
THE COMPULSORY STANDARDS ACT, 2017

PART I

PRELIMINARY PROVISIONS

Sections

1. Short title and commencement
2. Interpretation

PART II

THE ZAMBIA COMPULSORY STANDARDS AGENCY

3. Establishment of Agency
4. Seal of Agency
5. Functions of Agency
6. Board of Agency
7. Functions of Board and delegation of functions
8. Executive Director
9. Secretary and other staff
10. Consultative forum

PART III

COMPULSORY STANDARDS

11. Compulsory standard
12. Distinctive mark
13. Certification of products and services
14. Special procedure for emergency
15. Prohibition of introduction of product or service onto market without compliance with compulsory standard
16. Non-compliance with compulsory standard

PART IV

INSPECTORATE

17. Establishment of inspectorate and appointment of inspectors
18. Power of entry, search and inspection
19. Samples and information
20. Collection and disposal of samples

PART V

OFFENCES AND PENALTIES

21. Supply, sale, management, etc of commodity
22. Negligence and issuance of false report
23. Prohibition of publication or disclosure of information to unauthorised persons

- 24. General offences
- 25. Offence by principal officer or shareholder of body corporate or unincorporate body
- 26. General penalty
- 27. Additional powers of court
- 28. Civil remedy

PART VI

GENERAL PROVISIONS

- 29. Appeals
- 30. Presumption of importation
- 31. Acts not to be construed as assurances or guarantees
- 32. Regulations
- 33. Transitional provisions

FIRST SCHEDULE

SECOND SCHEDULE

GOVERNMENT OF ZAMBIA

ACT

No. 3 of 2017

Date of Assent: 12th April, 2017

An Act to provide for the establishment of the Zambia Compulsory Standards Agency and provide for its powers and functions; provide for the administration and maintenance of compulsory standards for the purpose of public safety and health, consumer protection and environmental protection; and provide for matters connected with, or incidental to, the foregoing.

[13th April, 2017

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Compulsory Standards Act, 2017, and shall come into operation on the date that the Minister appoints by statutory instrument.

Short title
and
commencement

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

Interpretation

“Agency” means the Zambia Compulsory Standards Agency established under section 3;

“amendment” in relation to a compulsory standard, means the complete or partial substitution of one or more of the provisions of the compulsory standard;

“Board” means the Board of the Agency established under section 6;

Act No. 4 of 2017	“Bureau” means the Zambia Bureau of Standards established under the Standards Act, 2017;
	“certification” means the procedure by which a third party gives written assurance that a product, process or service conforms to a specified requirement;
Act No. 4 of 2017	“commodity” has the meaning assigned to it in the Standards Act, 2017;
	“compulsory standard” means a standard declared compulsory under this Act;
	“conformity assessment” means the procedure used to determine, directly or indirectly, that the relevant requirements of a compulsory standard relating to a commodity, system or body have been fulfilled, and includes an inspection, testing and certification or a combination of these processes;
	“distinctive mark” means a mark prescribed under this Act, which is applied to a commodity that complies with a compulsory standard;
	“Executive Director” means the person appointed as Executive Director under section 8;
	“fee” means money payable to the Agency for a service rendered for the implementation of a compulsory standard, where the Agency is the sole provider of the service;
	“inspect” means to examine a product, product design, process, installation or commodity and determine its conformity with the specific requirements of a compulsory standard;
	“inspector” means a person appointed as an inspector under section 17;
	“levy” means money payable to the Agency by a supplier of a product or service falling within the scope of a compulsory standard;
	“manufacture” means to produce, assemble, alter, modify, convert, process or treat;
	“member” means a person appointed as a member of the Board;
Cap. 1	“person” has the meaning assigned to it in the Constitution;
	“premises” means any land, building or structure, and includes a train, boat, ship, aircraft, vehicle, trailer or other conveyance;

- “product” has the meaning assigned to it in the Standards Act, 2017; Act No. 4 of 2017
- “Secretary” means the person appointed as such under section 9;
- “sell” means to make over or dispose of in exchange for money, and includes to—
- (a) display, offer or advertise for sale;
 - (b) import into Zambia for or in pursuance of a sale;
 - (c) have in possession for the purpose of sale, trade, manufacture or export; or
 - (d) exchange, donate, lease or offer or display for leasing;
- “service provider” means a person who provides a service in respect of which a compulsory standard applies;
- “service” means a service provided for remuneration and at the request of a recipient of the service, and includes the process used to deliver the service;
- “supplier” means a manufacturer, merchant, distributor, importer or agent who places a commodity onto the market in Zambia;
- “WTO” means the World Trade Organisation; and
- “Zambian National Standard” means a standard approved by the Bureau under the Standards Act, 2017. Act No. 4 of 2017

PART II

THE ZAMBIA COMPULSORY STANDARDS AGENCY

3. (1) There is established the Zambia Compulsory Standards Agency which is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may, by law, do or perform. Establishment of Agency
- (2) The Agency may, in consultation with the Board and with the approval of the Minister, establish regional offices for commodities manufactured and imported into Zambia.
- (3) In this section, “regional office” means a provincial or district office in such area as the Board may determine for purposes of this Act.
- (4) The provisions of the First Schedule apply to the Agency.
4. (1) The seal of the Agency shall be such device as may be determined by the Agency and shall be kept by the Executive Director. Seal of Agency

(2) The affixing of the seal shall be authenticated by the Chairperson or the ViceChairperson and the Executive Director or one other person authorised in that regard by a resolution of the Board.

(3) A contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Agency by the Executive Director or any other person generally or specifically authorised by the Board in that behalf.

(4) A document purporting to be a document under the seal of the Agency or issued on behalf of the Agency shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without any further proof, unless the contrary is proved.

Functions of
Agency

5. (1) The functions of the Agency are to—

- (a) administer, maintain and ensure compliance with compulsory standards;
- (b) give premarket approval of high risk commodities falling within the scope of compulsory standards;
- (c) conduct market surveillance for products falling within the scope of compulsory standards in order to monitor postmarket compliance of commodities with compulsory standards;
- (d) educate the public on compulsory standards and provide public information for the protection of the consumers on products and services which do not comply with this Act;
- (e) cooperate with Ministries and other State institutions and international organisations in enforcing compulsory standards; and
- (f) do all such things as are connected with, or incidental to, the functions of the Agency under this Act.

(2) The Agency may, in the implementation of its functions under this Act—

- (a) enter into agreements with conformity assessment service providers to inspect, test or analyse samples on behalf of the Agency;
- (b) establish specialist committees to provide input into the process of interpreting and implementing compulsory standards;

- (c) participate in activities of regional or international bodies with similar functions to those of the Agency;
- (d) establish pre and postmarket surveillance systems; and
- (e) obtain information from suppliers of commodities falling within the scope of compulsory standards.

(3) The Agency may—

- (a) withdraw the declaration of a compulsory standard in relation to a product or service; and
- (b) determine the fees payable for an inspection conducted for the purposes of this Act;
- (c) determine fees for the testing and analysis of samples; and
- (d) determine what portion of any fee is payable in respect of any part of a year and the date on which the fee or portion of the fee is payable.

6. (1) There is constituted a Board for the Agency which shall consist of the following part-time members appointed by the Minister:

Board of
Agency

- (a) a representative of the Ministry responsible for industry;
- (b) a representative of the Attorney-General; and
- (c) five persons with experience and knowledge in matters relevant to this Act.

(2) The Minister shall, when appointing the members of the Board, ensure that—

- (a) fifty percent of each gender is represented; and
- (b) there is equitable representation of the youth and persons with disabilities, where they qualify for appointment in accordance with subsection (1).

(3) The Minister shall appoint the Chairperson from among the members of the Board who are not public officers.

(4) The members of the Board shall elect the Vice-Chairperson from amongst themselves.

(5) A person shall not be nominated or appointed as a member of the Board if the person—

- (a) is an undischarged bankrupt;
- (b) has been convicted of an offence involving fraud or dishonesty;
- (c) has been convicted of an offence under any written law and sentenced to imprisonment for a period exceeding six months without the option of a fine; or
- (d) has been found guilty of professional misconduct.

Functions of
Board and
delegation of
functions

(6) The provisions of the First Schedule apply to the Board.

7. (1) The Board shall be the governing body of the Agency and shall exercise and perform the functions of the Agency.

(2) Without prejudice to the generality of subsection (1), the functions of the Board are to—

(a) oversee the implementation and successful operation of the policy and functions of the Agency;

(b) review and approve the policy and strategic plans of the Agency;

(c) approve the annual budget and plans of the Agency;

(d) approve the methodology for the development and approval of compulsory Zambian National Standards;

(e) approve the investment of the funds of the Agency in accordance with Ministerial approval and relevant regulations;

(f) monitor and evaluate the performance of the Agency against budgets and plans; and

(g) do all such things as are connected with, or incidental to, the functions of the Board under this Act.

(3) The Minister may enter into a performance contract with the Board for a specified period, which shall be consistent with the provisions of this Act.

(4) Subject to the other provisions of this Act, the Board may, by direction, in writing, and subject to any terms and conditions as it considers necessary, delegate to the Executive Director any of its functions under this Act.

(5) A delegation made under subsection (1) shall—

(a) be in writing;

(b) be subject to a condition or restriction imposed by the Board; and

(c) not prevent the exercise of that power by the Board.

(6) The Board may amend or withdraw a delegation at any time, in writing.

Executive
Director

8. (1) The Board shall appoint the Executive Director on the terms and conditions determined by the Emoluments Commission.

(2) The Executive Director shall be the chief executive officer of the Agency and shall be responsible, under the general direction of the Board, for—

- (a) the management and administration of the affairs of the Agency;
- (b) the implementation of the decisions of the Board; and
- (c) any other function assigned or delegated to the Executive Director by the Board or under this Act.

(3) The Executive Director shall attend the meetings of the Board and may address those meetings but shall not vote on any matter.

(4) The Executive Director may, with the approval of the Board, delegate any of the Executive Director's function under this Act to any other member of staff of the Agency.

9. (1) The Board shall appoint, on the terms and conditions that the Emoluments Commission may determine, the Secretary and other staff of the Agency that it considers necessary for the performance of the functions of the Agency.

Secretary
and other
staff

(2) The Secretary shall perform corporate secretarial duties for the Board and such other functions as the Board may determine, under the direction of the Board and the Executive Director.

10. (1) The Board may, whenever the need arises, convene an *ad hoc* consultative forum consisting of representatives of organisations and State institutions that have an interest in issues of compulsory standards.

Consultative
forum

(2) The consultative forum shall—

- (a) consider matters that are within the scope of compulsory standards;
- (b) make recommendations to the Board on
 - (i) factors affecting compliance with compulsory standards; and
 - (ii) any other matter on which the Board requests for input for purposes of this Act; and
- (c) recommend areas for law reform taking into account international best practice.

(3) The Board shall establish rules for the procedure of the consultative forum which are consistent with the provisions of this Act.

PART III

COMPULSORY STANDARDS

11. (1) The Minister may, by statutory instrument, on the recommendation of the Board, where it is necessary or expedient to do so in respect of a commodity or service to promote public safety, health, consumer protection or environmental protection—

Compulsory
Standard

- (a) declare a Zambian National Standard or a provision of a Zambian National Standard to be a compulsory standard;
- (b) publish any specification or code of practice established in relation to an export commodity;
- (c) declare any specification or code of practice established in relation to an export commodity to be a compulsory export standard; or
- (d) withdraw a compulsory standard.

(2) The statutory instrument issued in accordance with subsection (1)—

- (a) shall contain the particulars of the compulsory standard or provision;
- (b) may refer to the title, number and scope of the compulsory Zambian National Standard;
- (c) shall state the minimum conformity assessment requirements necessary to demonstrate compliance of the product or service with the compulsory standard;
- (d) shall specify a date on which the compulsory standard shall come into operation, which shall be at least sixty days from the date of publication of the statutory instrument; and
- (e) may fix different dates on which different provisions of a compulsory standard shall come into operation.

(3) The Minister may alter a date referred to in subsection (2)(d) or (e) by notice in the *Gazette*.

(4) The Minister shall, before publishing a statutory instrument pursuant to subsection (1)—

- (a) publish a notice in the *Gazette* and a daily newspaper of general circulation in Zambia, or in the form of a data message in an electronic communication system accessed by the public, setting out the particulars of the proposed compulsory standard;
- (b) invite interested persons to comment on the proposed compulsory standard, in writing, within sixty days from the date of the publication of the notice; and
- (c) take into consideration the comments received from interested persons.

(5) The Minister shall consult the Minister responsible for

regulating a commodity or service in respect of which a compulsory standard is proposed to be declared, or any process that is the subject of a notice under subsection (4)(a), before declaring a compulsory standard pursuant to subsection (1)(a).

(6) The statutory instrument made under subsection (1)(a) may

(a) require that a commodity or service to which a compulsory standard applies shall be marked in the prescribed manner with a distinctive mark as provided for in section 16;

(b) require a supplier to label a commodity or describe a service to which a compulsory standard applies in accordance with its origin, batch, date of manufacture, characteristics or other particulars of the commodity or service, as the case may be;

(c) amend the requirement referred to in paragraph (b); and

(d) withdraw a requirement referred to in paragraph (a), (b) or (c).

(7) Where a *Zambian National Standard* declared in subsection (1)(a) is amended or revised, the amendment shall take effect after the Bureau obtains the approval of the Agency.

(8) The Bureau shall, before withdrawing a compulsory *Zambian National Standard*, obtain the approval of the Minister.

(9) The Board shall, in recommending a compulsory standard in accordance with subsection (1), ensure compliance with Zambia's obligations under the relevant international and regional trade agreements.

12. (1) The Minister may, by statutory instrument, on the recommendation of the Board, declare a mark depicted or described in a compulsory standard to be a distinctive mark to be used to mark specified commodities.

Distinctive
mark

(2) A distinctive mark shall not be declared which so closely resembles a trade mark registered under the Trade Marks Act as to be likely to be mistaken for that trade mark.

Cap 401

(3) A supplier by applying the distinctive mark to a product, or to the wrapper, covering, container or label used in connection with the product, declares that the product complies fully with the requirements of the relevant compulsory standard or provision of a compulsory standard and accepts responsibility in respect of that declaration.

Certification
of products
and services

(4) The Minister may, by statutory instrument, prescribe the rules under which the distinctive mark referred to in subsection (3) may be applied.

13. (1) A supplier intending to introduce a product or service onto the market in Zambia in respect of which a compulsory standard is in force shall apply to the Agency for certification of the product or service in the prescribed manner and form.

(2) The Agency may inspect a commodity or assess a service before certifying that the commodity or service complies with a relevant compulsory standard.

(3) Subject to subsection (4), the Agency shall approve or reject the request for certification of a product or service to which a compulsory standard relates within seven days of receipt of the application made in accordance with subsection (1), and shall inform the applicant of the decision, in writing.

(4) Where the certification of a product or service requires a period exceeding seven days, the Agency shall notify the applicant of the period required for the certification and shall approve or reject the application, in writing, within the specified period.

(5) A certification granted in accordance with subsection (3) shall contain the conditions relating to the certification of the relevant product or service, including its validity, number of products or any other limitation based on a risk assessment set by the Agency.

(6) The Agency shall, where it rejects the certification of a product or service under subsection (3), inform the applicant accordingly, in writing, and provide the reasons for the rejection.

Special
procedure
for emer-
gency

14. (1) The Minister may, in consultation with Cabinet, where there is a direct and immediate threat to the environment or human or animal life or health, adopt an emergency compulsory standard.

(2) A statutory instrument declaring an emergency compulsory standard in accordance with subsection (1) shall contain the justification of the necessity for the declaration of the standard.

(3) The declaration of an emergency compulsory standard pursuant to subsection (1) shall not exceed one year from the date of the declaration.

(4) The Agency may, where an emergency compulsory standard is in force, begin the process for converting the emergency compulsory standard to a compulsory standard.

(5) Where an emergency compulsory standard is converted to a compulsory standard, it shall cease to have effect from the date of its conversion to a compulsory standard.

15. (1) A person shall not import, manufacture, sell, market, advertise, offer for hire or supply a product or service to which a compulsory standard applies unless—

(a) the product or service complies with or has been manufactured in accordance with the compulsory standard;

(b) a distinctive mark has been applied to the product or service, where applicable, in the prescribed manner, and the product or service is marked in accordance with section 12; and

(c) where applicable, the product or service is certified pursuant to section 13.

(2) A person who manufactures, sells, markets, advertises, offers for hire or supplies a product or service to which a compulsory standard applies and who introduces the product or service onto the market shall—

(a) keep records in respect of the sales or supplies or quantities manufactured or imported and submit the records to the Agency; and

(b) pay such fees or levies for the product or service, as may be prescribed under this Act.

16. (1) A service provider or manufacturer shall not provide a product or service in contravention of a compulsory standard.

(2) Where the Executive Director has reason to suspect that a product or consignment or batch of a product does not comply with, or has not been manufactured in accordance with, the applicable compulsory standard, the Executive Director may, in writing, direct a person who is in possession or control of the commodity, consignment or batch to keep it in that person's possession or under that person's control at the premises specified in the directive until the product is modified to comply with the compulsory standard or appropriately disposed of.

(3) Where the Executive Director has reason to suspect that a service does not comply with, or has not been provided in accordance with, the applicable compulsory standard, the Executive Director may direct, in writing, a person who provides the service to cease the operation or provision of the service until the service complies with the compulsory standard.

Prohibition
of introduc-
tion of
product or
service onto
market
without
compliance
with
compulsory
standard

Non-
compliance
with
compulsory
standard

(4) Where the Agency determines that a product does not comply with an applicable compulsory standard, the Executive Director may direct, in writing, that—

(a) the importer of the product returns it to its place of origin;
or

(b) the product or batch concerned be confiscated, destroyed, re-worked or dealt with in such other manner as the Executive Director may direct.

(5) Where the Agency determines that a service provider does not comply with the applicable compulsory standard, the Executive Director may, in writing, direct that the service provider ceases to provide the service until the service provider complies with the compulsory standard.

(6) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units, or to imprisonment for a term not exceeding three years, or to both.

(7) The Minister may, by statutory instrument, prescribe the manner in which the directives referred to in this section shall be issued.

PART IV

INSPECTORATE

Establish-
ment of
inspectorate
and
appointment
of
inspectors

17. (1) The Agency shall establish an inspectorate for the Agency which shall ensure compliance with the provisions of this Act.

(2) The Executive Director shall appoint suitably qualified persons as inspectors for purposes of this Act.

(3) The Board shall provide an inspector with a certificate of appointment, in the prescribed form, which shall be *prima facie* evidence of the inspector's appointment as such.

(4) An inspector shall, in performing any function under this Act—

(a) be in possession of the certificate of appointment referred to in subsection (3); and

(b) show the certificate of appointment to a person who requests to see the certificate or is subject to an investigation for purposes of this Act.

Power of
entry, search
and
inspection

18. (1) An inspector may, for the purposes of enforcing the provisions of this Act, with a warrant—

(a) enter and search any premises that the inspector has reasonable grounds to believe is used for the commission of an offence or contrary to the provisions of this Act;

- (b) search a person on any premises if the inspector has reasonable grounds to believe that the person has in possession an article, document or record that has a bearing on an investigation, except that a person shall only be searched by a person of the same sex;
- (c) take samples of a product or a component, material or substance in or upon any premises used or suspected to be intended for use in the manufacture of the product, and open, inspect or confiscate a package or container in or upon the premises which contains or is suspected to contain a product or a component, material or substance;
- (d) inspect any process or service carried on, in or upon the premises, in connection with the manufacture or supply of a product or service in respect of which a compulsory standard or distinctive mark applies;
- (e) at any time, demand from a person, immediately or at a time and place fixed by the inspector, the production of a certificate, book, notice, record, list or other document which is in the possession, custody or control of that person;
- (f) make copies of, or extracts from, a book, notice, record, list or other document relating to a product or service on any premises that has a bearing on an investigation;
- (g) require from a person referred to in paragraph (e) an explanation of any record or entry in a record, book or other document;
- (h) seize a book, notice, record, list or other document which the inspector believes can afford evidence of an offence under this Act;
- (i) confiscate, impound and destroy, where necessary, goods or products manufactured or supplied in contravention of a compulsory standard required by or under this Act or any other written law;
- (j) require a service provider or manufacturer to submit such information and records as may be necessary to enable the Agency to monitor their compliance with compulsory standards;
- (k) order a person to appear before the inspector, immediately or at a time and place fixed by the inspector, and at that time and place question that person with regard to a matter which the inspector is investigating for purposes of this Act;

-
- (*l*) require a manufacturer or service provider in respect of which a compulsory standard applies to inform the Agency of the change of the registered office or premises before re-locating; or
 - (*m*) check any relevant document or record of a supplier of a product or service in respect of which a compulsory standard is in force to determine whether that supplier has paid the applicable fees or levies.
 - (2) A court may issue a warrant on application by an inspector if it appears from written information given by the inspector, on oath or affirmation, that there are reasonable grounds to believe that this Act has been or is likely to be contravened.
 - (3) An inspector may enter a private dwelling with—
 - (*a*) the consent of the owner or occupier; or
 - (*b*) the authority of a warrant.
 - (4) An inspector who removes anything from any premises shall—
 - (*a*) issue a receipt for anything removed to the owner or the person in control of the premises; and
 - (*b*) return anything removed as soon as practicable after the thing has served the purpose for which it was removed.
 - (5) An inspector who enters and inspects any premises or private dwelling in accordance with this section shall have strict regard to safety and security measures, decency, order and respect for each person's right to dignity and privacy.
 - (6) A person who—
 - (*a*) delays or obstructs an inspector in the carrying out of the inspector's duties under this Act;
 - (*b*) knowingly or negligently gives an inspector information which is false or misleading in a material particular;
 - (*c*) fails to answer, to the best of that person's ability, any relevant question which an inspector has in the exercise of the inspector's functions put to that person;
 - (*d*) refuses to give an inspector information or assistance which is required for purposes of an investigation under this Act; or
 - (*e*) impersonates an inspector or falsely represents oneself to be an inspector or to be acting under an inspector's orders;
- commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(7) An inspector shall furnish the Agency with a written report relating to an inspection.

19. (1) A person who imports, manufactures or sells a commodity in respect of which a compulsory standard is in force shall, at that person's own cost—

Samples and
information

(a) transmit to the Agency such samples of the commodity for inspection, testing or analysis, as may be specified by the Agency; or

(b) furnish to the Agency such information as the Agency may specify with regard to the commodity or its manufacture.

(2) The Agency may inspect and provide for testing or analysis a sample of a product or commodity obtained under this Act in order to determine whether the product or commodity complies with, or has the characteristic of a commodity or product which has been manufactured in accordance with, the applicable compulsory standard.

(3) Where a sample obtained under section 18 is damaged or destroyed during the process of examining, inspection, testing or analysis, the Agency shall not be liable for the damage to, or destruction of, that sample, except in a case of negligence.

(4) The result of an inspection, test or analysis of a sample of a product in respect of which a compulsory standard is in force shall, unless the contrary is proved, be deemed to be valid for the whole consignment or batch from which the sample was obtained.

20. (1) A sample taken by or provided to the Agency for inspection or testing shall be collected by the supplier three months after the date on which the sample was provided to the Agency unless an appeal has been lodged as provided for in section 29, in which case the samples shall be collected six months after the date on which the appeal process is concluded.

Collection
and
disposal of
samples

(2) The Agency shall periodically request suppliers from whom samples are collected under section 18 to collect the samples within a specified period.

(3) Samples that are not collected by a supplier within the period specified under subsection (2) shall be disposed of by the Agency in a manner determined by the Agency.

(4) The Executive Director shall cause samples which are likely to have an adverse environmental impact to be disposed of in accordance with the Environmental Management Act, 2011.

Act No. 12 of
2011

(5) Any cost incurred by the Agency for the disposal of samples as provided for in subsection (3) shall be recovered by the Agency from the supplier of the samples.

PART V

OFFENCES AND PENALTIES

Supply, sale,
manufacture,
etc of
commodity

21. A supplier commits an offence who—

(a) introduces or places a commodity on the market in respect of which a compulsory standard is in force without certification or conformity assessment under this Act; or

(b) sells, manufactures, imports, distributes or places on the market a commodity which does not comply with a compulsory standard.

Negligence
and issuance
of false
report

22. (1) An inspector commits an offence who deliberately or negligently permits the importation or exportation of a product or supply of a service that does not comply with a compulsory standard or which contravenes the provisions of this Act.

(2) An officer or employee of the Agency commits an offence who issues or causes the issuance of a false inspection report or an inspection report with regard to the compliance of a product or service based on false or misleading information.

(3) A person who makes a false report or record on a product or commodity commits an offence.

Prohibition
of
publication
or disclosure
of
information
to
unauthorised
persons

23. (1) A person shall not, without the consent, in writing, given by or on behalf of the Agency, publish or disclose to an unauthorised person, otherwise than in the course of that person's duties, the contents of a document, communication or information, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act.

(2) A person shall not, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publish or communicate the information to any other person.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

General
offences

24. A person commits an offence who—

(a) contravenes, or fails to comply with, a provision of this Act or any directive, order, condition, requirement, determination or request made under this Act;

(b) fails to mark a commodity with a distinctive mark in accordance with the provisions of this Act; or

- (c) falsely represents a product or service to be a commodity or service that complies with the provisions of a compulsory standard or this Act.

25. Where an offence under this Act is committed by a body corporate or unincorporate body, and the director, manager or shareholder of that body is suspected to have committed the offence and is charged of that offence, that director, manager or shareholder of the body corporate or unincorporate body is liable, upon conviction, to the penalty specified for the offence, unless the director, manager or shareholder proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director, manager or shareholder or that the director, manager or shareholder took reasonable steps to prevent the commission of the offence.

Offences by principal officer or shareholder of body corporate or unincorporate body

26. A person who commits an offence under this Act for which a penalty is not provided is liable, upon conviction —

General penalty

- (a) if the offence was committed in connection with a compulsory standard, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both; and
- (b) in any other case, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

27. (1) The court may, where a person is convicted of an offence under this Act, in addition to any other penalty provided for in this Act—

Additional powers of court

- (a) order that an article, material, substance, commodity or a consignment or batch of a commodity in respect of which that offence was committed be forfeited to the State; and
- (b) summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by that person in consequence of that offence and cause the monetary value to be recovered as a debt due and payable to the Government.

(2) The court may, where a person is convicted of an offence under this Act which causes loss, damage, or injury assess the amount of compensation for the loss, damage or injury caused in the commission of the offence and cause the compensation to be recovered from that person as if it were a debt due and payable to the Government.

Civil remedy
reserved

28. (1) Nothing in this Act shall be construed as taking away or interfering with the right of the Republic or a person to sue for and recover, at common law or otherwise, compensation for or in respect of a damage or injury caused by the commission of an offence.

(2) The court shall, in assessing the compensation take into account the amount of any compensation recovered under section 27.

PART VI

GENERAL PROVISIONS

Appeals

29. (1) A person aggrieved with the decision of the Agency under this Act may appeal to the Minister within thirty days of the receipt of the decision of the Agency.

(2) A person aggrieved with a decision of the Minister may appeal to the High Court.

Presumption
of importa-
tion

30. Where it is necessary for the purposes of this Act to determine the importer of a commodity, it shall be presumed, unless the contrary is proved, that the person named on the import transaction documents of the commodity as the importer, is the importer of that commodity.

Acts not to
be construed
as assur-
ances or
guarantees

31. A supplier is accountable for the integrity of a product or service in respect of which a compulsory standard applies, irrespective of an inspection or certification by the Agency regarding that product or service.

Regulations

32. The Minister may, by statutory instrument, prescribe anything which by this Act is required to be prescribed or is necessary for the better carrying out of the provisions of this Act.

Transitional
provisions

33. The Second Schedule applies to transitional arrangements relating to the Agency.

FIRST SCHEDULE
(Sections 3(4) and 6(6))

THE ZAMBIA COMPULSORY STANDARDS AGENCY

PART I

ADMINISTRATION OF BOARD

1. (1) Subject to the other provisions of this Act, a member shall hold office for a period of three years and may be reappointed for one further period of three years.

Tenure of
office and
vacancy

(2) A member may resign upon giving one month's notice, in writing, to the Minister.

(3) The office of a member becomes vacant if the member—

(a) dies;

(b) resigns;

(c) is absent without reasonable excuse, from three consecutive meetings of the Board of which the member has had notice;

(d) is adjudged bankrupt;

(e) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a period exceeding six months without the option of a fine;

(f) ceases to be a representative or member of the institution which nominated the member;

(g) is found guilty of professional misconduct; or

(h) has a mental or physical disability which makes the member incapable of performing the duties of a member.

(4) A member shall, on the expiration of the period for which the member is appointed, continue to hold office until a successor is appointed, but in no case shall the further period exceed four months.

(5) Whenever the office of a member becomes vacant before the expiry of the term of office, the Minister may appoint another person to be a member in place of the member who vacates the office for the unexpired term of that office.

2. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

Proceedings
of
Board

(2) The Board shall meet for the transaction of business at least once in every three months at such places and times as the Board may determine.

(3) A meeting of the Board may be called by the Chairperson upon giving notice of not less than fourteen days, and shall be called by the Chairperson if one-third or more of the members so request in writing, except that if the urgency of any particular matter does not permit the giving of the notice, a special meeting may be called upon giving a shorter notice.

(4) Five members shall constitute a quorum at a meeting of the Board.

(5) There shall preside at a meeting of the Board

(a) the Chairperson;

(b) in the absence of the Chairperson, the ViceChairperson;
and

(c) in the absence of the Chairperson and the ViceChairperson,
such other member as the members present may elect
for the purpose of that meeting.

(6) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote.

(7) A member appointed under section 6 (1) (a) or (b) who is for any reason unable to attend a meeting of the Board may, in writing, nominate another person from the same organisation to attend the meeting in that member's stead and that person shall be deemed to be a member for the purpose of that meeting.

(8) The Board may invite a person, whose presence is in its opinion desirable to attend and to participate in the deliberations of the meeting of the Board, but that person shall have no vote.

(9) The validity of any proceedings, acts or decisions of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

(10) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and every meeting of any committee of the Board.

Committees
of Board

3. (1) The Board may, for the purpose of performing its functions establish such committees as it considers necessary and delegate to any of those committees any of its functions or the functions of the Agency.

(2) The Board may appoint as members of a committee persons who are or are not members of the Board, except that at least one member of the Board shall be a member of a Committee.

(3) A person serving as a member of a committee shall hold office for such period as the Board may determine.

(4) Meetings of the committee shall be held at such times as the committee may determine or as the Board shall direct.

(5) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.

4. A member of the Board or a committee of the Board shall be paid such emoluments as the Emoluments Commission may determine.

Emoluments

5. (1) A person who is present at a meeting of the Board or a committee of the Board at which any matter is the subject of consideration, and in which matter that person or that person's relative or associate is directly or indirectly interested in a private capacity, shall, as soon as is practicable after the commencement of the meeting, declare that interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on any question relating to that matter.

Disclosure of interest

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) In this paragraph—

(a) “associate” has the meaning assigned to it in the Anti-Corruption act, 2012; and

Act No. 3 of 2012

(b) “relative” means—

(i) a person's son, daughter, brother, sister, nephew, niece, parent, uncle, aunt, grandparent or cousin; and

(ii) a person's spouse or the spouse of any of the persons mentioned in sub-paragraph.

6. An action or other proceeding shall not lie or be instituted against a member of the Board, a member of a committee of the Board or a member of staff of the Agency for or in respect of an act or thing done or omitted to be done in good faith in the exercise or performance of the powers, functions or duties conferred under this Act.

Immunity

PART II

FINANCIAL PROVISIONS

Funds of
Agency

7. (1) The funds of the Agency shall consist of such monies as may—

(a) be appropriated to the Agency by Parliament for the purposes of the Agency;

(b) be paid to the Agency by way of fees, grants or donations; and

(c) otherwise vest in or accrue to the Agency.

(2) The Agency may, subject to the approval of the Minister—

(a) accept monies by way of grants or donations from any source within or outside Zambia; and

(b) raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions.

(3) There shall be paid from the funds of the Agency—

(a) the emolument of the members of staff of the Agency;

(b) such reasonable travelling and other allowances for the members of the Board and a committee of the Board when engaged on the business of the Agency, at such rates as the Emoluments Commission may determine; and

(c) any other expenses incurred by the Agency in the performance of its functions under this Act.

(4) The Agency may, subject to the approval of the Minister, invest in such manner as it considers appropriate such funds of the Agency which it does not immediately require for the discharge of its functions.

Financial
year

8. The financial year of the Agency shall be a period of twelve months ending on 31st December.

Accounts
and audit

9. (1) The Agency shall cause to be kept proper books of account and other records relating to its accounts.

(2) The accounts of the Agency shall be audited annually or whenever necessary by the Auditor-General or an auditor appointed by the Auditor-General.

(3) The Auditor-General's fees shall be paid by the Agency.

Annual
report

10. (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Agency shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subparagraph (1) shall include information on the financial affairs of the Agency and there shall be appended to that report—

- (a) an audited statement of financial position;
- (b) an audited statement of comprehensive income; and
- (c) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly.

SECOND SCHEDULE

(Section 33)

1. (1) The Minister shall, by statutory instrument, on the commencement of this Act provide for the transfer of—

Transitional
arrangements

 - (a) such assets, liabilities, rights and obligations of the Bureau relating to the functions to be performed by the Agency;
 - (b) employees of the Bureau responsible for compulsory standards to the Agency on terms that are not less favourable than those enjoyed by the employees while in the service of the Bureau.
 - (2) Notices, designations and certificates issued in terms of the Standards Act, in respect of anything provided for in this Act are deemed to have been issued in terms of this Act.

Cap. 416
 - (3) Regulations promulgated in terms of the Standards Act in respect of any matter dealt with in this Act are deemed to have been issued in terms of this Act.

Cap. 416
 - (4) A compulsory standard declared in accordance with the Standards Act that is in force in terms of the provisions of that Act immediately before the commencement of this Act, is deemed to be a compulsory standard declared in terms of this Act.

Cap. 416
 - (5) A notice issued regarding a compulsory standard in terms of the Standards Act, which is in force at the commencement of this Act, is deemed to be a notice issued in terms of this Act.

Cap. 416
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