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COMMONWEALTH OF DOMINICA

ACT No.4 of 1999

I assent



(Sgd.) V.L. Shaw
President

3rd May, 1999.

AN ACT TO PROVIDE FOR THE PREPARATION AND PROMOTION OF STANDARDS IN RELATION TO GOODS, SERVICES, PROCESSES AND PRACTICES BY THE ESTABLISHMENT AND OPERATION OF A BUREAU OF STANDARDS TO DEFINE THE POWERS AND FUNCTIONS OF THE BUREAU OF STANDARDS AND FOR MATTERS INCIDENTAL THERETO,

(Gazetted 6th May , 1999.)

BE IT ENACTED by the Parliament of the Commonwealth of Dominica as follows:

1. This Act may be cited as the –

STANDARDS ACT 1999.

Short title.

Interpretation.

2. In this Act –

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

“CARICOM Standard Mark” means the mark or design approved by the CARICOM Council of Trade and Economic Development (COTED) to be licensed for use on goods or in connection with processes, practices or services that conform to the requirements of the CARICOM Standard and so declared by the Minister by Order published in the *Gazette*;

“code of practice” means a description of the method of production of any goods, or of the execution of any service, process or practice by which in the opinion of the Bureau a person adhering to it is able to produce goods or offer services which are likely to comply with a specification or standard;

“compulsory standard” means a standard so declared by Order of the Minister under section 19;

“Council” means the National Standards Council established by section 7;

“Standard Mark” means the Dominica Standard Mark prescribed under section 20;

“goods” means commodities which are the subject of trade or commerce;

“Minister” means the Minister charged with the responsibility for standards matters;

“practice” includes advertising, labelling or packaging;

“specification” means a description of any goods, services, process or practice by reference to its nature, quality, strength, purity, safety, composition, quantity, dimensions, weight, grade, durability, origin, age, or other characteristics, and includes guidelines for a process or practice, tables of data and a code of practice;

“standard” means a specification declared by the Bureau to be a standard

PART I
ESTABLISHMENT AND FUNCTIONS OF BUREAU

3. (1) There is hereby established a body corporate to be known as the Bureau of Standards. Establishment of Bureau of Standards.

(2) The Bureau –

- (a)* shall have perpetual succession and a common seal;
- (b)* may acquire, hold and dispose of land and other property;
- (c)* may enter into contracts; and
- (d)* shall do any other thing which is necessary for the purpose of its functions.

4. (1) The Bureau shall promote and encourage the maintenance of standards – Functions of the Bureau of Standards.

- (a)* for the improvement of goods produced or used in Dominica;
- (b)* for services produced or used in Dominica; and
- (c)* in relation to processes and practices,

for ensuring industrial efficiency and development and promoting public and industrial welfare and health and safety for safeguarding the environment and shall exercise such other functions as may be prescribed.

(2) For the purposes of subsection (1) the Bureau may –

- (a)* promote the general adoption and implementation of standards relating to structures, goods, materials, processes, practices, operations and other matters, on a national and international level;
- (b)* promote research in relation to specifications, establish or designate laboratories and testing facilities, and provide for the examination and testing of goods, services, processes and practices;
- (c)* certify those goods, services, processes and practices that conform to national regional and interna-

tional standards;

- (d) inspect or cause to be inspected –
 - (i) any operations carried out and any books or records, in connection with the production, manufacture, processing or treatment of any goods; and
 - (ii) the execution of any services, processes or practice for which a compulsory standard has been declared or for which application has been made to use the Standard Mark;
- (e) declare standards and keep the standards under review;
- (f) collect and publish for public information and guidance, data relating to specifications and standards;
- (g) encourage and undertake educational programmes relating to standards;
- (h) provide for the examination, testing and calibration of instruments, appliances and apparatus;
- (i) co-operate with and advise manufacturers, agricultural producers and service providers of goods and services in setting up quality control systems and preparing standards;
- (j) do such other things as may be expedient or necessary to secure the proper execution of the purposes of this Act.

Bureau to advise
manufacturers on quality
control.

5. (1) In addition to the functions specified in section 4 the Bureau may provide advisory services to manufacturers, agricultural producers and service providers as to the type of quality control applicable to their activities and may undertake the training of staff in quality control.

(2) The Bureau shall have the power to charge fees for

services rendered under this section.

6. (1) The Minister shall, after consultation with the Council, appoint a Director of the Bureau who shall be the Chief Executive of the Bureau. Appointment of Director and staff of the Bureau.

(2) The Director shall have full responsibility for the day to day management of the business of the Corporation and shall have such powers and shall carry out such other duties as the Council may from time to time, by resolution, delegate to him.

(3) The Council shall, after consultation with the Director appoint the Senior Management personnel of the Bureau as the Council may deem necessary for the proper performance of the functions of the Bureau under this Act.

PART II

ADMINISTRATION OF THE BUREAU

7. The general administration of the affairs of the Bureau shall be carried out by the National Standards Council consisting of not less than eleven and not more than fourteen members. Standards Council.

8. (1) The Council shall comprise the following: Appointment of Council members.
- (a) one person nominated by the Minister who shall be the Chairman of the Council;
 - (b) two persons nominated by the Dominica Association of Industry and Commerce;
 - (c) one person nominated by the Consumer Association, or in the absence of such an Association, one person nominated by the Minister, after consultation with the Trade Unions, to represent consumers;
 - (d) two persons representing the Ministry responsible for marketing;
 - (e) one person nominated by the Minister responsible for agriculture to represent the producers of agricultural produce;
 - (f) two persons representing the Ministry responsible for agriculture;
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- (g) one person representing the Ministry responsible for communications and works;
 - (h) one *ex-officio* member being the Director of the Bureau/Standard Unit; and
 - (i) not more than three other persons with qualifications in fields relating to standards or experience in business or members of organisations committed to the maintenance or promotion of standards, as the Minister may determine.

(2) The Minister shall appoint a Deputy Chairman from among the persons appointed under subsection (1).

Chairman of Council Meetings.

9. Where the Chairman is absent or unable to act the Deputy Chairman shall preside at Council Meetings. In case both the Chairman and Deputy Chairman are absent or unable to act, the members of the Council present at a meeting shall elect one of their members to preside as Chairman.

Tenure of office of Council members.

10. (1) The Minister shall appoint all members except the *ex-officio* member to the Council by instrument in writing for a period not exceeding three years and a member so appointed is eligible for reappointment on the expiration of his period of office.

(2) The Minister may terminate the appointment of the Chairman or any other nominated member of the Council who—

- (a) becomes of unsound mind or incapable of carrying out his duties;
- (b) becomes bankrupt or compounds with, or suspends payments to his creditors;
- (c) is convicted and sentenced to a term of imprisonment;
- (d) is convicted of any offence involving dishonesty;
- (e) is guilty of misconduct in relation to his duties;
- (f) is absent, except on leave granted by the Council, from three consecutive meetings of the Council; or

(g) fails to carry out any of the functions conferred or imposed on him under this Act.

11. A member of the Council, other than members appointed by the Minister by virtue of section 8(d), (f), and (g) may resign his office at any time by letter addressed to the Minister and conveyed through the Chairman.

Resignation of Council members.

12. The names of the members of the Council shall be published in the *Gazette*, and any subsequent change in the membership of the Council shall be similarly gazetted.

Publication of membership of Council.

13. (1) The Council shall meet at least once in every quarter and at such other times as may be necessary or expedient for transacting the business of the Bureau.

Meetings and quorum of Council.

(2) Where the Council consists of not more than eleven members the quorum shall be six and where the Council consists of more than eleven members the quorum shall be one more than half the number.

(3) The decision of the Council shall be taken by a majority of the votes.

(4) The Chairman may at any time call a special meeting and shall, upon receipt in writing from four or more members of the Council, call a meeting within seven days to consider the matters entailed in the request.

(5) If the Chairman refuses to convene a special meeting of the Council upon request or neglects to convene the meeting as requested, a special meeting of the Council may be convened by the Council Members making the request.

(6) Minutes of the proceedings of each meeting shall be kept, in such manner as the Council may determine, by the Secretary to the Council.

14. (1) A member of the Council whose interest may directly be affected by a decision of the Council on any matter shall disclose

Conflict of interest.

the nature of his interest at the first meeting of the Council at which he is present after the relevant facts have come to his knowledge.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Council and after the disclosure the member concerned may not vote on the matter, and unless otherwise directed by the Council shall not be present at any meeting when the matter is being decided by the Council.

Remuneration of members.

15. (1) There shall be paid to each member of the Council in respect of his office such remuneration and allowances as the Minister may, from time to time, determine.

(2) Where any member of the Council undertakes overseas travel on behalf of the Bureau, travel and subsistence allowances shall be payable at such rates and subject to such conditions as may from time to time be fixed by the Council with the approval of the Minister.

Bureau's Seal and authentication of documents.

16. (1) The Seal of the Bureau shall be kept in the custody of the Secretary of the Council and shall be authenticated by the Chairman or in his absence, by the Vice-Chairman and the Secretary of the Council.

(2) All documents other than those required to be under seal and all decisions of the Council may be authenticated by the Chairman or the Secretary.

Immunity of Council members.

17. (1) No action, suit, prosecution or other proceedings may be brought or instituted against a member of the Council in his personal capacity, in respect of any act done or omitted to be done by him in good faith in the execution or the purported execution of his duties under this Act.

(2) Where a member of the Council is exempt from liability by reason only of this section the Bureau is liable for the acts of the member on the principles of agency.

18. (1) The Council may appoint committees for the better regulation and management of any matter with which the Council is concerned and may determine –

Appointment of committees.

- (a) the number of members of a committee so appointed;
- (b) the terms of appointment of the members;
- (c) the quorum of the committee;
- (d) the functions of the committee as a whole and of individual members; and
- (e) the area and scope of the committee's authority.

(2) Sections 14 and 16 apply to members of any committee as it applies to a Council member.

PART III BUSINESS OF THE BUREAU

19. (1) The Bureau may declare a specification to be a standard and a standard to be a Dominica Standard.

Declaration and publication of standards.

(2) No specification may be declared a standard and no standard may be varied or revoked unless the Bureau is satisfied that persons who may be affected thereby have had an opportunity to consider and comment on the standard.

(3) The Bureau shall keep a copy of every standard and every variation of a standard available for public inspection and shall cause every declaration, variation or revocation of a standard to be published in the *Gazette*, and in such other publication as the Minister may direct.

(4) The Bureau may adopt any international specification or other specification formulated outside Dominica where it is impractical to formulate its own specification.

20. (1) A standard may be voluntary or compulsory.

Voluntary and compulsory standards.

(2) A standard which is intended primarily –

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- (a) to protect the consumer or user against danger to health or safety;
 - (b) to prevent fraud or deception arising from misleading advertising or labelling;
 - (c) to ensure quality in goods produced for export;
 - (d) to require adequate information to be given to the consumer or user;
 - (e) to ensure quality in any case where the choice of source of supply is restricted; or
 - (f) to generally ensure the quality of goods and services;

may on the recommendation of the Bureau, be declared by Order of the Minister to be a compulsory standard.

(3) An Order made under subsection (2) shall state the purpose for which the standard is intended.

(4) The Minister shall, by Notice publish in the *Gazette*, give at least thirty days notice of his intention to make an Order to declare a standard to be a compulsory standard and shall in the Notice indicate the date on which it is intended that the compulsory standard shall come into effect.

(5) Any interested person may on or before the date specified in the Notice referred to in subsection (4) lodge with the Director a written representation on the proposed Order.

(6) The Director shall consider the representation made to him under subsection (5) and communicate his decision to the Minister.

(7) The Minister shall not make an Order under subsection (2) unless he is satisfied that the Director has given due consideration to the representation made to him under subsection (5).

21. The Minister may on the recommendation of the Bureau prescribe a mark which shall be called the Dominica Standard Mark, the property of which vests in the Bureau, and which shall be used in relation to goods, services, processes or practices to

signify conformity to a standard.

22. The CARICOM Standards Mark may be used in relation to goods, services, processes, or practices which conform to CARICOM Standards.

Use of CARICOM
Standards Mark.

23. (1) A person desiring to use the Standard Mark and CARICOM Standards Mark in connection with any goods, service, process or practice shall make application to the Bureau in such manner as may be prescribed.

Licences to use
Standard Mark.

(2) The Bureau may, if satisfied that the goods, service, process or practice conforms to a standard, grant a licence to the applicant to use the Standard Mark and CARICOM Standards Mark upon such terms and conditions, including the payment of the prescribed fee.

24. (1) No person shall carry on a business or perform any function under a name which contains the word "Standard" without the consent of the Bureau.

Restriction on the use of
the word "Standard"

(2) Where a written law provides for the registration of an association of persons, the registering authority shall refuse registration if in its opinion the use of the name by which the association desires to be registered is prohibited by subsection (1).

(3) This section does not apply to a name that was in use in Dominica before the commencement of this Act.

25. (1) The Minister may –

(a) direct the Bureau; or

(b) by letter authorise the Bureau to obtain the service of a public officer or other person having such qualifications as may be prescribed;

Testing of goods for
compliance with
compulsory standard.

to test or examine the quality of any goods for which a compulsory standard has been declared.

(2) The Bureau or a public officer or other person as

mentioned in subsection (1)(b) may require any person in Dominica to submit goods manufactured by him for testing or examination where –

(a) that person has a licence to use a Standard Mark in respect of the goods; or

(b) a compulsory standard has been declared for the goods.

(3) The Bureau may –

(a) certify that the goods conform with; or

(b) report that the goods do not comply with a standard or specification where the standard is voluntary or where a foreign specification exists with respect to certain goods.

Prohibition of sale or export of rejected goods.

26. (1) Where a standard is compulsory and goods tested or examined under section 23 fail to conform to the standard, the goods shall not be exported or released for home use, unless the goods are clearly stamped or marked with the words “rejects” or “seconds” or “imperfect” or other similar words as may be prescribed.

(2) Notwithstanding subsection (1) where the compulsory standard is declared to protect the consumer or user against danger to health or safety, the goods may neither be exported nor released for home use, but shall be disposed of as the Bureau thinks fit.

Court Order.

27. If a compulsory standard specification is declared in respect of a commodity, and a producer fails to comply with the standard, the High Court may upon application by the Minister, order such producer to cease production after a date specified in the Order.

Examination of imported goods.

28. (1) Notwithstanding the provision of any other law, the Bureau may authorise a member of its staff to examine goods manufactured outside Dominica and any custom entries relating to such goods, where a standard is declared for the goods.

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- (2) The Minister may in writing –
- (a) authorise a public officer; or
 - (b) retain at a fee to be prescribed a suitable qualified consultant,

to assist the staff of the Bureau in an examination carried out under subsection (1).

(3) A person who examines goods under this section may take and submit samples of the goods for testing or analysis.

(4) Where goods imported into Dominica bear a mark so closely resembling the Standard Mark as to be misleading or which falsely represents a mark of compliance with a specification formulated or adopted outside Dominica, the goods shall not be entered for home use unless the mark is removed or substantially changed.

(5) Where a standard is compulsory, goods produced or manufactured outside Dominica may be entered for home use if –

- (a) upon an examination of samples the goods comply with the standard; or
- (b) the goods are accompanied by a certificate of examination and compliance with the standard issued by a laboratory or other similar institution in the country of origin, recognised by the Bureau.

(6) In this section and in section 24, “home use” means consumption in Dominica.

29. (1) For the purpose of monitoring compulsory standards, or eliminating any process or practice the effect of which adversely affects the environment, the Minister may on the advice of the Bureau designate employees of the Bureau or public officers to be Inspectors and shall provide every Inspector with documentary evidence of his designation.

Appointment and powers of Inspectors.

(2) An Inspector may, at any time and on production of documentary evidence of his designation enter any place –

- (a) where he has reasonable grounds to believe that an

article to which this section applies is manufactured, prepared, stored or offered for sale, to examine and take samples of the article; or

- (b) where he has reasonable grounds to believe that an activity to which this section applies is carried out to inspect or investigate the activity and take samples of any article, material or substance relating to the activity;

and while there may

- (c) open and examine any receptacle or package that he has reasonable grounds to believe contains an article to which this section applies;
- (d) examine and make copies of or transcribe extracts from any book, document or other record found in the place which he has reasonable grounds to believe contains information relevant to the enforcement of this Act; and
- (e) seize and detain for such time as may be necessary, any article by means of which or in relation to which he has reasonable grounds to believe any provision of this Act has been infringed.

(3) A Magistrate shall issue a warrant under this section where he is satisfied by sworn information in writing that admission to any premises has been refused, or that refusal is apprehended or that a request for admission could defeat the purpose of the entry.

(4) In this section –

- (a) “article to which this section applies” means any goods for which a compulsory standard is declared and includes –
- (i) anything used in the manufacture, testing, preparation, processing, packaging, storage or sale of the goods; and

(ii) any labelling or advertising material referring to the goods, whether or not bearing the Standard Mark; and

(b) "activity to which this section applies" includes any process or practice for which a compulsory standard has been declared and anything used in the performance of the process or practice.

(5) Where an Inspector enters a place pursuant to this section, the owner or person in charge of the place and any servant or agent present at the time shall give to the Inspector all reasonable assistance and shall furnish him with such information as he may reasonable require.

(6) An Inspector may in his discretion leave any article seized under subsection (2)(e) in the place where it was seized or remove it to be stored in another place, and upon being satisfied that this section has been complied with shall release all seized articles not destroyed by testing.

(7) Where an article is seized under subsection (2)(e) the article forfeits to the State and may be destroyed or otherwise disposed of as the Minister may direct.

(8) An Inspector may lay charges in courts of summary jurisdiction in cases arising from violation of this Act.

PART IV

MISCELLANEOUS

30. (1) The Bureau shall investigate complaints regarding goods, services, processes and practices referred to it by consumers and users and may institute legal proceedings against the manufacturer or other person supplying the defective goods or service or engaged in the defective process or practice.

(2) Where upon representations made by the Bureau the Court is of the opinion that any goods, service, process or practice is dangerous to the public, the Court may order the manufacturer of

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- (h) with intent to defraud represents that he is an Inspector or a person authorised by the Bureau or the Minister to perform a function under this Act;
 - (i) being entitled to use the Standard Mark uses it in contravention of the terms and conditions of the licence or after he is no longer entitled to use the Mark;
 - (j) uses the word "Standard" in a name contrary to section 22;
 - (k) impersonates an Inspector;
 - (l) obstructs an Inspector by not giving him reasonable assistance or access to records, documents or information relevant to the performance of his functions under this Act; or
 - (m) tampers with an article seized by an Inspector in such a way as to change any of the characteristics of the article described in the standard applicable on such article;

is liable on summary conviction to a fine of fifteen thousand dollars and to an additional penalty of one thousand dollars for every day on which the offence continues and to imprisonment for six months.

Forfeiture of articles on conviction of offenders.

37. Where a person is convicted of an offence under this Act, the Court –

- (a) may order the forfeiture of any article by means of or in relation to which the offence was committed or any similar item in the possession of that person or found with such article whether or not the item is proved to be in contravention of section 26, and may order that such article or item be disposed of as the Minister may direct; and
- (b) may order the person to cease and desist from performing any activity by means of or in relation to

which the offence was committed until such time as the Court may direct.

38. A copy of a standard authenticated by the Bureau together with a copy of the *Gazette* notice declaring or amending the standard is *prima facie* evidence of that standard in legal proceedings.

Evidence of standard.

39. (1) All information obtained by the Minister, the Council, the Bureau or any member of its staff or by any other person in the course of the administration of this Act, as to any formula, process or practice shall be treated as confidential, except for any purpose connected with the administration of this Act.

Secrecy of information.

(2) The disclosure of any information relating to any formula, process or practice to the Minister, the Council, the Bureau or any member of its staff or to any other person for purposes connected with the administration of this Act, shall not prejudice a subsequent application for the patent of the formula, process or practice.

40. No person has a claim against the State or against the Bureau by reason only of the fact that the Standard Mark is used in connection with any goods, or that any goods, service, process or practice conforms or is alleged to conform to a standard.

Protection against claims.

41. The Minister may make Regulations for the purpose of this Act and for prescribing all things required to be provided and in particular he may make Regulations –

Regulations.

- (a) regarding the declaring of standards including compulsory standards;
- (b) concerning the use of the Standard Mark and the terms and conditions subject to which the Mark may be used and the fees to be paid in respect of such use;
- (c) regarding packaging, labelling and advertising of any goods;

- (d) regarding the examination and testing of goods, processes and practices and entry upon premises for that purpose;
- (e) requiring any person to keep and produce in relation to any goods, services, process or practice, such records as the Bureau may consider necessary for the purposes of this Act;
- (f) prescribing matters in respect of which fees are to be paid, the amount of the fees and the persons by whom the fees are to be paid and authorising the refund or remission of fees in such circumstances as may be prescribed;
- (g) prescribing penalties for the breach of any Regulation not exceeding a fine of one thousand dollars and imprisonment for twelve months;
- (h) prescribing the qualifications, powers and duties of persons authorised under section 23 to examine goods upon landing and of persons designated Inspectors under this Act; and
- (i) prescribing anything required under this Act to be prescribed.

Passed in the House of Assembly this 10th day of March,
1999.

ALEX F. PHILLIP (MRS.)
Clerk of the House of Assembly.

DOMINICA

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