
CHAPTER 338A
STANDARDS

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CHAPTER 338A

STANDARDS

An Act to establish a bureau of standards to promote standardization in relation to commodities, processes, services and practices, and for connected purposes. *2 of 2006*

[Assent 6th February 2006]

[Commencement 19th March, 2007] *S.I. 15/2007.*

1. This Act may be cited as the Standards Act. *Short title.*

2. In this Act — *Interpretation.*

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

“commodity” means any article, product or thing which is the subject of trade or commerce;

“Council” means the Standards Council established under section 4;

“Minister” means the Minister responsible for the Bureau of Standards;

“specification” means a description of a commodity, process, service, or practice by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age or other characteristics;

“standard mark” means a mark which has been prescribed by regulations to be a standard mark pursuant to section 10;

“standard specification” means a specification which has been declared to be a standard specification pursuant to section 8 and “compulsory standard specification” means a standard specification which has been so declared by order of the Minister pursuant to section 8.

3. (1) There is hereby established for the purposes of this Act a body to be known as the Bureau of Standards. *Establishment of Bureau of Standards.*

(2) The provisions of the First Schedule shall have effect as to the constitution of the Bureau and otherwise in relation thereto. *First Schedule.*

Establishment of Standards Council.

4. (1) There shall be a Standards Council of the Bureau which, subject to the provisions of this Act, shall be responsible for the policy and general administration of the affairs of the Bureau.

Second Schedule.

(2) The provisions of the Second Schedule shall have effect as to the constitution of the Council and otherwise in relation thereto.

Appointment of Director of Standards.

5. (1) The Minister shall appoint a person to be the Director of Standards being a person appearing to the Minister to have —

- (a) wide experience in, and to have shown capacity in matters relating to finance, standards specifications, testing and certification of commodities, processes, services and practices; or
- (b) qualification and an appropriate experience in science, technology, engineering and management.

(2) The person appointed as Director of Standards shall hold office for a term not exceeding five years as the Minister shall direct in the instrument appointing him, but such director shall be eligible for re-appointment.

(3) The Director of Standards shall subject to the directions of the Bureau be responsible generally for the management of the Bureau.

(4) Without prejudice to the generality of subsection (3) the Director of Standards shall supervise and direct the work of the Bureau, the administrative and other staff of the Bureau and also perform such other functions as may from time to time be assigned to him by the Council.

(5) The Minister may at any time by instrument in writing revoke the appointment of the person appointed as Director of Standards if he thinks it expedient so to do.

(6) The person appointed as Director of Standards may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of receipt of such instrument by the Minister.

(7) Whenever the Director of Standards is absent from The Bahamas or is for any reason unable to perform the functions of his office, the Minister may appoint a person to act as Director of Standards.

(8) There shall be paid from the funds of the Bureau to the person appointed as Director of Standards such remuneration whether by way of honorarium, salary or fees and such allowances, if any, as the Minister may determine.

6. The Minister may, after consultation with the chairman of the Council, give to the Council such directions of a general character as to the policy to be followed by the Council in the performance of its functions as appear to the Minister to be necessary in the public interest, and the Council shall give effect thereto.

Power of Minister to issue general directions.

7. The Bureau shall promote and encourage the maintenance of standardization in relation to commodities, processes, services and practices and shall exercise such other functions as may be prescribed and for these purposes the Bureau shall have power —

Functions of the Bureau.

- (a) to make recommendations to the Minister in respect of the formulation of specifications and the promulgation and application of standard specifications, and compulsory standard specifications;
- (b) to promote research in relation to specifications and to provide for the examination and testing of commodities, processes, services and practices;
- (c) to provide for the registration and use of standard marks;
- (d) to provide for the examination, testing and calibration of instruments, appliances and apparatus in relation to the accuracy thereof;
- (e) to encourage or undertake educational work in connection with standardization;
- (f) to make arrangements for the inspection of any operation which is being carried out in or upon any premises in connection with the manufacture, production, processing or treatment of any commodity, process, service or practice for which a standard specification or a compulsory standard specification has been declared;
- (g) to do such other things as may be expedient or necessary for the proper performance of its functions under this Act;

(h) to do such other things as may be prescribed by this Act or any other written law.

Standard specifications and compulsory standard specifications.

8. (1) The Bureau shall formulate for the Minister specifications for such commodities, processes, services and practices as may be required in the national interest.

(2) The Bureau, on formulating a specification, may, with the consent of the Minister, declare it to be a standard specification for the commodity, process, service or practice to which it relates.

(3) Where any other Act prescribes or authorizes the making of regulations prescribing grades, standards or other characteristics of any commodity, process or practice, the Minister shall not consent to the declaration of any standard specification in respect thereof or cause any amendment to be made to any such standard specification except with the approval of the Minister for the time being charged with responsibility for the department or subject to which that Act relates.

(4) The Bureau shall as soon as may be after the declaration of a standard specification cause notice thereof to be published in the Gazette and in such other manner as the Minister may direct.

(5) No specification shall be declared to be a standard specification unless the Minister is satisfied that any person who may be affected thereby has had an opportunity to consider it and to make representations on it to the Bureau and that the Bureau has given due consideration to such representations.

(6) The Bureau may, with the consent of the Minister, revoke or amend a standard specification, and shall revoke a standard specification in any case where the Minister so directs.

(7) Where it appears to him necessary or desirable in the public interest so to do, the Minister may by order declare a standard specification to be a compulsory standard specification.

Proof of specification.

9. Prima facie evidence of any standard specification may be given in any proceedings by the production of a copy of the specification purporting to be issued by the Bureau.

Standard marks may be prescribed.

10. (1) The Minister may, on the recommendation of the Bureau, prescribe standard marks to be used in relation

to commodities, processes, services, or practices to distinguish commodities, processes, services or practices which conform to a standard specification from others which do not conform to that specification or do not conform to any standard specification.

(2) Standard marks shall be of such design and contain such words, figures or symbols and be used by such persons, in such circumstances and subject to such conditions, as may be prescribed.

11. The Bureau may grant to any person a licence to use a standard mark in connection with any commodity, process or practice which conforms to a standard specification and notice of the grant of every such licence shall be gazetted:

Licences to use standard marks.

Provided that where a specification in respect of a commodity, process or practice is declared to be a standard specification with the approval of another Minister by virtue of subsection (3) of section 8, the Bureau shall not make a grant of licence for the use of a standard mark in relation to such commodity, process, service or practice except with the approval of that other Minister.

12. (1) Every licence issued by the Bureau under section 11 shall be subject to the prescribed conditions and to such other conditions as may be specified in the licence and subject to the provisions of this section may be suspended for a period not exceeding six months or revoked by the Bureau at any time for breach of any such conditions or subject to regulations under this Act in such other circumstances as the Bureau may think fit; and a licence suspended as aforesaid shall during the period of suspension be of no effect.

Suspension or revocation of licences.

(2) Notice of the revocation or suspension of any licence shall be gazetted.

(3) Before the Bureau suspends or revokes any licence granted under section 11 it shall cause to be given to the licensee not less than fourteen days' notice of intention so to do specifying the grounds on which it proposes to suspend or revoke the licence and shall afford the licensee an opportunity of submitting a written statement of objection to the suspension or revocation of the licence, and thereafter the Bureau shall advise the licensee of its decision.

Summary
suspension or
revocation.

13. (1) Notwithstanding section 12, the Minister, acting on the advice of the Bureau —

- (a) that the Bureau objects to the manner in which the licensee is using the standard mark; or
- (b) that the Bureau is of the opinion that a licence to use a standard mark is being used by the licensee in a manner that tends to mislead the public,

shall by order published in the Gazette, immediately suspend the operation of that licence.

(2) The Minister shall within seventy-two hours after suspending a licence of a licensee to use a standard mark —

- (a) cause notice of that suspension to be served on the licensee; and
- (b) inform the licensee in writing of any conditions that must be complied with prior to the lifting of the suspension order made under subsection (4).

(3) Where the Minister is of the opinion that a licence suspended under subsection (1) ought to be revoked the Minister shall by order published in the Gazette revoke such licence.

Appeals.

14. Any person aggrieved by a decision of the Minister or the Bureau may appeal to the Supreme Court in accordance with rules of court.

Appointment and
powers of
inspectors.

15. (1) The Minister may, on the advice of the Bureau, appoint one or more persons to be inspectors.

- (2) Any inspector may at any reasonable time —
 - (a) enter premises in or upon which any operation is being carried out in connection with the manufacture, production, processing or treatment of any commodity, process, service or practice for which a standard specification or a compulsory standard specification has been declared, or in or upon which any such commodity is offered for sale or stored;
 - (b) inspect such operation and such commodity, process or practice, take samples of such commodity, free of charge, for testing or analysis and examine anything that he reasonably believes is used or is capable of being used for the

manufacture, production, processing or treatment of such commodity;

- (c) examine the packaging and labelling of such commodity;
- (d) examine any books and records kept in relation to such commodity, process or practice;
- (e) make such other investigations as may appear to him to be necessary in order to determine whether such commodity, process or practice conforms to the relevant standard specifications or to any conditions subject to which a licence to use a standard mark was granted.

(3) Where an inspector takes samples for analysis, he shall inform the owner of the commodity or such other person from whom the sample is obtained that the sample will be tested or analysed.

(4) Where after considering the result of a test or analysis of a sample, the Bureau is satisfied that a further test or analysis of another sample of the commodity should be carried out, an inspector shall —

- (a) take another sample of the commodity from the batch from which the first sample was obtained;
- (b) divide the sample into three parts;
- (c) identify the three parts as the owner's part, the sample, and the duplicate sample;
- (d) so seal each part that it cannot be opened without breaking the seal; and
- (e) deliver the part identified as the owner's part to the owner or the person from whom the sample was obtained, and cause the sample to be tested or analysed as the case may require, and retain the duplicate sample.

(5) Any person who refuses to permit an inspector to enter any premises or carry out any examination and investigation specified in subsection (2), or who attempts to obstruct him in the execution of his duty under this Act is guilty of an offence and shall be liable on summary conviction to a fine of two thousand dollars or to imprisonment for twelve months or to both.

Regulations.

16. The Minister may make regulations for the purposes of this Act and without prejudice to the generality of the foregoing provisions, may make regulations —

- (a) for the promulgation of standard specifications and compulsory standard specifications;
- (b) for the issue of licences to use standard marks, prescribing terms and conditions upon or subject to which such licences may be issued, suspended or revoked, and prescribing fees to be paid in respect of such licences;
- (c) prohibiting, either absolutely or subject to such conditions as may be prescribed and regulating the sale of any commodity or class of commodity or the use in any trade or business of any commodity, process or practice, in respect of which a compulsory standard specification has been declared unless the same conforms to that specification;
- (d) with respect to the packaging, labelling, description and advertising of any commodity for which a standard specification has been declared;
- (e) requiring such persons as may be prescribed to keep in relation to such commodities, processes or practices as may be prescribed, such books and records as the Bureau may consider necessary for the proper administration and enforcement of this Act;
- (f) prescribing forms for the purposes of this Act;
- (g) prescribing matters in respect of which fees are to be payable, the amount of such fees and the persons liable to pay them;
- (h) prescribing anything which may be or is required to be prescribed under this Act.

Offences.

17. Every person who —

- (a) makes any statement or representation, whether in writing or not, or uses any mark with reference to any commodity, process or practice which conveys or is likely to convey the impression that a person who is not licensed to use a standard mark with reference to that commodity, process or practice is so licensed or is otherwise entitled to use a standard mark;

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- (b) makes any statement or representation, whether in writing or not, or uses any mark which conveys or is likely to convey the impression that a commodity, process or practice complies with a standard specification when it does not do so;
 - (c) without the authority of the Bureau or the Minister, and for the purposes of gain or profit (whether by means of a sale or otherwise), makes any statement or representation, whether in writing or not, whereby comparison is made in respect of any commodity, process or practice with the standard provided for by any standard specification unless he proves that he acted without intent to defraud;
 - (d) having been licensed to use a standard mark, uses the standard mark after the suspension or revocation of his licence so to do, or otherwise than in accordance with the terms and conditions of his licence,

is guilty of an offence and shall be liable on summary conviction to a fine of two thousand dollars, or to imprisonment for twelve months or to both and, in the case of a continuing offence, to a further fine of one hundred dollars for every day on which the offence is continued.

18. (1) Except with the consent of the Minister in writing, no association of persons, whether a body corporate or not, shall exercise the functions for which it is formed under a name which contains the word “Standard” or any abbreviation of such word.

Restriction of use of the word “Standard”.

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

(3) Except with the consent of the Minister in writing, no trade mark which contains the word “Standard” shall be registered under the Trade Marks Act.

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(4) The provisions of this section shall, *mutatis mutandis*, apply to an individual carrying on business under any name or style other than his own.

(5) Any individual or association of persons who does any act in contravention of this section is guilty of an offence and shall be liable on summary conviction to a fine

of two thousand dollars or to imprisonment for twelve months or to both and in the case of a continuing offence to a further fine of one hundred dollars for every day on which the offence is continued.

- (6) Nothing in this section shall apply —
- (a) to the use by any individual or association of persons of any name that was in use in The Bahamas by that individual or association, or any predecessors in business of that individual or association, at the commencement of this Act;
 - (b) to any trade mark registered at the commencement of this Act.

Secrecy of
information.

19. (1) All information obtained by the Minister, or by the Council, or by the Bureau or any officer or servant thereof, or by any other person in the course of the administration of this Act, as to any formula, process or practice, shall be treated as confidential, save for purposes connected with the administration of this Act.

(2) The disclosure of any information relating to any formula, process or practice to the Minister, or to the Council, or to the Bureau or any officer or servant thereof, or to any other person for purposes connected with the administration of this Act, shall not prejudice any application subsequently made for the patent.

Protection
against claims.

20. The fact that any commodity, service, process or practice conforms or is alleged to conform to a standard specification, or the fact that a standard mark is used in connection with any commodity shall not give rise to any claim against the Crown or the Bureau.

FIRST SCHEDULE (Section 3)

1. The Bureau shall be a body corporate having perpetual succession and a common seal and with power to acquire, hold and dispose of land and other property of whatever kind, to enter into contracts and to do all things necessary for the purpose of its functions.

2. The Bureau may sue and be sued in its corporate name and may for all purposes be described by that name.

3. (1) The seal of the Bureau shall be kept in such custody as the Bureau directs and shall not be used except upon the order of the Bureau.

(2) The seal of the Bureau shall be authenticated by the signatures of the chairman of the Council or any other member of the Council duly authorized by the Council to act in that behalf and the seal shall be officially and judicially noticed.

(3) All documents, other than those required by law to be under seal, made by, and all decisions of the Bureau may be signified under the hand of the chairman or any member of the Council authorized by the Council to act in that behalf.

4. (1) The Bureau shall appoint and employ at such remuneration and on such terms and conditions as it thinks fit such officers, agents and servants as it thinks necessary for the proper carrying out of its functions:

Provided that no appointment to a post carrying a salary in excess of the rate of twelve thousand dollars per annum shall be made without the prior approval of the Minister.

(2) The Governor-General, acting in accordance with the advice of the Public Service Commission may, subject to such conditions as he may impose, approve the appointment of any public officer in the service of The Bahamas to any office within the Bureau and any public officer so appointed shall in relation to pension, gratuity or other allowance and to other rights as a public officer, be treated as continuing in the service of the Government.

5. The funds of the Bureau shall consist of such moneys as may from time to time be placed at its disposal for the purposes of this Act by Parliament, or such other moneys as may lawfully be paid to the Bureau.

6. (1) Subject to the provisions of subparagraph (2), the Bureau may borrow sums required by it for meeting any of its obligations or discharging any of its functions.

(2) The power of the Bureau to borrow shall be exercisable only with the approval of the Minister responsible for finance as to the amount, as to the source of borrowing and as to the terms on which the borrowing may be effected, and an approval given in respect for the purpose of this subparagraph may be either general or limited to a particular borrowing or otherwise, and may be either unconditional or subject to conditions.

(3) In this paragraph the word “borrow” includes obtaining advances.

7. (1) The Bureau shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in a form satisfactory to the Minister and shall submit the same from time to time with vouchers to the Auditor-General or such other auditor as the Minister may approve to be audited.

(2) The Bureau shall, on or before the thirty-first day of January in each year, submit to the Minister for his approval, its estimates of revenue and expenditure in respect of the financial year commencing on the first day of July next following.

8. (1) The Bureau shall, as soon as practicable after the end of each financial year, cause to be made and transmit to the Minister —

- (a) a statement of its account audited in accordance with paragraph 7;
- (b) a report dealing generally with the activities of the Bureau during that financial year, and containing such information relating to the proceedings and policy of the Bureau as can be made public without detriment to the interest of the Bureau.

(2) The Minister shall cause a copy of the report together with the annual statement of accounts and the auditor’s report thereon to be laid on the respective Tables of both Houses of Parliament.

9. The Bureau shall furnish the Minister with such returns, accounts and other information as he may require with respect to the activities of the Bureau, and shall afford

to him facilities for verifying such information in such manner and at such times as he may reasonably require.

SECOND SCHEDULE (Section 4)

1. The Council shall consist of nine members as follows —

- (a) eight members (hereinafter referred to as “nominated members”) appointed by the Minister of whom —
 - (i) one shall be appointed chairman;
 - (ii) one shall be an inspector;
 - (iii) five shall be persons of whom one shall in the opinion of the Minister be representative of the interests of agriculturalists, and the remaining four shall in like manner be representative of the interests of manufacturers, wholesalers, retailers of commodities and a health professional respectively; and
 - (iv) two shall be persons who, in the opinion of the Minister, are representative of the interests of consumers.
- (b) the Director of Standards as *ex officio* member.

2. In the case of the absence or inability to act, at any meeting, of the chairman, the vice-chairman shall preside at that meeting, and in the case of the absence or inability to act of both the chairman and vice-chairman, the remaining members of the Council shall elect one of their number to preside at that meeting.

3. (1) The appointment of every nominated member of the Council shall be evidenced by an instrument in writing, and such instrument shall state the period of office of the member which shall not exceed three years.

(2) Every nominated member of the Council shall be eligible for reappointment.

(3) The Minister may at any time by instrument in writing revoke the appointment of any nominated member of the Council if he thinks it expedient so to do.

4. (1) Any nominated member of the Council other than the chairman may at any time resign his office by

instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of such instrument such member shall cease to be a member of the Council.

(2) The chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.

5. The names of all members of the Council as first constituted and every change in the membership thereof shall be published in the Gazette.

6. (1) The Council shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Council shall determine, so, however, that the Council shall meet not less than once a month.

(2) The chairman may at any time call a special meeting of the Council and shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by any two members of the Council.

(3) The chairman or, in the case of the absence or inability to act of the chairman, the vice-chairman or a person elected in accordance with the provisions of paragraph 2, shall preside at the meetings of the Council and when so presiding the chairman or vice-chairman or the person elected as aforesaid, as the case may be, shall have an original and a casting vote.

(4) The quorum of the Council shall be five members.

(5) Subject to the provisions of this Schedule the Council may regulate its own proceedings.

(6) The validity of any proceedings of the Council shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

7. There shall be paid to the nominated members of the Council and to members of any committee appointed under paragraph 10, except for the inspector, such remuneration (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine.

8. A member of the Council who is interested in any company or undertaking which is an interested party in any proceedings before the Council shall disclose to the Council the fact and nature of his interest and shall not take part in any deliberation or any decision of the Council relating to such matter, and such a disclosure shall forthwith be recorded in the records of the Council.

9. (1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Council in respect of any act done bona fide in pursuance or execution or intended execution of this Act.

(2) Where any member of the Council is exempt from liability by reason only of the provisions of this paragraph, the Bureau shall be liable to the extent that it would be if the said member was a servant or agent of the Bureau.

10. (1) The Council may appoint committees for any such general or special purposes with which the Council may be concerned as in the opinion of the Council would be better regulated and managed by means of a committee.

(2) The number of members of a committee appointed under subparagraph (1), their functions and terms of appointment, the quorum of the committee and the area, if any, within which the committee is to exercise authority shall be determined by the Council.

(3) A committee appointed pursuant to this paragraph may include persons who are not members of the Council.

(4) The provisions of paragraph 9 shall apply to a member of a committee who is not a member of the Council in like manner as they apply to a member of the Council.

(5) The validity of the proceedings of a committee appointed pursuant to this paragraph shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

11. (1) Subject to the provisions of this Act the Council may, subject to the approval of the Minister, delegate to any member or committee of the Council or to any of the officers or servants of the Bureau the power and authority to carry out such functions as the Council may determine.

(2) Every delegation under this paragraph shall be revocable by the Council and no delegation shall prevent the exercise by the Council of any function delegated.