

THE STANDARDS ACT, 1973

No. 17 of 1973

Date of Assent: 16th January, 1974

Date of Commencement: 25th January, 1974

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

Section

- 1—Short title and commencement.
- 2—Interpretation.

PART II—THE KENYA BUREAU OF STANDARDS

- 3—Establishment of the Bureau.
- 4—Functions of the Bureau.
- 5—Director and staff of the Bureau.
- 6—The National Standards Council.
- 7—Powers of the Council.
- 8—Financial provisions.

PART III—ESTABLISHMENT OF STANDARDS

- 9—Standardization marks.
- 10—Compulsory standard specifications.
- 11—Appeals.

PART IV—ENFORCEMENT

- 12—Samples and information.
- 13—Appointment of inspectors.
- 14—Powers of inspectors.
- 15—Obstruction.
- 16—General provisions.

PART V—MISCELLANEOUS

- 17—Protection of Government, Institute, Council and members and employees.
- 18—Secrecy of information.
- 19—Victimization.
- 20—Regulations.

SCHEDULE.

An Act of Parliament to promote the standardization of the specification of commodities, and to provide for the standardization of commodities and codes of practice; to establish a Kenya Bureau of Standards, to define its functions and provide for its management and control; and for matters incidental to, and connected with, the foregoing

ENACTED by the Parliament of Kenya, as follows:—

PART I—PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Standards Act, 1973, and shall come into operation on such day as the Minister may, by notice in the Gazette, appoint.

Interpretation.

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

“Bureau” means the Kenya Bureau of Standards established by section 3 of this Act;

“code of practice” means a set of rules relating to the methods to be applied or the procedure to be adopted in connexion with the construction, installation, testing, operation or use of any article, apparatus, instrument, device or process;

“compulsory standard specification” means a specification which has been declared to be a compulsory standard specification under section 10 of this Act;

“Council” means the National Standards Council established by section 6 of this Act;

“Director” means the Director of the Bureau appointed under section 5 of this Act;

“distinctive mark” means a mark which has been prescribed under section 10 of this Act;

“inspector” means an inspector appointed under section 13 of this Act;

“mark” includes any device, brand, heading, label, ticket, name, signature, word, letter or numeral, or any combination thereof;

“Minister” means the Minister for the time being responsible for matters relating to commerce and industry;

“permit” means a permit issued under section 9 or 10 of this Act or the regulations;

“sell” includes barter and exchange, and exposure or offer for sale, and export for or in pursuance of sale, and have in possession for any purpose of sale, export, trade or manufacture;

“specification” means a description of any commodity by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age or other characteristics, or to any substance or material of or with which, or the manner in which, any commodity may be manufactured, produced, processed or treated;

“standardization mark” means a mark which has been declared to be a standardization mark under section 9 of this Act;

“standard specification” means a specification which has been declared to be a compulsory standard specification under section 10 of this Act.

PART II--THE KENYA BUREAU OF STANDARDS

3. There is hereby established a Bureau which shall be a body corporate by the name of the Kenya Bureau of Standards, with perpetual succession and a common seal, and which shall, in its corporate name, be capable of—

Establishment of
the Bureau.

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of property, movable or immovable; and

(c) entering into contracts and doing or performing all such other things or acts for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

4. (1) The functions of the Bureau shall be—

Functions of
the Bureau.

(a) to promote standardization in industry and commerce;

(b) to make arrangements or provide facilities for the testing and calibration of precision instruments, gauges and scientific apparatus, for the determination of their degree of accuracy by comparison with standards approved by the Minister on the recommendation of the Council, and for the issue of certificates in regard thereto;

- (c) to make arrangements or provide facilities for the examination and testing of commodities and any material or substance from or with which and the manner in which they may be manufactured, produced, processed or treated;
- (d) to control, in accordance with the provisions of this Act, the use of standardization marks and distinctive marks;
- (e) to prepare, frame, modify or amend specifications and codes of practice;
- (f) to encourage or undertake educational work in connexion with standardization;
- (g) to assist the Government or any local authority or other public body or any other person in the preparation and framing of any specifications or codes of practice;
- (h) to provide for co-operation with the Government or the representatives of any industry or with any local authority or other public body or any other person, with a view to securing the adoption and practical application of standards;
- (i) to provide for the testing at the request of the Minister, and on behalf of the Government, of locally manufactured and imported commodities with a view to determining whether such commodities comply with the provisions of this Act or any other law dealing with standards of quality or description.

(2) In the exercise of its functions the Bureau shall maintain, so far as practicable, a system of consultation and co-operation with any body established by the Community having functions similar to those prescribed in subsection (1) of this section or relating to industrial or commercial standards generally.

Director and
staff of the
Bureau.

5. (1) The Minister shall, on the advice of the Council, by notice in the Gazette, appoint a Director of the Bureau who shall be the chief executive officer of the Bureau.

(2) The Council shall, after consultation with the Director, appoint such members and staff of the Institute as the Council may deem necessary for the proper performance of the functions of the Bureau under this Act.

1973

6. (1) There is hereby established a Council of the Institute by the name of the National Standards Council.

The National
Standards
Council.

(2) The Council shall, subject to the provisions of subsection (3) of this section, consist of the following members—

- (a) a chairman appointed by the Minister;
- (b) a secretary who shall be the Director of the Bureau;
- (c) not more than seven persons appointed by the Minister who shall be public officers;
- (d) not more than eight persons appointed by the Minister who shall possess knowledge of industrial or commercial standards or other matters likely to be of assistance to the Bureau in the performance of its functions under this Act.

(3) The Minister may, after consultation with the Council, appoint not more than five persons to be additional members of the Council being persons whose assistance or advice it may from time to time require.

(4) The Schedule to this Act shall have effect with respect to the Council, but subject thereto the Council shall otherwise regulate its own procedure.

7. (1) The Council shall have power—

Powers of
the Council.

- (a) to supervise and control the administration and financial management of the Bureau;
- (b) to advise and obtain advice from the Minister in regard to any matter within his purview under this Act;
- (c) to formulate matters of policy for the purpose of providing general or specific guidance to the Institute for the better performance of its functions under this Act;
- (d) to do all things necessary for the better carrying out of the provisions and purposes of this Act except where otherwise provided.

(2) The Council may, whether or not for reward, at the request of any person, carry out or cause to be carried out—

- (a) any study, examination or test in respect of any particular commodity or class of commodity;

(b) any comparative study, examination or test in respect of commodities of different makes or brands or of different specifications whether produced in Kenya or elsewhere.

(3) The Council, upon payment of such fees, if any, as may be prescribed, may issue reports on any study, examination or test carried out pursuant to subsection (2) of this section and may, if it thinks fit, impose conditions as to the use to be made of such reports and conditions prohibiting, restricting or requiring the publication of or other disclosure of any information contained therein.

Financial provisions.

8. (1) The funds of the Bureau shall consist of all moneys received or recovered under the provisions of this Act or the regulations by or on behalf of the Bureau or the Council and any moneys provided by Parliament.

(2) The Minister may, out of the funds of the Bureau, and with the consent of the Treasury—

(a) pay to the members of the Council and the Bureau (other than a member who is a public officer in receipt of salary) and to the staff of the Bureau remuneration and travelling and other allowances;

(b) authorize the payment of all such sums of money as may be necessary to enable the Bureau to discharge its functions under this Act and to give effect thereto.

(3) The Council shall cause to be kept all proper books of account and other books and records in relation to the funds and to all the undertakings, activities and property of the Bureau and shall, within such period after the end of each financial year as the Minister shall specify, cause to be prepared—

(a) a balance sheet showing in detail the assets and liabilities of the Bureau as at the end of that year;

(b) such other statements of account as may be necessary to indicate the financial status of the Bureau as at the end of that year.

(4) The accounts of the Bureau shall be examined, audited and reported upon annually by the Controller and Auditor-General.

1973

Standards

(5) The Council shall submit to the Minister all such information as he may from time to time require in respect of the activities and financial position of the Bureau, and shall in addition submit to the Minister an annual report, including a balance sheet and a statement of income and expenditure audited in accordance with subsection (4) of this section, and such other particulars as the Minister may request, and such report shall be laid by the Minister before Parliament, and published by the Council in such manner as it shall specify, as soon as practicable after the end of each financial year.

PART III—ESTABLISHMENT OF STANDARDS

9. (1) The Council may, with the approval of the Minister and subject to the provisions of subsections (2) and (3) of this section, by notice in the Gazette, declare any mark which has been adopted by the Council in respect of any specification framed by the Bureau for any commodity, or for the manufacture, production, processing or treatment of any commodity, to be a standardization mark in respect thereof, and may in like manner abolish or amend any such mark.

Standardization
marks.

(2) Every such notice shall contain such information in regard to the relevant specification or amendment thereof as the Council considers necessary.

(3) No mark which is identical with any trade mark registered in respect of any commodity in accordance with the Trade Marks Act or so nearly resembles such mark as to be likely to be mistaken for it shall be declared to be a standardization mark in respect of that or any similar commodity or in respect of the manufacture, production, processing or treatment of that or any similar commodity, and no mark identical with a mark which has been duly declared to be a standardization mark, or so nearly resembling such a mark as to be likely to be mistaken for it, shall be registered as a trade mark under that Act in respect of any commodity.

Cap. 506.

(4) After the publication of a notice under subsection (1) of this section no person shall apply any standardization mark mentioned in such notice to any commodity except under a permit issued by the Bureau or a person acting under its authority and unless that commodity complies with the relevant specification or has been manufactured, produced, processed or treated in accordance therewith.

(5) Any person who—

- (a) applies a standardization mark to any receptacle or covering of any commodity or to any label attached to any commodity or any receptacle or covering thereof; or
- (b) places or encloses any commodity in a receptacle or covering to which a standardization mark has been applied, or in a receptacle or cover to which is attached a label to which any such mark has been applied,

shall, for the purposes of subsection (4) of this section, be deemed to have applied that standardization mark to that commodity.

(6) The issue of a permit under subsection (4) of this section shall be in the discretion of the Bureau of a person acting under its authority, and any such permit may be issued subject to conditions to be specified therein and subject to the payment of such fees as the Council may, with the approval of the Minister, determine.

(7) Any person who contravenes any of the provisions of subsection (4) of this section, or who contravenes any of the conditions which may be specified in a permit issued to him, shall be guilty of an offence.

10. (1) The Minister may, on the recommendation of the Council and subject to the provisions of this section, by notice in the Gazette—

- (a) declare a standard specification for any commodity or for the manufacture, production, processing or treatment of any commodity to be a compulsory standard specification in relation thereto with effect from a date specified in such notice being a date not less than two months after the date of publication thereof;
- (b) amend any compulsory standard specification in the manner prescribed in paragraph (a);
- (c) prescribe a distinctive mark for any commodity which complies with a compulsory standard specification or which has been manufactured, produced, processed or treated in accordance therewith and may abolish or amend any such mark.

Compulsory
standard
specifications.

(2) The Council shall not recommend and the Minister shall not declare a compulsory standard specification for the manufacture, production, processing or treatment of a commodity unless the Council or the Minister, as the case may be, is satisfied that it is not practicable to achieve the purposes of such a compulsory standard specification by a compulsory standard specification for the commodity in question.

(3) The Council shall, at least two months before making any recommendation for the purposes of paragraph (a) of subsection (1) of this section, publish in the Gazette a preliminary notice setting forth the precise purport of the recommendation proposed and shall call upon all interested persons to lodge any objections in writing with the Council in such manner and within such time as may be prescribed.

(4) Every person who has lodged an objection in accordance with the foregoing subsection shall be entitled to appear before the Council and be heard, either personally or through a representative, at such time and place as the Council shall determine, and publication of the relevant notice under paragraph (a) of subsection (1) of this section shall not take place if any such objection is upheld or until after every such objector has had an opportunity to be heard and the reasons for the rejection of any such objection have been furnished in writing to that objector or his representative.

(5) Every notice published by virtue of this section shall contain full particulars of the relevant standard specification or the amendment thereof.

(6) Whenever the Minister has, under subsection (1) of this section, declared a standard specification to be a compulsory standard specification no person shall sell the commodity to which the standard specification relates after the date specified unless it complies with that standard specification or has been manufactured, produced, processed or treated in accordance therewith.

(7) After a distinctive mark has been prescribed in accordance with paragraph (c) of subsection (1) of this section no person shall apply that mark to any commodity except under and by virtue of a permit issued to him under this Act and unless that commodity or its manufacture, production, processing or treatment complies with the compulsory standard specification relative thereto.

(8) Any person who contravenes any of the provisions of subsections (6) or (7) of this section shall be guilty of an offence.

(9) The provisions of subsections (3) and (5) of section 9 of this Act shall apply with reference to a distinctive mark as they apply to a standardization mark, and the provisions of subsections (6) and (7) of the said section shall apply respectively to the issue of a permit and a permit issued under this section.

(10) Where a person is charged with contravening subsection (6) of this section it shall be a defence for him to prove to the satisfaction of the court that he had no knowledge nor any reasonable means of ascertaining, whether before or at the time of sale, that the commodity specified in the charge did not comply with the standard specification relating thereto.

Appeals.

11. (1) Any person who is aggrieved by—

(a) the refusal of the Bureau to issue any permit;

(b) the attaching of any condition to a permit; or

(c) the variation, cancellation or suspension of any permit, may, within fourteen days of the notification of the act complained of being received by him, appeal in writing to the Minister who shall as soon as reasonably practicable, either confirm, set aside or vary the decision complained of, and whose decision shall be final.

(2) Any person who is aggrieved by any decision of the Minister under this section may in writing require the Minister to give the reasons for his decision and the Minister shall give his reasons in writing accordingly.

PART IV—ENFORCEMENT

Samples and information.

12. (1) Every person to whom a permit has been issued under this Act shall, if so requested by the Council in writing, furnish within such period as may be specified such samples of any commodity to which the permit relates and all such

information in regard to such commodity or its manufacture, production, processing or treatment as may be specified in the request.

(2) Any person who contravenes any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding six thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

13. (1) The Minister may, at the request of the Council, by notice in the Gazette appoint as an inspector for the purposes of this Act any person who, in his opinion, is suitably qualified.

Appointment of inspectors.

(2) Every person so appointed shall be either a public officer or a member of the staff of the Institute and shall be furnished with a certificate of appointment signed by the Director stating that such person is authorized by the Minister to act as an inspector for the purposes of this Act.

14. (1) An inspector may, for the purposes of this Act, at all reasonable times—

Powers of inspectors.

- (a) enter upon any premises at which there is, or is suspected to be a commodity in relation to which any standard specification or standardization mark exists;
- (b) inspect and take samples of any commodity or any material or substance used, or likely to be, or capable of being used in the manufacture, production, processing or treatment thereof, and cause any container within which there is or is suspected to be any quantity of any such commodity, material or substance, to be opened;
- (c) inspect any process or other operation which is or appears likely to be carried out in the said premises in connexion with the manufacture, production, processing or treatment of any commodity in relation to which a standard specification or a standardization mark exists;
- (d) require from any person the production of any book, notice, record, list or other document which is in the possession or custody or under the control of such person or of any other person on his behalf;

(e) examine and copy any or any part of such book, notice, record, list or other document which appears to him to have relevance to his inspection or inquiry, and require any person to give an explanation of any entry therein, and take possession of any such book, notice, record, list or other document as he believes may afford evidence of an offence under this Act;

(f) require information relevant to his inquiry from any person whom he has reasonable grounds to believe is or has been employed at any such premises or to have in his possession or custody or under his control any article referred to in this subsection.

(2) An inspector entering any premises under subsection (1) of this section shall, if so required, produce the certificate issued to him in accordance with section 13 of this Act and may be accompanied, if necessary, by an interpreter.

Obstruction.

15. Any person who resists, hinders or obstructs an inspector acting pursuant to subsection (1) of section 14 or wilfully fails to comply with any requirement made of him under the said subsection shall be guilty of an offence.

General provisions.

16. (1) Any person convicted of an offence under this Act for which no penalty is specifically provided shall be liable to imprisonment for a term not exceeding twelve months, or to a fine not exceeding ten thousand shillings, or to both such imprisonment and fine.

(2) On a second or subsequent conviction of any person for any offence under this Act he shall be liable to imprisonment for a term not exceeding three years or to a fine, or to both such imprisonment and fine.

(3) On the conviction of any person for an offence under this Act the court may, in addition to any other penalty which may be imposed, order the confiscation of all or any part of any goods in respect of which the offence was committed, and all goods the subject of such an order shall be disposed of in such manner as the court may direct.

(4) Any person who employs any agent, clerk, servant or other person shall be answerable for any act or omission of such agent, clerk, servant or other person which is an offence under this Act or which would be an offence if committed or

1973

Standards

made by such employer, and every such employer and his agent, clerk, servant or other person shall be jointly and severally guilty of the offence and liable to the penalties provided by this Act:

Provided that it shall be a defence for such employer to prove that he did not know and could not reasonably be expected to know that the act or omission was taking or was to take place and that he took all reasonable steps to ensure that the relevant provisions of this Act were being complied with.

PART V—MISCELLANEOUS

17. The fact that any commodity complies or is alleged to comply with a standard specification or a compulsory standard specification or has been or is alleged to have been manufactured, produced, processed or treated in accordance with any such specification, or that a distinctive mark or standardization mark is used in connexion with any commodity, shall not give rise to any claim against the Government, the Council, or the Institute, or any member or employee thereof.

Protection of
Government,
Institute,
Council and
members and
employees

18. (1) Any person who is or has been engaged in the administration of this Act who discloses, except for the purpose of the exercise of his functions or when required to do so by a court or under any written law, any information acquired by him in the exercise or purported exercise of his functions under this Act to any other person shall be guilty of an offence.

Secrecy of
information.

(2) The disclosure of any information for purposes connected with the administration of this Act shall not prejudice any application made subsequently for registration of a patent under the Patents Registration Act.

Cap. 508.

19. (1) No employer shall dismiss any person employed by him or reduce the rate or remuneration of such person or otherwise alter the conditions of his employment to conditions less favourable to him or alter his position to his disadvantage relative to other persons employed by such employer by reason of the fact that he believes or suspects (whether or not such belief or suspicion is justified or correct) that that person has given any information which he could be required under this Act to give to an inspector or has complied with any lawful requirement of an inspector or has given evidence in any proceedings under this Act.

Victimization.

(2) An employer who contravenes any of the provisions of subsection (1) of this section shall be guilty of an offence, and the court convicting an employer of any such contravention may in addition to any sentence which it imposes, order such employer—

(a) to restore a rate of remuneration, or conditions of employment, or the position of an employee to that which existed immediately before, and with effect from, the date of the reduction or alteration which gives rise to the conviction;

(b) to pay to any employee whose dismissal is the subject of such conviction a sum estimated by the court to be equal to his total remuneration for any period not exceeding twelve months calculated according to the rate at which he was being remunerated at the time of his dismissal.

(3) An order made under paragraph (b) of this section may be enforced as if it were a judgment of a civil court in favour of the employee concerned.

Regulations.

20. (1) The Minister, after consultation with the Council, may make regulations generally for the better carrying out of the provisions and purposes of this Act.

(2) Without prejudice to the generality of subsection (1) of this section, such regulations may—

(a) make provision for all matters in respect of which fees shall be payable under this Act or the regulations;

(b) prescribe the amount of any such fees and the persons who shall be liable for payment thereof;

(c) prescribe forms to be used under this Act and the regulations;

(d) provide for matters connected with appeals under this Act;

(e) make provision for requiring persons to supply information relevant to the provisions of this Act and the regulations;

(f) prescribe anything which under this Act is to be prescribed, and in particular the procedure to be followed by the Institute in the performance of any of its functions under this Act.

SCHEDULE

(s. 6 (4))

THE NATIONAL STANDARDS COUNCIL

1. (1) Each member of the Council appointed by the Minister under paragraph (b), (c) or (d) of section 6 of this Act shall hold office for such period as may be specified in his instrument of appointment, and shall be eligible for reappointment.

Tenure of office.

(2) Each additional member of the Council appointed by the Minister under subsection (3) of the said section shall hold office for such period as the Minister, on the advice of the Council, may at any time specify.

(3) A member or additional member may at any time resign his office by notice in writing addressed to the chairman of the Council.

(4) The Minister may cancel the appointment of a member or additional member on the ground of his infirmity, incapacity or misbehaviour, or if a member is absent from three consecutive meetings of the Council without the leave of the chairman.

2. Meetings of the Council shall be convened by the chairman at least twice in each year and otherwise as occasion requires, and the chairman shall convene a special meeting of the Council at the request in writing of not less than four members.

Meetings.

3. (1) At every meeting of the Council the person presiding shall have only a casting vote to be exercised in the event of an equality of the deliberative votes of the other members present and voting.

Procedure.

(2) The quorum for a meeting of the Council shall be five.

(3) Minutes of the proceedings of every meeting of the Council shall be regularly entered by the secretary in a minute book, and the book shall be kept so as to show proper tabulated details of all business conducted or transacted at each meeting.

(4) An additional member appointed pursuant to subsection (3) of section 6 of the Act shall not vote or be counted for the purpose of forming a quorum at any meeting of the Council.