimetres approximately

Passed in Parliament this fourteenth day of March, two thousand and sixteen.

FIONA. KALEMBA
Clerk of Parliament

