

I-9/12/2020-W&M
Government of India
Department of Consumer Affairs
Legal Metrology Division

Subject: Stakeholder consultation on proposal of decriminalization of Legal Metrology Act, 2009 - regarding.

The Legal Metrology Act, 2009 ("the Act") is the primary instrument which establishes and enforces the standards of weights and measures and regulates trade in weights and measures in the country. Chapter V of the Act sets out the various offences and penalties under the Act. The offences under this Act are criminal offences and prescribe imprisonment as a punishment for violation of the Act.

2. Whenever any violation is observed by an Inspector (Legal Metrology Officer) during inspection or on a complaint, as the case may be, he issues a notice to the person concerned with the violation and if the person to whom notice is issued, agrees with the notice, he may compound the offence by paying the compounding fee and the case will be closed.

If the person to whom notice is issued does not agree with the charges made by the Inspector, he may appeal under section 50 of the Act against the decision/ order of Legal Metrology officer to the Controller of Legal Metrology and against the orders of Controller to the State Government.

In case of non-compounding of offence and if no appeal is filed to the Controller or State Government, the Inspector (LMO) may file the case in the Court of Law to initiate legal proceedings. The Court decides the case either by upholding the case or by rejecting the charges made by the Inspector.

Under the Legal Metrology Act when a case is booked either on first offence or second or subsequent offence, there is no provision of arrest. The cases booked by the Inspector, Legal Metrology (LMO) in case of non- compounding, are filed in the Court of Law, and the Court after following the due procedure summons the offenders, who may be present personally or through an Advocate. However, if the Court summons the person to be present personally and if he fails to be present, the Court may again summon or issue warrant. In case of warrant, the person needs Bail.

3. Criminal offence often requires the standard of proof to be beyond reasonable doubt, a much higher threshold than the standard adopted for civil wrongs. Many critics have, therefore, questioned the efficiency of criminal law in dealing with misconduct; many offences which are of technical nature could be shifted to civil liability from criminal liability.

4. The offences which can be decriminalized should not have (i) *Mens rea* (malafide/ criminal intent– therefore, it is critical to evaluate the nature of non-compliance i.e. fraud as compared to negligence or inadvertent omission; and (ii) where the larger public interest is affected adversely.

5. Therefore, there is a need to review the civil and criminal penalties under the Legal Metrology Act, 2009, considering their suitability for the imposition of criminal liability. This exercise requires a review and categorization of both compoundable and non-compoundable offences under the Act.

6. Thus, as stated in para-2 above, at present the Legal Metrology Act provides that for an order passed by a Legal Metrology Officer of the State Government the appeal lies before the Controller and against the orders of the Controller an appeal may be made before the State Government.

7. To sum up it needs to be examined whether second or subsequent offence should be retained in its current form or limited to a fine, converted into a civil penalty, dealt with by an alternate mechanism or omitted altogether. If the offender does not compound the offence, then the Inspector (LMO) can take further action for cancellation of the licence or permit obtained from the concerned Central Government/ State Government/ Authority under the Central/ State Government. The suitability of existing penal and adjudicatory mechanisms, as well as the feasibility of alternate mechanisms would need to be explored from the perspective of ensuring speedy and effective enforcement, at the same time ensuring that the Legal Metrology Act remains effective. The proposed fine is maximum prescribed and the State Governments may fix the fine considering the nature and gravity of the offence.

8. The Department has received suggestions from various sources and has enumerate the proposed changes in Table-1. Given the importance of this exercise as also its large-scale impact across society, this stakeholder consultation exercise is being conducted, in order to develop consensus. The Department of Consumer Affairs, which administers the Legal Metrology Act, 2009, therefore, invites the comments of State Governments/ UT Administrations, Civil Society/ Non-Government Organizations, Academicians, Public and Private Sector organizations, Multilateral Institutions and members of the public to submit their comments on the proposed amendments to the Department. The relevant Act and specific provision(s) proposed for amendment are provided in Table 1. Stakeholders may submit their suggestions in the format provided in Table 2.

Table 1: Proposed Amendments:

Ministry/ Department: Consumer Affairs				
Relevant Statute: Legal Metrology Act, 2009				
S. No.	Provision	Current Punishment	Proposed Amendments	Rationale for de-criminalization
1.	Section 25 Penalty for use of non-standard weight, measure or numeration	For second or subsequent offence, Imprisonment up to six months and also with fine	Penalty: upto INR 10 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	For repetition of same or similar offence committed earlier, a fine may be sufficient, since the violation may not necessarily involve mens rea (malafide/ criminal intent) and may not adversely affect public interest at large. Thus a review of the penalties need to be done.
2.	Section 26 Penalty for tampering or altering of Standards weights and measures	For second or subsequent offence, imprisonment six months to one year or Fine or both	Penalty: upto INR 10 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	
3	Section 27 Penalty for manufacture or sale of non-standard weight or measure	For second or subsequent offence, Imprisonment up to three years or Fine or both	Penalty: upto INR 10 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	
4	Section 28 Penalty for making any transaction, deal or contract in contravention of the prescribed standards	For second or subsequent offence, Imprisonment up to one year or Fine or both	Penalty: upto INR 1 Lac. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	
5	Section 29 Penalty for quoting or publishing etc. of non –standards units	For second or subsequent offence, Imprisonment up to one year or Fine or both	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	
6	Section 30 Penalty for transactions in contravention of standard weight or measure non-standard packages in quantity	For second or subsequent offence, Imprisonment up to one year or Fine or both	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	

7	Section 31 Penalty for non-production of documents	For second or subsequent offence, Imprisonment up to one year and with Fine	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.
8	Section 32 Penalty for failure to get model approval	For second or subsequent offence, Imprisonment up to one year and with Fine	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.
9	Section 33 Penalty for use and sale of un-verified weight or measure	For second or subsequent offence, Imprisonment up to one year and with Fine	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.
10	Section 34 Penalty for sale or delivery of commodities, etc. by non-standard weight or measure	For second or subsequent offence, Imprisonment from three months to one year or Fine or both	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.
11	Section 35 Penalty for rendering services by non-standard weight, measure or number	For second or subsequent offence, Imprisonment from three months to one year or Fine or both	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.
12	Section 36(1) Penalty for selling etc. of non-standard packages in declarations	For second offence fine Upto INR 50,000 and for subsequent offence fine from INR 50,000 to INR 1,00,000 or with imprisonment upto one year or with Fine	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.
13	Section 36(2) Penalty for selling etc. of non-standard packages in quantity	For second or subsequent offence, Fine: up to INR 1,00,000 or with imprisonment up to one year or both	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be

			initiated with information to applicant.	
14	Section 37 (1) Penalty for contravention of Act or Rules or conditions of licence by GATC	Fine: up to INR 1,00,000	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	
15	Section 37(2) Penalty for verification of any weight or measure in contravention of Act or Rules by GATC	Imprisonment up to one year or with Fine up to INR 10,000 or both	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	
16	Section 38 Penalty for non-registration by importer of W & M	For second or subsequent offence, Imprisonment up to one 6 months or with Fine or both	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	
17	Section 39 Penalty for import of non - standard W & M	For second or subsequent offence, Imprisonment up to one year and also with Fine	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	
18	Section 41 (1) Penalty for giving false information	For second or subsequent offence, Imprisonment up to 6 months and also with Fine	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	
19	Section 41 (2) Penalty for giving false return or maintain false particulars	For second or subsequent offence, Imprisonment up to one year and also with Fine	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	
20	Section 42 Vexatious search	Imprisonment up to one year or with Fine up to INR 10,000 or both	Penalty: upto INR 2 Lacs.	

21	Section 43 Penalty for verification in contravention of Act and rules	Imprisonment up to one year or with Fine up to INR 10,000 or both	Penalty: upto INR 2 Lacs.	
22	Section 45 Penalty for manufacture of W & M without licence	For second or subsequent offence, Imprisonment up to one year or with Fine or both	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	
23	Section 46 Penalty for Repair/ sale etc. of weight or measure without licence	For second or subsequent offence, Imprisonment up to one year or with Fine or both	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	
24	Section 47 Tampering with licence	Fine up to INR 20,000 or with Imprisonment up to one year or both	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	
25	Section 52(3) In making any rule, the Central Government may provide that a breach thereof shall be punishable with fine.	Fine up to INR 5,000	Fine up to INR 2,00,000	
26	Section 53(3) In making any rule, the State Government may provide that a breach thereof shall be punishable with fine.	Fine up to INR 5,000	Fine up to INR 2,00,000	
Sr. No.	Provision	Current Provision	Proposed Amendment	Rationale for amendment
27	Section 49 Offences by companies and power of court to publish names,	Company may, nominate any director as the person responsible,	Company may nominate at managerial level instead of at director level	Board of Directors may not be involved in day to day functioning of the company/ factory

	place of business, etc., for companies convicted	for the conduct of the business		and also may not be available at the time of occurrence of an offence
28	Section 2(r) Definition of Sale	"sale", with its grammatical variations and cognate expressions, means transfer of property in any weight, measure or other goods by one person to another for cash or for deferred payment or for any other valuable consideration and includes a transfer of any weight, measure or other goods on the hire-purchase system or any other system of payment by instalments, but does not include a mortgage or hypothecation of, or a charge or pledge on, such weight, measure or other goods;	"sale", with its grammatical variations and cognate expressions, means transfer of property in any weight, measure or other goods or services by one person to another for cash or for deferred payment or for any other valuable consideration and includes a transfer of any weight, measure or other goods or services on the hire-purchase system or any other system of payment by instalments, but does not include a mortgage or hypothecation of, or a charge or pledge on, such weight, measure or other goods.	To harmonise the definition of sale under LM Act with Article 366 (29-A), Sub-clause (f) of the Constitution of India (introduced vide 46th Constitutional Amendment).
29	Section 36(1)(A) New Provision		36(1)(A) Whoever, sells, distributes, delivers or otherwise transfers any pre-packaged commodity more than the retail sale price shall be punished with fine which shall not be less than five thousand rupees but which may extend to twenty five thousand rupees, for the second offence, with fine which may extend to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees.	Penalty provision for selling over and above MRP.
30	Section 48 Compounding of offences		Sections 26, 41, 42 & 43 may be made compoundable.	The provisions under sections 26, 41, 42 & 43 are not compoundable which may be

				added under section 48 to make them compoundable.
31	Section 56(A) New Provision		56(A) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may by order, make such provisions, not inconsistent with provisions of this Act as may appear to it to be necessary or expedient for removing the difficulty.	To remove the difficulty in giving effect to the provisions of the Act.

Table 2: Comments and Feedback

Name of the Institution/ Organisation: _____

Category: State/ UT/Civil Society/ NGOs, Academics/ Public/ Private Sector/ Multilateral Institutions/ Members of the public (please tick)

S No.	Provision	Current Punishment	Proposed Amendments	Suggestions	Rationale for Suggestions
	Name of the Statute: Legal Metrology Act, 2009				
1.					
2.					
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Comments/Suggestions may be submitted to the Ministry at the following address within **30 days** of the issuance date of this notice (i.e. upto 12.08.2020). The comments may also be emailed at: **js-ca@nic.in**:

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Joint Secretary

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