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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2017**

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**NAIROBI, 22nd February, 2017**

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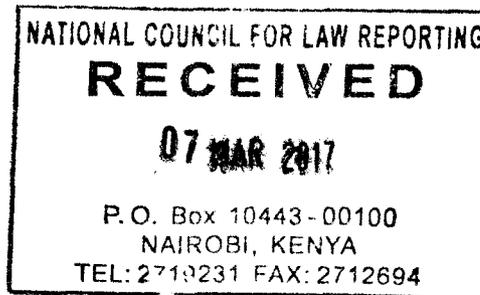
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## THE LEGAL METROLOGY BILL, 2017

### A Bill for

**AN ACT of Parliament to make provisions for the manufacture, sale and use of weighing and measuring equipment in trade, health and safety, environment and the sale of goods, to provide for international best practices and administration of legal metrology services in the devolved system of government and for connected purposes**

**ENACTED** by Parliament of Kenya, as follows—

### PART I— PRELIMINARY

1. This Act may be cited as the Legal Metrology Act, 2017. Short title.

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

“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;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for the matters relating to trade;

“calibration” means a comparison between measurements, one of known magnitude or correctness made or set with one device and another measurement made in as similar a way as possible with a second device;

“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;

“certificate of verification” means a certificate issued by an inspector detailing the condition of weighing and measuring equipment verified by him or her and its errors;

“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;

“County Director” means a director in charge of legal metrology services in a county;

“County Executive” means a County Executive Committee Member for the time being responsible for matters relating to trade in a county;

“custodian” means the custodian of Kenya Primary Standards referred to in section 12;

“Director” means the Director of Legal Metrology Services appointed under section 55;

“derived” means derived from the base unit of measurement;

“error” —

- (a) in respect of a weighing equipment includes deficiency in sensitiveness or discrimination; and
- (b) in respect of measuring equipment, it is the deficiency or excess in measurement of the equipment in comparison to the equivalent standard;

“inspector” means a person appointed under section 54 of this Act;

“inspection” means—

- (a) the surveillance activities carried out by an inspector on goods and weighing or measuring equipment to confirm the correct use and, accuracy of the equipment or that of the statements on goods in relation to the requirements of the Act; and
- (b) in relation to sale of goods or test-purchase, the general surveillance in trade premises for the examination of pre-packed goods and the general transactions in goods for conformity with the provisions of this Act;

“institute” means the Institute of Trade Standards Administration;

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

“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 legal metrology standards” means standards procured and maintained under section 12;

“Kenya primary legal metrology reference Standards” means copies of the Kenya primary legal metrology standards which the Cabinet Secretary has procured and caused to be verified and authenticated as such under section 13 of this Act;

“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 wholesale, bargain, sale as well as sale and delivery;

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

“secondary reference standards” means standards which the Cabinet Secretary has procured and caused to be verified and authenticated as such under section 15 of this Act;

“stamp” means a mark for use as evidence of compliance of the weighing or measuring equipment with

the requirements of this Act, 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;

“valid certificate of verification” means a certificate of verification that is within twelve months of its issuance;

“valid stamp” means a stamp that has not lasted for more than twelve months from the date of application;

“vehicle” means any means of conveyance or transport and shall include road vehicles, rail, aircraft and ship;

“verification” in relation to weighing or measuring equipment, means the operation carried out by an inspector on submitted weighing or measuring equipment having the object of ascertaining and confirming that such weighing or measuring equipment entirely satisfies the requirements of this Act;

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

“weighing or measuring equipment” includes weights, measures or a weighing or measuring instrument;

“Working Standards” means standards provided for under section 16.

### **PART 11—UNITS OF MEASUREMENT FOR LEGAL METROLOGY**

**3.** (1) Every unit of weight and measure used in Kenya shall be based upon the units of the International System of Units specified in the First Schedule and shall carry the meanings assigned to them from time to time by the BIPM.

Units of  
measurement.

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

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

Measurement of  
weight.

(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 1 of the Second Schedule.

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

Measurement of length.

6. 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.

Measurement of time.

7. 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.

Measurement of electric current.

8. 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 order.

Measurement of thermodynamic temperature.

9. 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.

Measurement of luminous intensity.

10. 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

Measurement of amount of substance.

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 making of the order.

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

Offence to use unauthorized unit of measurement.

### **PART III—STANDARDS OF MEASUREMENT**

12. (1) The Cabinet Secretary shall procure and cause to be maintained standards of the metre, the ampere, the second, the candela, the kelvin, the mole and the kilogram which shall be the Kenya primary legal metrology 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.

Kenya primary legal metrology standards.

(2) Every standard procured under subsection (1)

shall, before being brought into use, be calibrated by the International Bureau of Weights and Measures (BIPM) or by any other institution accredited by BIPM and thereafter shall be calibrated at such intervals and in such manner as may be prescribed, and the certificate of calibration or re-calibration in respect thereof shall be kept in the custody of the Director.

(3) On production of the certificate of calibration or re-calibration kept under subsection (2) in respect of a Kenya primary legal metrology 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 prior to the date of production thereof.

(4) The Kenya primary legal metrology 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.

13. (1) The Cabinet Secretary shall procure and cause to be maintained copies of the Kenya primary legal metrology standard and the copies, together with other standards of such of the weights and measures set out in

Kenya primary legal metrology reference standards.

Part 1 of the Third Schedule, other than capacity measures of more than ten litres, shall be designated the Kenya primary legal metrology reference standards.

(2) The Cabinet Secretary shall cause every standard procured under subsection(1) to be examined, calibrated and authenticated by such authority as he or she shall direct before the standard is brought into use, and thereafter to be recalibrated or renewed as requisite from time to time as may appear to the Cabinet Secretary expedient.

(3) Before any of the Kenya primary legal metrology standards are examined and re-calibrated in accordance with section 12(2) of this Act, the Director shall cause the Kenya primary legal metrology reference standards to be calibrated against the Kenya primary legal metrology standards, and such Kenya primary legal metrology reference standards shall be deemed to be the Kenya primary legal metrology standards during such time as the Kenya primary legal metrology standards are undergoing calibration.

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

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

**14.** (1) The Cabinet Secretary shall procure such copies of the Kenya primary legal metrology reference standards as he or she may think fit, and shall provide for calibrating 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 such unit or have no such markings, as the Cabinet Secretary may think fit.

(2) The secondary standards shall, at such time as the Cabinet Secretary may prescribe, be compared with the

Secondary standards to be procured.

Kenya primary legal metrology 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 legal metrology 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 legal metrology 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) The Cabinet Secretary may at any time cancel any secondary standard and direct that the secondary standard shall no longer be used as a secondary standard.

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

**15.** (1) The Cabinet Secretary or the County Executive as may be appropriate, 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.

Secondary  
reference  
standards.

(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 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 such unit or have no such markings, as the Cabinet Secretary may think fit.

(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.

**16.** (1) The Cabinet Secretary or the County Executive, as may be appropriate 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 such unit or have no such markings, as the Cabinet Secretary may think fit.

(2) The County Executive shall cause to be compared legal metrology standards under his or her custody against higher accuracy legal metrology standards in the traceability chain from time to time as may be recommended by the Director.

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

Working  
standards and  
testing equipment.

(4) The Cabinet Secretary may by order vary the Third Schedule by adding to or replacing any of the weighing or measuring equipment specified therein as he may deem necessary.

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

17. The Director or county Director may, on the application of any person, government or institution, accept for testing as to accuracy or compliance with any specifications and for report—

Testing of standards and equipment of other institutions.

- (a) any article used or proposed to be used as a standard of a unit of measurement of mass, length, capacity, area or volume;
- (b) any weighing or measuring equipment;
- (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 equipment accepted by him or her pursuant to this section.

#### **PART IV – WEIGHING AND MEASURING FOR TRADE**

18. (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—

Meaning of “use for trade”

- (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; or
- (c) for the assessment of any work done, wages due or services rendered.

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.

Any equipment—

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

**19.** (1) A person shall not—

- (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; or
- (c) use for trade or have in possession or control for

Units of measurement, weighing or measuring equipment lawful for use for trade.

use for trade any weighing or measuring equipment unless the same bears a valid stamp of verification.

(2) A person shall not use the carat (metric) for trade except for the purposes of transactions in precious stones, pearls, precious metals or articles made there from.

(3) Except as may be prescribed and subject to any Regulations made under section 33, no capacity measure specified in Part 1 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 commits an offence and in addition to any penalty under this Act, any weighing or measuring equipment 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.** Every person who uses or has in his possession or control for use for trade a weighing or measuring equipment not constructed to indicate in terms of some weight or measure authorized by this Act commits an offence and in addition to any penalty under this Act, the weighing or measuring equipment shall be forfeited.

Offences for use or possession of certain weighting or measuring equipment.

**21.** Every person who uses or has in his possession or control for use for trade any weighing or measuring equipment which is false or unjust commits an offence and in addition to any penalty under this Act, the weighing or measuring equipment shall be liable to be forfeited.

Offences relating to false or unjust weighing or measuring equipment.

**22.** (1) In using a dry 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.

Mode of use of dry measure of capacity.

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

**23.** Where a fraud is committed in the use of any weighing or measuring equipment, the person committing

Offences relating to fraud in the use of weighing or

the fraud, commits an offence, and in addition to any penalty under this Act, the weighing or measuring equipment shall be forfeited, except where the court is satisfied that the weighing or measuring equipment 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.

measuring  
equipment.

**24.** Every weighing or measuring equipment 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.

Unjust weighing  
or measuring  
equipment.

**25.** (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 weighing or measuring equipment and a person shall not sell or expose for sale any weighing or measuring equipment, intended for use for trade unless the same bears a valid stamp of verification .

Offences for sale  
of incorrect  
weighing or  
measuring  
equipment.

(2) This section shall not apply to—

- (a) a weighing or measuring equipment 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 commits an offence and in addition to any penalty under this Act, the weighing or measuring equipment in respect of which the offence is committed shall be forfeited.

**26.** (1) Subject to subsection (3), a person shall not, in the case of any weighing or measuring equipment used or intended to be used for trade—

Offences in  
connection with  
stamping of  
weighing or  
measuring  
equipment.

- (a) not being an inspector or a person acting under the instructions of an inspector, mark in any manner any plug or seal used or designed for use for the reception of a stamp; or

- (b) forge, counterfeit or, except as permitted by or under this Act, in any way alter or deface any stamp; or
- (c) remove any stamped plug and insert it into any other such weighing or measuring equipment; or
- (d) make any alteration in the weighing or measuring equipment after it has been stamped such as to make it false or unjust; or
- (e) sever or otherwise tamper with any wire, cord or other thing by means of which a stamp is attached to the weighing or measuring equipment; or
- (f) have in his possession a pre-stamped plug.

(2) A person who contravenes the provisions of subsection (1) commits an offence.

(3) Nothing in subsections (1) and (2) 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 weighing or measuring equipment by, or by the duly authorized agent of a person who is a manufacturer of or regularly engaged in the business of repairing such weighing or measuring equipment.

(4) A person who has in his possession of any weighing or measuring equipment for use for trade shall not sell, expose or offer for sale or in any manner dispose of that weighing or measuring equipment—

- (a) if it bears a stamp which is a forgery or counterfeit or which has been transferred from another weighing or measuring equipment, or which has been altered or adjusted otherwise than as permitted by or under this Act; or
- (b) if it is false or unjust as a result of an alteration in the weighing or measuring equipment after it has been stamped; or
- (c) if it is without a valid certificate of verification; or
- (d) if it does not bear a valid stamp of verification.

(5) A person who contravenes the provisions of subsection (4) commits an offence.

(6) In addition to any penalty provided for under this Act, any weighing or measuring equipment 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. (1) An inspector shall, not more often than once in every year call upon persons in any area having weighing or measuring equipment in use for trade to produce the same for the purpose of their being examined, verified, stamped or re-stamped at such time and place within that area as he may appoint.

Verification of weighing or measuring equipment.

(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 the place so appointed, such time not being earlier than fourteen days after the publication of the notice.

(3) Where a weighing or measuring equipment—

(a) by reason of it being permanently fixed or of its heavy weight or delicate construction, cannot be conveniently moved, or

(b) by reason of its placement, is situated at a distance exceeding twenty kilometres from the nearest place appointed in pursuance of subsection (1), it shall be sufficient for the purpose of this section if the person who has the same for use for trade notifies in writing its location 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 shall examine every weighing and measuring equipment brought or submitted to him or her which is of denomination or a pattern authorized by or under this Act.

(5) In the process of examining every weighing and measuring equipment under subsection (4), an inspector shall compare or test it with the working standards and testing equipment and if he or she finds the weighing or measuring equipment to be accurate and correct, and upon payment of the prescribed fee, he or she shall stamp it with a stamp of verification in the prescribed manner and all those that are found to be inaccurate and incorrect and upon

payment of appropriate prescribed fee, he or she shall obliterate the stamp of verification in the prescribed manner.

(6) 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 or her custody at the place notified and shall test or examine and stamp any weighing or measuring equipment so notified in the same manner as if such weighing or measuring equipment had been brought or submitted to him or her.

(7) In case of any weighing or measuring equipment 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 and 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 re-verified and stamped by an inspector.

(8) If any person knowingly uses, or causes or permits any other person to use any weighing or measuring equipment in contravention of subsection (7) or knowing that the same is required by virtue of that subsection to be so re-verified, disposes of it to some other person without informing him or her of that requirement, that person commits an offence.

(9) Whenever an inspector calibrates or verifies a weighing or measuring equipment submitted to him or her shall issue to the person submitting the equipment a certificate of calibration or certificate of verification together with fees receipt in respect thereof in such form as prescribed in the Regulations.

(10) Subject to subsection (3), any person who fails to comply with any notice published under subsection (2) commits an offence.

**28.** Any person who refuses or fails to produce to an inspector any weighing or measuring equipment 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

Offences in connection with obstruction of inspector.

this Act or who fails to comply with any reasonable request made by an inspector in the course of his duty under this Act, that person commits an offence.

**29.** Where any weighing or measuring equipment is found in the possession or control of any person carrying out 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 weighing or measuring equipment in his possession for use for trade and the onus of proving the contrary shall be upon him.

Presumption concerning possession.

**30.** (1) All patterns of weighing or measuring equipment intended to be used in the country for trade, health, safety and environmental measurements shall be submitted to the Director for approval before being sold, exposed for sale or used for such purposes.

Approval of pattern of weighing or measuring equipment for trade.

(2) Where any pattern of weighing or measuring equipment is submitted by any person to the Director for approval in such manner as the Cabinet Secretary may prescribe, the Director upon payment of the prescribed fees by the applicant shall cause to be examined and tested for suitability for use for trade of the equipment of that pattern, having regard in particular to the principles, materials and methods used or proposed to be used in its construction, and if satisfied that such equipment is suitable for use as such, then he shall issue a certificate of approval of that pattern and may from time to time thereafter authorize such modifications thereof as may be necessary.

(3) Where a person submits a pattern of a weighing or measuring equipment to the Director under sub-section (1) the Director may require the person to deposit with him or her the weighing or measuring equipment or parts of that pattern or model of such weighing or measuring equipment together with drawings of such weighing or measuring equipment or parts thereof.

(4) 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 equipment, uses or causes or permits any other person to use the same in contravention of that condition he or she commits an

offence, and in addition to any penalty under this Act, the weighing or measuring equipment shall be liable to be forfeited.

(5) The Director, after consultation with such interested persons, may at any time revoke any certificate of approval granted under this section, and shall cause notice of any such revocation to be published in the Gazette, and any person, except as may be permitted by any fresh certificate of approval 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 equipment of the pattern or incorporating the modification in question, or disposes of any weighing or measuring equipment to any other person in a state in which it could be so used without informing that other person of the revocation, he or she commits an offence, and in addition to any other penalty under this Act, the weighing or measuring equipment shall be liable to be forfeited.

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

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

(8) Any person who sells, exposes for sale, uses or has in his possession or control for use for trade any weighing or measuring equipment which is not of a pattern approved by the Director commits an offence, and in addition to any other penalty under this Act, the weighing or measuring equipment shall be forfeited.

**31.** (1) The provisions of this section shall apply to the use for trade, weighing or measuring equipment of such type as may be prescribed.

Prescribed weighing or measuring equipment, etc.

(2) A person shall not use any article for trade as weighing or measuring equipment to which this section applies or have any article in his possession for such use unless—

- (a) that article, or weighing or measuring equipment 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
- (b) except as otherwise expressly provided by or under this Act, bears a valid stamp of verification indicating that it has been so passed.

(3) A person who contravenes subsection (2) commits an offence, and in addition to any penalty under this Act, any article in respect of which the offence was committed shall be liable to forfeiture.

(4) Where a person submits any weighing or measuring equipment 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 equipment is intended for trade for a particular purpose for which it is not suitable, he or she may refuse to pass or stamp it.

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

Exemption from marking or stamping.

**33. (1)** The Cabinet Secretary may make regulations 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—

Regulations relating to weighing or measuring for trade.

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

- (e) the marking of any weighing or measuring equipment 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 weighing or measuring equipment may be used for trade;
- (h) the manner of erection or use of weighing or measuring equipment used for trade;
- (i) the condition in which and the manner in which weighing or measuring equipment 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 pattern approval, verification, calibration and adjusting of weighing or measuring equipment, cartage and carriage of standards and other related activities;
- (m) the examination and licensing of persons engaging in or proposing to engage in the repairing or overhauling of weighing or measuring equipment whether or not for profit, and the fees to be charged for such examination and licenses;
- (n) the inspection and approval of premises to be used for manufacturing, repairing or overhauling of weighing or measuring equipment and the fees charged for such inspection and approval;
- (o) the manner in which the tare weight of road vehicles, or of road vehicles of any particular class or description is to be determined;
- (p) the identification of equipment or approved patterns;
- (q) the prescribing of any weighing or measuring equipment;
- (r) the form of certificates, licenses, notices or other documents to be used or issued for the purposes of this Act;

- (s) the examination, verification and stamping of weighing and measuring equipment used or in possession for use by any public or private institutions for the purposes of, or in connection with, the fixing of tolls, rates, taxes, or payment of any description;
- (t) 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;
- (u) the declaration of such equivalents, multiples or fractions or any unit of measurement in use in Kenya;
- (v) the abbreviations of or symbols for the units of measurement in use in Kenya, as he may consider expedient;
- (w) the material, principle of construction and metrological control of weighing or measuring equipment other than those covered by paragraph (a) as the Director may from time to time recommend.

(2) Subsection (1) notwithstanding, the Cabinet Secretary may make rules generally for weighing and measuring equipment used for trade, health, safety and environment in line with international best practices.

#### **PART V—TRANSACTIONS IN GOODS**

**34.** (1) The Cabinet Secretary may make regulations generally to regulate certain transactions in goods and in particular with respect to any goods specified in the Regulations for all or any of the following purposes, and 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;

Regulations relating to transactions in particular goods.

- (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), regulations 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 regulations; 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. (1) The Cabinet Secretary may make regulations—**

Regulations as to information.

(a) as to the manner in which any container required by regulations 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 shall be satisfied in marking with information as to the quantity of goods made up in the container or on which any goods are made up for sale (whether by way of pre-packing or otherwise) where those goods are goods on sale of which (whether any sale or sale of any particular description) the quantity of the goods sold is required by any such provision to be made known to the buyer as 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 ensuring, 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 such circumstances as may be specified in the Regulations, 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 made-up packages or vessels for sale in Kenya which do not comply with the requirements of any regulations made under section 34.

(2) Any person who contravenes any regulation made under subsection (1) commits an offence.

**36.** 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 specified, from all or any of the requirements imposed by or under sections 34 and 35.

Exemption from requirements imposed under sections 34 and 35.

**37.** (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, a person commits an offence if that person—

Offences relating to transactions in goods.

- (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) A person commits an offence if that person—
- (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 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 commits 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 commits an offence.

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

(7) In this section “required” means required under this Act.

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

Quantity to be stated in writing in certain cases.

- (a) which is required under this Act to be a sale by quantity expressed in a particular manner; or
- (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 notfalling 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 commits 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 or she commits an offence.

**39.** 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.

Exemption from requirements of section 38.

**40.** (1) Subject to sections 46 to 49, a person commits an offence if that person, 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—

Short weight.

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

(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 quantity of the goods.

**41.** (1) Subject to section 46 to 49, any person who—

Misrepresentation.

- (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, commits 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. (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 and 49—

Quantity less than stated.

- (a) any person who has those goods in his possession for sale; or
- (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, commits an offence.

(2) If—

- (a) in the case of a sale of 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 and 49, the person by whom, and any other person on whose behalf, the goods were sold or agreed to be sold commits 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 that 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) of this section —
  - (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) of this section; 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) of this section 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 paragraph (a) (b) or (c) of subsection (3), the provisions of subsection (1) or (2) of this section 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 reasonably 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, commits an offence;

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

(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.** (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, commits an offence.

Incorrect statements.

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

Offences due to default of third person.

**45.** 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.

Presumption concerning the nature of goods.

**46.** (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—

Defence of warranty.

- (a) that he or she 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;
- (b) that he or she 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;
- (c) that at the time of the commission of the offence he or she did in fact believe the statement contained in the warranty to be accurate and had no reason to believe it to be inaccurate;
- (d) if the warranty was given by a person who at the time he or she 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; or
- (e) in the case of proceedings relating to the quantity of any goods, that he or she 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 or she 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 or she 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 or she 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 or her employer; and

(b) with the substitution for paragraph (c) of the following—

“(c) that at the time of the commission of the offence his or her 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 or she commits an offence.

(6) A person who, in respect of any goods sold by him or her in respect of which a warranty might be pleaded under this section, gives to the buyer a false warranty in writing commits an offence unless he or she proves that when he or she gave the warranty he or she 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.** (1) In any proceedings for an offence under this Act, it shall be a defence for the person charged to prove that he or she 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

Reasonable precautions and due diligence.

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 or her 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 or she served on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as was then in his or her possession.

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

Subsequent  
deficiency.

- (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) of this section, after the making up of the goods and the marking of the container;
- (b) in a case falling within paragraph (b) of that subsection (1), of this section, 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 (1) of this section, 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.** (1) If proceedings for an offence under this Act, in respect of any deficiency in the quantity—

Provisions as to testing.

- (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 otherwise 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 were 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 of 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 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.** Where any goods are required under this Act to be sold only by quantity expressed in a particular manner—

Selling by quantity.

- (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) a person shall not commit 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.** (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,

Making quantity known to a person.

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 equipment 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 or herself 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 equipment; 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 equipment for such use is displayed in a position on the premises where it may be readily seen by any prospective buyer.

**52.** 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 or she causes

Quantity determination in presence of a person.

any weighing equipment used for the purpose to be 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 equipment, if any, and of the operation, and of any indication of quantity given by any such equipment as the result of that operation.

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

Ascertaining quantity of beer or cider.

### **PART VI—ADMINISTRATIVE PROVISIONS**

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

Appointment of inspectors.

(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 or her appointment under this Act.

(4) Any person who, immediately before the commencement of this Act, was an inspector appointed under the Act repealed by section 67 of this Act, shall be deemed for the purposes of this Act to be an inspector appointed under this section.

**55.** (1) There shall be a Director, Deputy Directors, Senior Assistant Directors, County Directors and Assistant Directors of Legal Metrology services, as may be necessary, who shall be from among persons appointed under section 54 for the purposes of this Act.

Appointment of Director, etc.

(2) The Director may delegate in writing all or any of his or her powers, duties or functions under this Act, either generally or in any area in Kenya, or for such periods or purposes as he or she may specify, to Deputy Director, Senior Assistant 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 sections 14, 15 and 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 under the national government.

(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 County Director, of a service for the adjustment of weighing or measuring equipment and where such a service is so provided, an 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 or County Director as appropriate 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 the person a report on—

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

(6) Any person who, immediately before the commencement of this Act was a Director or Deputy Director or an Assistant Director appointed under the Act repealed by section 67 of this Act, shall be deemed for the purposes of this Act to be Director, Deputy Director, Senior Assistant Director or Assistant Director appointed under this section.

**56.** (1) There is established a professional body of legal metrology practitioners known as the Institute of Trade Standards Administration.

Institute of Trade  
Standards  
Administration.

(2) The Institute shall provide for the professional conduct of the officers and structures for the training and administration of professional examinations that lead to the award of the certificate of qualification referred to under section 54(1).

(3) The Cabinet Secretary may make Rules to regulate the manner, structures and procedures for the management of training affairs and examinations so offered.

**PART VII—MISCELLANEOUS PROVISIONS**

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

Powers of entry  
and seizure.

(2) For the purposes of subsection (1), an inspector may enter any shop, factory, store or warehouse, stall, yard or other premises wherein he or she has reasonable cause to believe that there are any weighing or measuring equipment which he or she 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 purposes.

(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 equipment 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 containers 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) An inspector seizing any goods and or documents under this Act shall complete a seizure notice of the prescribed form as set out in the Fourth Schedule and leave a copy with the person from whom the goods and documents are seized:

Provided that where it is impracticable to leave the copy with the person from whom the goods and documents are seized, the inspector shall leave the copy at a conspicuous place within the premises.

(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 or she has entered by virtue of this section or any information obtained by him or her in pursuance of this Act he or she commits an offence, unless the disclosure was made in or for the purposes of the performance by him or her 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 sales, or for delivery after sale, by weight or measure to a purchaser to have it check-weighed.

**58.** (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.

Power to make test purchase.

(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.

**59.** (1) In addition to any other powers conferred by this Act, an inspector may—

Powers of arrest, search and seizure.

- (a) 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 weighing or measuring equipment in respect of which he or she has reason to believe that such an offence has been committed and may search any person so stopped and detained or arrested;
- (b) seize and detain any goods or thing, or weighing or measuring equipment in respect of which he or she has reason to believe that an offence under this Act has been committed or which he or she has reason to believe to be evidence of such an offence:

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

(2) No suit, prosecution or other legal proceedings shall lie against the Director, County Director, all other Directors, any inspector or any other officer authorized to perform any duty by or under this Act in respect of anything which is done in good faith under this Act or any rule or order made thereunder.

**60.** Any person who, not being an inspector or a person acting under the express instructions of an inspector, purports to act as such under this Act commits an offence.

Impersonation of inspector.

**61.** Any person who employs in his or her 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 or her agent, servant or other person shall each commit an offence and shall be jointly and severally liable to the penalties provided by this Act.

Employer answerable for acts of servant, etc.

**62.** 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.

Liability of partners in a firm.

**63.** 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 or she as well as the body corporate commits that offence and shall be liable to be proceeded against and punished accordingly.

Offences by corporations.

**64.** (1) Where any vehicle, equipment, 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.

Disposal of seized goods.

(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 ninety days after the date of the 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 or she may authorize the inspector to dispose of the goods as the magistrate may find appropriate.

(4) Where any proceedings are instituted 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 find appropriate.

(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).

(6) Where the owner of seized goods cannot reasonably be traced either during proceedings and before conclusion of the case or before court proceedings are commenced, upon sworn information in writing before a magistrate by the investigating officer, the magistrate may order forfeiture of the goods and give appropriate orders for disposal.

**65.** (1) Except as otherwise provided for under this Act, a person who is found guilty of an offence under this Act for which no other punishment is given, that person shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

General penalty.

(2) Where any person has been convicted of an offence under this Act, the court convicting him or her may, in addition to any other penalty to which the convicted persons may be liable, make such order as the court thinks fit to prevent that person from continuing to deal with or in the same goods or articles in respect of which the offence was committed.

**66.** All offences committed under this Act may be prosecuted by an inspector with the leave of the Director of Public Prosecutions under the Criminal Procedure Code.

Prosecution of offences.

Cap. 75.

**67.** (1) The Cabinet Secretary may make Regulations for the carrying into effect the intent and purposes of this Act.

Regulations.

(2) For the purpose of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfillment of the objectives specified under this section;

- (c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act.

**PART VIII—REPEAL, SAVINGS AND TRANSITION PROVISIONS**

**68.** (1) The Weights and Measures Act is repealed.

Repeal of Cap.  
513.

(2) Despite subsection (1) —

- (a) any proceedings taken against or pending against any person immediately before the commencement of this Act may be continued as if instituted under this Act:

Provided that criminal proceedings shall be regarded as pending if the person concerned had pleaded to the charge in question.

- (b) any administrative investigation or inquiry instituted in terms of the repealed Act which was pending before the commencement of this Act shall be continued or disposed of as if instituted under this Act;
- (c) all disciplinary proceedings which immediately before the commencement of this Act were pending shall be continued or concluded as if instituted under this Act; and
- (d) all appeal processes, which immediately before the commencement of this Act were pending, shall proceed as if instituted under this Act;

**FIRST SCHEDULE (s.3)****INTERNATIONAL SYSTEM OF UNITS (SI) AND THEIR SYMBOLS**

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

<b>Quantity</b>	<b>Unit</b>	<b>Symbol</b>
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 (ss. 3(2) and 4)****DEFINITIONS OF UNITS OF MEASUREMENTS****PART I – MEASUREMENT OF WEIGHT OR MASS**

Tonne = 1,000 kilograms

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 meter	= 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 decimetre	= 0.001 cubic metre
cubic centimetre	= 0.001 cubic decimetre

**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.5,13 (1), 15(1), 16(1), (4) and 19(1)(b), (3))**

**PART I**

**MEASURES AND WEIGHTS LAWFUL FOR TRADE**

**Measures of Length**

Measures of –

50 metres	3 metres
30 metres	2 metres

20 metres	1 metre
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	500 millilitres	20 millilitres
5 litres	300 millilitres	10 millilitres
2 litres	200 millilitres	5 millilitres
1 litre	100 millilitres	2 millilitres
	60 millilitres	1 millilitre
	50 millilitres	
	30 millilitres	

### **Weights**

1. Weights of –

20 kilograms	500 grams	500 milligrams
10 kilograms	200 grams	200 milligrams
5 kilograms	100 grams	100 milligrams
2 kilograms	50 grams	50 milligrams
1 kilograms	20 grams	20 milligrams
	10 grams	10 milligrams
	5 grams	5 milligrams
	2 gram	2 milligrams
	1 grams	1 milligrams

Weights of –

500 carats (metric)	0.5 carat (metric)
200 carats (metric)	0.2 carat (metric)
200 carats (metric)	0.1 carat (metric)
50 carats (metric)	0.05 carat (metric)
20 carats (metric)	0.02 carat (metric)
10 carats (metric)	0.01 carat (metric)
5 carats (metric)	
2 carats (metric)	
1 carat (metric)	

## **PART II**

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

#### **Test Weights**

Measures of –

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. Calipers, 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. Digital weighing and measuring equipment
9. Any other equipment that the Director may recommend.

**FOURTH SCHEDULE (s. 57(6))**

**SEIZURE NOTICE**

I hereby certify that I .....being an Inspector under the Act, have today the.....day of .....year .....visited the premises of ..... (name of owner/s)located at.....(place/town/market).....(address). (plot number) ..... and have seized the following : equipment/goods/documents;,  
.....  
.....  
.....

The above items have been seized for the purpose of:-  
.....  
.....  
.....

The items have been tested/examined in the presence of the trader/attendant/agent/manager

Remarks/observations:  
.....  
.....  
.....

Seizing officer's name..... Signature .....

Name of trader/attendant/manager/agent..... Signature .....

Designation..... Title.....

Time..... Office

Witnesses:-

<b>Name</b>	<b>Signature</b>	<b>Address</b>
(i).....	.....	.....
(ii).....	.....	.....
(iii).....	.....	.....

*Notes: If the space/s provided above is not adequate, an attachment hereto shall be deemed to be part of this certificate.*

**TO BE COMPLETED IN TRIPLICATE**

**ORIGINAL** – To be retained by seizing officer as evidence of seizure

**DUPLICATE** – To be left with the person from whom the goods are seized

**TRIPLICATE** – To be filed

## **MEMORANDUM OF OBJECTS AND REASONS**

The principal object of this Bill is to repeal the Weights and Measures Act and replace it with amendments to the Legal Metrology Act to take on board the substantive changes that have taken place in science of measurement (metrology) including areas that were not previously covered such as health, human safety and environmental issues.

**PART I (CLAUSES 1-2)** of the Bill provides for preliminary matters that include the short title and the interpretation provisions of the Act.

**PART II (CLAUSES 3-11)** of the Bill contains the units of measurement for legal metrology including units of measurement (Clause 3), Measurement of weight (Clause 4), Measurement of length (Clause 5), Measurement of time (Clause 6), measurement of electronic current (Clause 6), among others.

**PART III (CLAUSES 12-17)** of the Bill further defines the five legal metrology standards. These are the Kenya Primary legal metrology standards, Kenya Primary legal metrology reference standards, secondary standards, secondary reference standards and working standards.

**PART IV (CLAUSES 18-17)** of the Bill provides for the offences that may be committed while using weighing or measuring equipment for trade. These offences include using unlawful units, possession of false or use of unauthorized weight or measure, using or having in possession of false or unjust weighing or measuring equipment, fraud in the use of weighing or measuring equipment, sale of incorrect weighing or measuring equipment, offences in connection with stamping of weighing or measuring equipment, failing to verify weighing or measuring equipment or failing to submit weighing equipment for pattern approval.

**PART V (CLAUSES 34-53)** of the Bill further deals with transactions in goods. Clause 34 gives the Cabinet Secretary powers to make regulations relating to transactions in particular goods. In Clause 35, the Cabinet Secretary has the powers to make Regulations as to the required information in packaging of goods. Under Clause 36, the Cabinet Secretary has the power to exempt certain goods from the provisions made under Clauses 34 and 35.

Clauses 37-44 state the offences which may be committed in the transaction of goods. Defences by an accused person, are given in clauses 46-51.

**PART VI (CLAUSES 54-56)** of the Bill contains administrative clauses.

Clauses 54 & 55 deal with the appointment of inspector and directors, while Clause 56 establishes the institute of Trade Standards Administration which offers professional examinations in legal metrology.

**PART VII (CLAUSES 57-66)** of the Bill provides for miscellaneous provisions. Clauses 57, 58, 59 provides for the powers of an inspector to enter a business premises, seize goods, make a test purchase, arrest and search a trading premises. Other clauses deal with impersonation of inspectors, disposal of goods and the general penalty

**PART VIII (Clause 67)** of the Bill provides for repeal of the Weights and Measures Act (Cap. 513) and also provides savings & transition provisions.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not limit fundamental rights and freedoms.

**Statement that the Bill concerns county governments**

The Bill may concern County Governments in terms of Article 110 (1) (a) of the Constitution as it affects the functions and powers of County Government set out in the Fourth Schedule.

**Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall occasion additional expenditure of public funds to be provided for through the annual estimates.

Dated the 4th February, 2017

ADEN DUALE,  
*The Leader of Majority,  
The National Assembly.*