



Moving toward a more flexible and agile legislative framework for trade measurement

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Measurement Canada Legislative Visioning Paper 2023

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Case for change

Trade measurement plays a fundamental role in the Canadian economy, touching virtually all major industry sectors, including fishing, forestry, grain and field crops, upstream and retail petroleum, retail food, livestock, electricity and gas, and many others. To say that trade measurement is crucial to our daily economic activities is an understatement. Sixty percent of the Canadian economy is underpinned by trade measurement, and without a modern and flexible framework, it would suffer and lag behind its international counterparts. In trade environments where goods are sold on the basis of measurement, we see industry, supply chains, businesses and consumers using increasingly innovative technology, new energy sources, and digital and data-driven methods to pursue their personal, business, economic and green growth objectives.

Although the laws governing trade measurement have served Canadians and Canadian businesses well for some time, we are in an era of rapid innovation and digitization where it is imperative to update them. These laws have not changed significantly in more than 40 years and the gap between the legislative framework and innovation and fair competition continues to widen.

At times, legislative and regulatory policy lags behind fast-evolving markets, shortening innovation cycles and technological advances as the machinery of government and associated regulatory organizations have to proceed with caution when changing legislation. The latter try to strike a balance between keeping pace with innovation and achieving a level playing field between all parties – industry, buyers, sellers, end users and consumers combined. The resulting delays unfortunately can introduce uncertainty and inefficiency in the marketplace, thereby risking fair competition and consumer protection that the government is striving for. In the case of trade measurement, outdated legislation hampers Canada's ability to meet its commitments and priorities in terms of net-zero targets for green house emissions, which depend on an established infrastructure to use clean fuels.

[Measurement Canada](#) (MC) is the agency that administers the *Weights and Measures Act* (WMA) and the *Electricity and Gas Inspection Act* (EGIA). It is responsible for ensuring accuracy in the trade of measured goods, developing and enforcing the laws related to measurement accuracy, approving and inspecting measuring devices and investigating complaints of suspected inaccurate measurement to help ensure a fair and competitive market for Canadians.

Amendments are required to the WMA and EGIA for them to serve Canadians better and for MC to remain an effective regulator in both traditional and emerging sectors. A revised legislation that is outcome-based, agile and technology-neutral would help narrow the gap between legislative policy and innovation and competition, thereby ensuring a marketplace that is balanced and appropriate for Canadians and businesses.

Modern legislation – What we want to achieve

MC's [strategic vision for 2021-2026](#) explains how we plan to expand and redefine our role in the Canadian marketplace. In this document, we also explain what we want to achieve in terms of modern legislation, namely:

- create a legislative trade measurement framework that is more flexible and agile to support innovation and respond to the needs of industry, businesses and consumers, now and in the future;
- maintain balance between innovation, competition and the public interest;
- strengthen and renew our working relationship with regulated parties so that it goes beyond the simple application of laws and requirements.



This paper presents a series of legislative proposals that are organized into three themes or desired outcomes:

- Reducing barriers for business
- Protecting consumers
- Delivering services effectively

Reducing barriers will allow small businesses to enter the market and contribute to the economy as well as to key government priorities. Protecting consumers enhances fairness and preserves trust in the market. Finally, delivering services effectively means that MC can fulfil its mandate as a regulator. We believe that these outcomes are necessary in order to create a more flexible and agile legislative framework for trade measurement.

Government commitments

Legislative and regulatory modernization is a lengthy process, yet important preliminary steps have been taken. The federal government's commitments to the economy and making investments in clean and green growth initiatives are outlined in various announcements including the [2021 Speech from the Throne](#), [Budget 2021](#) and the [2021 Economic and Fiscal Update](#). MC has heard from industry on many of these issues and there is a consensus between the government and stakeholders that these modernization efforts are essential to Canada's future. For example, [Budget 2021](#) announced funding for MC to develop and implement a set of codes and standards for retail zero-emission vehicle charging and refuelling stations. This includes the necessary accreditation and inspection frameworks necessary to make sure that the standards are met and that supply chains and consumers are charged correctly for electricity, hydrogen or any other potential clean fuel that is sold to charge electric vehicles at public charging stations. We have initiated further consultations on modernizing our regulations through [regulatory reviews](#) and our initiatives on [electric vehicle charging](#). Furthermore, some minor legislative changes necessary for this work to succeed have already been introduced through recent [annual regulatory modernization bills](#).

The proposed amendments to the WMA and EGIA are simply the next step in modernizing trade measurement laws in Canada. Consequential changes to regulations and operational or administrative guidance documents will be developed once these proposed amendments are approved by Parliament.

Reducing barriers for business

Trade measurement laws need to change in order to accommodate innovation and ensure a fair and competitive marketplace in a modern digital and data-driven economy.

This is particularly evident for the EGIA where the current electricity and gas market has evolved substantially and the current legislation simply does not fit the complex web of relationships and transactions that exist today. When the EGIA was enacted, the businesses in Canada who sold electricity and gas (referred to as "contractors" in the Act) did not change much. In the 40 years since; however, those who sell electricity and gas vary widely, from large utilities to small power plants and newer market participants like condominium subcontractors, small casual or seasonal businesses like campgrounds as well as private individuals who sell electricity back to the grid. Under the current legislative framework, small businesses are subject to the same requirements as large utilities. The EGIA needs to be modernized so that it is not prescriptive in a one-size-fits-all manner and the level of regulatory and administrative burden is proportional to the cost and impact on utilities and other service providers.



It is also imperative to amend the EGIA to introduce new provisions to facilitate innovation and measurement accuracy related to clean fuel technologies. Electricity and hydrogen use will be central to the success of these initiatives. Smart communities will rely on meters or other devices that use constantly evolving technology like embedded digital measurement software. These innovations need to be encouraged in order for the government to reach its ambitious net-zero emissions targets and to show that it is preparing for and embracing the emerging digital economy.

The following legislative proposals aim to amend both the WMA and EGIA in order to reduce barriers and level the field for businesses so they can better understand requirements, introduce new measuring technologies into the market sooner and remain competitive as well as compliant with regulations.

Creating a forward-looking framework for smaller businesses

Though solid in its intent, the existing framework, as described above, does not serve the needs of the current market and where it is headed. There is a steadily growing number of smaller businesses, including home-based and casual businesses, that should not be required to fulfil the same legal requirements as large utilities. Legislative change is required to create a new framework that recognizes these new market participants and lays the groundwork for proportional regulatory and administrative requirements.

Legislative proposal for consideration and feedback

- Authorize MC to establish exemptions and conditions under the EGIA for smaller and casual market participants whose main business is not the sale of electricity or gas.

Prompting discussion questions

- Should certain businesses who are exempted under the EGIA be required to register in a separate registry than the one for registered contractors?
- Should registered contractors and certain exempted businesses be required to renew their registration at specified intervals?

Influencing compliance with fairness in mind

Large companies and small businesses each face different pressures and challenges while trying to remain compliant with trade measurement laws and regulations. The current legislation's provisions regarding administrative monetary penalties (AMPs) are too prescriptive and rigid for businesses to return to compliance, especially in cases when a heavy-handed approach is not necessary. Businesses deserve compliance and enforcement approaches that are both fair and graduated where possible.

Legislative proposals for consideration and feedback

- Allow regulated parties who commit multiple minor violations to enter into a compliance agreement as opposed to being imposed an AMP.
- Allow regulated parties who commit less serious violations to be imposed an AMP rather than face prosecution.
- Authorize the power to revoke an AMP if the regulated party returns to compliance.



Testing new technology in markets

Industry often wants to test new technology in the market in order to determine whether it is viable for wider distribution and use. MC examines devices before approving them for use in trade, but sometimes there are requests from business to test devices before seeking full approval. Legislative change is needed for MC to accommodate these requests while balancing the need to protect public interest.

Legislative proposals for consideration and feedback

- Provide for a temporary permission under the EGIA to allow new measuring technologies to be introduced into the market under conditions and without prior approval or examination.

Resolving disputes

MC investigates all disputes and complaints about suspected inaccurate energy measurement and, at the request of contractors or consumers (“purchasers” under the Act), investigates the condition and registration of meters used to determine the amount of electricity or natural gas supplied by the contractor or sold to the purchaser. However, many disputes turn out to be about a different matter than originally presented. Legislative changes are necessary for MC to clearly establish the criteria and conditions for disputes to proceed and for contractors and purchasers to better understand what falls within and outside MC’s mandate.

Legislative proposals for consideration and feedback

- Add a broad statement in the EGIA that clearly states MC’s role in disputes.
- Authorize MC to set criteria outside of legislation that qualify contractors or purchasers to open a dispute resolution process to provide for increased transparency to stakeholders.
- Authorize MC to set conditions outside of legislation, such as access to relevant records, that it would require before proceeding with the dispute resolution process.
- Authorize MC to define outside of legislation the scope of what can be reported as part of resolving a dispute.

Prompting discussion questions

- Should the dispute resolution process that applies to registered contractors also apply to smaller businesses who are exempted under the EGIA and consumers who purchase electricity or gas from those businesses?



Protecting consumers

Consumers – both buyers and sellers – want to be certain that they get what they pay for when purchasing goods and services. This is especially true at a time when the cost of living, which includes many basic goods sold on the basis of measurement, is rising and supply chains are unpredictable. Yet, supporting this premise is the implicit trust that buyers and sellers have in the various scales, gas pumps, electric vehicle chargers and other devices that measure or dispense the goods they purchase or sell. They trust that measuring devices are accurate and that those responsible for maintaining and keeping the devices in good condition are complying with the requirements.

This is where MC fits in. Our mandate is to protect the right of buyers and sellers to accurate and reliable measurements when goods are sold on the basis of measurement. We do this, in part, by approving and inspecting measuring devices, enforcing the laws related to measurement accuracy and investigating complaints of suspected inaccurate measurement. We aim through these activities to build consumer confidence in the marketplace.

Certain provisions within the current legislation are out of date and need to be revised in order to modernize our oversight and enforcement activities and to better protect consumers. The following proposals are considered with the interests of both consumers and regulated parties in mind, as well as the need for fair, balanced and appropriate regulatory oversight.

Remote locations and hybrid business practices

Measuring devices are varied and widespread across Canada. Legislative changes are needed to protect consumers in remote areas of Canada where there is often very limited access to authorized service providers (ASPs) and recognized technicians available to conduct inspections, in particular, for measuring devices due for mandatory recertification. Legislative changes are also needed to address different business practices, such as home-based businesses operating outside of traditional business hours, or certain types of verifications that do not require an inspector to be present on site.

Legislative proposals for consideration and feedback

- Authorize inspectors to conduct an inspection or site visit remotely when and where necessary under both Acts.
- Authorize inspectors to obtain a telewarrant in order to enter residences in a timely manner when access is denied.
- Review and clarify the meaning of the term “normal business hours” in the EGIA in order to accommodate enforcement activities that may need to be conducted at businesses that operate 24 hours a day or on weekends.

Sampling

Instead of testing and rejecting randomly selected individual electricity and natural gas meters, inspectors regularly test and examine samples from a selected lot to better gauge compliance of the entire lot. Legislative changes are needed to allow inspectors to request information or data in order to help them predetermine sampling activities or to request a sample device so they can familiarize themselves with the work to be conducted before they arrive on site.

Legislative proposals for consideration and feedback



- Authorize inspectors to request information and sample devices, and to access data virtually or without an on-site visit in order to carry out their duties.

Fostering stronger relations with regulated parties

Large utilities governed under the EGIA are familiar with MC and have a good working relationship with the organization. However, small businesses are generally unaware of MC's existence and mandate. This prevents MC from establishing the rapport of trust that consumers need to feel they are being protected. Legislative changes are needed to help inspectors foster those relationships.

Legislative proposals for consideration and feedback

- Add a provision to the EGIA that requires MC to provide its inspectors with a proof of their designation that they can produce when interacting with the public. This will align the EGIA with the WMA and increase the visibility of MC inspectors.

Additional legislative proposals for greater consumer protection

- Authorize inspectors to seize and detain non-compliant devices or meters under the EGIA provided they are not in use and supplying needed electricity or gas.
- Authorize inspectors to enter vehicles or other means of conveyance equipped with measuring devices or meters, such as mobile recharging services, in order to inspect them.

Prompting discussion question

- Should notices of approval be valid for a specified period?

Delivering services effectively

As an organization, MC strives to deliver services in an effective, predictable and reliable manner. Doing so creates trust with Canadians because they know what to expect and the integrity of trade measurement is reinforced. Both the WMA and EGIA include outdated provisions that prevent MC from conducting its business as effectively as possible. Some of the provisions are too rigid and could be moved to the regulations, for example, to allow for greater flexibility. Some provisions need to be updated to take into account several decades of work and changes, while others are simply difficult to read and understand. Legislative changes are needed in order for MC to adopt a more responsive and client-centric digital approach as well as a risk-based oversight and marketplace monitoring that better suits today's needs.

The following legislative proposals will strengthen relationships with ASPs, do more to recognize international standards and competent authorities, and modernize administrative powers.

Strengthening relationships with authorized service providers

MC designates accredited and registered ASPs across Canada to deliver services under both Acts. This allows MC to use its resources effectively and focus on sectors of the economy that are new and emerging or have a lower compliance level. Legislative changes are needed to help MC respond to client needs and adapt more quickly to innovation within the industry and marketplace.

Legislative proposals for consideration and feedback



- Authorize MC to cancel, revoke, suspend or not renew accreditation should it be required.
- Remove training requirements from the WMA to align with the EGIA and agreements with ASPs.

Note that MC is also conducting a concurrent review of its alternative service delivery programs as part of its commitment to maintain strong relationships with ASPs.

Recognizing international standards and competent authorities

An international standard is a technical standard developed, approved and published by globally recognized organizations. Standards cover almost every industry, from technology to food safety, agriculture to healthcare, as well as trade measurement. It's important for MC to have the legal authority necessary to use standards already made available to other countries.

Legislative proposals for consideration and feedback

- Strengthen measurement traceability by accepting competent laboratory standards and internationally recognized standards.

Modernizing administrative and operational authorities

MC requires modern authorities that better support the organization in what continues to be a very fluid operating environment. The following proposals will give MC added flexibility to prepare for and respond to change, and do so outside of a potentially cumbersome legislative framework.

Legislative proposals for consideration and feedback

- Amend the EGIA and the WMA to allow any regulation made under these acts to incorporate by reference any document, regardless of its source, either as static or dynamic.
- Authorize MC to establish plans under the WMA for examining and certifying lots of devices based on statistical sampling or other sampling approaches.
- Use modern technology to conduct inspection-related activities and save time (e.g. access data remotely rather than through paper records).
- Authorize MC to prescribe legal units of measurement outside of legislation to allow for greater flexibility.
- Remove prescribed seal periods from the EGIA to allow for greater flexibility.
- Clarify provisions in the EGIA regarding the importance of approving devices before putting them into service and verifying them for accuracy.
- Repeal redundant provisions in the EGIA regarding offences to increase clarity.

Increasing clarity and correct outdated references

Both the WMA and the EGIA contain provisions and references that date back to a time when certain practices and attitudes were more common. These elements should be updated to make the legislation easier to understand, more inclusive and subject to continuous improvement or regular review.

Legislative proposals for consideration and feedback

- Repeal provisions in the EGIA whereby inspectors may test the voltage of the supply of electricity as this test is unnecessary and never performed.
- Repeal dated provisions in the EGIA regarding adaptation orders.



- Align legislative language in both Acts with government documents exchanged with regulated parties when there is a ministerial review of contested AMPs.
- Update gender-specific references and discrepancies in both Acts.



Conclusion

These legislative proposals aim to modernize the WMA and EGIA so that Measurement Canada can serve Canadians better. They will help ensure that Measurement Canada regulates effectively, now and in the future, while promoting innovation and ensuring a fair and competitive marketplace.

If you would like to provide feedback, please email your comments to:
mcfeedback-retroactionmc@ised-isde.gc.ca.

We fully anticipate that these legislative proposals will help us achieve our desired outcomes and build a brighter, cleaner and more innovative future.