

**CHAPTER 43:07
STANDARDS**

ARRANGEMENT OF SECTIONS

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Act 16, 1995.

An Act to provide for the Botswana Bureau of Standards for the promotion and maintenance of standardization and quality assurance in the provision of commodities and the rendering of services.

[Date of Commencement: 1st August, 1996]

1. Short title

This Act may be cited as the Standards Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"Bureau" means the Botswana Bureau of Standards established by section 3;

"Council" means the Standards Council established by section 4;

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

"specification" means any description of a commodity by reference to its name, 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 it may be manufactured, produced, processed, treated, tested or sampled;

"standard mark" means a mark which has been approved and registered by the Bureau as a mark denoting conformity with a standard declared by the Minister under section 11;

"standard specification" means a specification set and issued by the Minister under section 10(1) in respect of any commodity, or for the manufacture, production, processing or treatment of any commodity, and a "compulsory standard specification" means a specification that has been declared to be a compulsory standard specification in accordance with section 10(2).

3. Establishment of Botswana Bureau of Standards

(1) There is hereby established a bureau, to be known as the Botswana Bureau of

Standards, which shall be a body corporate, with perpetual succession and a common seal, and capable, in its corporate name of-

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, managing, charging and disposing of property, movable or immovable;
- (c) entering into contracts, and doing or performing all such other things as may be necessary, and as may lawfully be done or performed by a body corporate,

for the proper performance of its functions and undertaking of its duties under this Act.

(2) The functions and duties of the Bureau shall be-

- (a) to promote standardization and quality assurance in industry and commerce, with the aim of improving product quality, industrial efficiency and productivity, and the promotion of trade, so as to achieve optimum benefits for the public generally, particularly in the interests of health, safety and welfare, and protection of the consumer;
- (b) to make arrangements for, 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 recommendations of the Council, and for the issue of certificates with regard thereto;
- (c) to make arrangements for, or provide facilities for, the examination and testing of commodities, and any material or substance from which, with which, or having regard to the manner in which, they may be manufactured, produced, processed or treated;
- (d) to grant, renew, suspend or cancel licences for the use of standards marks;
- (e) to prepare, modify or amend and publish Botswana Standards, and any codes of practice intended to be applied, or to be adopted in connection with the construction, installation, testing, sampling, operation or use of any article, apparatus, instrument, device or process;
- (f) to encourage or undertake educational work in connection with standardization and quality assurance;
- (g) to assist the Government or any local authority or public body, or any other person in the preparation and framing of any specifications or codes of practice;
- (h) to co-operate with the Government or any local authority or public body, or with the representatives of any industry or any person, with the aim of securing the adoption and practical application of standards;
- (i) to provide for the testing, on behalf of the Government, of locally manufactured or imported commodities, to determine whether such commodities comply with the provisions of this Act, or any other written law dealing with standards of quality or description;
- (j) to establish or recognize inspection agencies for the purpose of product and quality system certification, and for such other purposes as may be prescribed;
- (k) to support environmental protection within the framework of standardization and quality assurance;
- (l) to do all such acts and things, or enter into all such transactions as are expedient or necessary for the proper and efficient discharge of the functions of the Bureau.

4. Establishment of Standards Council

(1) There shall be established a council to be known as the Standards Council which shall consist of the following persons appointed by the Minister-

- (a) a chairman;
- (b) not more than four persons who shall be public officers; and
- (c) not more than seven persons possessing knowledge of industrial or commercial standards, or other matters likely to be of assistance to the Bureau in the performance of its functions and duties under this Act:

Provided that in making appointments under this subsection the Minister shall ensure that the Government, the parastatal sector, manufacturers and consumers are represented on the Council.

(2) The Managing Director of the Bureau shall be the secretary of the Council.

(3) The Council may appoint committees or sub-committees of the Council, and may delegate to such committees or sub-committees any of its functions or duties under this Act, subject to such conditions as it may specify.

(4) The provisions of the Schedule shall have effect with regard to the Council and its proceedings, but otherwise the Council shall regulate its own procedure.

(5) Members of the Council may be paid such fees and allowances for expenses as may be approved by the Minister.

5. Duties and proceedings of Council

(1) The Council shall-

- (a) supervise and control the administration and financial management of the Bureau;
- (b) consult with the Minister in respect of any matter for which he is responsible under this Act;
- (c) formulate matters of policy for the purpose of providing general or specific guidance to the Bureau in respect of the performance of its functions under this Act;
- (d) do all such things as are necessary or desirable for the better carrying out of the provisions and purposes of this Act, except where otherwise provided.

(2) The Council may, at the request of any person, carry out or cause to be carried out-

- (a) studies, examinations or tests in respect of any particular commodity or class of commodities;
- (b) comparative studies, examinations or tests in respect of commodities or classes of commodities of different makes or brands or specifications,

whether produced in Botswana or elsewhere.

(3) The Council may, on payment of such fees as may be prescribed, issue reports on any study, examination or test carried out in accordance with the provisions of subsection (2), and may impose conditions as to the use to be made of such reports, including provisions prohibiting, restricting or requiring the publication or other disclosure of any information contained therein.

(4) The Minister may give directions of a general or a specific nature to the Council, which directions shall be complied with by the Council.

(5) No act or proceedings of the Council shall be invalid by reason only of the fact that the number of members present at the time was not complete, or by reason of any defect in the appointment of any member, or that any member was at the time disqualified or disentitled to act as such.

6. Managing Director and Deputy Managing Director of the Bureau

(1) The Minister shall, after consultation with the Council, appoint a person, suitably qualified technically and scientifically, to be the Managing Director of the Bureau, who shall be the chief executive officer of the Bureau.

(2) The Council shall, with the consent of the Minister, appoint a suitably qualified person to be the Deputy Managing Director of the Bureau, who shall perform such functions and carry out such duties as the Managing Director may assign to him, and who shall, in the absence for any reason of the Managing Director, act as Managing Director.

(3) The Council shall, after consultation with the Managing Director, appoint such members and staff of the Bureau as it deems necessary for the proper performance of the functions, and the carrying out of the duties, of the Bureau.

7. Finances of the Bureau

(1) The funds and resources of the Bureau shall consist of-

- (a) such moneys as may be provided for the purposes of the Bureau by the Government;

- (b) such moneys or assets as may, from time to time, vest in the Bureau from other sources by way of fees, grants or otherwise;
- (c) such moneys as the Council may, in accordance with the provisions of subsection (2), borrow for the purposes of the Bureau.

(2) With the prior approval of the Minister for the time being responsible for finance, the Council may, from time to time, borrow moneys on behalf of and for the purposes of the Bureau, by way of loans or overdrafts, upon such security, and on such terms and conditions relating to the repayment of the principal and the payment of interest as the Council may, subject to any directions given by the Minister, deem fit.

(3) The Council may, from time to time, invest any moneys standing to the credit of the Bureau in securities and property approved, either generally or specifically, by the Minister for the time being responsible for finance, and may, from time to time with like approval, sell or vary such securities or property.

8. Accounts of the Bureau

(1) The Bureau shall keep proper accounts, and other records in relation thereto, and shall, in respect of each financial year, prepare a statement of accounts showing in detail the assets and liabilities, real and contingent, and income and expenditure of the Bureau.

(2) The statement of accounts produced in accordance with subsection (1) in respect of each financial year shall, within four months of the end of such year, be audited by auditors appointed by the Council with the approval of the Minister:

Provided that no auditor shall be qualified to be appointed under this subsection if he is a member, officer or servant of the Bureau, and unless he holds one of the qualifications referred to in section 128(1) of the Companies Act.

(3) The auditors appointed under subsection (2) shall, in respect of the accounts of each financial year, and in addition to any other matters on which they deem it pertinent to comment, report whether or not-

- (a) they have received all the information and explanations which, to the best of their knowledge and belief, were necessary for the proper performance of their duties as auditors;
- (b) the accounts and related records of the Bureau have been properly kept;
- (c) the Bureau has complied with all the financial provisions of this Act with which it was its duty to comply;
- (d) the statement of accounts produced by the Bureau was prepared on a basis consistent with that of the preceding year, and represents a true and fair account of the transactions and financial affairs of the Bureau.

(4) The Council shall, within thirty days of its receipt of the auditors' report, send such report and a copy of the audited accounts to the Minister, and the Minister shall, within thirty days of receiving them, lay such report and the copy of the audited accounts before the National Assembly.

(5) The Council shall, within six months of the end of each financial year, or such longer period as the Minister may approve, prepare and submit a comprehensive report on the operations of the Bureau during such year, together with the auditors' report and the audited accounts referred to in subsection (4), which reports and accounts the Minister shall lay before the National Assembly within thirty days of his receiving them, and require them to be published in such manner as he may specify.

9. Liabilities of Council members and Bureau staff

(1) No matter or thing done by any member of the Council, or officer of the Bureau, if done *bona fide* in the execution, or purported execution of his duties or functions under this Act, shall render such member or officer personally liable for such matter or thing.

(2) Any person who is or has been engaged in the administration of the provisions of this Act, and who, except for the purposes of the exercise of his duties or functions under the Act, or

when required to do so by a court, or in accordance with any written law, discloses to any other person any information acquired by him in the exercise of those duties or functions, shall be guilty of an offence and liable to the penalties prescribed in section 14.

10. Standard specifications

(1) The Minister may, on the recommendation of the Bureau, from time to time by notice in the *Gazette* set and issue in respect of any commodity, or for the manufacture, production, processing or treatment of any commodity, standard specifications, and may likewise cancel, amend or revise such specifications.

(2) Any such standard specification may, in the original notice, or in a subsequent notice, be declared to be a compulsory standard for the commodity, or for the manufacture, production, processing or treatment of the commodity concerned:

Provided that any such notice shall contain full particulars of the compulsory standard, and shall not become effective until a date specified in the notice, which shall not be less than two months after the date of publication of the notice.

(3) The Bureau shall, at least two months before making a recommendation for the purpose of subsection (2), publish in the *Gazette* a preliminary notice setting forth as precisely as possible details of its recommendation, and inviting any interested persons to lodge objections to such recommendation with the Bureau, in writing, and in such manner and within such time, being not less than one month from the date of publication of such preliminary notice, as may be specified in the notice.

(4) Any person who has lodged an objection in accordance with the provisions of subsection (3) shall be entitled to appear before the Bureau, either personally or through a representative, and be heard, at such time and place as the Bureau may determine, and no declaration shall be made in accordance with the provisions of subsection (2) until every person lodging an objection within the specified time has been given an opportunity to be heard, or if any such objection is upheld.

(5) Where the Bureau rejects any objection made in accordance with the provisions of subsection (3), it shall at the same time furnish to the objector or his representative the reasons for such rejection, in writing, and any objector aggrieved by such rejection may, within two months therefrom appeal to the Minister, in writing, and the Minister's decision thereon shall be final.

(6) Where a compulsory standard has been declared in respect of any commodity, or the manufacture, production, processing or treatment of any commodity, any person who manufactures, produces, processes, treats, sells or otherwise deals in a commodity of that description which does not comply with the declared standard specifications in respect thereof shall be guilty of an offence.

11. Standards marks

(1) Subject to the provisions of subsection (2), the Minister may, by notice in the *Gazette*, and on the recommendation of the Council, declare any mark to be a standards mark that may be applied to any commodity falling within the scope of standard specifications which have been set and issued in respect of that commodity.

(2) No mark which is identical to any trade mark registered in respect of any commodity in accordance with the provisions of the Trade Marks Act, or which so nearly resembles such mark as to be likely to be mistaken for it, shall be eligible to be declared a standards mark in respect of that commodity or any similar commodity, or in respect of the manufacture, production, processing or treatment of that commodity or any similar commodity.

(3) After the coming into operation of a notice under subsection (1), no person shall apply to any commodity any standards mark referred to in such notice, except under and in accordance with a licence issued by the Bureau, or by a person acting under its authority, and unless that commodity complies with the standard specifications appropriate to that mark, or has been manufactured, produced, processed or treated in accordance therewith.

(4)(a) The issue of a licence under this section shall be at the discretion of the Bureau, or the person acting under its authority, and may be issued subject to such conditions as may be specified therein, on payment of such fee as may be prescribed.

(b) The Bureau may, at its discretion, revoke or suspend any licence issued under this section, or may vary any condition attached to such licence.

(5) For the purposes of this section a person shall be deemed to have applied a standards mark to a commodity if he has-

- (a) applied that standards mark to any container or covering of that commodity, or to any label attached to such commodity or to such container or covering;
- (b) placed or enclosed the commodity concerned in any container or covering to which that standards mark has been applied, or to which is attached any label to which such standards mark has been applied; or
- (c) in connection with the sale of such commodity, directly or indirectly referred to that standards mark in a manner or under circumstances likely to convey the impression that the commodity complies with, or has been manufactured, produced, processed or treated in accordance with, the relevant standards specification.

(6) Any person who contravenes any of the provisions of subsection (3), or who contravenes any of the conditions specified in a licence issued to him in accordance with this section, shall be guilty of an offence.

(7)(a) Any person who is aggrieved by the refusal of the Bureau to issue a licence, or any condition subject to which it is issued, or the variation, cancellation or suspension of any licence by the Bureau may, within fourteen days of being notified of the decision of the Bureau, appeal in writing to the Minister.

(b) The Minister shall as soon as is reasonably possible after receipt of an appeal under paragraph (a) either confirm, set aside or vary the decision of the Bureau complained of, and the Minister's decision thereon shall be final.

12. Samples and information

(1) Every person to whom a licence has been issued in accordance with section 11 shall, at the written request of the Bureau, and within such period as may be specified in the request, furnish to the Bureau for examination, testing or analysis such samples of the commodity to which the licence relates as may be specified in the request, or supply to the Bureau such information with regard to the commodity concerned or its manufacture, production, processing or treatment as may be specified in the request.

(2)(a) The Bureau may examine, test or analyse any sample obtained in terms of subsection (1), to determine whether it complies with, or has been manufactured in accordance with, the requirements of the standard specifications appropriate to it.

(b) If any sample obtained in terms of this section is damaged or destroyed during the process of examination, testing or analysis, the Bureau shall not be liable for the damage to or the destruction of that sample.

(3) The result of any examination, test or analysis of any sample of a commodity under this section shall, until the contrary is proved, for all purposes be deemed to be valid for the whole consignment or batch from which the sample was obtained.

13. Inspectors

(1) The Minister may, at the request of the Bureau, by notice in the *Gazette*, appoint any public officer or officer of the Bureau to be an inspector for the purposes of this Act.

(2) Every person appointed to be an inspector under subsection (1) shall be furnished with, and shall produce on request, a certificate of appointment signed by the Managing Director, stating that such person is duly appointed and authorized by the Minister to act as an inspector for the purposes of the Act.

(3) An inspector may, for the purposes of this Act, at all reasonable times and without notice, enter any premises in or upon which there is, or is suspected to be, any commodity in

relation to which there exists a compulsory standard or a standards mark, and there may-

- (a) 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 of such commodity, and may open or cause to be opened any package or container which contains, or is suspected to contain any such commodity, material or substance;
- (b) inspect any process or other operation being carried on, or suspected of being carried on in such premises, in respect of such commodity, or in connection with the manufacture, production, processing or treatment thereof;
- (c) require from any person the production, there and then or at a time and place fixed by the inspector, 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 person on his behalf, which the inspector, on reasonable grounds to be relevant to any inspection or inquiry being carried out by him;
- (d) examine and copy any or any part of any book, notice, record, list or other document produced in accordance with paragraph (c), and require any person to give an explanation of any entry therein, and may take possession of any such book, notice, record, list or other document which he believes may afford evidence of an offence under the Act;
- (e) with regard to any matter which he is investigating, question any person whom he finds in or on the premises concerned, or whom on reasonable grounds he believes to be or to have been employed in or on the premises, or to have in his possession or custody, or under his control, any thing or matter referred to in this subsection.

(4) Any person who is in charge of any premises referred to in subsection (3) shall at all reasonable times furnish such assistance as an inspector may reasonably require in the exercise of his powers under this section.

(5) Any person who resists, hinders or obstructs an inspector in the performance of his duties or the exercise of his powers under this section, or who wilfully fails to comply with any requirement lawfully made of him in accordance with the provisions of this section shall be guilty of an offence.

14. Offences and penalties

(1) Any person guilty of an offence under this Act shall-

- (a) in respect of an offence under section 9(2) or section 13(5), be liable to imprisonment for one year and to a fine of P2 000;
- (b) in respect of an offence under section 10(6) or section 11(6), be liable to imprisonment for three years and to a fine of P5 000; and
- (c) in respect of an offence under section 15(2), be liable to imprisonment for two years and to a fine of P3 000.

(2) On the conviction of any person for an offence under this Act the court may, in addition to any other penalty imposed, order the confiscation, and disposal in such manner as it may direct, of all or any part of the commodity or commodities in respect of which the offence was committed.

(3) Where any offence under this Act is committed by an agent or employee, the principal or employer may be charged with a like offence and liable to the same punishments therefor, unless it is proved that he did not take part in the commission of the offence, and that he could not have prevented it.

15. Victimization

(1) No employer shall dismiss, or terminate the employment of, any person employed by him, or reduce his remuneration or otherwise unfavourably alter the terms of his employment, or alter his position to his disadvantage relative to other persons employed by such employer, by reason only of the fact that he believes or suspects (whether or not such belief or suspicion is

justified or correct) that such 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.

(2) An employer who contravenes any of the provisions of subsection (1) shall be guilty of an offence and, in addition to the penalties prescribed by section 14(1), the court convicting him may order him-

- (a) to restore the rate of remuneration, or conditions of employment, or the position of the employee concerned to that which existed immediately before, and with effect from, the date of the dismissal, termination, reduction or alteration which gave rise to the conviction;
- (b) to pay to the employee concerned whose dismissal is the subject of the 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,

such order being enforceable as a civil judgment in favour of the employee.

(3) In any proceedings for an offence under subsection (2), if the court is satisfied that the employee's employment was terminated, or that his remuneration was reduced, or that his terms of employment were adversely varied within twelve months of such employee having given any information to an inspector, or having given evidence in proceedings under this Act, the court shall, unless it is satisfied to the contrary, presume that such termination of employment, reduction of remuneration or variation of terms of employment was made by the employer because of the employee having given such information, complied with such lawful requirement or given such evidence, as the case may be.

(4) An order made under subsection (2) may be enforced as if it were a judgment of a civil court in favour of the employee concerned.

16. Regulations

(1) The Minister may, after consultation with the Council, make regulations for the better carrying out of, or for giving effect to the principles of, the provisions and purposes of this Act, and without derogation from the generality of the foregoing such regulations may-

- (a) make provision for all matters in respect of which fees shall be payable under this Act or any regulations made under this Act;
- (b) prescribe the amount of any such fees, and who shall be liable for payment thereof;
- (c) prescribe forms to be used for the purposes of this Act or any regulations made thereunder;
- (d) provide for matters in connection with appeals made under this Act;
- (e) make provision for requiring persons to supply details and information relevant to the provisions of this Act and a regulations made under this Act;
- (f) prescribe anything which under this Act is to be prescribed, and in particular the procedure to be followed by the Bureau in the performance and carrying out of its duties and functions under this Act;
- (g) provide for the regulation and promulgation of standard specifications and compulsory standard specifications.

(2) There may be annexed to the breach of any regulations made under this Act penalties not exceeding a fine of P2 000 and imprisonment for one year.

SCHEDULE

(Section 4(4))

1. In this Schedule, unless the context otherwise requires, "member" in relation to the Council includes the Chairman.

2. A member of the Council shall, unless his appointment is sooner determined by the Minister, or he otherwise ceases to be a member, hold office for such period as the Minister may specify in his appointment, or if no period is specified for a period of three years from the date of his appointment, and

shall be eligible for reappointment:

Provided that in the case of a member who is a member by virtue of his holding some other office, he shall continue to be a member whilst so holding that office, but shall cease to be a member upon his ceasing to hold such office.

3. Any member of the Council may, at any time, resign by giving notice in writing to the Minister, and from the date specified in such notice, or if no date is specified from the date of receipt of the notice by the Minister, he shall cease to be a member.

4. Where any member absents himself from three consecutive meetings of the Council without reasonable excuse, the Council shall advise the Minister of the fact, and the Minister may terminate the appointment of the member and appoint another member in his place.

5. The Minister shall appoint an alternate member for each substantive member of the Council, and such alternate member shall attend any meeting of the Council when the substantive member concerned is for any reason unable to attend.

6. The Council shall elect one of its members to be Vice-Chairman of the Council, and such Vice-Chairman shall, subject to his continuing to be a member of the Council, hold such office for a period of one year from the date of his election, and shall thereafter be eligible for re-election.

7. The Chairman of the Council shall preside at all meetings of the Council which he attends, but if for any reason he is absent the Vice-Chairman shall preside as Chairman, and in the absence of the Chairman and the Vice-Chairman, the members present at the meeting concerned and forming a quorum, shall elect one of their number to be Chairman for that meeting.

8. (1) The Council shall meet not less than four times during every year, and at such additional times as may be fixed by the Chairman, or by the Vice-Chairman acting as Chairman.

(2) The Chairman, or in his absence the Vice-Chairman, may, and shall upon application being made therefor by at least five members, convene a special meeting of the Council at any time.

(3) The Secretary of the Council shall give adequate notice to each member of the time and place of each meeting.

9. At any meeting of the Council, not less than half of the number of persons currently being members shall constitute a quorum.

10. All questions at a meeting of the Council shall be determined by a majority of the votes of the members present at the meeting:

Provided that, in the event of an equality of votes on any matter before the Council, the Chairman or the person acting as Chairman for that meeting shall have a casting vote, in addition to his deliberative vote.

11. Notwithstanding the foregoing provisions, where the Chairman, or the person acting as Chairman for the time being, so determines, decisions may be made by the Council without a meeting, by circulation of the relevant papers to all the members, and by a majority vote of the members in writing:

Provided that any member shall be entitled to require that any such decision be deferred and the subject matter considered at a meeting of the Council.

12. The seal of the Council shall be of such shape, size and form as the Council may determine, and shall be authenticated by the signature of the Chairman, or the Secretary, or an officer of the Bureau so authorized in that behalf by the Council.

13. All documents to be executed by the Council, other than those required by law to be under seal, and all decisions of the Council, shall be signified under the hand of the Chairman, or the Secretary, or an officer of the Bureau so authorized in that behalf by the Council.

14. (1) The Council shall cause minutes of all proceedings of meetings of the Council to be kept and to be entered in a book reserved for that purpose.

(2) Any such minutes, if purporting to be approved and signed by the Chairman or the person acting as Chairman of the next succeeding meeting of the Council, shall be evidence of such proceedings and, until or unless the contrary is proved, the meeting to which the minutes relate shall be deemed to have been duly convened and all proceedings thereat to have been duly transacted and recorded.