

THE STANDARDS BILL, 2019

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SCHEDULE: CONDUCT OF MEETINGS OF THE COUNCIL

THE STANDARDS BILL, 2019

A Bill for

An Act of Parliament to promote and maintain standardization, metrology and conformity assessment in the provision of products and services; to provide for the establishment of the Kenya Bureau of Standards, to define its mandate, functions, management and control; to provide for the establishment of the National Standards Council and the Standards Tribunal; to give effect to Article 46 of the Constitution on consumer rights and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Standards Act, 2019 and shall come into operation on such date as the Cabinet Secretary may, by notice in the *Gazette*, appoint.

Interpretation.

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

“accreditation” means third party attestation related to a conformity assessment body conveying formal demonstration of its competence to carry out specific conformity assessment tasks;

“accreditation body” means a body that conveys formal demonstration of the competence of conformity assessment tasks;

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

“calibration” means an operation that, under specified conditions, establishes a relation between the quantity values with measurement uncertainties provided by measurement standards and corresponding indications with associated measurement uncertainties and uses this information to establish a relation for obtaining a measurement result from an indication;

“certification” means third party attestation related to products, processes, systems or personnel;

“certified reference” means reference material, accompanied by a certificate, one or more of whose property values are certified by a

procedure which establishes traceability to an accurate realization of the unit in which the property values are expressed, and for which each certified value is accompanied by an uncertainty at a stated level of confidence;

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

“consignment” means a delivery of goods to a carrier to be shipped to a designated person for sale; it is a quantity of goods being moved to, within and from Kenya;

“container” means any box, bag, case, package, pot, sack or other receptacle in which material or other articles have been or are being transported, includes any covering, wrapping or packing material;

“conformity assessment” means an activity that demonstrates fulfilment of specified requirements relating to a product, process, system, personnel or body and includes quality assurance, inspection, testing, certification and market surveillance;

“conformity assessment body” means an entity that conducts conformity assessment;

“Council” means the National Standards Council as established by section 5 of this Act;

“designated laboratory” means public or private laboratory nominated by the government as the main laboratory representing the testing domain in Kenya;

“document” means any records, communication or facts with the help of marks, words, or symbols, including a tape recording, a photograph and any electronic, magnetic or other medium on, in, or by means and by way of which images, data, sound, or information may be stored;

“economic operator” a person involved in the international movement of goods for whatever function; (revert to the defn in the draft forwarded to the min)

“import” means entry of any goods and services into Kenya for the purposes of this Act and includes import within the meaning of section 2 of the Customs and Excise Act;

“inspector” means an employee of Bureau appointed by the Council to exercise the powers or perform the duties of an inspector and enforce the provisions under this Act;

“inspection” means examination of a product design, product, processor installation and determination of its conformity with standards and technical regulations;

“interception” means the refusal or controlled entry of an imported consignment due to failure to comply with mandatory standards and technical regulations;

“international standards” means standards developed by international standards setting organizations, such as the International Organization for Standardization, Codex Alimentarius Commission, the International Electro technical Commission and the International Telecommunication Union;

“Kenya Standard” means a National Standard developed through the national technical committees, subjected to stakeholder’s consultations, approved by the National Standards Council and published in the Kenya Gazette;

“Managing Director” means the Director of Bureau appointed under section 12;

“mandatory national standard” means a standard which lays down product, service or process characteristics with which compliance has been made compulsory in accordance with this Act;

“manufacture” means produce, assemble, alter, modify, adapt, convert, process, treat, install, test or operate;

“manufacturer” means any legal or natural person engaged in production, processing, treatment, installation, testing or any other operation in relation to goods or services subject to National Standards or Technical Regulations, and includes a supplier;

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

“measurement” means the process of experimentally obtaining one or more quantity values that can reasonably be attributed to a quantity;

“metrology” means the science of measurement and its application;

“National Conformity Assessment Body” means

“permit” means a permit to use standardization mark issued under this Act or Regulations;

“premises” means any building or other structure, and includes any building, aircraft, vehicle or vessel on or offshore, movable or immovable or other place in which may be used for the storage, manufacture, concealment, sale, handling, transport, or other related purposes within the meaning of the Customs and Excise Act;

“product” means the output of a process, software, hardware and processed materials;

“quality assessment” means that part of the coordinated activities to direct and control an entity with regard to quality, focused on providing confidence that quality requirements shall be fulfilled;

“quality system” means the totality of policy, legal, infrastructure and institutional arrangements that provide support and services in standards, metrology, testing, certification and accreditation in both the regulatory and non-regulatory domain;

“reference material” means material or substance of one or more whose property values are sufficiently homogenous and well established to be used for calibration of an apparatus, the assessment of a measurement method, or for assigning values to materials;

“sell” means barter and exchange, exposure or offer for sale, as well as export for or in pursuance of sale;

“service” means the result of an activity or interaction between a service supplier and a customer and can take many forms;

“specification” means a description of a product, process, practice or service by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age, or other characteristics or a description of a product by reference to any mark or label on the product, and includes a glossary of terms, a definition, a symbol, and a recommended practice;

“standard levy” means the charge payable as referred by section 49 of the Act;

“standard” means a document approved by the Council that provides, for common and repeated use, rules, guidelines or characteristics for products and services or related processes and production methods, aimed at the achievement of the optimum degree of order in a given context; and which may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, processor

production method and includes specifications, codes of practice and test methods and includes Kenya Standards and company standards;

“standards related deliverables” means National Workshop Agreements, Technical Specifications and publicly available specifications approved by the Council;

“standardization” means the activity of establishing, with regard to actual or potential problems, provisions for common and repeated use, aimed at the achievement of the optimum degree of order in a given context;

“marks of quality” means protected mark, applied or issued under the rules of a certification system, indicating that adequate confidence is provided that the relevant product, process, practice or service is in conformity with a specific standard or other normative document and which has been specified under section 25 of this Act;

“supplier” means a legal or natural person that provides goods or services;

“technical regulation” means a document that lays down product characteristics or their related processes or production methods, including administrative provisions, with which compliance is mandatory and may cover terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method;

“East African Community Standards” means standards developed by the East African Community in accordance with the provisions of the East African Community Standards, Quality Assurance, Metrology and Testing Act;

“Tribunal” means the Standards Tribunal, as established under section 37 of this Act; and

“Repealed Act” means the Standards Act.

Cap 496.

PART II—THE ESTABLISHMENT AND FUNCTIONS OF KENYA BUREAU OF STANDARDS

Establishment of the
Bureau.

- 3.** (1) There is established a national standards bureau to be known as the Kenya Bureau of Standards.
- (2) The Kenya Bureau of Standards shall be a body corporate with perpetual succession and a common seal, and which shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property for the purposes of this Act; and
- (c) entering into contracts; and
- (d) doing or performing all such other things or acts necessary for or incidental to the proper performance of its functions under this Act, which may lawfully be done by a body corporate.

(3) The Bureau shall be the successor to the Kenya Bureau of Standards existing immediately before the commencement of this Act, and subject to this Act, all rights, obligations, assets and liabilities of the Kenya Bureau of Standards existing at the commencement of this Act shall be automatically and fully transferred to the Bureau and any reference to the Kenya Bureau of Standards shall be deemed to be a reference to the Bureau established under subsection (1).

Functions of Bureau.

4. The functions of the Bureau shall be—
- (a) to provide standardization, metrology and conformity assessment service in industry and trade;
 - (b) to improve product quality, industrial efficiency, productivity and the promotion of trade so as to achieve optimum benefits for the public generally, particularly in the interest of health, safety and welfare, protection of the consumer and the environment;
 - (c) to provide facilities or make arrangements for the testing and calibration of equipment for the determination of their degree of accuracy by comparison with standards approved by the Cabinet Secretary and for the issue of certificates with regard thereto;
 - (d) to provide or make arrangements for, the examination and testing of products and their derivatives with regard to the manner in which they may be manufactured, produced, processed or treated;
 - (e) to grant, renew, suspend or cancel permits and certificates and control the use of marks of quality and distinctive marks in accordance with the provisions of this Act;
 - (f) to prepare, frame, modify or amend and publish standards;

- (g) to conduct inspect and take samples of any material or substance for testing and other appropriate action including appointment of other inspection agencies;
- (h) to undertake training and awareness in connection with standardization, metrology and conformity assessment;
- (i) to promote and facilities the use of standards as the basis for the development of technical regulations;
- (j) to assist the government, regulatory authorities or any county or public body or any other person in the preparation and the framing of any standards related deliverables, specifications or codes of practice;
- (k) to co-operate with the g government, regulatory authorities or any county 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;
- (l) to promote health, safety and environmental protection within the framework of standardization, metrology and conformity assessment;
- (m) to participate in regional and international standardization metrology and conformity assessment and trade facilitation activities and give effect to the decisions and recommendations arising from regional and international engagements;
- (n) to provide access to standards related information to the public and private sectors; and
- (o) to perform all other functions necessary for the proper and efficient discharge of its function and consistent with this Act.

Establishment of the
National Standards
Council.

- 5.** (1) There is established a council of the Bureau to be known as the National Standards Council.
- (2) The Council shall consist of the following members—
- (a) a chairperson appointed by the President;
 - (b) the Principal Secretary in the ministry responsible for matters relating to finance or a designated alternate;
 - (c) the Principal Secretary, in the ministry responsible for matters relating to industry or a designated alternate;

- (d) a person who is knowledgeable in standardization, metrology or conformity assessment or related sciences and engineering;
- (e) a person knowledgeable in matters relating to human resource;
- (f) a person nominated by an association that has wide representation of key stakeholders in the industry as may be determined by the Cabinet Secretary; and
- (g) a person with knowledge, experience and qualifications in consumer protection, law and related matters.

- (3) The Cabinet Secretary may after consultation with the Council, appoint a person to the Council, whose assistance or advice the Council may, from time to time require.
- (4) The members appointed under paragraphs (d) to (g) shall be appointed by the Cabinet Secretary.
- (5) The Corporation Secretary of Bureau shall act as the Secretary to the Council provided that the Corporation Secretary and the Managing Director of Bureau shall be ex-officio members of the Council with no voting rights.
- (6) The Council composition shall adhere to the principles of gender, regional and ethnic balance.
- (7) All appointments under this section shall be by notice in the *Gazette*.
- (8) No act or proceedings of the Council shall be invalid merely by reason of—
 - (a) any vacancy in or any defect in the composition of the Council;
 - (b) any irregularity in the appointment of a member thereof.

Term of office of the
National Standard
Council.

- 6. (1) Members of the Council appointed under section 5(2) shall hold office for a term of three years and shall be eligible for reappointment for one further term.

(2) For the purpose of continuity, the appointment under section 5 shall be made in a manner that their terms do not expire at the same time.

Eligibility Criteria.

- 7. The following categories of persons shall not be eligible to serve as a member of the council—

- (a) an undischarged bankrupt;
- (b) a person who has been sentenced to a term of imprisonment exceeding six months provided that the person has exhausted the appeal mechanisms provided in law;
- (c) a person who has been removed from office on grounds of violating ethics and integrity provisions of the Constitution and any related legislation; or
- (d) a person who has been declared by a court to be mentally ill or unfit in accordance with the applicable legislation.

Vacation of Office.

8. (1) The chairperson or a member of the Council other than an ex-officio member may —

(a) resign from office by giving at least three months' notice, in writing, to the Cabinet secretary;

(b) be removed from office by the Cabinet Secretary, on the recommendation of the Council, if the member—

(i) is absent from three consecutive meetings of the Council without a written consent of the chairperson;

(ii) is adjudged bankrupt by a court of competent jurisdiction;

(iii) is unable to exercise the functions of the office by reason of physical or mental infirmity;

(iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months; or

(v) dies.

(2) Where a vacancy occurs under subsection (1) the Cabinet Secretary shall initiate the recruitment process of filling in vacancy within one month of occurrence of the vacancy.

Remuneration, Terms and Conditions of Employment of Members of the Council.

9. The chairperson and members of the Council shall be paid such remuneration and benefits as may be approved by the Cabinet Secretary upon the advice Salaries and Remuneration Commission.

Meetings of the Council and disclosure of interest.

10. The conduct of meetings of the Council shall as provided in the Schedule.

Powers of the Council.

11. The Council shall have power to—

- (a) oversee the administration and financial management of Bureau;
- (b) give policy direction to Bureau;
- (c) advise the Cabinet Secretary or government generally on any policy issue relating to any matter governed by this Act;
- (d) conduct or commission any comparative study, examination or tests in respect of any particular or class of products;
- (e) conduct or commission any comparative study, examination or tests in respect of products of different makes or brands or of different specification whether produced in Kenya or elsewhere;
- (f) issue or publish reports of any studies, examinations or tests carried out by Bureau and may impose such conditions prohibiting or restricting further publication or disclosure of such information as it may deem proper;
- (g) levy fees, penalties and charges; and
- (h) to do all things necessary for the better carrying out of the provisions and purposes of this Act except where otherwise provided.

Managing Director of Bureau

12. (1) There shall be a Managing Director of Bureau who shall be appointed for a period of four years which may be renewed once.

(2) The Managing Director shall be the Chief Executive Officer of Bureau.

(3) The Managing Director shall be appointed by the Council through a competitive process and in accordance with the provisions of Chapter 6 of the Constitution and in consultation with the Cabinet Secretary.

(4) The Managing Director may cease to hold office on the occurrence of the following events—

- (a) upon being declared an undischarged bankrupt;
- (b) upon being sentenced to a term of imprisonment exceeding six months provided that the person has exhausted the Appeal mechanisms provided in law.

(c) upon being declared by a court to be mentally ill or unfit in accordance with the applicable legislation.

(d) provided that the Council may remove the Managing Director from office for inability to perform the functions of the office or on similar grounds subject to the provisions of the Constitution, Employment Act and other labour related legislation.

Appointment of Employees.

13. The Council shall, in consultation with the Managing Director, appoint such employees as it shall consider necessary upon such terms and conditions as it may deem necessary and according to the procedures applicable to employees of public bodies for the proper performance of the functions and the carrying out of the duties of the Bureau.

PART IV—DEVELOPMENT OF STANDARDS

The Purpose of Standards.

14. Standardization shall be carried out for the purposes of—

- (a) safeguarding health and ensuring safety of human beings, plants and animals;
- (b) protection of the environment;
- (c) ensuring fitness for purpose of products and services;
- (d) achieving compatibility and ensuring interchangeability;
- (e) variety control of products and services and efficient utilization of resources;
- (f) product protection and;
- (g) technology transfer;
- (h) prevention of deceptive practices; and
- (i) national security.

Principles of Standardization.

15. Standardization shall be carried out in accordance with the following principles—

- (a) transparency and openness;
- (b) impartiality;
- (c) consensus;
- (d) effectiveness and relevance;

- (e) coherence;
- (f) development dimension;
- (g) stakeholder engagement;
- (h) due process; and
- (i) implementation of national standards and adoption of international standards.

Kenya Standards.

16. (1) The Bureau shall develop standards and standards related deliverables in accordance with approved procedures under the Act.

(2) Any proposed Standards developed by other bodies or government agencies shall be scrutinized to ensure compliance with the provisions of this Act provided that the Bureau may approve or reject any such proposed standard except where there is an approved Kenya Standard.

(3) Any Kenya Standard and standard related deliverable that is developed and approved by the Bureau shall be published in the *Gazette*.

Declaration of Kenya Standard.

17. (1) The Council shall by notice in the *Gazette* declare a standard for any product or for the manufacture, production, processing, treatment or performance of any product and service or for any process, installation, construction, testing, operation or use of any article or device to be a Kenya standard.

(2) The Council shall, before declaring a Kenya Standard, ensure that the standard is developed in accordance with the national procedure for developing or approving Kenya standards, published and maintained by the Bureau.

(3) The Council may confirm, amend or withdraw a published Kenya Standard.

Mandatory Kenya Standards.

18. (1) The Council shall declare and *Gazette* a standard issued under section 17(1) as a mandatory Kenya standard.

(2) Where the Council declares a standard to be a mandatory Kenya standard under sub section (1), the council shall prescribe a date after which no person shall manufacture or sell any product and service or use any method or procedure to which the relevant specification or code of practice relates unless it complies with that Kenya standard specification or code of practice.

(3) A standard shall be declared as a mandatory standard for the purposes of—

- (a) protection of human life, health and safety;
- (b) protection of animal and plant life and health;
- (c) prevention of deceptive practices;
- (d) protection of the environment; and
- (e) national security.

(4) Where a standard has been declared as a mandatory standard, the requisite notification shall be made to the World Trade Organization in line with the Agreement on Technical Barriers to Trade.

(5) Any person who in contravention of a mandatory Kenya standard, manufactures or sells or offers for sale any product or uses any method or procedure to which the said mandatory Kenya standard applies, commits an offence unless there is in force in respect of him, a notice of exemption under section 19(1).

Exemption from the Application of Mandatory Standards.

19. Notwithstanding the provisions of section 18, the Cabinet Secretary, on the advice of the Council, may by notice in the *Gazette*, exempt any person, industry or trade, whether generally or for a particular purpose or transaction from compliance with the relevant mandatory Kenya Standards for such period and subject to such conditions, to be specified in the notice where the following conditions are met—

- (a) it is temporarily impossible or impractical for the person, industry or trade to comply with the relevant mandatory standard; and
- (b) it is desirable in the public interest that the person, industry or trade should be permitted to manufacture or sell the product or use the method or procedure referred to without complying with the mandatory standard.

Conflict between Kenya Standard and other Standards.

20. Where there is a conflict between a standard developed, approved or adopted pursuant to the provisions of this Act and any other standard or technical regulation, the standards developed, approved or adopted under this Act shall prevail.

Catalogue of the Kenya Standards.

21. The Bureau shall maintain and make available a catalogue of Kenya Standards and normative documents.

Intellectual Property of Bureau and Publication of Kenya Standards.

22. (1) The intellectual property rights with respect to Kenya Standards shall be vested in the Bureau.

(2) A person who publishes, sells, reproduces, records or transmits any Kenya Standard or any part of such a standard without the authority of the Bureau commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or a term of imprisonment not exceeding one year or both.

PART V—CONFORMITY ASSESSMENT

The Purpose of Conformity Assessment.

23. (1) The Bureau shall carry out conformity assessment activities for the purposes of—

(a) certifying that products and services conform to the requirements of the Kenya standards;

(b) enhancing competitiveness of Kenya products and services in the local, regional and international markets;

(c) facilitating free movement of goods and services within the country and across the borders; and

(d) for any other purpose permitted under the Act.

PART VI—QUALITY ASSURANCE

Quality Assurance.

24. In order to ensure conformity to standards, the Bureau shall—

(a) monitor, enforce and take measures to ensure compliance with the standards; and

(b) take appropriate action in cases of non-compliance with the standards.

Marks of Quality.

25. (1) Subject to this Act and the laws relating to intellectual property, the Bureau shall by notice in the *Gazette* declare any mark to be a mark of quality that shall be applied to the product which falls within the scope of a Kenya Standard or related approved specification.

(2) The Bureau may grant, renew, suspend or cancel the permit to use the Bureau marks of quality for application on goods notified under section..... of this Act.

(3) A person who intends to manufacture or import any product in respect of which a mark of quality has been specified under section 26 (1) shall apply to the Bureau for a permit to use the mark of quality.

(4) The Bureau shall issue a permit subject to compliance with the requirements of the applicable Kenya Standard under this Act and other laws relating to environment, health and safety of the product and other relevant laws relating to the product.

(5) A person shall not apply a Bureau mark of quality declared under section 26(1) to any product, except—

(a) where the product, system or document complies with the requirements relating to that mark of quality; and

(b) where a permit is granted and issued by the Bureau in accordance with this section.

(6) For purposes of this section, a person is deemed to have applied a Bureau mark of quality to products if that person has—

(a) applied that mark of quality to any container, package or cover of that commodity, or to any label attached to that commodity, or to that container, package or cover;

(b) placed or enclosed that product in any container, package or cover to which the Bureau mark of quality has been applied; or

(c) referred directly or indirectly, in connection with the sale of that product, to the Bureau mark of quality in a manner or under circumstances likely to create the impression that that product complies with the requirements of the relevant Kenyan Standard.

(7) A person who requires a permit referred to in sub section (2) must apply to the Bureau in the prescribed manner, and upon payment of the prescribed application fees, determined by the Bureau from time to time for the granting of such permit.

(8) The Bureau shall, after considering an application for the granting of a permit in terms of sub section (4), either decline to grant the permit for such period of time and subject to such conditions as Bureau may determine.

(9) If the Bureau declines, to grant the permit applied for in terms of sub section (4), it shall within fourteen days of the refusal, notify the applicant concerned in writing and of its reasons thereof.

(10) The Bureau may—

- (a) subject to sub section (5)(a) suspend the permit for such period as it considers appropriate, or withdraw the permit;
- (b) amend or set aside any condition subject to which the permit was granted and issued; or
- (c) impose, subject to this Act, any additional condition in respect of the permit.

(11) The Bureau may under section 26(8)(a)(i) suspend or withdraw a permit if the holder of the permit concerned, in its opinion, ceases to fulfil the necessary requirements prescribed by or under this Act, or if the holder of the permit concerned fails in some material respect to comply with any condition imposed in terms of sub section (6)(c).

(12) The Bureau shall inform the holder of the permit concerned in writing of the suspension or withdrawal of the permit or the amendment or setting aside of any condition subject to which the permit was granted or the imposition of any additional condition, and of the reasons therefore.

(13) The provision of this section shall be in addition to but not in derogation of the power to prosecute for an offence under this Act.

(14) Any person aggrieved by the decision of the Bureau under this section may appeal to the Tribunal.

PART VII – MARKET SURVEILLANCE

Market Surveillance.

26. (1) The Bureau shall—

- (a) monitor enforce and take measures to ensure compliance with standards in the Kenyan market;
- (b) take appropriate action in cases of non-compliance;
- (c) with standards; and
- (d) promote fair trade practices.

(2) The Bureau shall undertake market surveillance in order to ensure that products covered by approved specifications which, when used in accordance with their intended purpose or under conditions which can be reasonably foreseen and when properly installed and maintained, are liable to compromise the health or safety of users, or which otherwise do not conform to approved specifications, are withdrawn or prohibited from the market or restricted and that the public and other stakeholders are informed accordingly.

(3) The Bureau shall take appropriate measures, without delay, to alert end-users to hazards that the Bureau has identified relating to any product so as to reduce the risk of injury or other damage.

General safety requirement.

27. It shall be the responsibility of the economic operator to ensure compliance of their products to approved standards and specifications.

General obligations of economic operators.

28. (1) Upon request, economic operators shall make available to the Bureau any documentation and information that the Bureau requires for the purpose of carrying out its activities.

(2) Economic operators shall at all times ensure that they maintain the proper records that enables the precise identification of the product and facilitates the tracing of the product.

Obligations of manufacturers.

29. (1) A manufacturer shall ensure that his products have been designed and manufactured in accordance with the general safety requirement laid down in this Act.

(2) Proportionate to the possible risks of a product, a manufacturer shall, to protect the health and safety of consumers, carry out sample testing of products made available on the market, investigate complaints and keep a register of complaints, nonconforming products and product recalls, and shall keep distributors informed of any such monitoring.

Obligations of importers.

30. Proportionate to the possible risks presented by a product, an importer shall, to protect the health and safety of persons, carry out sample testing of marketed products, investigate complaints, and keep a register of complaints, of non-conforming products and of product recalls, and shall keep the manufacturer and distributors informed of such monitoring.

Obligations of distributors.

31. (1) When making a product available on the market, a distributor shall act with due care in relation to the requirements of this Act.

(2) Before making a product available on the market distributors shall verify that the manufacturer and the importer have complied with the general safety requirement set out in this Act.

(3) Where a distributor considers or has a reason to believe that a product is not in conformity with this Act, he shall not make the product available on the market until it has been brought into conformity and where the product is not safe, the distributor shall inform the Bureau and the manufacturer or the importer, where applicable.

(4) Distributors shall ensure that, while a product is under their responsibility, storage or transport conditions do not jeopardise

the products compliance with the general safety requirement laid down in this Act.

(5) Distributors who consider or have reason to believe that a product which they have made available on the market is not safe or is not in conformity with the requirements of this Act, shall make sure that the corrective action necessary to bring that product into conformity is taken, to withdraw it or recall it, if appropriate.

Authorised
representatives.

32. A manufacturer may, in writing, appoint an authorized representative to perform the tasks specified by the manufacturer.

Product recall.

33. (1) The Bureau shall require the economic operators to recall or withdraw products which present a risk to health or safety or to prohibit the product from the market.

(2) The decision whether or not a product presents a risk shall be based on an appropriate risk assessment which takes account of the nature of the hazard and the likelihood of its occurrence. The feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering that a product presents a risk.

Refusal to release.

34. (1) Where the Bureau concludes that a product presents a serious risk, it shall take measures to prohibit the placing of the product on the market and shall require customs and border control authorities not to release it for free circulation.

(2) Where the Bureau concludes that a product presents a formal non-compliance with the applicable Kenya standards or approved specifications, it shall take measures to prohibit the placing of the product on the market and shall require customs and border control authorities not to release it for free circulation.

Liabilities.

35. (1) An economic operator shall be liable for any damage caused by his products found to be defective, unsafe, non-complying or unsuitable.

(2) An individual who suffers loss or damage caused by defective, unsafe, non-complying or unsuitable goods may recover compensation through court action.

(3) The economic operator shall undertake to indemnify the Bureau, its staff members and agents against any liability that may be incurred pursuant to seizure, removal or detention of any alleged substandard and/or unsafe goods or any other action with or delivery of the goods, including any changes in condition of the goods during handling, transportation and storage, as

described below, in terms of the Act and any other applicable written law and further undertake to cover any expenses that may be incurred in effecting the seizure, removal or detention of the goods and to pay any legal costs incurred by the Bureau pursuant to the seizure, removal or detention of the goods and to pay and arrange for the removal of such goods to a place of storage, and to pay any storage costs, including any Bureau's seized goods depot rent as determined by the Managing Director and to arrange for and pay for the destruction of the goods if required.

The National
Metrology Institute.

PART VIII — NATIONAL METROLOGY INSTITUTE

36. (1) There is hereby established an institute of the Bureau to be known as the National Metrology Institute.

(2) The National Metrology Institute shall be a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) purchasing, holding and disposing of movable and immovable property; and
- (c) doing all such other things as may be done by a body corporate.

(3) Notwithstanding the provisions of subsection (1) all acts, directions, orders, requirements, authorizations, other things given, taken or done under, and all assets and other property acquired by the Metrology Department of the Bureau, shall, so far as not inconsistent with this Act, be deemed to have been given, taken, done or acquired under this Act.

Functions of the
Metrology Institute.

37. The National Metrology Institute in Kenya and shall carry out the following functions—

- (a) act as custodian of the national measurement standards;
- (b) ensure that the national measurement standards are traceable to the International System of Units;
- (c) realize, maintain and provide measurement traceability through dissemination of units of measurements which are reliable, trusted and acceptable internationally;
- (d) represent and disseminate the reference or legal time in Kenya, defined as Coordinated Universal Time plus three hours;
- (e) participate and give effect to the decisions and recommendations of the Council, Regional and

International Organizations with regard to scientific and industrial metrology;

- (f) invest in new or emerging technologies to meet measurement needs;
- (g) promote the use of metrology in trade and industry, as well as metrology in general;
- (h) providing metrological expertise and knowledge through high level calibration services, technical advice and training;
- (i) be the lead agency in matters relating to the International Bureau of Weights and Measures; and
- (j) provide metrology expertise.

PART IX— TESTING LABORATORIES

Establishment of laboratories.

38. (1) The Bureau may establish laboratories which shall —

- (a) provide testing and measurement services;
- (b) produce of certified reference materials and reference materials;
- (c) develop test methods;
- (d) provide proficiency testing services; and
- (e) provide chemical metrology services for the National Metrology Institute.

(2) The Bureau may designate competent bodies where necessary to provide measurements.

(3) Only laboratories that have been assessed by the Bureau and found to have met criteria of Assessment for designation of Standard Laboratories shall be designated as reference laboratories.

(4) Tests carried out by designated bodies are deemed to have conformed to the Bureau requirements under this Act.

(5) The Council may designate testing laboratories to perform conformity assessment of products sampled during inspection subject to national or regional technical regulations or mandatory standards.

PART X- NATIONAL QUALITY INSTITUTE

The National Quality Institute.

39. (1) There is hereby established an institute to be known as the National Quality Institute.

(2) The National Quality Institute shall be a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) purchasing, holding and disposing of movable and immovable property; and
- (c) doing all such other things as may be done by a body corporate.

(3) Notwithstanding the provisions of subsection (1) all acts, directions, orders, requirements, authorizations, other things given, taken or done under, and all assets and other property acquired by the Quality Department of the Bureau, shall, so far as not inconsistent with this Act, be deemed to have been given, taken, done or acquired under this Act.

Functions of the National Quality Institute.

40. The National Quality Institute in Kenya and shall carry out the following functions—

- (a) create and strengthen public awareness on standards;
- (b) promote the competitiveness of industry and commerce; nationally, regionally and internationally, and the efficiency and effectiveness of public and voluntary service, by the advancement of quality management practices and techniques;
- (c) provide education, training, qualification and continuing professional development in quality;
- (d) develop educational and training courses, and awards and prizes;
- (e) promote quality concepts and best practices in support of Kenyan economy;
- (f) conduct research in quality related matters, including scientific investigation and other methods of expanding knowledge, to publish the useful results of such research, and to provide facilities for study, research and education;

- (g) provide training and experience in quality and to hold or cause to be held examinations and other tests, and to award or promote the award of certificates and diplomas:

Provided that no such certificates or diploma shall purport to be issued under government authority, or purport to be a national qualification, without the prior approval of, or accreditation by designated body;

- (h) co-operate with any authority or organization in the establishment of, and recognition of achievement against, national, regional or international professional standards of competence and achievement in the field of quality, and to seek or maintain accreditation;
- (i) maintain registers of members, of other practitioners in the relevant field of management systems, and of bodies and activities;
- (j) establish and maintain libraries and collections, and provide public access; and
- (k) consult or co-operate with any authority, institution or other body within Kenya or elsewhere with regard to matters of quality.

PART XI- CERTIFICATION BODIES

Certification Bodies.

- 41.** (1) The Bureau may establish certification bodies to provide system, product and personnel certification services.
- (2) The Bureau may upon receipt of an application in writing—
 - (a) assess any product, system or personnel; and
 - (b) certify that the product, system or personnel referred to in paragraph (a) conforms to the relevant standards or schemes.

PART XII- ENFORCEMENT OF STANDARDS

Enforcement of standards.

- 42.** (1) No person shall manufacture, trade, distribute, sell, supply or import a product to which a Kenya Standard applies unless the product conforms to the requirements of the Standard.
- (2) Any person whom a permit has been issued under this Act shall, if so requested by the Bureau, furnish within such period as may be prescribed, such samples of any commodity to which the permit relates and all such information in regard to that commodity or its manufacture, production, processing or treatment as may be specified in the request.

(3) The Bureau shall, in respect of non-conforming products have power to do inter alia the following—

- (a) stop further production;
- (b) seal or lock the premises;
- (c) seize the product;
- (d) confiscate the product;
- (e) order a withdrawal of the products from the market;
- (f) order reshipment;
- (g) order for corrective action;
- (h) order an arrest of the persons involved in the production or sale of the non-conforming products;
- (i) order destruction;
- (j) stop any further sale;
- (k) stop importation; and
- (l) make any other order necessary to give to effect to the objectives of this section.

(4) Where any or all of the above actions have been taken the Bureau may order the person to take appropriate action to conform.

(5) The Bureau shall have power to lift a suspension.

(6) The Bureau may collaborate with other state agencies in the enforcement of this Act.

(7) Any person aggrieved by the decision, action or order under this section may, within fourteen days of the decision, action or order request for a review by the Managing Director.

(8) Any person aggrieved by a decision, action or order under this section may within fourteen days of the decision, action or order appeal to the Tribunal.

(9) An appeal to the Tribunal shall be dealt with expeditiously.

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

Appointment of
Inspectors.

43. (1) The Councils shall, at the request of the Bureau, appoint such number of inspectors as the Council considers appropriate and shall issue to them certificates of Appointment to act as inspectors for the purposes of this Act.

(2) The appointment under sub section (1) shall be by notice in the Gazette.

(3) The Council may revoke the appointment of an inspector appointed under this section.

Powers of inspectors.

44. (1) An Inspector appointed under this Act shall carry out such inspections as the Bureau may direct in compliance with any provision of this Act, but in particular verify conformity of goods, processes or services with relevant mandatory standards, technical regulations or metrology measures and investigate any fees payable in terms of the administration of this Act.

(2) An inspector may for the purposes of this Act, 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 standard, specification or standardization mark exists;

(b) inspect and take samples of any commodity or any material or substance used, or likely to be, or capable of being used in the manufacture, production, processing or treatment thereof, and cause any container within which there is or is suspected to be a 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 those premises in connection with the manufacture, production, processing or treatment of any commodity in relation to which a standard specification or a standardization mark exists;

(d) require corrective action to be taken on any process or product;

(e) require from any person the production of any book, notice, record, list or other document which is in the

possession or custody or under the control of that person or of any other person on his behalf;

- (f) examine and copy any or any part of such book, notice, record, list or other document which appears to him to have relevance to his inspection or inquiry, and require any person to give an explanation of any entry therein, and take possession of any such book, notice, record, list or other document as he believes may afford evidence of an offence under this Act;
- (g) 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;
- (h) seize and detain, for the purpose of testing, any goods in respect of which he has reasonable cause to believe that an offence has been committed; and
- (i) seize and detain any goods or documents which he has reasonable cause to believe may be required as evidence in any proceedings for any offence under this Act.

(3) While exercising the powers under this Act, an inspector entering any premises for inspection shall produce to the person apparently in-charge of the premises an identification document signifying their appointment as an inspector where—

- (a) premises to which this section relates are unoccupied;
- (b) the owner, occupier or person in charge thereof is temporarily absent; or
- (c) entry thereon is refused or obstructed.

(4) The inspector may use such force as is reasonably necessary to effect entry, provided that in the case of an entry under sub section (3)(a) or (3)(b)—

- (a) reasonable steps shall be taken prior to entry by the inspector to find the owner, occupier or person in charge of the premises to be entered; and
- (b) the premises shall be left by the inspector as effectively secured against trespassers as he found them.

Order for Destruction
of Goods.

45. (1) The Bureau may order the destruction of goods detained under section 31(2)(g) and 32(2) (h) if the following conditions are satisfied—

- (a) testing indicates that the goods do not meet the relevant Kenya Standard; and
- (b) it is reasonably necessary to destroy the goods because the goods are in a dangerous state or injurious to the health of human beings, animals or plants.

(2) In an order under subsection (1) the inspector may require the owner of the goods to pay the costs of the destruction of the goods including the costs of transporting and storing the goods before destruction.

(3) A notice of at least fourteen days shall be given of an order under subsection (1) either by giving the owner of the goods a written notice or by publishing the notice in the *Gazette*:

Provided that where the notice relates to goods that are perishable in nature then the period of the notice shall be seven days.

(4) The notice issued under sub-section (3) above shall contain the following—

- (a) particulars of the goods detained;
- (b) the name, address, telephone number and other particulars of the owner of the goods; and
- (c) the reason for the detention of the goods and what is proposed to be done with the detained goods.

(5) Any person who is aggrieved by an order under subsection (1) may, within fourteen days of the notice of the order appeal in writing to the Tribunal.

(6) If the goods in respect of which an order under subsection (1) is made have not entered into Kenya within the meaning of the Customs and Excise Act, the goods may be exported and, if the owner of the goods gives an undertaking to export the goods, the order shall not be carried out until at least thirty days after the notice of the order under subsection (3).

(7) No inspector shall be personally liable for making and carrying out an order under subsection (1) if it is done in good faith.

(8) For greater certainty subsection (7) does not relieve the Bureau of any liability it may have with respect to an order that is made or carried out otherwise than in accordance with this section.

(9) For the purposes of carrying out his duties under the Act, every inspector shall have the powers, rights and privileges specified in section 33 and the protection of a police officer.

(10) An inspector who—

(a) directly or indirectly solicits for, or receives in connection with any of his duties, a payment or other reward whatsoever, whether pecuniary or otherwise, or a promise or security for any such payment or reward not being a payment or reward which he is lawfully entitled to claim; or

(b) enters into any agreement to do, abstain from doing, permit, conceal or connive at any act whereby the Bureau is or may be defrauded, or which is contrary to the provisions of this Act or the proper execution of the duty of that officer;

(c) discloses, except for the purposes of this Act or when required to do so as a witness in a court of law or with the approval of the Managing Director, information acquired by him in the performance of his duties relating to a person, firm; or

(d) uses his position to improperly enrich himself or others:

shall be guilty of an offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding Kenya Shilling One million or both and any money, property or reward obtained fraudulently or any property acquired using money obtained fraudulently shall be forfeited to the Government.

(11) The costs of or incidental to the destruction of the goods shall be borne by the owner of the goods provided that where for reasons to be recorded, such costs have been paid for by the Bureau, then the same shall be recovered from the owner of the goods summarily.

(12) A person who, with the intention of defrauding the Bureau—

(a) directly or indirectly offers to give an inspector a payment or reward, whether pecuniary or otherwise, or makes a promise or security for any such payment or reward; or

- (b) promises or enters into an agreement with an inspector in order to induce him to do, abstain from doing, permit, conceal or connive at any act whereby the Bureau may be defrauded, or which is contrary to the provisions of this Act for the proper execution of the duty of that inspector:

shall be guilty of an offence and liable to imprisonment as prescribed under subsection (11).

Conditional Release
of Goods.

46. (1) An inspector may order the conditional release of goods to a manufacturer, importer, possessor, dealer or seller or his agent pending the testing of the samples of goods to determine whether they comply with the relevant Kenya Standard.

(2) Where the goods are in custody and possession of the manufacturer, importer, dealer, seller or his agent, an inspector may require and order the manufacturer, importer, dealer, seller or agent to retain possession of the goods pending the testing of samples and release of the test results.

(3) Where the goods are released under section 35(1) or retained under Section 35(2), the inspector shall ensure that the samples are tested within reasonable time and the results thereof released to the manufacturer, importer, possessor, dealer, seller or agent.

(4) Where the goods are found to comply with the relevant Kenya Standard, they shall be released to the manufacturer, importer, possessor, dealer or seller forthwith.

(5) Where the goods fail to comply with the relevant Kenya Standard; they shall be re-shipped or destroyed in accordance with the provisions of this Act.

Duties of Inspectors.

47. (1) While carrying out his activities in accordance with this Act and exercising the powers under section 34, the inspectors shall—

(a) notify the owner, legal entities or natural persons having possession, care or control of the product to be seized reasons for the seizure for them and shall, provide an inventory of the product or products seized;

(b) notify, by pinning a copy of the inventory on the premises of the owner, the legal entity or natural person if as seizure under this Act is done in his absence.

(2) The inspector who seizes goods in premises may affix seals on the premises to secure the goods.

(3) Seals affixed by an inspector shall not be tampered with and may only be broken in the presence and on the instruction of the inspector.

Inspection of Goods
for Conformity to
Standards.

48. (1) The Bureau shall carry out inspection of goods to ensure the compliance to the requirements of the Standards, approved specifications or Technical Regulations of Kenya.

(2) If a consignment of goods does not meet the requirements of the Standards, approved specifications or Technical Regulations of Kenya, it shall be intercepted by the inspectors and not permitted into the Republic of Kenya. The importer shall be instructed to re-ship to the country of origin or destroy at their expense.

(3) Intercepted consignment shall be seized, detained, disposed of, returned or destroyed in accordance with the relevant provisions of this Act.

(4) Where goods subjected to destination inspection under this Act fail to conform to the Standards as well as approved specifications or Technical Regulations of Kenya, they shall be re-shipped, or destroyed at the expense of the importer.

(5) Where it is necessary in the national interest, the Cabinet Secretary may, on the advice of the National Standards Council, exempt any imports or importer from the requirements of this section.

(6) The inspection or lack thereof of inspection of products by the Bureau or its agent in a country of origin shall neither transfer the importers' responsibility to ensure the conformity contemplated under this Act nor shall it place any liability on the Bureau.

(7) The Bureau may publish a list of products that are mandatorily required to be inspected in the country of origin and may for that purpose appoint an agent to carry out such inspection and subject to such terms and conditions as shall be indicated in the Gazette; provided that the inspection of goods in the country of origin or lack thereof shall not relieve the importers of their obligations to ensure conformity with the standards.

PART XIII – THE STANDARDS TRIBUNAL

Establishment of the
Standards Tribunal.

49. (1) There is hereby established a tribunal to be known as the Standards Tribunal which shall be a successor in title of the Tribunal established under section 16A of the repealed Act.

(2) The Tribunal shall consist of—

- (a) a chairperson who shall be an advocate of the High Court of not less than ten years standing;
 - (b) two advocates of the High Court of Kenya of not less than seven years standing; and
 - (c) three persons with knowledge and experience in matters relating to standardization, metrology and conformity.
- (3) The Chairperson and the members of the Tribunal shall elect amongst themselves the vice-chairperson of the Tribunal who shall not be of the same gender as the Chairperson.
- (4) In the absence of the Chairperson, the vice-chairperson shall act as Chairperson and shall perform such actions and exercise such powers as are conferred to the Chairperson by this Act or any other law.
- (5) In the absence of the Chairperson and the vice chairperson, members of the Tribunal shall appoint one person amongst themselves to act as chairperson and such person shall perform such functions and exercise such powers as are conferred to the Chairperson by this Act or any other law.
- (6) No member of the Council or employee of the Bureau may be appointed as a member of the Tribunal.
- (7) There shall be a secretary to the Tribunal who shall be an advocate appointed by the Cabinet Secretary or as may be provided by any other law. The Cabinet secretary shall appoint a legal officer from the Attorney-General's Chambers to be the secretary to the Tribunal.
- (8) The Chairperson and members of the Tribunal shall serve for a term of five years and shall be eligible for re-appointment, provided that the terms of the members shall not expire at the same time.
- (9) The Chairperson and members of the Tribunal shall be removed from office on the following grounds—
- (a) inability to perform the functions of office arising from mental or physical incapacity;
 - (b) imprisonment for a term not exceeding six months provided that the person has exhausted the appeal mechanisms provided in law;

- (c) violation of the ethics and integrity provisions of the Constitution and related legislation;
- (d) bankruptcy;
- (e) incompetence; or
- (f) gross misconduct or misbehaviour.

(10) Removal of the Chairperson and members of the Tribunal may be initiated by—

- (a) the Judicial Service Commission or on the petition addressed to the Judicial Service Commission by any member of the public;
- (b) a petition seeking the removal of the Chairperson and/or members of the Tribunal shall be in writing setting out the alleged facts constituting the grounds for removal.

(11) The Judicial Service Commission consider the petition under Section 10(b) above and if it is satisfied that the petition discloses a ground for removal under this section then it shall recommend the removal.

Procedures of the Tribunal.

50. (1) The Tribunal may make rules to regulate its own practice and procedure.

(2) The Tribunal shall not be bound by the rules of evidence.

(3) The Tribunal shall, upon an application made to it in writing by any party in accordance with this Act upon a reference made to it by the managing director on any matter relating to this Act, inquire into the matter and make an award thereon, and every award made shall be notified by the Tribunal to the parties concerned.

(4) The Tribunal shall sit at such times and in such places as it may decide.

(5) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(6) The Tribunal may—

- (a) make such orders for the purposes of securing the attendance of any person at any place, the discovery or production of any document or the investigation of

contravention of this Act as it deems necessary or expedient;

(b) take evidence on oath and may for that purpose administer oaths; or

(c) on its own motion summon and hear any person as a witness.

(7) Any person who—

(a) fails to attend to the Tribunal after having been required to do so under section 39(6)(a);

(b) refuses to take oath before the Tribunal or to answer satisfactorily to the best of his knowledge and belief any question lawfully put to him in proceedings before the Tribunal or to produce any article or document when required to do so by the Tribunal;

(c) knowingly gives false evidence or information which he knows to be misleading;

(d) at any sitting of the Tribunal—

(i) wilfully insults any member or officer of the Tribunal; or

(ii) wilfully interrupts the proceedings or commits any contempt of the Tribunal:

shall be guilty of contempt of Court and shall be punishable in accordance with the law governing contempt of court.

(8) The Tribunal shall have power to issue decrees and orders which shall be enforceable as decrees and orders of the High Court.

(9) If, after making an order, the Tribunal discovers that the order was based on a misrepresentation or a concealment of a material fact by either party to the dispute, the Tribunal may order the party guilty of the misrepresentation or concealment to pay the other party such sum as is, in the opinion of the Tribunal, sufficient compensation for any damage or loss suffered by the party as a result of the misrepresentation or concealment.

(10) Unless it is contrary to the regulations made under this Act or to specific directions made by the Tribunal, Civil Procedure Rules shall govern the proceedings before the Tribunal.

Independence of the Tribunal Members.

51. (1) In exercise of its authority under this Act, the Tribunal shall be subject only to the Constitution and the law shall not be subject to the control or direction of any person or authority.

(2) A member of the Tribunal is not liable to any action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of his duties as such.

Powers of the Tribunal.

52. (1) In the exercise of its powers under this Act, the Tribunal may confirm, set aside or vary the decision or act in question and may make such other order as the Tribunal considers appropriate, including an order with respect to the payment of costs.

(2) An order issued by the Tribunal is enforceable by the High Court as if it were a decree of that Court.

Remuneration and Benefits of Members of the Tribunal.

53. The Chairperson and members of the Tribunal shall be paid such remuneration and benefits as shall be determined by the Salaries and Remuneration Commission.

Jurisdiction of the Tribunal.

54. The Tribunal shall have jurisdiction to—

- (a) hear and determine complaints arising out of any breach arising out of the provisions of this Act;
- (b) hear or determine any administrative appeal lodged to it arising out of any decision taken by Bureau, The National Standards Council or the Cabinet Secretary pursuant to the provisions of this Act;
- (c) to hear any reference made to it by the management of Bureau for an advisory opinion on any matter that appears to involve a point of law of great public importance or complexity; and
- (d) to perform such other functions as may be conferred upon it by this Act or any other written law for the time being in force.

Quorum of the Tribunal.

55. (1) For the purposes of hearing and determining any cause or matter under this Act or any other law, the Chairman and two members of the Tribunal shall form a quorum. Provided that where for any reason either or both of the members is or are not present for any part of the hearing, the jurisdiction of the Tribunal may be exercised by the Chairman, sitting either with one such member or alone as the case may be.

(2) A member of the Tribunal who has a direct interest in any matter, which is the subject of the proceedings before the Tribunal shall not take part in those proceedings.

(3) Any matter considered by the Tribunal shall be decided by the votes of the majority of the members constituting the Tribunal and voting, and the person presiding shall have a casting as well as a deliberative vote.

Provided that any point of law arising, in any proceedings before the Tribunal shall be reserved to, and pronounced upon, by the person presiding exclusively.

(4) Notwithstanding any other provision of this Act, the Chairperson of the Tribunal acting alone shall have jurisdiction to entertain and make orders as are appropriate in relation to any such matters and may issue temporary injunctions.

Appointment of Experts.

56. (1) The Tribunal may seek opinion on any matter that requires specialized expertise.

(2) No member of the Council may offer an opinion under section (1).

Appeal from the Tribunal to the Court.

57. (1) Any party to the proceedings before the Tribunal who is aggrieved by any order of the Tribunal may, within thirty days' lodge an appeal to the High Court, provided that the High Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if many, as it may think fit.

(2) Upon the hearing of an appeal under this section, the High Court may—

- (a) confirm, set aside or vary the order in question;
- (b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the court may deem fit to give;
- (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
- (d) make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.

(3) The decision of the High Court on any appeal shall be final.

Legal Representation before the Tribunal.

58. Any person who is a party to the proceedings before the Tribunal may appear in person or be represented by an advocate.

Protection of Officers
of the Tribunal.

- 59.** No officer of the Tribunal or other person bound to execute the lawful warrants, orders or other processes of the Tribunal shall be liable to be sued in any court for the execution of a warrant, order or process which he would have been bound to execute if within the jurisdiction of the Tribunal issuing it.

PART XIV – FINANCIAL MANAGEMENT

Finances of Bureau.

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

(2) Subject to the provisions of Public Finance Management Act, the Council may, out of the funds of Bureau—

(a) pay to the chairperson, members of the Council and employees of Bureau such Remuneration and benefits as they are entitled under the law; and

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

Standards Levy.

- 61.** (1) The Cabinet Secretary may, with the advice of the Council, may make a standards levy order for the purposes of giving effect to proposals submitted by the Council; provided that the order may review or amend a previous Standard Levy Order or may relate to different matters where necessary:

(2) A standards levy order may contain provisions as to the evidence by which a person's liability to the levy or his discharge of that liability may be established, and as to the time at which any amount payable by any person by the way of the levy shall become due and the manner in which it shall be recoverable by Bureau.

(3) If any person fails to pay an amount payable by him by the way of the standards levy within the time prescribed by the standards levy order, five per cent of that amount shall be charged in addition to the amount for each month or part of a month thereof that the amount due remained unpaid.

(4) All moneys received in respect of the standards levy order shall be paid into a Bureau Account.

(5) The Managing Director of Bureau, acting on the direction of the Cabinet Secretary, may make payments out of the Bureau Account for the purposes set out in section 42.

(6) Any person aggrieved by an act or decision under a Standards Levy Order may appeal in writing to the Tribunal.

(7) Any monies payable under this section may be recovered by Bureau as a civil debt.

Accounts of Bureau.

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

(2) The Council shall cause to be kept all proper books of account and other books and records in relation to the funds and to all the undertakings, activities and property of Bureau.

(3) The Council shall submit to the Cabinet Secretary all such information as he may from time to time require in respect of the activities and financial position of Bureau, and shall in addition submit to the Cabinet Secretary an annual report, including a balance sheet and a statement of income and expenditure audited in accordance with section 51(2), and such other particulars as the Cabinet Secretary may request, and the report shall be laid by the Cabinet Secretary before Parliament, and published by the Council in such manner as it shall specify, as soon as practicable after the end of each financial year.

(4) With prior approval of the Cabinet Secretary the Council may invest any of the funds of Bureau not immediately required in investments authorized by the National Treasury.

PART XV—OFFENCES AND PENALTIES

Compliance with Standards.

63. Any person who manufactures, trades, distributes, sells, supplies or imports a product that is within the scope of a Kenya Standard into the Republic of Kenya but which does not comply with the requirements of the Standard shall be guilty of an offence and liable to a fine not exceeding twenty million Kenya Shillings or imprisonment for a term not exceeding six years or both such fine and imprisonment.

Obstruction of Inspector.

64. Any person who—

(a) prevents, hinders or obstructs an Inspector appointed under section 32 of this Act in the exercise of his/her functions under this Act;

(b) fails to produce any document or to appear or answer any questions when required to do so under section 33 or fails or refuses without reasonable cause to give any information to an inspector when required to do so in accordance with this Act or knowingly gives false or incomplete information;

(c) contravenes or fails to comply with any of the provisions of this Act or of any regulations made there under or of any order or direction made or given under this Act, or of any

regulations made there under, with which it is his duty to comply; or

- (d) being a person concerned at any stage of the manufacture, production, processing, treatment or distribution of a product in respect of which a Mandatory Standard has been declared, contravenes section 31 (1):

shall be guilty of an offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding two million Kenya shillings or both.

Illegal Use of
Standardization Mark.

65. Any person who—

- (a) uses any standardization mark without a permit granted by Bureau or contravenes any conditions of the permit or fails to pay the fees of the use thereof;
- (b) makes any statement or representation, whether in writing or not, or uses a standard mark which conveys, or is likely to convey the impression that a Product, process or practice conforms to a standard, as the case may be, when it does not do so; or
- (c) makes a statement whether in writing or otherwise that is intended to mislead, defraud or deceive any person in connection with a mandatory Kenyan standard or in contravention of this Act:

shall be guilty of an offence and liable to imprisonment for a term not exceeding Five Million Kenya shillings or both.

Offences by
Inspectors.

66. An Inspector who in the exercise of the powers outlined in Section 33 of this Act—

- (a) detains or seizes any goods for any reason other than those prescribed in this Act or subsequent legislation and instructions;
- (b) directly or indirectly solicits for, or receives in connection with any of his duties, a payment or other reward whatsoever, whether pecuniary or otherwise, or a promise or security for any such payment or reward not being a payment or reward which he is lawfully entitled to claim; or
- (c) enters into an agreement to do, abstain from doing, permit, conceal or connive at any act whereby Bureau is or may be defrauded, or which is contrary to the provisions of this Act or the proper execution of the duty of that officer;

- (d) discloses, except for the purposes of this Act or when required to do so as a witness in a court of law or with the approval of the Managing Director of Bureau, information acquired by him in the performance of his duties relating to a person, firm or business of any kind; or
- (e) uses his position to improperly enrich himself or others:

shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or a fine not exceeding one million Kenya shillings or both and any money obtained fraudulently shall be forfeited to the Government.

Colluding with
Inspectors.

- 67.** A person who, with the intention of defrauding Bureau—
- (a) directly or indirectly offers to give an inspector a payment or reward, whether pecuniary or otherwise, or makes a promise or security for any such payment or reward; or
 - (b) promises or enters into an agreement with an inspector in order to induce him to do, abstain from doing, permit, conceal or connive at, any act whereby Bureau may be defrauded, or which is contrary to the provisions of this Act for the proper execution of the duty of that inspector:

shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding two Million Kenya Shillings or both and any, money, property or reward obtained fraudulently or any property acquired using money obtained fraudulently shall be forfeited to the Government.

False or Misleading
Advertising.

- 68.** Any person who, for the purpose of effecting or promoting the sale of any product within the scope of Kenya Standards, publishes or causes to be published an advertisement which is false or misleading, shall be guilty of an offence shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding two million Kenya shillings.

Standard Levy.

- 69.** Any person who fails to comply with any provisions of the standard levy order shall be guilty of an offence shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding two million Kenya shillings.

Conditional Release
of Goods.

- 70.** Any person who removes, sells, uses, disposes off, re-exports, damages, wastes, destroys or in any manner deals with the goods, under conditional release specified in section 35 of this Act before the release of the results shall be guilty of an offence and liable to imprisonment for a term not exceeding six years or to a fine not exceeding twenty million Kenya shillings.

Disclosure of
Information.

- 71.** Any person who is or has been engaged in the administration of this Act who discloses, except for the purpose of his functions or

when required to do so by a court or under written law, any information acquired by him in the exercise or purported exercise of his functions under this Act to any other person shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding one Million Kenya shillings.

Victimization.

72. (1) No person shall be victimized on account of any Act done or omitted to be done or any information given whether to Bureau, to the National Standards Council or to an Inspector pursuant to the Provisions of this Act.

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

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

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

(b) to pay to any employee whose dismissal is the subject of 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.

(4) An order made under paragraph (b) section 60(1) above may be enforced as if it were a judgment of a civil court in favor of the employee concerned.

General penalty.

73. (1) Any person convicted of an offence under this Act for which no penalty is specifically provided shall—

(a) in the case of a first offence, be liable to imprisonment for a term not exceeding one year or to a fine not exceeding five hundred thousand shillings or to both such imprisonment and fine;

(b) in the case of a second or subsequent offence, to imprisonment for a term not exceeding three years or to a fine not exceeding one million or to both such imprisonment and fine; and

(c) where an offence is of a continuing nature, the person shall in addition be liable to a fine not exceeding fifty thousand shillings for each day or part thereof during which the offence continues.

(2) On the conviction of any person for an offence under this Act the court may, in addition to any other penalty which may be imposed, make an order—

(a) confiscating all or any part of any goods in respect of which the offence was committed, and the destruction of such goods at the cost of the offender;

(b) prohibiting the manufacturer or sale of that product unless it complies with the relevant Kenya Standard and the court may order that any goods which are the subject of an order under paragraph (a) shall be disposed of in such manner as it may direct.

(3) Where a complaint is or has been made in respect of an offence provided for under this Act the court may, on application ex-parte by an inspector, and on receiving evidence that the product, method or procedure complained of, or its manufacture or sale, fails to comply with the relevant Kenya Standard, make an interim order prohibiting, either absolutely or subject to conditions, the manufacture or sale of that Product, method or procedure until the earliest opportunity for hearing and determining the complaint.

Evidence Certificate.

by

74. (1) The Cabinet Secretary may by regulations provide that certificates be issued by such persons and in relation to such matters as may be specified therein

(2) Certificates issued under subsection (1) above shall, unless the contrary is proved be prima facie evidence of what is stated therein.

Limitation of Action against Government etc.

75. (1) No claim shall lie against the Government, the Cabinet Secretary, the Managing Director of the Bureau, or an inspector or any other officers of the Bureau for anything done in good faith under the powers conferred by this Act.

(2) In particular—

- (a) no inspector shall be personally liable for making an order under this Act in the ordinary course of duty and in good faith;
- (b) no person shall be personally liable for carrying out an order under this Act in the ordinary course of duty and in good faith.

(3) For greater certainty, sections 53(1) of this Act, do not relieve the Bureau of any liability it may have with respect to an order that is made or carried out otherwise than in accordance with this Act.

PART XVI—MISCELLANEOUS

Protection of
Government, Bureau,
Council Members and
Employees.

76. The fact that any Product complies or is alleged to comply with a National Standard or approved specification of such standard or has been or is alleged to have been manufactured in accordance with any such specification, or that a standardization mark is used in connection with any product, shall not give rise to any claim against the Government, the Council, or Bureau, or any member of employee thereof.

Trade Secrets and
Confidentiality.

77. (1) Except for the purposes of this Act or any other Act or when required by any court, no person shall disclose information in relation to any Product, process or practice which he has acquired in the exercise of his/her function under this Act.

(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 any written law.

(3) Notwithstanding anything in this Act or any other Act or in an undertaking in respect of disclosure of information, a worker shall not be liable to any penalty for disclosure of information to an inspector or any person when required to do so under section 32 and the employer of that employee shall not do anything to the prejudice of the worker on the ground of such disclosure.

Custody and Use of
Seal.

78. The Common seal of the Bureau shall be kept in the custody of the Managing Director and used in the manner the Council shall direct.

Regulations.

79. (1) The Cabinet Secretary in consultation with the Council, may make regulations generally for the better carrying out of the provisions and purposes of this Act.

(2) Without prejudice to the generality of section 65(1), regulations may—

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

PART XVII – REPEAL AND SAVINGS

Savings
transitional
provisions.

and

80. (1) Notwithstanding the provisions of this Act—

- (a) any orders, notices or certificates issued by the Kenya Bureau of Standards established under the Repealed Act shall be deemed to have been issued under this Act;
 - (b) any function, transaction, agreement inspection or conformity assessment carried out by or on behalf of Bureau under the Repealed Act and any civil proceedings or other legal processes in respect of any matter carried out by Bureau under the Repealed Act shall be deemed to have been carried out under the Act; or
 - (c) save as otherwise provided for in this Act, any undertaking or responsibility falling on the Bureau established under the Repealed Act shall be assumed by Bureau.
- (2) The Council of the Bureau under the repealed Act shall continue in office for their unexpired term.
- (3) The Tribunal of the Bureau established under the repealed Act shall, before the coming into effect of this Act, continue to hear and conclude any appeals filed under the repealed Act.
- (4) Any person who is an officer or employee of the Bureau immediately before the coming into operation of this Act shall be deemed to be an officer or employee of the Bureau established under this Act.

- (5) Any rule or regulation made, order or directive issued, notification given or any administrative act undertaken under the repealed Act, shall be deemed to have been made, issued, given or undertaken under this Act and shall continue in force and have effect as if it had been so made, issued, given or undertaken under this Act.

Transfer of Assets etc.

81. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, or entered into by or on behalf of the Kenya Bureau of Standards established under the Repealed Act, shall be deemed to have been acquired, incurred or entered into by or on behalf of the Bureau to the same extent as they were enforceable by or against the said Kenya Bureau of Standards before the commencement of this Act.

(2) Where the transfer of any property transferred to or vested in Bureau under subsection (1) above is required by any written law to be registered, Bureau shall within three months from the commencement of this Act or within such other period as the written law may prescribe apply to the appropriate registering authority for registration of the transfer and thereupon the registering authority shall at no cost to Bureau or any person by way of registration fees, stamps or other duties—

- (a) make such entries in the appropriate register as shall give effect to the transfer;
- (b) where appropriate issue to the Bureau a certificate of title or other statutory evidence of ownership of property or make such amendments on such certificates or on the appropriate register as may be necessary; and
- (c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

Repeal of Cap 476.

82. The Standards Act is Repealed.

SCHEDULE:

CONDUCT OF MEETINGS OF THE COUNCIL (s10)

(1) The Council shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding sub-paragraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Council at any time for the transaction of the business of the Council.

The Standards Bill, 2019

(3) Unless three-quarters of the total members of the Council otherwise agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.

(4) The Chairperson presides at all meetings of the Council.

(5) If the Chairperson is absent from a meeting of the Council, the members present at such a meeting shall elect from among their number a member to preside at that meeting.

(6) The quorum for a meeting of the Council shall be four.

(7) Unless a unanimous decision is reached, a decision on any matter before the Council shall be by the majority vote of the members present, and in the case of an equality of votes the chairperson or person presiding shall have a casting vote.

(8) The Council shall keep minutes of its proceedings and decisions.

(9) A member of the Council whose interest is likely to be affected whether directly or indirectly by a decision of the Council on any matter whatsoever, shall declare such interest and the nature thereof at the meeting of the Council at which the member is present.

(10) A disclosure of interest under subsection (8) above shall be recorded in the minutes of the Council and the concerned member shall not vote on the matter and unless the Council otherwise directs, shall not be present to take part in the deliberations relating to the disclosed interest.

(11) The Council may, by resolution, make rules to further regulate its proceedings.