

STANDARDS AND QUALITY ACT, 2003

*Assented to on 8th November, 2001*

*Date of commencement to be proclaimed*

*Arrangement of Sections*

PART I

PRELIMINARY

1. Short title and commencement.
2. Interpretation.

PART II

ESTABLISHMENT, FUNCTIONS AND MANAGEMENT OF THE AUTHORITY

3. Establishment of the Eswatini Standards Authority.
4. Functions of the Authority.
5. Establishment and composition of the Council of the Authority.
6. Directorate of the Authority and staff.
7. Vacation of office by Council members.
8. Functions of the Council.
9. Procedure at meetings of the Council.
10. Committees of the Council.

PART III

FINANCIAL AND ACCOUNTING PROVISIONS

11. Funds and assets.
12. Borrowing powers.
13. Accounts, audit and annual report.
14. Appointment and powers of the financial auditor.
15. Financial year.

PART IV

STANDARDS, MARKS AND LICENCES

16. Standards.
17. Mandatory standard, distinctive mark.
18. Certification marks.
19. Copyright in standards and publications.
20. Appeals.

21. Samples and information.
22. Protection of Government, Authority, members and employees.

PART V

INSPECTORS AND AUDITORS

23. Appointment of inspectors and auditors.
24. Powers of inspectors and auditors.

PART VI

MISCELLANEOUS PROVISIONS

25. Personal immunity of members and officers.
26. Offences and penalties.
27. Offences by bodies corporate.
28. Restriction on execution against property of Authority.
29. Secrecy.
30. Victimisation.
31. Pension scheme for the staff of the Directorate of the Authority.
32. Rights in discoveries, inventions and improvements by member of staff vests in Authority.
33. Immovable and movable property to be made available to Authority where required.

PART VII

TRANSITIONAL SAVINGS AND CONSEQUENTIAL PROVISIONS

34. Use of words associated with Authority by any person carrying on any activity business, trade or occupation.
35. Regulations.

Schedule

*An Act to establish the Eswatini Standards Authority and to provide for matters connected thereto.*

PART I

PRELIMINARY

*Short title and commencement.*

1. This Act may be cited as the Standards and Quality Act, 2003, and shall come into force on a date to be appointed by the Minister by notice in the *Gazette*.

*Interpretation.*

2. In this Act, unless the context otherwise requires —  
“auditor” means a person appointed as an auditor under section 23;

- “Authority” means the Eswatini Standards Authority established under section 3;
- “certification mark” means a mark declared to be a certification mark under section 18;
- “Chairman” means the person appointed as the chairman of the Council under section 5;
- “Chief Financial Officer” means a person appointed as Chief Financial Officer under section 13;
- “code of practice” means, a description of —
- (a) the terminology to be used;
  - (b) the method to be applied or the procedure to be followed;
  - (c) the material to be used;
  - (d) any requirements to be met,
- in connection with the execution in an orderly systematic, practical, efficient, safe or effective manner of an act performed with a view to achieve a stated purpose or to obtain a stated result;
- “commodity” includes an element, characteristic, category, system, or item;
- “Council” means the Council of the Authority established under section 5;
- “Director” means the person appointed as such under section 6;
- “Directorate” means the Directorate of the Authority established under section 6;
- “Director of Audit” means a person appointed as such in terms of section 133 of the Constitution of Eswatini Act, No. 50 of 1968;
- “distinctive mark” means a mark declared as such under section 11;
- “financial auditor” means a person appointed as such under section 14;
- “inspector” means a person appointed as such under section 23;
- “issue” with regard to a standard or a publication, includes making available by means of electronics, photography or other medium, of that standard or publication;
- “licence” means a licence granted under section 18 to use the certification mark in relation to any commodity or process which conforms to a standard;
- “mandatory standard” means a standard which has been declared as such under section 17;
- “manufacture” includes producing, assembling, modifying, adapting, converting, processing or treating;
- “Minister” means the Minister responsible for Standards and Quality assurance;

“organised industry” means Chambers of Commerce and Industry or similar groupings;

“reference material” means any material or substance whose one or more characteristics are such that it may be used for the —

- (a) calibration of any apparatus;
- (b) testing of the occurrence of any method of measurement; or
- (c) determination, by comparison therewith, of any characteristic, including purity, of any other material or substance;

“sales licence” means a licence referred to in section 17(8);

“specification” includes the description of a commodity or substance from which it is to be made, processed, treated, or finished, with reference to its nature, quality, mass, efficacy, composition, strength, purity, assembly, grade, performance, durability, origin, age, reliability, quantity, dimension, design, capacity, operation, installation, marking, handling, packing, storage and transport of a commodity;

“standard” means a document (which may include a specification, code of practice, standard method), established by consensus and approved by the Council that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context;

“standard method” means a description of the —

- (a) preparatory steps to be taken;
- (b) equipment, material or substance to be used;
- (c) procedure to be followed,

for the purpose of determining the nature, purity, composition, dimensions, performance or other characteristics of any commodity;

“technical regulation” is a regulation that provides technical requirements, either directly or by referring to or incorporating the content or part of a standard and declared a technical regulation by the Minister under section 35.

## PART II

### ESTABLISHMENT, FUNCTIONS AND MANAGEMENT OF THE AUTHORITY

#### *Establishment of the Eswatini Standards Authority.*

3. (1) There is established a body to be known as the Eswatini Standards Authority, which shall be a body corporate with perpetual succession and a common seal, which may sue and be sued in its corporate name and acquire, hold, and dispose of any property and do such other things and perform such other acts as any body corporate may lawfully do or perform.

(2) The Authority shall be a Category A Enterprise for purposes of the Control and Monitoring Act, 1989.

*Functions of the Authority.*

4. The functions of the Authority are to:

- (a) promote standards and quality in industry, commerce and the public sector;
- (b) provide facilities for testing and calibrating precision instruments, gauges and scientific apparatus, to determine their degree of accuracy in comparison with standards approved by the Minister on the recommendation of the Council, and for the issuance of certificates in regard thereto;
- (c) arrange or provide facilities for examining and testing of locally manufactured or imported commodities, products and materials including food and drugs, and any material or substance from or with which and the manner in which they may be manufactured, produced, processed or treated;
- (d) operate and control, in accordance with this Act, the use of certification marks and distinctive marks;
- (e) prepare, frame, modify or amend standards relating to structures, commodities, products, materials, practices and operations and administer schemes based thereon;
- (f) encourage or undertake educational work in connection with standardisation and quality;
- (g) assist the Government or any local authority or other public body or any other person in the preparation and framing of any standards and technical regulations;
- (h) co-operate with the Government or the representatives of any industry or with any local authority or other public body or any other person, in order to secure the adoption and practical application of standards and technical regulations;
- (i) at the request of the Minister or Government, and on behalf of the Government, test locally manufactured and imported commodities to determine whether they comply with this Act, or any technical regulations;
- (j) establish and maintain libraries and supply guidance and information for the purpose of furthering standardisation and quality;
- (k) charge such fees for any services rendered as may be prescribed by the Minister on the recommendation of the Council;
- (l) obtain membership of and participate in activities of national, regional, or international bodies having objects similar to any object of the Authority;
- (m) make arrangements for or accredit laboratories and control schemes with regard to laboratories so accredited;
- (n) make arrangements for or assess quality systems and control the registration of systems so assessed;
- (o) make arrangements for or assess the competence of and accredit quality practitioners;

- (p) at the request of any person, and whether or not for reward, carry out or cause to be carried out any study, examination or test in respect of any particular class of commodity, or commodities of different makes, brands, or standards whether or not such commodities are produced in Eswatini;
- (q) upon payment of such fees as the Minister may prescribe, issue reports on any study, examination or test carried out under paragraph (p) and may 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; do all such things as are necessary for, incidental or conducive to, the attainment of the objects of this Act.

*Establishment and composition of the Council of the Authority.*

5. (1) There is established a Council of the Authority which shall consist of the following members:

- (a) a Chairman who shall be a public officer;
- (b) not more than four persons who shall be public officers, one of whom shall be the Principal Secretary of the Ministry of Finance or his representative;
- (c) not more than three persons who shall represent organised industry and commerce and possess commercial and industrial knowledge of issues concerning standardisation and quality of commodities.

(2) (a) Subject to section 6 of the Public Enterprises Control and Monitoring Act, 1989, the members of the Council shall be appointed by the Minister for a period of three years and on such terms and conditions as the Minister may determine.

(b) A member of the Council (other than the Director) may be reappointed for one further term after the expiration of the initial period of appointment.

(3) The Council shall have the power to co-opt other persons as members in order for those persons to give advice or assistance on any specific issue approved by the Minister and such persons shall, during the period of co-option, have all the rights and privileges accorded to appointed members of the Council except the right to vote.

(4) (a) The Council shall nominate from amongst its members not more than three (3) members, one of whom shall be the convener, to form an executive committee to assist the Director in the day to day operations of the Authority.

(b) The executive committee shall, subject to the approval of the Council, regulate its own procedures.

*Directorate of the Authority and staff.*

6. (1) There is hereby established a Directorate of the Authority which shall be responsible for the day to day operations and the carrying out of the functions of the Authority specified in this Act.

(2) Subject to the Public Enterprises Act, 1989, the Minister shall, on the advice of the Council and on such terms and conditions as he may determine, appoint a Director and a Deputy Director of the Directorate who shall have such qualifications and experience as the Minister may determine to ensure the carrying out of the functions of the Authority specified in this Act.

- (3) The Director shall be an *ex officio* member of the Council and shall also be its secretary.
- (4) The Director shall, whenever so requested by the Council, advise it on technical matters.
- (5) The Deputy Director shall, in the absence of the Director, act on his behalf.
- (6) The Council may, after consultation with the Director and on such terms and conditions as it may determine, appoint such staff of the Directorate as the Council may find necessary for the proper performance of the functions of the Authority.

*Vacation of office by Council members.*

7. A member of the Council shall vacate his office if he —
  - (a) ceases to qualify to be a member;
  - (b) resigns his office by letter addressed to the Secretary of the Council;
  - (c) becomes of unsound mind or is in any way physically incapacitated;
  - (d) is absent from three consecutive meetings of the Council, without leave of the Chairman;
  - (e) becomes insolvent under any law relating to the insolvency of persons in Eswatini;
  - (f) is convicted of an offence and is sentenced to a term of imprisonment without the option of a fine;
  - (g) conducts himself in a manner which, in the Minister's opinion, would bring disrepute to the Authority or prejudice its activities.

*Functions of the Council.*

8. (1) The functions of the Council are to administer, manage and control the affairs of the Authority in accordance with this Act, and without affecting the generality of the foregoing, the Council shall —
  - (a) formulate matters of policy for the purpose of providing general or specific guidance to the Authority for the better performance of its functions;
  - (b) acquire, hold, hire, mortgage, pledge, sell or otherwise dispose of such movable or immovable property as may be conducive to or necessary for the effective performance of the functions of the Authority;
  - (c) execute any trusts, agency, business which may be conducive to or necessary for the effective performance of the functions of the Authority;
  - (d) subject to the approval of the Minister, invest any monies of the Authority not immediately required for any of its functions in such manner as it may determine;
  - (e) advise and obtain advice from the Minister in regard to any matter within his purview;
  - (f) maintain, so far as is practicable, a system of consultation and co-operation with any body nationally, regionally or internationally, having functions similar to any functions referred to in this Act; and

(g) with the approval of the Minister, utilize any bodies or persons in or outside Eswatini to perform any of its functions for a specified period of time.

(2) In the exercise of its powers and performance of its functions, the Council shall act in accordance with such general or specific directions not inconsistent with the purposes of this Act, as the Minister may issue.

(3) Subject to the approval of the Minister, the Council may delegate any of its powers or functions to the Director, a member of the Council or any committee established under section 10, but the Council may not be divested of such functions and may amend or revoke any decision made by such Director, member, or committee in the exercise of such functions.

*Procedure at meetings of the Council.*

9. (1) The procedures of the Council at meetings and other matters relating thereto shall be governed by the provisions set out in the Schedule hereto.

(2) The Minister may, by notice in the *Gazette*, amend the Schedule.

*Committees of the Council.*

10. (1) The Council may appoint such committees consisting of such persons as it may determine to advise it on the exercise of any of its functions.

(2) Members of committees established under subsection (1) shall receive such remuneration or allowance as the Minister may determine.

PART III

FINANCIAL AND ACCOUNTING PROVISIONS

*Funds and assets.*

11. (1) The funds and assets of the Authority shall consist of —

(a) all monies or property that may be donated, lent, or otherwise granted to the Authority by the Government, any other Government, person or international organisation;

(b) all property or investments otherwise acquired by or invested in the Authority and any money earned or accruing therefrom;

(c) any monies raised or borrowed by the Authority with the approval of the Minister;

(d) all other monies or property that may in any manner become payable to or vested in the Authority regarding any matter incidental to its purpose or functions.

(2) The Council may, out of the funds of the Authority —

(a) pay the members of the Council and staff of the Directorate such remuneration and allowances as approved by the Minister of Finance or paid to other members of similar parastatal organisations in terms of the Public Enterprises (Control and Monitoring) Act, 1989, as the case may be;



- (b) authorise the payment of all such sums of money as may be necessary to enable the Authority to discharge its functions.

*Borrowing powers.*

- 12. (1) The Authority may, on such conditions as the Minister may determine, and with the concurrence of the Minister for Finance —
  - (a) borrow temporarily, by way of bank overdraft or otherwise, such sums as it may require for meeting its obligations or exercising or performing its functions; or
  - (b) raise money by way of loans.
- (2) The repayment of monies borrowed by the Authority and of interest thereon, and all charges connected with such borrowing, shall be a liability of the Authority and shall be charged on its revenue.

*Accounts, audit and annual report.*

- 13. (1) There shall be a Chief Financial Officer appointed in terms of section 8(2) of the Public Enterprise (Monitoring and Control) Act, 1989, and who shall be answerable to the Director.
- (2) The Chief Financial Officer shall —
  - (a) keep all proper books of account and other books and records in relation to the funds, undertakings, activities and property of the Authority; and
  - (b) after the end of the financial year, cause to be prepared:
    - (i) a balance sheet showing in detail the assets and liabilities of the Authority;
    - (ii) a statement of income and expenditure;
    - (iii) such other statements of accounts as may be necessary to indicate the financial status of the Authority as at the end of that year.
- (3) The accounts of the Authority shall be examined, audited and reported upon annually by a financial auditor.
- (4) The Auditor General shall have the right of access to books of accounts and other relevant records of the Authority and shall be given such explanations as he may require in respect of public funds or property pledged for whatever purpose.
- (5) The Council shall submit to the Minister —
  - (a) during the course of the financial year, all such other information as he may require regarding the activities and financial position of the Authority;
  - (b) at the end of each financial year, an annual report, including a balance sheet and a statement of income and expenditure audited in accordance with subsection (2);

and such other particulars as the Minister may request.

- (6) The Minister shall lay the annual report submitted to him under subsection (5) before Parliament at its first sitting after he has received it.

(7) The Council shall, in such manner as it may specify after the Minister has laid the annual report before Parliament pursuant to subsection (5) and as soon as practicably possible after the end of each financial year, publish the annual report.

*Appointment and powers of the financial auditor.*

14. (1) The financial auditor shall be appointed by the Minister on the recommendation of the Council.

(2) After consulting the Council the financial auditor may —

(a) in writing require the production of all books, deeds, contracts, vouchers, receipts and other documents relating to the accounts or investments of the Authority that he may deem necessary for the purpose of an audit under this Act;

(b) by notice in writing, summon all persons as may appear to him to have knowledge of the affairs of the Authority to personally appear before him at the offices of the Authority at such a time as he may state for examination in connection with any document or matter relating to an audit.

(3) None of the following persons shall be qualified for appointment as financial auditors of the Authority:

(a) a member of the Council or any officer of the Authority;

(b) a person who is a partner of a member of the Council or a partner of any officer of the Authority;

(c) a person who is an employer or employee of a member of the Council or an officer of the Authority;

(d) a person who has any pecuniary interest in the Authority or any of its activities.

*Financial year.*

15. Unless the Minister otherwise indicates by notice in the *Gazette*, the financial year of the Authority shall be from 1st April to 31st March of the following year or for such longer or shorter period as the Minister may determine.

PART IV

STANDARDS, MARKS AND LICENCES

*Standards.*

16. (1) The Council shall establish guidelines for the Authority to draft, issue or amend a standard.

(2) A standard shall as far as possible —

(a) reflect the latest technological development; and

(b) serve all interests including the interests of the supplier, consumer and public authorities to a reasonable degree.

(3) A provision of a standard may consist of a mere reference to an appropriate standard or appropriate provision occurring in —

(a) any other standard; or

(b) a document with the nature of a standard which the Authority may deem suitable for the purposes of any provision so referred to and which was issued by a foreign or international body having objects similar to any object of the Authority.

(4) The Authority may —

(a) draft and issue, a standard as a Eswatini standard;

(b) amend or withdraw a standard.

(5) (a) The Council shall, by notice in the *Gazette*, publish the issue, amendment or withdrawal of a standard.

(b) If the issue, amendment or withdrawal of a standard has been published under paragraph (a), it shall be sufficient if the notice —

(i) states the title, number and date of the standard or a document referred to in subsection (3); and

(ii) contains a resumé of the scope and purpose of that standard or document.

(6) No person shall issue a document in the nature of a standard which may create the impression that the document is a Eswatini standard.

(7) The Authority may prescribe fees —

(a) in connection with the control of the use or application of standards; and

(b) for the sale of a standard.

*Mandatory standard, distinctive mark.*

17. (1) On the recommendation of the Council and subject to this section, the Minister may, by notice in the *Gazette* —

(a) declare a standard for any commodity or for the manufacture, production, processing or treatment of any commodity to be a mandatory standard with effect from a date specified in such notice, which date shall not be less than two months after the date of publication thereof;

(b) declare a distinctive mark for any commodity which complies with a mandatory standard or which has been manufactured, produced, processed or treated in accordance therewith;

(c) revoke or amend any mandatory standard or distinctive mark by notice in the *Gazette* in the manner prescribed in paragraph (a).

(2) The Council shall not recommend and the Minister shall not declare a mandatory standard 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 practicable to achieve the purposes of such a mandatory standard by a standard for the commodity in question.

(3) The Council shall, at least two months before making any recommendation under subsection (1), publish in the *Gazette* a preliminary notice setting out the precise purport of the proposed recommendation referred to in subsection (2) and call upon all interested persons to lodge any objections in writing with the Council in such manner and within such time as the Council may determine.

(4) A person who has lodged an objection in accordance with subsection (3) may in person or through a representative appear before the Council and be heard, at such time and place as the Council shall determine.

(5) The Council shall publish the notice under subsection (1)(a) if any objection under this section is upheld or an objector or his representative has had an opportunity to be heard and the reasons for the rejection of his objection have been furnished to him in writing.

(6) A notice published under this section shall contain full particulars of the standard or the amendment thereof.

(7) If the Minister has declared —

(a) a standard to be a mandatory standard under subsection (1)(a), a person shall not sell the commodity to which the standard relates after the date specified unless the commodity complies with that standard or has been manufactured, produced, processed or treated in accordance therewith;

(b) a distinctive mark under subsection (1)(b), a person shall not apply that mark to any commodity except under a licence issued to him by the Director and unless that commodity or its manufacture, production, processing or treatment complies with the mandatory standard relative thereto.

(8) Notwithstanding subsection (7), the Director may issue a sales licence to a person exempting him from the provisions of subsection (7) on condition that the commodity concerned complies with the declared standard.

(9) Section 18(3), (4) and (5) shall, with necessary modifications, apply to a distinctive mark as it applies to a certification mark, and section 18(8) shall, with necessary modifications, apply to the issue of a licence.

#### *Certification marks.*

18. (1) On the recommendation of the Council and subject to subsections (2) and (3), the Minister may, by notice in the *Gazette*, declare any mark which has been adopted by the Council in respect of any standard approved by Council for any commodity, or for the manufacture, production, processing or treatment of any commodity, to be a certification mark, and may in like manner revoke or amend any such mark.

(2) A notice under subsection (1) shall contain such information in regard to the relevant standard or amendment as the Council considers necessary.

(3) A mark which is identical with any trade mark registered in respect of any commodity in accordance with the Trade Marks Act, 1981, or so resembles such mark as to be likely to be mistaken for it, shall not be declared to be a certification mark under subsection (1) in respect of that or any similar commodity or in respect of the manufacture, production, processing or treatment of that or any similar commodity.

(4) A mark identical with a mark which has been declared to be a certification mark under subsection (1) or so resembling such a mark as to be likely to be mistaken for it, shall not be registered as a trade mark under the Trade Marks Act, 1981, in respect of any commodity.

(5) After the publication of a notice under subsection (1) hereof no person shall apply any certification mark mentioned in such notice to any commodity except under a licence issued by the Authority and unless that commodity complies with the relevant standard or has been manufactured, produced, processed or treated in accordance therewith.

(6) A person who —

- (a) applies a certification mark to any receptacle or covering of any commodity or to any label attached to any commodity or any receptacle or covering thereof;
- (b) places or encloses any commodity in a receptacle or cover to which a certification mark has been applied, or in a receptacle or cover to which is attached a label to which any such mark has been applied;
- (c) takes, in connection with the sale of any commodity or product, any reference, directly or indirectly, to a certification mark in a manner or under circumstances calculated to convey the impression that the commodity or product complies with the standard to which the certification mark relates, or that it has been manufactured, produced, processed or treated in accordance with that standard,

shall, for the purposes of subsection (5) hereof, be taken to have applied that certification mark to that commodity or product.

(7) No person shall, in connection with the sale of any commodity or product, make any reference directly or indirectly to the Authority or the Council or to a standard approved, or purporting to have been approved by the Council unless —

- (a) the Minister has declared any mark to be a certification mark in respect of the standard approved by the Council for any commodity or product or for the manufacture, production, processing or treatment of that commodity or product; and
- (b) such person is in possession of a licence issued by the Authority authorising him to apply such certification mark to that commodity or product.

(8) The licence referred to in subsection (7)(b) may be issued by the Director on behalf of the Authority on such terms and conditions including the payment of fees, as the Minister may prescribe.

(9) Notwithstanding subsection (7) hereof, any person required to make a statement in a contract, tender, quotation or other similar document as to whether a commodity offered or supplied by him complies with or has been manufactured, produced, processed or treated in accordance with a particular standard, may make such a statement as an affidavit or affirmation stating that he knows such statement to be correct.

*Copyright in standards and publications.*

19. (1) Notwithstanding any other law —
- (a) the Authority may issue a copyright of a standard or a publication issued by it and that copyright shall vest in the Authority;
  - (b) the Authority shall not be deprived of the copyright referred to in this section if a standard, or any publication issued by the Authority, is incorporated in any other Law.
- (2) Unless authorised by the Authority, no person shall, in any manner or form, publish, reproduce, or record any document or part thereof in respect of a copyright issued under this section.

*Appeals.*

20. (1) A person who is aggrieved by the —
- (a) refusal of the Director to issue any licence;
  - (b) attaching of any condition to a licence;
  - (c) variation, cancellation or suspension of any licence,
- may, within fourteen days after the date of the notification to him of such decision, appeal in writing to the Minister who shall within thirty days of receipt of such appeal, either confirm, set aside or vary the decision complained of, and set out his reasons therefore in writing.
- (2) The Minister's decision under this section shall be final.

*Samples and information.*

21. If requested by the Director in writing, a person to whom a licence has been issued under this Act shall furnish, within such period as the Director may specify, such samples of any commodity to which the licence relates and all such information in regard to such commodity or its manufacture, production, processing or treatment, as the Director may specify in the request.

*Protection of Government, Authority, members and employees.*

22. The fact that any commodity complies or is alleged to comply with a standard or a mandatory standard or has been alleged to have been manufactured, produced, processed or treated in accordance with any such standard, or that a distinctive mark or certification mark is used in connection with any commodity, shall not give rise to any claim against the Government, Authority or any member or employee thereof.

## PART V

## INSPECTORS AND AUDITORS

*Appointment of inspectors and auditors.*

23. (1) The Minister may, on the recommendation of the Council, appoint as inspectors or auditors for the purpose of this Act any suitably qualified person.

(2) A person appointed an inspector or auditor under this section shall be furnished with a certificate of appointment signed by the Minister stating that such person is authorised to act as an inspector or auditor for the purpose of this Act.

*Powers of inspectors and auditors.*

24. (1) Subject to the provisions of his appointment and for the purpose of this Act, an inspector or auditor may, at all reasonable times —

- (a) enter upon any premises at which there is, or is suspected to be, a commodity in relation to which any mandatory standard or certification mark exists;
- (b) inspect, examine and take samples of, any commodity or material or substance of a commodity referred to in paragraph (a), used or likely to be used, 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 premises in connection with the manufacture, production, processing or treatment of any commodity for which a mandatory standard or certification mark exists;
- (d) require from any person the production then and there or at a time and place fixed by the inspector or auditor of any book, notice, record, list or other document pertaining to a commodity or the manufacture, production, processing or treatment thereof which is in the possession or custody or under the control of such person on his behalf;
- (e) examine, take extracts, 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;
- (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;
- (g) in addition to the above, enter, inspect and examine anything connected with the purposes of this Act.

(2) An inspector or auditor entering any premises under subsection (1) shall, if so required, produce the certificate issued to him in accordance with section 23 and may be accompanied, if necessary, by an interpreter.

PART VI

MISCELLANEOUS PROVISIONS

*Personal immunity of members and officers.*

25. Nothing done by a member of the Council or employee of the Authority in the *bona fide* exercise of their functions or in the execution of any provision of this Act shall render them personally liable to any action, liability, claim, demand or any prosecution.

*Offences and penalties.*

26. (1) A person who —

- (a) contravenes section 16(6), 17(7), 18(5), (6) or (7), 19(2), 21, 29(1), 30, or 34(1) or (2);
- (b) (i) contravenes or otherwise fails to comply with the conditions of any licence issued in terms of this Act;
- (ii) falsely holds himself out to be an inspector or auditor;
- (iii) makes any false statement to an inspector or auditor in the exercise of his powers under this Act;
- (iv) refuses, neglects or otherwise fails to answer any question put by an inspector or auditor in the exercise of his powers under this Act;
- (v) refuses, neglects or otherwise fails to comply with any direction made by an inspector or auditor in the exercise of his functions under this Act;
- (vi) hinders or otherwise obstructs an inspector or auditor in the exercise of his powers under this Act,

commits an offence.

(2) (a) Where a person is charged with contravening section 18(5) or (6) and section 17(7)(a) or (b) or section 18(1)(b) it shall be a defence for him to prove to the satisfaction of the court that —

- (i) he took all reasonable precautions to comply with such provisions; and
- (ii) on demand by the Council, inspector or auditor, he furnished all information which was or should reasonably have been available to him from the person from whom he acquired the commodity or product to which the charge relates.

(b) Where a person is charged with contravening section 18(7)(a) 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 any time of the sale, that the commodity specified in the charge did not comply with a standard relating thereto.

(3) A court convicting an employer of contravening section 30 may in addition to any sentence it imposes, order the employer to —

- (a) 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 use to the conviction;
- (b) pay the 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 six months calculated according to the rate at which he was being remunerated at the time of his dismissal.

(4) An order made under subsection (3) shall be enforced as if it were a judgment of a civil court in favour of the affected employee.



- (5) A person convicted of an offence under subsection (1) shall on —
- (a) first conviction, be liable to a fine, not exceeding two thousand Emalangeni or to imprisonment for a term not exceeding two years or to both such fine and imprisonment;
  - (b) subsequent conviction, be liable to a fine not exceeding five thousand Emalangeni or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.
- (6) A person who —
- (a) fails, refuses or otherwise neglects to produce any document that he has been required to produce by the financial auditor;
  - (b) fails, refuses, or otherwise neglects to comply with a notice summoning him to appear before the financial auditor;
  - (c) refuses to be examined by the financial auditor after having been summoned by him;
  - (d) refuses to answer questions pertaining to the audit that are put to him by the financial auditor after having been summoned to him;
  - (e) hinders or otherwise obstructs the financial auditor in the exercise of his powers under this Act;
  - (f) having appeared before the financial auditor on a notice summoning him to appear, makes a statement pertaining to the audit that he knows or believes to be false or that he does not know or believe to be true,

commits an offence and shall on —

- (i) first conviction be liable to a fine not exceeding two thousand Emalangeni or to a term of imprisonment not exceeding two years or to both such fine and imprisonment; and
- (ii) subsequent conviction be liable to a fine not exceeding four thousand Emalangeni or a term of imprisonment not exceeding four years or to both such fine and imprisonment.

(7) A person summoned to attend to give evidence or to produce any paper, book, record or document before the financial auditor, is entitled in respect of such evidence or the disclosure of any communication, or the production of any such paper, book, record or document to the same right or privilege as before a court of law.

(8) A conviction under subsection (1), (6) or (9) shall not exempt, or be taken to exempt, the person convicted from the liability to do or perform the act, matter or thing required of him.

(9) A person who employs an 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 made by such person, and such person and his agent, clerk, servant or other person shall be jointly and severally guilty of the offence and liable upon conviction to the penalties provided under this Act for that offence, unless he proves that he did not know and could not reasonably be expected to know that the act, or omission was taken 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.

(10) On conviction of a 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 decide.

*Offences by bodies corporate.*

27. Where an offence under this Act is committed by a body of persons —

- (a) if that body is a body corporate other than the Authority, every person who at the time of the commission of the offence is a director, manager, secretary or similar officer, or is purporting to act in any such capacity, shall be deemed to have committed the offence;
- (b) if that body is a firm, every partner of that firm shall be deemed to have committed the offence,

unless he proves that the offence was committed without his knowledge or that he exercised all diligence to prevent the committing of the offence.

*Restriction on execution against property of Authority.*

28. Notwithstanding anything to the contrary in any other law —

- (a) where any judgment or order has been obtained against the Authority, no execution or attachment, or process in the nature of execution, shall be issued against the Authority but the Director shall, without delay, cause to be paid out of the revenue of the Authority such amounts as may, by the judgment or order, be awarded against the Authority to the person entitled thereto;
- (b) the property of the Authority shall not be seized or taken by any person whether or not having power by law to attach or detain property unless with the written permission of the Minister.

*Secrecy.*

29. (1) Except for the purpose of the exercise of his functions or when required to do so by law or a court, a person who is or has been engaged in the administration of this Act shall not disclose any information acquired by him in the exercise or purported exercise of his functions.

(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 Act, 1936, or any subsequent amendments to the Designs and Utility Model Act, 1996.

*Victimisation.*

30. (1) An employer shall not dismiss any person employed by him or reduce the rate of pay 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 because he believes or suspects (whether or not such belief or suspicion is justified or correct) that person has —

- (a) given any information which he could be required under this Act to give an inspector or auditor;

- (b) complied with any lawful requirement of an inspector or auditor; or
- (c) given evidence in any proceedings under this Act.

(2) A dismissal under this section shall be deemed an unfair dismissal in terms of the employment legislation.

*Pension scheme for the staff of the Directorate of the Authority.*

31. The Council may —

- (a) establish and regulate a pension scheme for the payment of pensions, gratuities, allowances, and such other schemes as are of benefit to the members of the staff of the Directorate, and a widows' and orphans' pension fund or scheme for providing pensions to the widows and orphans of deceased members of the staff;
- (b) require contributions to be made to such scheme or fund by members of the staff of the Directorate and may deduct such contributions from the salaries or wages of the members of the staff;
- (c) make contributions to any such scheme or fund from the revenues of the Authority.

*Rights in discoveries, inventions and improvements by member of staff vests in Authority.*

32. (1) The rights in all discoveries and inventions and all improvements in processes, apparatuses, and machines made by an officer of the Directorate shall vest in and be the property of the Authority and shall be made available for use in the public interest subject to such conditions and the payment of such fees or royalties as the Minister may prescribe.

(2) The Council may, out of the funds of the Authority, pay to any officer of the Directorate, who has made any discovery, invention or improvement referred to in subsection (1), such bonus, or make provisions for such officer to share in the profits derived from that discovery, invention or improvement, as the Minister may determine.

(3) The Council may apply for letters of patent in respect of any inventions made by any officer of the Directorate and shall for the purpose of the Patents, Designs and Utility Model Act, 1996, or any amendments thereof, be regarded as the assign of the inventor.

*Immovable and movable property to be made available to Authority where required.*

33. If any immovable or movable property is required for the purpose of the Authority, such property may be given, granted, donated, leased or otherwise transferred to the Authority by the Minister responsible according to applicable law.

## PART VII

### TRANSITIONAL SAVINGS AND CONSEQUENTIAL PROVISIONS

*Use of words associated with Authority by any person carrying on any activity business, trade or occupation.*

34. (1) Except with the written approval of the Minister and subject to subsections (3) and (4) hereof, a person shall not carry on any activity, business, trade or occupation under any

name which contains the words “Authority of Standards”, “Standards Authority” or such other words the use of which would imply that such person is the Authority or is associated or connected with the Authority.

(2) Except with the written approval of the Minister and subject to subsections (3) and (4) —

- (a) a trade mark which contains the word “standards” shall not be registered under the Patents, Designs and Utility Model Act, 1996, or any amendments thereof;
- (b) a person shall not, unless authorised by a licence, sell any commodity under a mark which contains the word “standard” or under a description in which such word is used in a manner which may create the impression that the commodity or product complies with a standard approved therefor by the Council.

(3) Notwithstanding subsection (1), a person who, at the commencement of this Act has applied for, carries on any activity, business, trade or occupation, shall have his application proceeded with, or may continue to carry on such activity, business, trade or occupation, or to be registered, as the case may be, under such name.

(4) Subsection (2) shall not affect any trade mark registered at the commencement of this Act or the sale of any commodity under such trade mark.

(5) The Minister may at any time withdraw any approval given by him under subsection (1) or (2) if, in his opinion, it is necessary to do so in order to avoid confusion or abuse.

#### *Regulations.*

35. After consulting the Council, the Minister may make regulations generally for the better carrying out of the provisions of this Act and without prejudice to the generality of the foregoing:

- (a) provide for all matters in respect of which fees may be payable under this Act;
- (b) prescribe the amount of any such fees and the persons who may be liable for payment thereof;
- (c) prescribe forms that may be used under this Act;
- (d) provide for any procedures regarding any applications relating to licences;
- (e) provide for matters connected with appeals under this Act;
- (f) make provision for the requirement of persons to supply information under this Act;
- (g) provide for the control of the use of standards and technical regulations;
- (h) prescribe the procedure to be followed by the Authority in the performance of any of its functions under this Act;
- (i) prescribe anything which under this Act is to be prescribed.

SCHEDULE  
(Under section 9(1))

*Rules of procedure of the Council*

1. The Council shall meet at least once every three months for the despatch of the business of the Authority or meet as often as business requires.
  2. The Chairman shall convene and preside at all meetings of the Council and shall convene a special meeting at the written request of at least three members.
  3. Only the business stipulated in a written request for a special meeting may be transacted at the meeting.
  4. In the absence of the Chairman, but subject to the quorum, the members present shall nominate one of them to preside at the meeting.
  5. The quorum for a meeting of the Council shall be five members.
  6. All decisions of the Council shall be made by a simple majority of the votes of the members present and the person presiding shall only have a casting vote where there is an equality of votes.
  7. An additional member appointed under section 5(3) shall not vote or be counted for the purpose of a quorum at any meeting of the Council.
  8. The Secretary shall keep minutes of all proceedings of the Council in a minute book which shall show all details of the business transacted at each meeting.
  9. Subject to this Act and this Schedule, the Council may regulate its own proceedings.
  10. The Chairman, in consultation with the Council, may invite any representative of any committee to attend and participate in a Council meeting dealing with a specific subject of interest to or affecting the work of that committee.
-

