



THE REPUBLIC OF KENYA

LAWS OF KENYA

THE WEIGHTS AND MEASURES ACT

CHAPTER 513

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CHAPTER 513

WEIGHTS AND MEASURES ACT

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CHAPTER 513

WEIGHTS AND MEASURES ACT

[Date of assent: 23rd December, 1987.]

[Date of commencement: 1st February, 1988.]

An Act of Parliament to amend and consolidate the law relating to the use, manufacture and sale of weights and measures and to provide for the introduction of International System of Units (SI) and for connected purposes

[Act No. 18 of 1987, Legal Notice 9 of 1988, Act No. 14 of 1991, Act No. 2 of 2002.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Weights and Measures Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"approved" means approved by the Director, or by any other person deputed by the Director to carry out examinations, grant approvals and issue certificates under section 30;

"base unit" means one of the international system (SI) units of measurement listed in the First Schedule;

"certificate of qualification" means a certificate granted by the Institute of Trade Standards Administration, Kenya or any other recognized institute or institution to any person who passes the final examination of that institute or institution, being an examination held for the purposes of ascertaining whether the person possesses sufficient skill and knowledge for the proper performance of the functions and duties of an inspector;

"check-weighed", in relation to any vehicle, means weighed with its load by means of a suitable weighing instrument and weighed again after it has been unloaded by means of the same or another suitable weighing instrument;

"container" includes any form of packaging of goods for sale as a single item, whether by completely or partly enclosing the goods or by attaching the goods to, or winding the goods round some other article and includes a wrapper or confining band;

"custodian" means the custodian of Kenya primary standards referred to in section 13;

"Director" means the Director of Weights and Measures appointed under section 55;

"derived" means derived from the base unit of measurement;

"error", in respect of a weighing instrument, includes deficiency in sensitiveness or discrimination;

"inspection", in relation to a weight, measure, weighing or measuring instrument, means an examination of the weight, measure, weighing or measuring

instrument by an inspector with the object of checking that it has not been modified after verification, its stamp is valid and that its errors, if any, do not exceed those permitted under this Act;

"International Bureau of Weights and Measures" means the body known as *Internationale des Poids et Mesures* established under the *Convention du Metre*, being the body responsible for the conservation of the prototypes of the international standards of weights and measures;

"inspector" means a person appointed under section 54;

"international definition", in relation to any unit of measurement, means the definition of that unit recognized by the General Conference of Weights and Measures from time to time convened by the International Bureau of Weights and Measures;

"Kenya primary standards" means standards procured and maintained under section 12;

"measuring instrument" includes every instrument for the measurement of length, area, volume, capacity and gauge;

"pre-packed" means packaged or made up in advance, ready for sale in or on a container;

"quantity" includes length, width, height, area, size, volume, capacity, weight and number;

"sale" includes an agreement to sell and an offer to sell, and an offer to sell shall be deemed to include the exposing of goods for sale, the furnishing of a quotation and any other act whatsoever by which willingness to enter into any transaction of sale is expressed;

"secondary reference standards" means standards which the Cabinet Secretary has procured and caused to be verified and authenticated as such under section 15;

"secondary standards" means copies of the Kenya primary reference standards which the Cabinet Secretary has procured and caused to be verified and authenticated as such under section 14;

"stamp" means a mark for use as evidence of the passing of weights, measures, or weighing or measuring instruments as fit for use for trade, whether applied by impressing, casting, engraving, etching, branding or otherwise, and cognate expressions shall be construed accordingly;

"testing equipment" means equipment maintained under section 16;

"verification", in relation to a weight, measure, weighing or measurement instrument, means the operations carried out by an inspector having the object of ascertaining and confirming that such weight, measure, weighing or measuring instrument entirely satisfies the requirements of this Act;

"weighing instrument" includes all instruments constructed to calculate and indicate prices, compute wages, count or grade articles by use of weighing principles, together with all weights and counterpoises belonging thereto;

"weighing or measuring equipment" includes a weight, measure or a weighing or measuring instrument;

"working standards" means standards provided for under section 16.

[Act No. 2 of 2002, Sch.]

PART II – UNITS OF MEASUREMENT

3. Units of measurement

(1) Every unit of weight and measure used in Kenya shall be based upon the units specified in the First Schedule.

(2) The Second Schedule shall have effect for defining the units of measurement specified in that Schedule for all purposes in Kenya.

4. Measurement of weight

(1) The kilogram shall be the base unit of measurement of mass by reference to which any measurement of weight shall be made in Kenya.

(2) The measurement of the weight of an item may be expressed in the same terms as its mass by reference to the units of measurement set out in Part I of the Second Schedule.

5. Measurement of length

The metre shall be the base unit of measurement of length by reference to which any measurement of length shall be made in Kenya.

6. Measurement of time

The second shall be the base unit of measurement of time by reference to which any measurement of time shall be made in Kenya and it shall have the meaning assigned by an order made by the Cabinet Secretary, being the meaning appearing to the Cabinet Secretary to reproduce in English the international definition of the second in force at the date of the making of the order.

7. Measurement of electric current

The ampere shall be the base unit of measurement of electric current by reference to which any measurement of electric current shall be made in Kenya; and it shall have the meaning assigned by an order made by the Cabinet Secretary, being the meaning appearing to the Cabinet Secretary to reproduce in English the international definition of the ampere at the date of the making of the order.

8. Measurement of thermodynamic temperature

The kelvin shall be the base unit of measurement of thermodynamic temperature by reference to which any measurement of thermodynamic temperature shall be made in Kenya and it shall have the meaning assigned by an order made by the Cabinet Secretary, being the meaning appearing to the Cabinet Secretary to reproduce in English the international definition of the kelvin at the date of the making of the order.

9. Measurement of luminous intensity

The candela shall be the base unit of measurement of luminous intensity by reference to which any measurement of luminous intensity shall be made in Kenya; and it shall have the meaning assigned by an order made by the Cabinet Secretary, being the meaning appearing to the Cabinet Secretary to reproduce in English the international definition of the candela at the date of the making of the order.

10. Measurement of amount of substance

The mole shall be the base unit of measurement of the amount of substance by reference to which any measurement of the amount of substance shall be made in Kenya and it shall have the meaning assigned by an order made by the Cabinet Secretary, being the meaning appearing to the Cabinet Secretary to reproduce in English the international definition of the mole at the date of the making of the order.

11. Offence to use unauthorized units of measurement

Any person who uses for trade any unit of measurement which is not authorized by this Act shall be guilty of an offence.

PART III – STANDARDS OF MEASUREMENT**12. Kenya primary standards**

(1) The Cabinet Secretary shall procure and cause to be maintained standards of the metre and the kilogram which shall be the Kenya primary standards by reference to which the accuracy of all other standards of those units and of any other unit of measurement directly related to any of those units shall be maintained.

(2) Every standard procured under subsection (1) shall, before being brought into use, be verified by the International Bureau of Weights and Measures and thereafter shall be reverified at such intervals and in such manner as may be prescribed; and the certificate of verification or reverification in respect thereof shall be kept in the custody of the Director.

(3) On production of the certificate of verification or reverification kept under subsection (2) in respect of a Kenya primary standard, the standard shall be conclusively presumed for all purposes to be true and accurate, provided that the certificate is dated not earlier than ten years previous to the date of production thereof.

(4) The Kenya primary standards shall be kept at such place, and under such conditions, as the Cabinet Secretary may prescribe.

(5) Judicial notice shall be taken of every Kenya primary standard.

[Act No. 14 of 1991, Sch., Act No. 2 of 2002, Sch.]

13. Kenya primary reference standards

(1) The Cabinet Secretary shall procure and cause to be maintained copies of the Kenya primary standards and the copies shall be designated the Kenya primary reference standards.

(2) Every Kenya primary reference standard shall be verified by such authority and in such manner as may be prescribed.

(3) Before the Kenya primary standards are reverified in accordance with subsection (2) of section 12, the Director shall cause the Kenya primary reference standards to be verified against the Kenya primary standards, and such Kenya primary reference standards shall be deemed to be the Kenya primary standards during such time as the Kenya primary standards are undergoing verification.

(4) The Kenya primary reference standards shall be kept at such place, and under such conditions, as the Cabinet Secretary may prescribe.

(5) Judicial notice shall be taken of every Kenya primary reference standard.

[Act No. 2 of 2002, Sch.]

14. Secondary standards to be procured

(1) The Cabinet Secretary shall procure such copies of the Kenya primary reference standards as he may think fit, and shall provide for verifying the same, and shall cause such copies to be authenticated as secondary standards in such manner as he may think proper; and a secondary standard of any measure of length or measure of capacity may—

- (a) be provided either as a separate standard or by means of divisions marked on a standard of a large measure; and
- (b) be either marked in whole or in part with subdivisions representing any multiple or fractions of unit of measurement specified in the Act or have no such markings.

(2) The secondary standards shall, at such time as the Cabinet Secretary may prescribe, be compared with the Kenya primary reference standards in the presence of the custodians of the Kenya primary reference standards, and when necessary shall be corrected and adjusted.

(3) The secondary standards shall not be used elsewhere other than at the premises approved by the Director for their custody.

(4) The custodians of the Kenya primary reference standards shall cause every weight or measure submitted to them for certification under this section to be compared with such one or more of the Kenya primary reference standards as may appear to them to be appropriate and, if that weight or measure is found correct and satisfies any other requirements of this Act, they shall issue a certificate to that effect which may include a statement of any error therein.

(5) No weight or measure shall be used as a secondary standard unless there is for the time being in force a certificate of its fitness for the purpose.

(6) A certificate issued under subsection (4) shall cease to have effect at the expiration of the period from the date of issue specified therein in accordance with the provisions of this Act.

(7) The Director shall keep a record of all certificates issued under subsection (4).

(8) *Deleted by Act No. 2 of 2002, Sch.*

(9) Judicial notice shall be taken of every secondary standard.

[Act No. 2 of 2002, Sch.]

15. Secondary reference standards

(1) The Cabinet Secretary shall provide secondary reference standards of such of the measures and weights set out in Part I of the Third Schedule as the Director may from time to time recommend as being proper and sufficient for the purposes of this Act.

(2) The Director shall ascertain the accuracy of secondary reference standards by reference either directly or indirectly to secondary standards, at least once every year; and the standards may be used by an inspector for any purpose in connection with his duties.

(3) A secondary reference standard measure of length or a measure of capacity may—

- (a) be provided either as separate standards or by means of divisions marked on a standard of a larger measure; and

- (b) be either marked in whole or in part with subdivisions representing any multiples or fractions of a unit of measurement specified in the Act, or have no such markings.

(4) Secondary reference standards may be replaced from time to time as may appear to the Cabinet Secretary to be necessary or expedient.

(5) Every standard provided under this section shall, until the contrary is proved, be deemed to be true and accurate.

[Act No. 2 of 2002, Sch.]

16. Working standards and testing equipment

(1) The Cabinet Secretary shall provide for use by an inspector and cause to be maintained working standards of such of the measures and weights set out in Part I of the Third Schedule, such testing equipment, and such stamping equipment as the Director may from time to time recommend as being proper and sufficient for the efficient discharge by an inspector of his duties under this Act; and a working standard measure of length or measure of capacity may—

- (a) be provided either as a separate standard or by means of divisions marked on a standard of a larger measure; and
- (b) be either marked in whole or in part with subdivisions representing any multiples or fractions of a unit of measurement specified in the Act or have no such markings.

(2) Working standards and testing equipment shall be maintained in such manner as the Cabinet Secretary may prescribe.

(3) The Cabinet Secretary may by order vary the Third Schedule by adding to or replacing any of the weights, measures or instruments specified therein as he may deem necessary.

(4) Every working standard provided under this section shall, until the contrary is proved, be deemed to be true and accurate.

[Act No. 2 of 2002, Sch.]

17. Testing of standards and equipment of other institutions

The Director may, if he thinks fit, on the application of any person, government or institution, accept for testing as to accuracy or compliance with any specifications and for report—

- (a) any article used or proposed to be used as a standard of a unit of measurement of mass, length, capacity, area or volume; and
- (b) any weighing or measuring instrument; and
- (c) any other metrological equipment; and
- (d) any article for use in the manner specified in paragraph (b) or (c),

submitted by that person, government or institution for the purpose at such place as the Director may direct; and the Director may charge a prescribed fee in respect of any article or weighing or measuring instrument accepted by him pursuant to this section.

PART IV – WEIGHING AND MEASURING FOR TRADE

18. Meaning of "use for trade"

(1) For the purpose of this Part, the expression "use for trade" means use in connection with or with a view to a transaction falling within subsection (2) where—

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- (a) the transaction is by reference to quantity or is a transaction for the purposes of which there is made or implied a statement of the quantity of goods to which the transaction relates; and
- (b) the use is for the purpose of the determination or statement of that quantity.

(2) A transaction shall be deemed to fall within the meaning of this section if it is a transaction—

- (a) for the transferring or rendering of money or money's worth in consideration of money or money's worth; or
- (b) for the making of a payment in respect of a toll or duty or other dues;
- (c) for the assessment of any work done, wages due or services rendered.

(3) Use for trade does not include use in a case where—

- (a) the determination or statement is a determination or statement of the quantity of goods required for dispatch to a destination outside Kenya; and
- (b) no transfer or rendering of money or money's worth is involved other than the passing of the title to the goods and the consideration for them.

(4) The following instruments, that is to say—

- (a) any weighing or measuring instrument which is made available in Kenya for use by the public, whether on payment or otherwise; and
- (b) any instrument which is used in Kenya for the grading by reference to their weight, for the purposes of trading transaction by reference to that grading, of hens' eggs in shell which are intended for human consumption; and
- (c) any weighing or measuring equipment used for determining whether or not any step is required to be taken to safeguard the well being of human beings or animals or to protect any commodity, vegetation or thing, shall be treated for the purposes of this Act as weighing or measuring instrument in use for trade, whether or not it would apart from this subsection be so treated.

[Act No. 2 of 2002, Sch.]

19. Units of measurement, weights and measures lawful for use for trade

(1) No person shall—

- (a) use for trade any weight or measure which is not authorized by this Act; or
- (b) use for trade, or have in his possession or control for use for trade any weight or measure of a denomination other than those specified in Part I of the Third Schedule.

(2) No person shall use the carat (metric) for trade except for the purposes of transactions in precious stones, pearls, precious metals or articles made therefrom.

(3) Except as may be prescribed and subject to any rules made under section 33, no capacity measure specified in Part I of the Third Schedule shall be used for trade by means of any division or subdivision marked thereon as a capacity measure of any lesser quantity.

(4) Any person who contravenes the provisions of this section shall be guilty of an offence and any weight or measure used or in the possession of any person or control for use for trade in contravention of any of those provisions shall be forfeited.

20. Offences for use or possession of certain weighing or measuring instruments

Every person who uses or has in his possession or control for use for trade a weighing or measuring instrument not constructed to indicate in terms of some weight or measure authorized by this Act shall be guilty of an offence and the weighing or measuring instrument shall be forfeited.

21. Offences relating to false or unjust weights, measures or weighing or measuring instruments

Every person who uses or has in his possession or control for use for trade any weight, measure, weighing or measuring instrument which is false or unjust shall be guilty of an offence and the weight, measure, weighing or measuring instrument shall be liable to be forfeited.

22. Mode of use of measure of capacity

(1) In using a measure of capacity, the same shall not be heaped, but either shall be stricken with a round stick or roller straight and of the same diameter from end to end, or if the article sold cannot from its size or shape be conveniently stricken it shall be filled in all parts as nearly to the level of the brim as the size and shape of the article permits.

(2) Any person who uses a measure of capacity for trade otherwise than in accordance with subsection (1) shall be guilty of an offence.

23. Offences relating to fraud in the use of weights, measures or weighing or measuring instruments

Where a fraud is committed in the use of any weight, measure, weighing or measuring instrument, the person committing the fraud, shall be guilty of an offence and the weight, measure, weighing or measuring instrument shall be forfeited; except so however that where the Court is satisfied that the weight, measure or weighing or measuring instrument is the property of a person other than the person committing, or a person being a party to the commission of, the fraud, the Court may waive the forfeiture.

24. What weight, measure, weighing or measuring instruments is unjust

Every weight, measure or weighing or measuring instrument which has a greater error than the limit of error prescribed under this Act shall be deemed to be false or unjust for the purposes of this Act.

25. Offences for sale of incorrect weights, measures, weighing or measuring instruments

(1) A person shall not make for sale or cause to be made for sale or sell or cause to be sold, any false or unjust weight, measure, weighing or measuring instrument, and no person shall sell or expose for sale any weight, measure, weighing or measuring instrument, intended for use for trade unless the same bears a valid stamp of verification of a date not earlier than one year previous to such sale or exposure.

(2) This section shall not apply to—

- (a) a weighing or measuring instrument of a type which when made was not intended or designed for use for trade and which was then marked with the words "Not Legal for Trade Use" permanently and clearly on some conspicuous part thereof; or
- (b) a measure, weighing or measuring instrument which is required by this Act to be permanently installed at the place where it is to be used before it is verified.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and the weight, measure, weighing or measuring instrument in respect of which the offence is committed shall be forfeited.

26. Offences in connection with stamping of weights, measures, weighing or measuring instruments

(1) Any person who, in the case of any weight, measure or weighing or measuring instrument used or intended to be used for trade—

- (a) not being an inspector or a person acting under the instructions of an inspector, marks in any manner any plug or seal used or designed for use for the reception of a stamp;
- (b) forges, counterfeits or, except as permitted by or under this Act, in any way alters or defaces any stamp;
- (c) removes any stamp and inserts it into any other such weight, measure or weighing or measuring instrument;
- (d) makes any alteration in the weight, measure or weighing or measuring instrument after it has been stamped such as to make it false or unjust; or
- (e) severs or otherwise tampers with any wire, cord or other thing by means of which a stamp is attached to the weight, measure or weighing or measuring instrument,

shall be guilty of an offence:

Provided that nothing in this subsection shall apply to the destruction or obliteration of any stamp, plug or seal, or anything done in the course of the adjustment or repair of any weight, measure or weighing or measuring instrument by, or by the duly authorized agent of, a person who is a manufacturer of or regularly engaged in the business of repairing, such weight, measure or weighing or measuring instrument.

(2) Any person who uses for trade, sells exposes or offers for sale or in any manner disposes of any weight, measure or weighing or measuring instrument which to his knowledge—

- (a) bears a stamp which is a forgery or counterfeit or which has been transferred from another weight, measure or instrument, or which has been altered or adjusted otherwise than as permitted by or under this Act; or
- (b) is false or unjust as a result of an alteration in the weight, measure, weighing or measuring instrument after it has been stamped,

shall be guilty of an offence.

(3) Any weight, measure or weighing or measuring instrument in respect of which an offence under this section is committed and any stamp or stamping instrument used in the commission of the offence shall be forfeited.

27. Verification of weights, measures, weighing of measuring instruments

(1) An inspector shall, not more often than once in every year call upon persons in any area having weights, measures, weighing or measuring instruments in use for trade to produce the same for the purpose of their being examined, verified, stamped or restamped at such time and place within that area as he may appoint.

(2) For the purposes of subsection (1) there shall be published a notice in the *Gazette* and in a newspaper circulating within such area stating the time and place so appointed, such time not being earlier than fourteen days after the publication of the notice.

(3) Where a weight, measure, weighing or measuring instrument, by reason of it being permanently fixed or of its heavy weight or delicate construction cannot be conveniently moved or where a weight, measure, weighing or measuring instrument is situated at a distance exceeding twenty kilometres from the nearest place appointed in pursuance of subsection (1) it shall be sufficient for the purposes of this section if the person who has the same for use for trade notifies in writing its position to the inspector or some other officer authorized by the inspector to receive the notification at least three days in advance of the date the verification falls due.

(4) An inspector shall attend with the working standards and testing equipment in his custody at the time and place notified under subsection (2) and upon payment of the prescribed fee, shall examine every weight, measure, weighing or measuring instrument brought or submitted to him which is of denomination or a pattern authorized by or under this Act, and shall compare or test it with the working standard and testing equipment and if he finds the weight, measure, weighing or measuring instrument to be accurate and correct, he shall stamp it with a stamp of verification in the prescribed manner.

(5) Where a notification has been given under subsection (3) an inspector shall, upon payment of the prescribed fee, attend with the working standards and testing equipment in his custody at the place notified and shall test or examine and stamp any weight, measure, weighing or measuring instrument so notified in the same manner as if such weight, measure, weighing or measuring instrument had been brought or submitted to him.

(6) In case of any measure, weighing or measuring instrument which is required by this Act to be verified only after it has been installed at the place where it is to be used for trade if after the same has been so verified and stamped it is dismantled and re-installed, whether in the same place or some other place, it shall not be used for trade after being so re-installed until it has been verified and stamped by an inspector; and if any person knowingly uses, or causes or permits any other person to use any measure, weighing or measuring instrument in contravention of this subsection or knowing that the same is required by virtue of this subsection to be so re-verified disposes of it to some other person without informing him of that requirement, he shall be guilty of an offence.

(7) Whenever an inspector verifies any weight, measure, weighing or measuring instrument and finds it correct, he shall issue to the person bringing or submitting the same to him a certificate in respect thereof in such form as may be prescribed.

(8) Subject to subsection (3), any person who fails to comply with any notice published under subsection (2) shall be guilty of an offence.

[Act No. 14 of 1991, Sch.]

28. Offences in connection with obstruction of inspector

Any person who refuses or fails to produce to an inspector any weight, measure, weighing or measuring instrument in his possession or custody or control for use for trade, whereof the inspector requires the production under this Act, or who obstructs or hinders or assaults an inspector in the performance of any duty or act imposed or authorized by this Act or who fails to comply with any reasonable request made by an inspector in the course of his duty under this Act, shall be guilty of an offence.

29. Presumption concerning possession

Where any weight, measure, weighing or measuring instrument is found in the possession or control of any person carrying on trade or is found on any premises, whether in a building or not and whether open or enclosed, which are used for trade, that person shall be deemed for the purposes of this Act to have the weight, measure or weighing or measuring instrument in his possession for use for trade and the onus of proving the contrary shall be upon him.

30. Approval of pattern of weighing and measuring instruments for trade

(1) Where any pattern of weighing or measuring instrument is submitted by any person to the Director for approval in such manner as the Cabinet Secretary may prescribe the Director shall, on payment by that person of such fee as may be prescribed, cause to be examined in such manner as he thinks fit the suitability for use for trade of instruments of that pattern, having regard in particular to the principle, materials and methods used or proposed to be used in its construction, and if the Director is satisfied that such weighing or measuring instrument is suitable for use for trade then he shall issue a certificate of approval of that pattern and may from time to time thereafter authorise such modifications thereof as he may think fit.

(2) Where a person submits a pattern of a weighing or measuring instrument to the Director under subsection (1) the Director may require the person to deposit with him the weighing or measuring instrument or parts of that pattern or model of such weighing or measuring instrument together with drawings of such weighing or measuring instrument or parts thereof.

(3) A certificate of approval granted under this section may be granted subject to such conditions as the Director may specify in the certificate of approval; and if any person, knowing that such a condition has been imposed with respect to any weighing or measuring instrument, uses or causes or permits any other person to use the same in contravention of that condition he shall be guilty of an offence, and the weighing or measuring instrument shall be liable to be forfeited.

(4) The Director, after consultation with such persons appearing to him to be interested as he thinks fit, may at any time revoke any certificate of authorization granted under this section, and shall cause notice of any such revocation to be published in the *Gazette*; and if any person knowing that the certificate of authorisation has been revoked, and except as may be permitted by any fresh certificate of authorisation granted in respect thereof, uses for trade or has in his possession or control for such use, or causes or permits any other person so to use, any weighing or measuring instrument of the pattern or incorporating the modification in question, or disposes of any weighing or measuring instrument to any other person in a state in which it could be so used without informing that

other person of the revocation, he shall be guilty of an offence and the weighing or measuring instrument shall be liable to be forfeited.

(5) The Director may accept and adopt, with or without modifications, an approval issued by a competent authority in another country, of any pattern of a weighing or measuring instrument.

(6) If any difference arises between an inspector and any other person as to the interpretation of any specification for the construction of prescribed weighing or measuring instruments under this Act, that difference shall, at the request of that other person, be referred to the Director whose decision thereon shall be final.

31. Prescribed weighing or measuring instrument, etc.

(1) The provisions of this section shall apply to the use for trade a weighing or measuring instrument of such class as may be prescribed.

(2) No person shall use any article for trade as a weighing or measuring instrument to which this section applies, or have any article in his possession for such use unless that article, or weighing or measuring instrument to which this section applies in which that article is incorporated or to the operation of which the use of that article is incidental, has been passed by an inspector as fit for such use and, except as otherwise expressly provided by or under this Act, bears a valid stamp of verification indicating that it has been so passed; and if any person contravenes this subsection, he shall be guilty of an offence and any article in respect of which the offence was committed shall be liable to be forfeited.

(3) Where a person submits any weighing or measuring instrument of a pattern in respect of which a certificate of approval granted under section 30 is for the time being in force, and an inspector is of the opinion that the weighing or measuring instrument is intended for trade for a particular purpose for which it is not suitable, he may refuse to pass or stamp it.

32. Exemption from marking or stamping

The requirement of this Act in respect of marking and stamping shall not apply to any weight, measure or weighing or measuring instrument which is of delicate construction or too small to be marked or stamped in accordance with those requirements.

33. Rules relating to weighing or measuring for trade

The Cabinet Secretary may make rules generally for the better carrying out of the provisions of this Part, and in particular, but without prejudice to the generality of the foregoing power, in respect to—

- (a) the material and principles of construction of weights, measures or weighing or measuring instruments for use for trade;
- (b) the examination and verification for use for trade and stamping of weights, measures or weighing or measuring instruments;
- (c) the prohibition of the stamping of weights, measures, or weighing or measuring instruments in such circumstances as may be specified in the rules;
- (d) the circumstances in which an inspector may remove or detain any weights, measures or weighing or measuring instruments for examination or verification;

- (e) the marking of any weights, measures or weighing or measuring instruments found unfit for use for trade;
- (f) the circumstances in which, conditions under which and manner in which stamps may be destroyed, obliterated or defaced;
- (g) the purpose for which particular types of weights, measures or weighing or measuring instruments may be used for trade;
- (h) the manner of erection or use of weighing or measuring instruments used for trade;
- (i) the condition in which and the manner in which weights, measures or weighing or measuring instruments shall be submitted for verification;
- (j) the standards of measure or weight of denomination other than those prescribed under this Act;
- (k) the limits of error to be allowed on verification either generally or in respect of any trade;
- (l) the fees to be charged in respect of verification of weighing or measuring instrument and the adjusting of weights and measures;
- (m) the examination and licensing of persons engaging in or proposing to engage in the repairing or overhauling of weighing or measuring instruments whether or not for profit, and the fees to be charged for such examination and licences;
- (n) the manner in which the tare weight of road vehicles, or of road vehicles of any particular class or description is to be determined;
- (o) the identification of equipment of approved patterns;
- (p) the prescribing of any weighing or measuring instrument;
- (q) the form of certificates, licences, notices or other documents to be used or issued for the purposes of this Act;
- (r) the examination, verification and stamping of weighing and measuring instruments used or in possession for use by any Department of the Kenya Government or by any local authority for the purposes of, or in connection with, the fixing of tolls, rates, taxes, or payment of any description;
- (s) the declaration, in relation to the specified base units, such other supplementary units, derived units and other units, as he may consider expedient for use in Kenya;
- (t) the declaration of such equivalents, multiples or fractions of any unit of measurement in use in Kenya;
- (u) the abbreviations of or symbols for the units of measurement in use in Kenya, as he may consider expedient;
- (v) the material, principle of construction and the meteorological control of weights, measures or instruments other than those covered by paragraph (a), as the Director may from time to time recommend.

[Act No. 14 of 1991, Sch.]

PART V – TRANSACTIONS IN GOODS

34. Rules relating to transactions in particular goods

(1) The Cabinet Secretary may make rules generally to regulate certain transactions in goods and in particular with respect to any goods specified in the

rules for all or any of the following purposes, that is to say, to ensure that, except in such cases or in such circumstances as may be so specified, the goods in question

- (a) are sold only by quantity expressed in such manner as may be so specified;
 - (b) are pre-packed or are otherwise made up in or on a container for sale or for delivery after sale, only if the container is marked with such information as to the quantity of the goods as may be so specified;
 - (c) are pre-packed, or are otherwise made up for sale or for delivery after sale, only in or on a container of a size or capacity so specified;
 - (d) are sold, or are pre-packed, or are otherwise made up in or on a container for sale or for delivery after sale, or are made for sale, only in such quantities as may be so specified;
 - (e) are not sold without the quantity sold expressed in such manner as may be so specified being made known to the buyer at or before such time as may be so specified;
 - (f) are sold by means of, or are offered or exposed for sale in, a vending machine only if there is displayed on or in the machine—
 - (i) such information as to the quantity of the goods in question comprised in each item for sale by means of that machine as may be so specified; and
 - (ii) a statement of the name and address of the seller;
 - (g) are carried for reward only in pursuance of an agreement made by reference to the quantity of the goods in question expressed in such manner as may be so specified;
 - (h) in such circumstances as may be so specified, have associated with them in such manner as may be so specified a document containing a statement of the quantity of the goods in question expressed in such manner, and a statement of such other particulars, if any, as may be so specified;
 - (i) when carried on a road vehicle along a highway are accompanied by a document containing such particulars determined in such manner as may be so specified as to the weight of the vehicle and its load apart from the goods in question.
- (2) Without prejudice to the generality of the powers conferred by paragraph (c) of subsection (1), rules made by virtue of that paragraph—
- (a) may require a container to be marked with such information concerning it or its contents as is specified in the rules; and
 - (b) in order to prevent size or capacity from giving a false impression of the quantity of the goods in a container, may prescribe a minimum quantity for the goods in a container of a given capacity.

(3) The minimum quantity referred to in subsection (2) (b) may be expressed in the rules by weight or volume, by percentage of the capacity of the container or in any other manner.

35. Rules as to information

- (1) The Cabinet Secretary may make rules—

- (a) as to the manner in which any container required by rules made under section 34 (1) to be marked with information (including in particular information as to quantity or capacity) is to be so marked;
- (b) as to the manner in which any information required by any such provision to be displayed on or in a vending machine is to be so displayed;
- (c) as to the conditions which must be satisfied in marking with information as to the quantity of goods made up in it the container in or on which any goods are made up for sale (whether by way of pre-packing or otherwise) where those goods are goods on a sale of which (whether any sale or a sale of any particular description) the quantity of the goods sold is required by any such provision to be made known to the buyer at or before a particular time;
- (d) as to the units of measurement to be used in marking any such container or machine with any information;
- (e) for securing, in the case of pre-packed goods, that the container is so marked as to enable the packer to be identified;
- (f) as to the method by which and conditions under which quantity is to be determined in connection with any information relating to quantity required by or under section 34;
- (g) permitting, in the case of such goods and in circumstances as may be specified in the rules, the weight of such articles used in making up the goods for sale as may be so specified to be included in the net weight of the goods for the purposes of this Act;
- (h) requiring persons who sell or who make, possess or carry for sale goods which they are prohibited from selling otherwise than by net weight or measure to provide for use of persons buying or proposing to buy such goods from them, the means of verifying or checking the net weight or measure of the goods; and
- (i) prohibiting the importation of make-up packages or vessels for sale in Kenya which do not comply with the requirements of any rules made under section 34.

(2) Any person who contravenes any rule under subsection (1) shall be guilty of an offence.

36. Exemption from requirements imposed under sections 34 and 35

The Cabinet Secretary may by order grant, with respect of goods or sales of such descriptions as may be specified in the order, an exemption, either generally or in such circumstances as may be specified, from all or any of the requirements imposed by or under sections 34 and 35.

37. Offences relating to transactions in goods

(1) Subject to section 50, where any goods are required, when not pre-packed, to be sold only by quantity expressed in a particular manner or only in a particular quantity, any person shall be guilty of an offence who—

- (a) whether on his own behalf or on behalf of another person, offers or exposes for sale, sells or agrees to sell; or
- (b) causes or suffers any other person to offer or expose for sale, sell or agree to sell on his behalf,

those goods otherwise than by quantity expressed in that manner or, as the case may be, otherwise than in that quantity.

(2) Any person shall be guilty of an offence who—

- (a) whether on his own behalf or on behalf of another person, has in his possession for sale, sells or agrees to sell; or
- (b) except in the course of carriage of the goods for reward, has in his possession for delivery after sale; or
- (c) causes or suffers any other person to have in his possession for sale or for delivery after sale, sell or agree to sell on behalf of the first-mentioned person, any goods to which subsection (3) applies, whether the sale is or is to be, by retail or otherwise.

(3) This subsection applies to any goods—

- (a) which are required to be pre-packed only in particular quantities but are not so pre-packed;
- (b) which are required to be otherwise made up in or on a container for sale or for delivery after sale only in particular quantities but are not so made up;
- (c) which are required to be made for sale only in particular quantities but are not so made;
- (d) which are required to be pre-packed only if the container is marked with particular information but are pre-packed otherwise than in or on a container so marked;
- (e) which are required to be otherwise made up in or on a container for sale or for delivery after sale only if the container is marked with particular information but are so made up otherwise than in or on a container so marked;
- (f) which are required to be pre-packed only in or on a container of a particular description but are not pre-packed in or on a container of that description; or
- (g) which are required to be otherwise made up in or on a container for sale or delivery after sale only in or on a container of a particular description but are not so made up in or on a container of that description.

(4) In the case of any sale where the quantity of the goods sold expressed in a particular manner is required to be made known, to the buyer at or before a particular time and that quantity is not so made known the person by whom, and any other person on whose behalf, the goods were sold shall be guilty of an offence.

(5) Where any goods required to be sold by means of, or to be offered or exposed for sale in, a vending machine only if certain requirements are complied with are sold, offered or exposed for sale without those requirements being complied with, the seller or person causing the goods to be offered or exposed for sale shall be guilty of an offence.

(6) The preceding provisions of this section have effect subject to sections 46 to 49.

(7) In this section "required" means required under this Act.

38. Quantity to be stated in writing in certain cases

(1) Subject to section 39, this section shall have effect on any sale of goods—

- (a) which is required under this Act to be a sale by quantity expressed in a particular manner;
- (b) in the case of which the quantity of the goods sold expressed in a particular manner is so required to be made known to the buyer at or before a particular time; or
- (c) which, being a sale by retail not falling within paragraph (a) or (b), is, or purports to be, a sale by quantity expressed in a particular manner other than by number.

(2) Subject to subsections (4) to (6), unless the quantity of the goods sold expressed in the manner in question is made known to the buyer at the premises of the seller and the goods are delivered to the buyer at those premises on the same occasion as, and at or after the time when, that quantity is so made known to him, a statement in writing of that quantity shall be delivered to the consignee at or before delivery of the goods to him.

(3) If subsection (2) is contravened then, subject to sections 46 to 49, the person by whom, and any other person on whose behalf, the goods were sold shall be guilty of an offence.

(4) If at the time when the goods are delivered the consignee is absent, it shall be sufficient compliance with subsection (2) if the statement is left at some suitable place at the premises at which the goods are delivered.

(5) Subsection (2) shall not apply to any sale otherwise than by retail where, by agreement with the buyer, the quantity of the goods sold is to be determined after their delivery to the consignee.

(6) Where any liquid goods are sold by capacity measurement and the quantity sold is measured at the time of delivery and elsewhere than at the premises of the seller, subsection (2) shall not apply but, unless the quantity by capacity measurement of the goods sold is measured in the presence of the buyer, the person by whom the goods are delivered shall immediately after the delivery hand to the buyer, or if the buyer is not present leave at some suitable place at the premises at which the goods are delivered, a statement in writing of the quantity by capacity measurement delivered, and if without reasonable cause he fails so to do he shall be guilty of an offence.

39. Exemptions from requirements of section 38

The Cabinet Secretary may, by order, grant with respect to goods or sales of such descriptions as may be specified in the order, an exemption, either generally or in such circumstances as may be so specified, from all or any of the requirements of section 38.

40. Short weight

(1) Subject to sections 46 to 49, any person who, in selling or purporting to sell any goods by weight or other measurement or by number, delivers or causes to be delivered to the buyer—

- (a) a lesser quantity than that purported to be sold; or
- (b) a lesser quantity than corresponds with the price charged,

shall be guilty of an offence.

(2) For the purposes of this section any statement, whether oral or in writing, as to the weight of any goods shall be taken, unless otherwise expressed, to be a statement as to the net weight of the goods.

41. Misrepresentation

- (1) Subject to sections 46 to 49, any person who—
- (a) on or in connection with the sale or purchase of any goods;
 - (b) in exposing or offering any goods for sale;
 - (c) in purporting to make known to the buyer the quantity of any goods sold; or
 - (d) in offering to purchase any goods,

makes any misrepresentation, whether oral or otherwise as to the quantity of the goods, or does any other act calculated to mislead a person buying or selling the goods as to the quantity of the goods, shall be guilty of an offence.

(2) Subsection (2) of section 40 shall have effect for the purposes of this section as it has effect for the purposes of that section.

42. Quantity less than stated

(1) If, in the case of any goods pre-packed in or on a container marked with a statement in writing with respect to the quantity of the goods, the quantity of the goods is at any time found to be less than that stated, then, subject to sections 46 to 49—

- (a) any person who has those goods in his possession for sale shall be guilty of an offence; and
- (b) if it is shown that the deficiency cannot be accounted for by anything occurring after the goods had been sold by retail and delivered to, or to a person nominated in that behalf by the buyer, any person by whom or on whose behalf those goods have been sold or agreed to be sold at any time while they were pre-packed in or on the container in question,

shall be guilty of an offence.

(2) If—

- (a) in the case of a sale or agreement to sell any goods which, not being pre-packed, are made up for sale or for delivery after sale in or on a container marked with a statement in writing with respect to the quantity of the goods; or
- (b) in the case of any goods which, in connection with their sale or an agreement for their sale, have associated with them a document containing such a statement, the quantity of the goods is at any time found to be less than that stated, then, if it is shown that the deficiency cannot be accounted for by anything occurring after the goods had been delivered to, or to a person nominated in that behalf by the buyer, and subject to sections 46 to 49, the person by whom, and any other person on whose behalf, the goods were sold or agreed to be sold shall be guilty of an offence.

(3) Subsections (1) and (2) shall have effect notwithstanding that the quantity stated is expressed to be the quantity of the goods at a specified time falling before the time in question, or is expressed with some other qualification of whatever description, except where—

- (a) that quantity is so expressed in pursuance of an express requirement of this Act; or
- (b) the goods, although falling within subsection (1) or subsection 2(a)—

- (i) are not required by or under this Act to be pre-packed as mentioned in subsection (1) or, as the case may be, to be made up for sale or for delivery after sale in or on a container only if the container is marked as mentioned in subsection 2(a); and
- (ii) are not goods on a sale of which (whether any sale or a sale of any particular description) the quantity sold is required under any provision of this Act other than section 38, to be made known to the buyer at or before a particular time; or
- (c) the goods, although falling within subsection (2)(b), are not required under this Act to have associated with them such a document as is mentioned in that provision.

(4) In any case to which by virtue of paragraphs (a) (b) or (c) of subsection (3), the provisions of subsection (1) or (2) do not apply, if it is found at any time that the quantity of the goods in question is less than that stated and it is shown that the deficiency is greater than what can be reasonable justified on the grounds justifying the qualification in question, then, subject to sections 46 to 49—

- (a) in the case of goods such as are mentioned in subsection (1), if it is further shown as mentioned in that subsection, then—
 - (i) where the container in question was marked in Kenya, the person by whom, and any other person on whose behalf, the container was marked; or
 - (ii) where the container in question was marked outside Kenya, the person by whom, and any other person on whose behalf, the goods were first sold in Kenya,

shall be guilty of an offence;

- (b) in the case of goods such as are mentioned in subsection (2), the person by whom, and any other person on whose behalf, the goods were sold or agreed to be sold shall be guilty of an offence if, but only if, he would, but for paragraph (a), (b) or (c) of subsection (3) have been guilty of an offence under subsection (2).

(5) Subsection (2) of section 40 shall have effect for the purposes of this section as it has effect for the purposes of that section.

43. Incorrect statements

(1) Notwithstanding section 42(2) to (4), if in the case of any goods required under this Act to have associated with them a document containing particular statements, that document is found to contain any such statement which is materially incorrect, any person who, knowing or having reasonable cause to suspect that statement to be materially incorrect, inserted it or caused it to be inserted in the document, or used the document for the purposes of this Act while that statement was contained in the document, shall be guilty of an offence.

(2) Subsection (2) of section 40 shall have effect for the purposes of this section as it has effect for the purposes of that section.

44. Offences due to default of third person

Where the commission by any person of an offence in respect of any goods is due to the act or default of some other person not being a person under the control of the first-mentioned person, the other person shall be guilty of an offence and

may be charged with and convicted of the offence whether or not proceedings are taken against the first mentioned person.

45. Presumption concerning the nature of goods

In any proceedings under this Act, the description of any goods in any charge shall be *prima facie* evidence that the goods were at the time of the offence and subsequently as so described, and the burden of proving the contrary shall lie upon the accused person.

46. Warranty

(1) Subject to this section, in any proceedings for an offence under this Act, being an offence relating to the quantity or pre-packing of any goods, it shall be a defence for the person charged to prove—

- (a) that he bought the goods from some other person—
 - (i) as being of the quantity which the person charged purported to sell or represented, or which was marked on any container or stated in any document to which the proceedings relate; or
 - (ii) as conforming with the statement marked on any container to which the proceedings relate; and
- (b) that he so bought the goods with a written warranty from that other person that they were of that quantity or, as the case may be, did conform; and
- (c) that at the time of the commission of the offence he did in fact believe the statement contained in the warranty to be accurate and had no reason to believe it to be inaccurate; and
- (d) if the warranty was given by a person who at the time he gave it was resident outside Kenya, that the person charged had taken reasonable steps to check the accuracy of the statement contained in the warranty; and
- (e) in the case of proceedings relating to the quantity of any goods, that he took all reasonable steps to ensure that, while in his possession, the quantity of the goods remained unchanged and, in the case of such or any other proceedings, that apart from any change in their quantity the goods were at the time of the commission of the offence in the same state as when he bought them.

(2) A warranty shall not be a defence in any proceedings under subsection (1), unless, not later than seven days before the date of the hearing, the person charged has sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom the warranty was received, and has also sent a like notice to that person.

(3) Where the person charged is the employee of a person who, if he had been charged, would have been entitled to plead a warranty as a defence under subsection (1), that subsection shall have effect—

- (a) with the substitution, for any reference (however expressed) in paragraphs (a), (b), (d) and (e) to the person charged, of a reference to his employer; and
- (b) with the substitution for paragraph (c) with the following—

"(c) that at the time of the commission of the offence his employer did in fact believe the statement contained in the warranty to be accurate and the person charged had no reason to believe it to be inaccurate".

(4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence.

(5) If the person charged in any such proceedings as are mentioned in subsection (1) wilfully attributes to any goods a warranty given in relation to any other goods, he shall be guilty of an offence.

(6) A person who, in respect of any goods sold by him in respect of which a warranty might be pleaded under this section, gives to the buyer a false warranty in writing shall be guilty of an offence unless he proves that when he gave the warranty he took all reasonable steps to ensure that the statements contained in it were, and would continue at all relevant times to be, accurate.

(7) For the purposes of this section, any statement with respect to any goods which is contained in any document required under this Act to be associated with the goods or in any invoice, and, in the case of goods made up in or on a container for sale or for delivery after sale, any statement with respect to those goods with which that container is marked, shall be taken to be a written warranty of the accuracy of that statement.

47. Reasonable precautions and due diligence

(1) In any proceedings for an offence under this Act, it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) If in any case the defence provided by subsection (1) involves an allegation that the commission of the offence in question was due to the act or default of another person (not being a person under the control of the person charged) or due to reliance on information supplied by another person not being a person under his control, the person charged shall not, without the leave of the Court, be entitled to rely on the defence unless, before the beginning of the period of seven days ending with the date when the hearing of the charge began, he served on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as was then in his possession.

48. Subsequent deficiency

(1) This subsection applies to any proceedings for an offence under this Act, by reason of quantity—

- (a) of any goods made up for sale or for delivery after sale (whether by way of pre-packing or otherwise) in or on a container marked with an indication of quantity;
- (b) of any goods which, in connection with their sale or an agreement for their sale, have associated with them a document purporting to state the quantity of the goods; or
- (c) of any goods required under this Act to be pre-packed, or to be otherwise made up in or on a container for sale or for delivery after sale, or to be made for sale, only in particular quantities, being less than that marked on the container or stated in the document in question or being less than the relevant particular quantity, as the case may be.

(2) In any proceedings to which subsection (1) applies, it shall be a defence for the person charged to prove that the deficiency arose—

- (a) in a case falling within paragraph (a) of subsection (1), after the making up of the goods and the marking of the container;
- (b) in a case falling within paragraph (b) of that subsection, after the preparation of the goods for delivery in pursuance of the sale or agreement and after the completion of the document;
- (c) in a case falling within paragraph (c) of that subsection, after the making up or marking, as the case may be, of the goods for sale,

and was attributable wholly to factors for which reasonable allowance was made in stating the quantity of the goods in the marking of the document or in making up or marking the goods for sale, as the case may be.

(3) If in any proceedings for an offence under this Act, being an offence in respect of any deficiency in the quantity of any goods sold, it is shown that between the sale and the discovery of the deficiency the goods were, with the consent of the buyer, subjected to treatment which could result in a reduction in the quantity of those goods for delivery to, or to any person nominated in that behalf by, the buyer, the person charged shall not be found guilty of that offence unless it is shown that the deficiency cannot be accounted for by the subjecting of the goods to that treatment.

49. Provisions as to testing

(1) If proceedings for an offence under this Act, in respect of any deficiency in the quantity—

- (a) of any goods made up for sale (whether by way of pre-packing or otherwise) in or on a container marked with an indication of quantity; or
- (b) of any goods which have been pre-packed or other wise made up in or on a container for sale or for delivery after sale, or which have been made for sale, and which are required by this Act to be pre-packed, or to be otherwise so made up, or to be so made as the case may be, only in particular quantities,

are brought with respect to any article, and it is proved that, at the time and place at which that article was tested, other articles of the same kind and of the same nominal quantity, being articles which, or articles containing goods which, had been sold by the person charged or were in that person's possession for sale or for delivery after sale, were available for testing the person charged shall not be convicted of such an offence with respect to that article unless a reasonable number of those other articles was also tested.

(2) In any proceedings for such an offence as is mentioned in subsection (1) the Court—

- (a) if the proceedings are with respect to one or more a number of articles tested on the same occasion, shall have regard to the average quantity in all the articles tested;
- (b) if the proceedings are with respect to a single article, shall disregard any inconsiderable deficiency; and
- (c) shall have regard generally to all the circumstances of the case.

(3) Subsections (1) and (2) shall apply with the necessary modifications to proceedings for an offence in respect of the size, capacity or contents of a container

as they apply to proceedings for an offence in respect of the deficiency in the quantity of certain goods.

(4) Where, by virtue of section 44, a person is charged with an offence with which some other person might have been charged, the reference in subsection (1) to articles or goods sold by or in the possession of the person charged shall be construed as a reference to articles or goods sold by or in the possession of that other person.

50. Selling by quantity

Where any goods are required under this Act to be sold only by quantity expressed in a particular manner—

- (a) it shall be a sufficient compliance with that requirement in the case of any sale of, or agreement to sell, any such goods if the quantity of the goods expressed in the manner in question is made known to the buyer before the purchase price is agreed; and
- (b) no person shall be guilty of an offence under section 37(1) by reason of the exposing or offering for sale of such goods at any time if both the quantity of the goods expressed in the manner in question and the price at which they are exposed or offered for sale are made known at that time to any prospective buyer.

51. Making quantity known to a person

(1) For the purposes of this Act, and without prejudice to any other method of making known to a person the quantity of any goods expressed in a particular manner, that quantity shall be taken to be made known to that person—

- (a) if the goods are weighed or otherwise measured or counted, as the case may require, in the presence of that person;
- (b) if the goods are made up in or on a container marked with a statement in writing of the quantity of the goods expressed in the manner in question and the container is readily available for inspection by that person; or
- (c) upon such a statement in writing being delivered to that person.

(2) The Cabinet Secretary may by order provide that subsection (3) shall apply, in the case of such goods in such circumstances as are specified in the order, to any requirement so specified under this Act with respect to the making known to the buyer of the quantity by weight of the goods sold by retail.

(3) In any case to which this subsection applies, the requirement specified in the order shall be taken to be satisfied if the goods are bought at the premises at which the weighing instrument of such description as may be prescribed—

- (a) is kept available by the occupier of those premises for use without charge by any prospective buyer of such goods for the purposes of weighing for himself any such goods offered or exposed for sale by retail on those premises; and
- (b) is so kept available in a position on those premises which is suitable and convenient for such use of the weighing instrument; and
- (c) is reserved for use for that purpose at all times while those premises are open for retail transactions; and a notice of the availability of the weighing instrument for such use is displayed in a position on the premises where it may be readily seen by any prospective buyer.

52. Weighing in presence of a person

For the purposes of this Act, a person shall not be taken to weigh or otherwise measure or count any goods in the presence of any other person unless he causes any weighing instrument used for the purpose to be so placed or conducts the operation of weighing or otherwise measuring or counting the goods, as to permit that person a clear and unobstructed view of the weighing or measuring instrument, if any, and of the operation, and of any indication of quantity given by any such instrument as the result of that operation.

53. Ascertaining quantity of beer or cider

In ascertaining the quantity of any beer or cider for the purposes of section 37 or sections 41 to 43 the gas comprised in any foam on the beer or cider shall be disregarded.

PART VI – ADMINISTRATIVE PROVISIONS**54. Appointment of inspectors**

(1) The Cabinet Secretary may from time to time for the purposes of this Act appoint inspectors from among persons holding certificates of qualification for the efficient discharge of the functions conferred or imposed upon them by this Act.

(2) Notice of a person's appointment to or ceasing to hold office under this Act shall be given by the Cabinet Secretary in the *Gazette*.

(3) A certificate of appointment signed by the Director shall be issued to every inspector appointed and shall be evidence of his appointment under this Act.

(4) Any person who, immediately before the commencement of this Act, was an inspector appointed under section 27 of the Weights and Measures Act (Cap. 513) (1979) (now repealed), shall be deemed for the purposes of this Act to be an inspector appointed under this section.

55. Appointment of director, deputy director and assistant director

(1) There shall be a Director, Deputy Directors and so many Assistant Directors of Weights and Measures, as may be necessary for the purposes of this Act.

(2) The Director may delegate in writing all or any of his powers, duties or functions under this Act, either generally or in any area in Kenya, or for such periods or purposes as he may specify, to any Deputy Director or to any Assistant Director, and may at any time revoke or vary such delegation.

(3) The Director shall be responsible to the Cabinet Secretary for the custody and maintenance of standards provided under section 14, 15 or 16 and generally for the operation of the arrangements made to give effect to the purposes of this Act, and the general supervision of inspectors.

(4) The arrangements made by or on behalf of the Director to give effect to the purposes of this Act may include the provision, under the supervision of the inspector in charge of any area, of a service for the adjustment of weights and measures, but not of other weighing or measuring instruments; and where such a service is so provided, the inspector shall charge such fee in connection therewith as the Cabinet Secretary may prescribe.

(5) Without prejudice to the powers and duties of an inspector under any other provisions of this Act, the Director may make arrangements whereby an inspector may, at the request of any person and upon payment of the prescribed fee, carry out and submit to that person a report on—

Weights and Measures

- (a) weighing or measurement of any goods or article submitted for the purpose by that person;
- (b) a test of the accuracy of any weight, measure or weighing or measuring instrument so submitted.

(6) Any person who, immediately before the commencement of this Act was a superintendent or an assistant superintendent appointed under section 26 of the Weights and Measures Act (repealed) shall be deemed for the purposes of this Act to be Director or Assistant Director as the case may be.

PART VII – MISCELLANEOUS PROVISIONS**56. Powers of entry and seizure**

(1) An inspector may at any reasonable time inspect and test all weights, measures or weighing or measuring instruments which are used or are in any person's possession, or upon any premises for the purposes of trade, and may cause such weights, measures or weighing or measuring instruments to be compared with the working standards, and may apply such test as may be necessary to determine the accuracy therefor, and may seize and detain such of them as are liable to forfeiture under this Act.

(2) For the purposes of subsection (1), an inspector may enter any shop, factory, store or warehouse, stall, yard or other premises wherein he has reasonable cause to believe that there are any weights, measures, weighing or measuring instruments which he is authorized under this Act to inspect or where any goods are bought, sold, exposed, pre-packed or kept for sale, or weighed or measured for sale or for conveyance or carriage or for any other trade purpose.

(3) An inspector authorized under this section may also inspect and weigh or otherwise measure or count any goods on any premises or at any place where goods are bought, sold or exposed for sale, and may stop any vehicle or person carrying goods for sale or delivery to a purchaser and may enter any premises where goods have been delivered to a purchaser in order to ascertain that the provisions of this Act have been complied with and for any such purpose may use any weighing or measuring instrument which complies with the provisions of this Act and which may be upon such premises; and the inspector may require the production of any documents or records appertaining to the quantity or gauge of such goods and such reasonable assistance from any person present and having an interest in those goods as may be necessary.

(4) An inspector may weigh or otherwise measure any container in or on which any goods are made up and may do anything else as respects the goods or container which is reasonably necessary, and which does not damage or depreciate the goods or container to ascertain whether the requirements of this Act are complied with.

(5) For the purposes of subsection (4), an inspector may if necessary break open any container of goods or open any vending machine in which goods are offered or exposed for sale.

(6) Where an inspector has reasonable cause to believe that any document produced to him under subsection (3) contains any inaccurate statement of quantity or gauge or may be required as evidence in proceedings under this Act, he may seize and detain the document giving in exchange thereof a certificate in the prescribed manner, signed by him to the effect that the document has been seized and giving reasons for the seizure.

(7) An inspector entering any premises by virtue of this section may take with him such other person and such equipment as may appear to him necessary.

(8) If any person discloses to any other person any information with respect to any secret manufacturing process or trade secret obtained by him in premises where he has entered by virtue of this section or any information obtained by him in pursuance of this Act he shall be guilty of an offence unless the disclosure was made in or for the purposes of the performance by him or any other person of the functions under this Act.

(9) For the purposes of this section the powers of an inspector shall include power to require the person in charge of any vehicle carrying goods for sale, or for delivery after sale, by weight or measure to a purchaser to have it check-weighed.

57. Power to make test purchase

(1) An inspector may make such test purchases of goods as may appear expedient for the purposes of determining whether or not the provisions of this Act are being complied with; and the expenses incurred in making any such purchase shall be met from public funds.

(2) An inspector may, in connection with the investigation of any alleged offence arising out of a test purchase involving payment with money, search any person for the money; or enter and search premises, or search any box or receptacle and the contents thereof at the place at which such test purchase has been made, and may seize the money so found and retain any change received for the purchase as evidence of the transaction.

(3) Any goods purchased in pursuance of subsection (1) in respect of which no court proceedings are instituted shall be disposed of in such a manner as the Cabinet Secretary may prescribe.

58. Powers of arrest, search and seizure

In addition to any other powers conferred by this Act, an inspector shall have the following powers—

- (a) he may stop and detain, or may arrest without warrant, any person suspected of an offence under this Act or being in possession of any goods, or any weight, measure or weighing or measuring instrument in respect of which he has reason to believe that such an offence has been committed and may search any person so stopped and detained or arrested;
- (b) he may seize and detain any goods or thing, or any weight, measure or weighing or measuring instrument in respect of which he has reason to believe that an offence under this Act has been committed or which he has reason to believe to be evidence of such an offence:

Provided that no person shall be arrested under this section unless he obstructs or hinders the inspector or it appears to the inspector that such a person is likely to fail to answer to a summons, or such a person refuses to give his name and address to the inspector and to produce to him satisfactory evidence of his identity, or such person gives a name and address which the inspector has reason to believe to be false.

59. Employer answerable for acts of servant, etc.

Any person who employs in his shop, store, or other place of business any agent, servant, or other person shall be answerable for the acts or omissions of

the agent, servant or other person in so far as they concern the business of the employer and if such agent, servant or other person commits any act or makes any omission which is an offence if committed or made by such employer, such employer and his agent, servant or other person shall each be guilty of the offence and shall be jointly and severally liable to the penalties provided by this Act.

60. Liability of partners in a firm

Any partner in any firm shall be answerable for the acts or omissions of any other partner in the same firm in so far as they concern that firm; and if any partner commits any act or makes any omission which is an offence under this Act, every partner in the firm shall be jointly and severally liable to the penalties provided by this Act.

61. Offences by corporations

Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent and connivance of or to be attributable to any manager, secretary or other similar officer of the body corporate, or any other person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

62. Disposal of seized goods

(1) Where any vehicle, instrument, goods or money has been seized under this Act, the same may be retained for a period not exceeding three months or if, within that period, proceedings are commenced for any offence under this Act, until the final determination of those proceedings.

(2) Where any goods are seized and detained under this Act, they shall be returned, less any portion which has been reasonably utilized for the purpose of any tests, to the person from whom they were seized within a period of three months after the date of seizure unless within such period some person is charged with an offence under this Act and such offence was committed in relation to or in connection with such goods.

(3) Where any perishable goods have been seized under any provision of this Act, the inspector who has seized the goods shall forthwith report to a magistrate the fact of the seizure and if the Magistrate is satisfied that the goods are perishable, he may authorize the inspector to dispose of the goods as the Magistrate may think fit.

(4) Where any proceedings are taken for any offence under this Act, the Court by or before which the alleged offender is tried may make such order as to the forfeiture of the goods in respect of which such offence was committed or as to the disposal of any goods or money seized in connection therewith as the court shall see fit.

(5) In this section "goods" shall be construed as including the proceeds of the sale of any goods, where such goods have been sold under subsection (3).

63. General penalties

(1) Any person guilty of an offence under this Act shall be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both.

(2) Where any person has been convicted of an offence under this Act, the court convicting him may, in addition to any other penalty to which the convicted

person may be liable, make such order as the Court thinks fit to prevent the person from continuing to deal with or in the same goods or articles in respect of which the offence was committed.

64. Prosecution of offences

All offences under this Act may be prosecuted by an inspector.

65. Exemption for survey equipment

The provisions of this Act shall not apply to any equipment designed or used or intended for use in connection with the survey of land.

66.

[Spent]

FIRST SCHEDULE

[s. 3(1)]

INTERNATIONAL SYSTEM OF UNITS (SI) AND THEIR SYMBOLS

The names and symbols of the base units are respectively as follows—

<i>Quantity</i>	<i>Unit</i>	<i>Symbol</i>
Mass	kilogram	kg
Length	metre	m
Time	second	s
Thermodynamic temperature*	kelvin	K
Electric current	ampere	A
Luminous intensity	candela	cd
Amount of substance	mole	mol

*This temperature is in general expressed in degrees *celsius*.

SECOND SCHEDULE

[s. 3(2), 4.]

DEFINITIONS OF UNITS OF MEASUREMENTS

PART I - MEASUREMENT OF WEIGHT OR MASS

Tonne	= 1,000 kilogram
Kilogram	= has the meaning assigned by an order made by the Cabinet Secretary, being the meaning appearing to the Cabinet Secretary to reproduce in English the international definition of the kilogram in force at the date of making the order.
Hectogram	= 0.1 kilogram
Gram	0.001 kilogram
Carat (metric)	= 0.2 gram
Milligram	= 0.001 gram

PART II - MEASUREMENT OF LENGTH

Kilometre = 1,000 metres

Metre = has the meaning assigned by an order made by the Cabinet Secretary being the meaning appearing to the Cabinet Secretary to reproduce in English the international definition of the metre in force at the date of the making of the order.

Decimetre = 0.1 metre

Centimetre = 0.01 metre

Millimetre = 0.001 metre

PART III - MEASUREMENT OF AREA

Square kilometre = 100 hectares

Hectare = 100 ares or 10,000 square metres

Dekare = 10 ares

Are = 100 square metres

Square metre = a superficial area equal to that of a square each side of which measures one metre

square decimetre = 0.01 square metre

square centimetre = 0.01 square decimetre

square millimetre = 0.01 square centimetre

PART IV - MEASUREMENT OF VOLUME

cubic metre = the volume equal to that of a cube each edge of which measures one metre

cubic = 0.001 cubic metre

decimetre

cubic = 0.001 cubic decimetre

centimetre

PART V - MEASUREMENT OF CAPACITY

Hectolitre = 100 litres

Litre = a cubic decimetre

Decilitre = 0.1 litre

Centilitre = 0.01 litre

Millilitre = 0.001 litre

THIRD SCHEDULE

[ss. 15(1), 16, 19]

MEASURES AND WEIGHTS LAWFUL FOR TRADE

PART 1

Measures of Length

Measures of—

50 metres 3 metres

30 metres 2 metres

20 metres 1 metres

10 metres 1 decimetre

5 metres 1 centimetre,

which may be marked in whole or in part with divisions or subdivisions representing any of the following, namely metres, decimetres, centimetres and millimetres.

Measures of Volume

Measures of—

100 cubic decimetres

200 cubic decimetres

500 cubic decimetres and multiples thereof.

Measures of Capacity

Measures of:—

any multiple of 10 litres

10 litres

5 litres

2 litres

1 litres

500 millilitres

300 millilitres

200 millilitres

100 millilitres

60 millilitres

50 millilitres

30 millilitres

20 millilitres

10 millilitres

5 millilitres

2 millilitres

1 millilitres

Weights

1. Weights of—

20 kilograms

10 kilograms

5 kilograms

2 kilograms

1 kilogram

500 grams

200 grams

100 grams

50 grams

20 grams

5 grams

2 grams

1 gram

10 grams

500 milligrams

200 milligrams

100 milligrams

50 milligrams

20 milligrams

10 milligrams

5 milligrams

2 milligrams

1 milligram

2. Weights of—

500 carats (metric)

200 carats (metric)

100 carats (metric)

50 carats (metric)

20 carats (metric)

10 carats (metric)

5 carats (metric)

2 carats (metric)

1 carats (metric)

0.5 carat (metric)

0.2 carat (metric)

0.1 carat (metric)

0.05 carat (metric)

0.02 carat (metric)

0.01 carat (metric)

Part II

TESTING EQUIPMENT WHICH MAY BE USED BY INSPECTORS IN CONNECTION WITH THEIR DUTIES

Test Weights

Measures of—

Weights and Measures

500 kilograms	20 kilograms
200 kilograms	10 kilograms
100 kilograms	5 kilograms

Other Equipment

1. Balances and beam scales.
 2. Egg poises of various denominations.
 3. Pipettes, burettes and displacement plungers.
 4. Callipers, micrometers and airy's gauges.
 5. Proving tanks of such capacity and design as the Director may approve.
 6. Positive and semi-positive displacement meters of such pattern as the Director may approve.
 7. Water meters.
 8. Any other equipment that the Director may recommend.
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