

WEIGHTS AND MEASURES (AMENDMENT) ACT, 1971

No. 54



of 1971.

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of Arrangement of Sections of Act 42 of 1970
3. Amendment of s. 2 of the principal Act
4. Amendment of s. 7 of the principal Act
5. Amendment of s. 10 of the principal Act
6. Amendment of s. 12 of the principal Act
7. Amendment of s. 15 of the principal Act
8. Amendment of s. 17 of the principal Act
9. Amendment of s. 18 of the principal Act
10. Amendment of s. 22 of the principal Act
11. Amendment of s. 23 of the principal Act
12. Amendment of s. 28 of the principal Act
13. Amendment of s. 29 of the principal Act
14. Amendment of s. 31 of the principal Act
15. Amendment of s. 32 of the principal Act
16. Insertion of new s. 32A into the principal Act
17. Amendment of s. 35 of the principal Act

AN ACT TO AMEND THE WEIGHTS AND MEASURES ACT, 1970

Date of Assent: 22.12.71.

Date of Commencement:

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Weights and Measures (Amendment) Act, 1971, and shall come into operation on such day as the Weights and Measures Act, 1970 (hereinafter called the principal Act) is brought into operation.

Short title
and com-
mencement

Amendment
of Arrange-
ment of Sec-
tions of Act
42 of 1970

2. The Arrangement of Sections to the principal Act is amended —

- (a) in Part II thereof by the deletion of the words “7. Government and Working Standards” and the substitution therefor of the words “7. Government, Local and Working Standards”;
- (b) by the addition, immediately after section 32, of the following new section —

“32A. Offences due to default of third person”.

Amendment
of s.2 of the
principal Act

3. Section 2 of the principal Act is amended —

- (a) by the deletion of the definition of “Superintendent”;
- (b) in the definition of “assizer” by the deletion of the words “section 11 and includes the Superintendent” and the substitution therefor of the words “section 12 and includes the Controller”;
- (c) in the definition of “inspector” by the deletion of the words “section 11” and the substitution therefor of the words “section 12”;
- (d) in the definition of “standard” by the deletion of the words “section 6” and the substitution therefor of the words “section 7”; and
- (e) by the insertion, in their correct alphabetical order, of the following new definitions —

“ “certificate of competency” means a certificate issued by the Controller under any regulations, order or notice made under this Act declaring that the holder is competent in the repair of weighing instruments, measuring instruments, weights or measures;

“Controller” means the Controller of Weights and Measures appointed under section 12 (1);”.

Amendment
of s. 7 of the
principal Act

4. Section 7 of the principal Act is amended —

- (a) in the margin note thereto by the insertion, immediately following the word “Government” of the words “, local”;
- (b) in subsection (1) thereof by —
 - (i) the addition immediately following paragraph (a) of the following new paragraph —

“(b) the local standards; and”;

- (ii) by the re-numbering of the present paragraph (b) as paragraph (c);
 - (c) in subsection (2) thereof by the deletion of the word “working” and the substitution therefor of the word “local”;
 - (d) by the addition immediately after subsection (2) of the following new subsection —
- “(3) The local standards shall be kept in the custody of an assizer at such places as shall be prescribed; shall be used for the purpose of verification of working standards; and where no working standards are held, may, on the authority of the Minister, be used as working standards.”; and
- (e) by re-numbering the present subsection (3) as subsection (4).
- 5.** Section 10 of the principal Act is amended in subsection (1) —
- (a) by the insertion immediately after paragraph (a) of the following paragraph —
 - “(b) all local standards to be verified in comparison with Government standards at intervals of not more than three years; and”;
 - (b) by the re-numbering of the present paragraph (b) as paragraph (c).
- 6.** Section 12 of the principal Act is amended —
- (a) by the deletion of subsection (1) and the substitution therefor of the following new subsection —
 - “(1) The Minister shall, for the purposes of the Act, appoint a Controller of Weights and Measures and such assizers and inspectors as he considers necessary for the carrying out of this Act”;
 - (b) in subsection (2) thereof by the deletion of the word “Superintendent” and the substitution therefor of the word “Controller”.
- 7.** Section 15 of the principal Act is amended in paragraph (b) thereof by the deletion of the word “Superintendent” and the substitution therefor of the word “Controller”.
- 8.** Section 17 of the principal Act is amended in subsection (1) by the addition, immediately after the word “trade”, of the words “or in their possession or charge for use in trade,”.
- 9.** Section 18 of the principal Act is amended —
- (a) by the insertion immediately after subsection (2) of the following new subsection —

Amendment
of s. 10 of the
principal Act

Amendment
of s. 12 of the
principal Act

Amendment
of s. 15 of the
principal Act

Amendment
of s. 17 of the
principal Act

Amendment
of s. 18 of the
principal Act

“(3) An assizer entering any premises by virtue of this section may take with him such other persons and such equipment as may appear necessary.”; and

(b) by the re-numbering of the present subsections (3) and (4) as subsections (4) and (5).

Amendment
of s. 22 of the
principal Act

10. Section 22 of the principal Act is amended by the addition after subsection (2) thereof of the following new subsection —

“(3) The purchaser of any pre-packed article sold by weight or measure may require the seller to verify in the presence of the purchaser the weight or measure by which such article was sold.”.

Amendment
of s. 23 of the
principal Act

11. Section 23 of the principal Act is amended by the addition, immediately after subsection (2) thereof of the following new subsection —

“(3) Whenever an automatic instrument is used for the packing for sale of articles which do not exceed either 12 kilograms in weight or 25 litres in volume per packed unit, the person or company packing such articles shall keep in close proximity to such automatic packing instrument such assized weighing or measuring equipment as may be necessary to verify the correct operation of such automatic packing instrument and shall use such assized weighing or measuring instrument at such frequent intervals as may be necessary to ensure that the automatic packing instrument is operating accurately and correctly.”.

Amendment
of s. 28 of the
principal Act

12. Section 28 of the principal Act is amended by the deletion of subsection (2) thereof and the substitution therefor of the following new subsection —

“(2) An assizer may, upon receipt of —

- (a) the prescribed fee; and
- (b) a written statement of the holder of a certificate of competency that an unassized instrument, weight or measure is correct and assizable,

issue written authority to any person to use that instrument, weight or measure in trade during such period and subject to such conditions, if any, as the assizer may therein specify.”.

Amendment
of s. 29 of the
principal Act

13. Section 29 of the principal Act is amended by the deletion of subsection (2) thereof and the substitution therefor of the following new subsection —

- “(2) An assizer may, upon receipt of —
- (a) the prescribed fee; and
 - (b) a written statement by the holder of a certificate of competency that an instrument, weight or measure which has been mended or repaired and not subsequently assized is correct and assizable,
- issue written authority to any person to use that instrument, weight or measure in trade during such period and subject to such conditions, if any, as the assizer may therein specify.”.

14. Section 31 of the principal Act is amended —

Amendment
of s. 31 of the
principal Act

- (a) by the deletion of subsection (1) and the substitution therefor of the following new subsection —
 - “(1) Subject to subsection (3), the Minister may by regulation prescribe all matters which are required or permitted to be prescribed, or which are necessary or convenient for the carrying out or giving effect to this Act.”; and
- (b) in subsection (2) thereof by the addition, immediately before the end thereof, of the following new paragraphs —
 - “(w) the circumstances in which a person may be issued with an assizer’s certificate;
 - (x) the examination of candidates for assizer’s certificates and the syllabus, conditions of and fees for such examinations;
 - (y) the issue of a certificate of competency in the repair of weighing instruments, measuring instruments, weights or measures.”.
- (c) in paragraph (j) of subsection (2) by the deletion of the word “Superintendent” and the substitution therefor of the word “Controller”; and
- (d) by the addition, immediately after subsection (3), of the following new subsection —
 - “(4) Where in the special circumstances of any particular case it appears to be impracticable or unnecessary that any requirement of any regulations, order or notice prescribed under this section shall be complied with, the Minister may, if he thinks fit, dispense in writing with the observance of that requirement

subject to compliance with such written conditions, if any, as he thinks fit to impose.”.

Amendment
of s. 32 of the
principal Act

15. Section 32 of the principal Act is amended in subsection (2) thereof —

- (a) in paragraph (d) by the deletion of the words “section 14” and the substitution therefor of the words “section 13”;
- (b) in paragraph (e) by the deletion of the words “any provision of this Act” and the substitution therefor of the words “this Act or any regulations made thereunder”; and
- (c) by the insertion, immediately after paragraph (e), of the following new paragraph —

“(f) who knowingly contravenes any condition imposed with respect to any instrument, weight or measure by virtue of section 31 (4).”.

Insertion of
new s. 32A
into the
principal Act

16. The principal Act is amended by the insertion, immediately after section 32, of the following new section —

“Offences
due to default
of third
person

32A. (1) A person against whom proceedings are brought for an offence under this Act shall, upon information duly laid by him and on giving the prosecutor not less than three clear days’ notice of his intention to avail himself of the provisions of this subsection, be entitled to have brought before the Court in those proceedings any other person to whose act or default he alleges the commission of the offence was due; and if, after the offence has been proved, the original defendant proves that the commission thereof was due to an act or default of the other person —

- (a) that other person may be convicted of the offence; and
- (b) if the original defendant further proves that he exercised all due diligence to avoid the commission of the offence by him or any other person under his control, the original defendant shall be acquitted of the offence.

(2) Where it appears to any authority by or on behalf of whom proceedings for such an offence as aforesaid may be instituted that such an offence has been committed by some person, and that authority is reasonably satisfied that the offence was due to an

act or default of some other person and that the first-mentioned person could establish a defence under subsection (1), that authority may take or authorise the taking of proceedings against that other person without first taking or authorising the taking of proceedings against the first-mentioned person; and in any such proceedings that other person may be charged with, and, on proof that the commission of the offence was due to his act or default, be convicted of, the offence with which the first-mentioned person might have been charged.

(3) Where by virtue of subsection (2) a person is charged with an offence with which some other person might have been charged, articles sold by or in the possession of that other person shall be deemed to have been sold by or in the possession of the person charged."

17. Section 35 of the principal Act is amended in subsection (2) thereof by the deletion of the words "or was due to the action of some person over whom he had no control". Amendment of s. 35 of the principal Act

Passed by the National Assembly this day, the 16th December, 1971.

G. T. MATENGE,
Clerk of the National Assembly.