

Government Gazette 14661

STATE PRESIDENT'S OFFICE

No. 454
19 March 1993

It is hereby notified that the State President has assented he following Act which is hereby published for general information:-

NO. 29 OF 1993: STANDARDS ACT, 1993

ACT

To provide for the promotion and maintenance of standardization and quality in connection with commodities and the rendering of services, and for that purpose to provide for the continued existence of the South African Bureau of Standards, as the national institution for the promotion and maintenance of standardization, and the control thereof by a council, and for matters connected therewith.

(English text signed by the State President.)

(Assented to 11 March 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

Definitions

1. In this Act, unless the context otherwise indicates-

- (i) "amendment" with regard to a standard or compulsory specification, includes complete substitution, with or without alteration of one or more of or all the provisions, or the scope and purport, thereof; (xxxiv)
- (ii) "article" includes any commodity; (i)
- (iii) "auditor" means a person appointed as auditor in terms of section 28(1)(a)(ii) for the purposes of this Act; (xv)
- (iv) "certification mark" means a certification mark referred to in section 18(1)(a); (xx)
- (v) "chairman" means the person appointed as the chairman of the council in terms of section 7(1)(a)(i); (xxxii)
- (vi) "code of practice" means, in the case of a code of practice referred to in section 16(3)(a)(i), a description of-
 - (a) the terminology to be used;
 - (b) the method to be applied or the procedure to be followed;

(c) the material to be used;

(d) any requirements to be met,

in connection with the execution in an orderly, systematic, practical, efficient, safe or effective manner of an act performed with a view to achieving a stated purpose or

obtaining

a stated result; (iv)

- (vii) "commodity" includes an element or characteristic, or a category or system, of some commodity; (viii)
- (viii) "compulsory specification" means a compulsory specification referred to in section 22; (xxviii)
- (ix) "council" means the Council of the South African Bureau of Standards referred to in section 6; (xviii)
- (x) "distinctive mark" means a distinctive mark referred to in section 18(1)(d); (xiii)
- (xi) "examine" includes inspect; (xiv)
- (xii) "financial institution" means a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984), and includes a bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990); (iii)
- (xiii) "importer" means an importer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964); (vii)
- (xiv) "inspector" means a person appointed as an inspector in terms of section 28(1)(a)(i); (vi)
- (xv) "issue", with regard to a standard or a publication, includes making available by means of electronics, photography or another medium; (xxv)
- (xvi) "manufacture" includes produce, assemble, alter, modify, adapt, convert, process or treat; (xxix)
- (xvii) "mark", whether used in a compound with any other word or not, includes any symbol, sign, drawing, design, badge, emblem, representation, heading, name, word, signature, letter or numeral, or any combination of two or more thereof; (ix)
- (xviii) "mark of authenticity" means a mark of authenticity referred to in section 18(1)(c); (xxxiii)
- (xix) "mark of proof" means a mark of proof referred to in section 18(1)(b); (xvii)
- (xx) "mark permit" means a mark permit referred to in section 20(1)(b); (x)

- (xxi) "mark specification" means a mark specification referred to in section 119, (xi)
- (xxii) "Minister" means the Minister of Trade and Industry; (xii)
- (xxiii) "prescribed" means prescribed by regulation; (xxx)
- (xxiv) "president" means the person who is the president of the SABS in terms of section 10(1); (xvi)
- (xxv) "reference material" means any material or substance one or more characteristics of which are such that it may be used-
- (a) for the calibration of any apparatus;
 - (b) for the testing of the accuracy of any method of measurement; or
 - (c) for the determination, by comparison therewith, of any characteristic, including purity, of any other material or substance; (xxx)
- (xxvi) "regulation" means a regulation in force in terms of this Act; (xix)
- (xxvii) "sales permit" means a sales permit referred to in section 23(1)(c); (xxvii)
- (xxviii) "sell" includes-
- (a) display, offer or advertise for sale;
 - (b) export from the Republic for or in pursuance of a sale;
 - (c) have in possession for the purpose of sale, trade, manufacture or export from the Republic; (xxvi)
- (xxix) "specification" means, in the case of a specification referred to in section 16(3)(a)(i)-
- (a) a description of a commodity with reference to its characteristics, including its nature, quality, strength, efficacy, purity, composition, assembly, quantity, dimensions, mass, grade, design, layout, durability, capacity, format, operation, performance, origin or age, whichever may be applicable;
 - (b) a description of the manner of manufacture of a commodity, including the components thereof, the material
- or
- substance from or with which it shall be manufactured, and the characteristics, requirements, handling and treatment
- of
- such components, material or substance, and the characteristics of the commodity, whichever may be applicable,
- as well as a description of related matters deemed necessary

or

expedient, including-

- (i) the marking, handling, packing, storage and transport of a commodity; or
- (ii) the manner of installation of the commodity to ensure efficient performance; (xxi)
- (xxx) "standard" means a standard referred to in section 16(3)(a)(i) or (8); (xxii)
- (xxx) "standard method" means, in the case of a standard method referred to in section 16(3)(a)(i), a description of-
 - (a) the preparatory steps to be taken;
 - (b) the equipment, material or substance to be used;
 - (c) the procedure to be followed, for the purpose of determining the nature, purity, composition, dimensions, performance or other characteristics of any commodity; (xxiii)
- (xxxii) "system", with regard to a commodity, means a system which is designed to achieve a particular purpose or to perform a specific function; (xxiv)
- (xxxiii) "the SABS" means the South African Bureau of Standards referred to in section 2(1); (ii)
- (xxxiv) "this Act" includes a regulation.(v)

Continuation of South African Bureau of Standards

2. (1) The South African Bureau of Standards established by section 2 of the Standards Act, 1945 (Act No. 24 of 1945), shall, notwithstanding the repeal of the Standards Act, 1982 (Act No. 30 of 1982), by this Act, continue to exist as a juristic person known as the SABS and is the national institution for the promotion and maintenance of standards.

(2) Notwithstanding anything to the contrary in this Act or any other law contained, any assets or property, whether movable or immovable, obtained by way of ownership by the council prior to the commencement of this Act, shall be deemed to be owned by the SABS.

(3) The registrar of deeds concerned shall make the entries or endorsements in or on any relevant register, title deed or other document in his office or submitted to him which he may deem necessary in order to give effect to the provisions of this section, and no office fee or other charge shall be payable in respect of any such entry or endorsement.

(4) Notwithstanding anything to the contrary in this Act or in any other law contained, all rights obtained or obligations incurred by the council prior to the commencement of this Act, shall be deemed to have been obtained or incurred by the SABS.

Objects of SABS

3. The objects of the SABS are-

- (a) to obtain membership of foreign or international bodies having any objects similar to an object of the SABS;
- (b) to obtain the co-operation of State departments, local authorities, other public bodies, representatives of any branch of commerce and industry and other persons;
- (c) to accredit laboratories and to administer schemes with regard to laboratories thus accredited
- (d) to assess quality systems and to administer the certification by such systems thus assessed;
- (e) to assess the competence of, and to accredit, quality practitioners;
- (f) to test precision and measuring instruments, gauges and scientific apparatus in order to determine their accuracy, and to calibrate them;
- (g) to examine, test or analyse articles, materials and substances;
- (h) to supply reference material for specific purposes
- (i) to furnish reports and issue certificates in connection with examinations, tests, analyses, calibrations and assessments carried out by the SABS, subject to the conditions it may consider expedient;
- (j) to supply information and guidance;
- (k) to compile and issue recommended practices as a supplement to a relevant standard;
- (l) to issue as a national standard a specification, code of practice or standard method, and to administer schemes based thereon;
- (m) to control the use of distinctive marks, certification marks, marks of proof and marks of authenticity;
- (n) to assist a person or State department in the preparation and framing of any document which embodies characteristics similar to those of a standard; and
- (o) to perform, in so far as it is not repugnant to or inconsistent with the provisions of any Act of Parliament, such functions as the Minister may assign to the SABS,

so as to promote and maintain standardization and quality regarding commodities and the rendering of services.

Functions, powers and duties of SABS

4. (1) The functions, powers and duties of the SABS shall be to achieve

its objects with the means at its disposal, and for the purposes of achieving those objects the SABS may-

- (a) with the approval of the Minister, granted with the concurrence of the Minister of State Expenditure, purchase, hire or otherwise acquire, or possess or alienate immovable property and let or otherwise encumber that property;
 - (b) with the approval of the Minister, granted with the concurrence of the Minister of Finance, raise money by way of loans;
 - (c) purchase, hire or otherwise acquire, or possess, movable property, and let, pledge, encumber or dispose of that property;
 - (d) supply reference material and issue directives in connection with such material;
 - (e) at the request of any person, body, organization, administration or authority and subject to the conditions determined by the SABS, conduct examinations, tests or analyses or cause them to be conducted in respect of any article, material or substance;
 - (f) purchase or otherwise acquire a sample of any article in order to investigate, test or analyse it, and, for the purposes of a specification, determine the sampling, examination, testing or analysis procedures to be followed in order to assess whether there has been compliance with the relevant characteristic requirements or the manner of manufacture of a commodity;
 - (g) with the approval of the Minister, on its own or in collaboration with any person, establish a company for a specific purpose which is relevant to the objects of the SABS, and for this purpose acquire an interest in or control over a company or other juristic person;
 - (h) make grants to universities, technikons, colleges and other educational institutions;
 - (i) provide and promote training, and for this purpose grant bursaries and study loans;
 - (j) establish and control facilities, including laboratory, test and training facilities;
 - (k) subject to the provisions of this Act, determine and collect fees for services rendered under this Act; and
 - (l) in addition to any function, power or duty that the SABS is required or empowered to perform, exercise or execute in terms of the provisions of this Act or any other law, do everything that is conducive or to the achievement of its objects or is calculated, directly or indirectly, to enhance the value of or render profitable the property rights of the SABS.
- (2) The SABS may issue to a person-
- (a) who manufactures outside the Republic an article a consignment of

which is intended for importation into the Republic; or

- (b) who intends to import a consignment of an article manufactured outside the Republic, a certificate in which it is declared that such consignment complies with or has been manufactured in accordance with the requirements determined in terms of this Act.
- (3) The SABS shall-
- (a) subject to the payment of the prescribed remuneration, undertake the investigations or research which the Minister may assign to it; and
 - (b) at the request of the Minister, advise the Minister concerning any matter which is relevant to the objects of the SABS.

Exercise of powers outside Republic

5. (1) The SABS may in the exercise of its powers and in order to achieve its objects-

- (a) enter into an agreement with;
- (b) render assistance to; or
- (c) obtain the co-operation of, a person, body, organization, administration, authority or government in any country or territory outside the Republic.

(2) The Minister may with the concurrence of the Minister of State Expenditure indemnify the SABS against any losses which it may incur consequent upon any act or omission of the person, body, organization, administration, authority or government referred to in subsection (1), provided such act was performed or omission was made with the approval of or at the request of the Minister.

Continuation of Council of South African Bureau of Standards

6. The Council of the South African Bureau of Standards established by section 4 of the Standards Act, 1962 (Act No. 33 of 1962), shall, notwithstanding the repeal by this Act of the Standards Act, 1982 (Act No. 30 of 1982), but subject to the conditions of this Act, continue to exist.

Constitution and functions of council

7. (1) (a) The council shall consist of-

- (i) a chairman and six other members appointed by the Minister; and
- (ii) the president, who shall serve on the council by virtue of his office.

(b) A member referred to in paragraph (a)(i) shall have particular knowledge or experience of matters which are relevant to the objects of the SABS.

(2) A member referred to in subsection (1)(a)(i) shall hold office for

the period determined by the Minister, but not exceeding three years, and shall be eligible for reappointment.

(3) A member referred to in subsection (1)(a)(i) shall vacate his office if-

- (a) he reaches the age of 70 years;
- (b) he is declared insolvent or surrenders his estate for the benefit of his creditors;
- (c) he is found guilty of an offence and sentenced to imprisonment without the option of a fine;
- (d) he is absent from three consecutive meetings of the council without the consent of the chairman unless the council condones his absence on good cause shown;
- (e) he resigns as a member;
- (f) (i) he is in terms of the provisions of the Electoral Act, 1979 (Act No. 45 of 1979), nominated as a candidate for election as a member of Parliament; or
(ii) he is in terms of the provisions of the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983), nominated as a member of Parliament, or is appointed or designated as a member of the President's Council; or
- (g) his term of office is terminated under subsection (4).

(4) The Minister may at any time discharge a member referred to in subsection (1)(a)(i) from office if he is of the opinion that there are sound reasons for discharging such member from office.

(5) If a member dies or by written notice, directed to the Minister, resigns or in terms of subsection (3) or (4) ceases to be a member, the Minister may, subject to the provisions of this section, appoint a person in his place for the unexpired portion of his term of office.

(6) (a) The president shall be the vice-chairman of the council, and shall during the absence or incapacity of the chairman act as chairman.

(b) If the president is unable to act as chairman at a meeting of the council in terms of paragraph (a), the members present shall elect one of their number to act as chairman at that meeting.

(7) The SABS may pay to a member referred to in subsection (1)(a)(i) who is not in the full-time employment of the State, such allowances as the Minister may determine with the concurrence of the Minister of State Expenditure.

(8) The council shall control the affairs of the SABS by-

- (a) determining the direction and objectives of the SABS; and
- (b) exercising control in general over-
 - (i) the performance of the functions;
 - (ii) the exercise of the powers; and
 - (iii) the execution of the duties, of the SABS.

Meetings of council

8. (1) (a) The meetings of the council shall be held at such times and places as the council may determine.

(b) The chairman, or in his absence or incapacity the president, may at any time convene a special meeting of the council, which shall be held at such time and place as the chairman or the president, as the case may be, may direct.

(2) The quorum for a meeting of the council shall be a majority of its members.

(3) The procedure at meetings of the council, including the keeping of minutes, shall be as prescribed.

(4) A decision of the council shall be taken by resolution by the majority of the members present at any meeting of the council, and in the event of an equality of votes on any matter, the person presiding at the meeting concerned shall have a casting vote in addition to his deliberative vote.

Committees of council

9. (1) The council may-

(a) establish one or more committees to perform, subject to the instructions of the council, such functions of the council as the council may determine, and

(b) at any time dissolve or reconstitute a committee referred to in paragraph (a).

(2) The council may-

(a) appoint any person as a member of a committee referred to in subsection (1)(a); or

(b) at any time terminate the membership of a person referred to in paragraph (a).

(3) If a committee referred to in subsection (1) consists of more than one member, the council shall designate a member of the committee as chairman thereof.

(4) The SABS may pay to the members of a committee referred to in subsection (1) who are not in the full-time employment of the State, or are not members of the council or employees of the SABS, such remuneration and

allowances as the Minister, with the concurrence of the Minister of State Expenditure, may determine.

President of SABS

10. (1) The council shall appoint a chief executive officer for the SABS, who shall occupy the post of president of the SABS.

(2) The president shall be responsible for the management of the affairs of the SABS and shall report to the council on such affairs as may be required by the council.

(3) The president shall be appointed for a period not exceeding five years on the conditions, including conditions relating to the payment of remuneration, allowances and other benefits, as the council may determine in accordance with a system approved by the Minister, with the concurrence of the Minister of State Expenditure, as such system is amended from time to time.

(4) The president may, at the expiration of his period of office, be reappointed.

(5) Whenever for any reason the president is absent or unable to carry out his duties or whenever the office of president is vacant, the council may, on such conditions and subject to the payment of such remuneration and allowances as it may determine, in accordance with a system approved by the Minister, with the concurrence of the Minister of State Expenditure, as such system is amended from time to time, appoint another person to act as president until the president can resume his functions or until the vacancy is filled, and that other person shall, while so acting, have all the powers and perform all the duties of the president.

(6) Any reference to the Director-General of the South African Bureau of Standards in any law, contract, register, record or other document shall, from the date of the commencement of this Act, be construed as a reference to the president.

Appointment of staff, and conditions of service

11. (1) (a) The council may, subject to paragraph (b) and on such conditions as it may determine, appoint the employees of the SABS whom it deems necessary to assist the SABS in the performance of its functions.

(b) The SABS shall pay to its employees such remuneration, allowances, subsidies and other benefits as the council may determine, in accordance with a system approved by the Minister, with the concurrence of the Minister of State Expenditure, as such system is amended from time to time.

(2) The council may from time to time, on such conditions and against such security as it may deem fit-

(a) provide collateral security, including guarantees, to a registered financial institution in respect of a loan granted to an employee of the SABS by that financial institution, to enable the employee to acquire, improve or enlarge immovable property for residential purposes;

(b) build, cause to be built, purchase or rent houses, flats, flat

buildings or other similar dwelling units for occupation by employees, and may sell or let those houses, flats or dwelling units to employees, or otherwise dispose of, let or otherwise deal with those houses, flats, flat buildings or dwelling units;

- (c) establish, institute, erect or maintain sports and recreation facilities, social clubs, social and health services, car parking facilities, creches and pre-school centres, restaurants, hostels, bursary schemes for purposes of study or other similar undertakings or schemes which in its opinion may be beneficial to its employees, and may for this purpose utilize part of its assets;
- (d) establish motor vehicle schemes for employees of the SABS; and
- (e) grant a loan to an employee-
 - (i) for the purposes of study by that employee;
 - (ii) which may be used by that employee for such purposes as the council may determine, provided that such purposes shall be in the interest of the SABS; or
 - (iii) for any other purpose up to an amount of not more than the monthly salary due to that employee after deductions.

(3) The council may, on such conditions as it may deem fit, second an employee temporarily to a State department, the government of another country or territory, an institution or a person in or outside the Republic, provided that-

- (a) such an employee consents to such secondment; and
- (b) such an employee's rights, privileges and benefits by virtue of his conditions of service as an employee of the SABS are not adversely affected by such secondment.

Financing

12. (1) The funds of the SABS shall consist of-

- (a) money appropriated by Parliament;
- (b) money obtained by virtue of the provisions of this Act or any other law;
- (c) money, donations, interest, dividends, royalties, rent or contributions received from any source;
- (d) money obtained by the SABS in terms of section 4(1)(b);
- (e) the proceeds from the sale of shares, and from dividends on shares held by the SABS, in any company or other juristic person referred to in section 4(1)(g); and
- (f) revenue obtained from the sale of-
 - (i) publications prepared by the SABS, including publications in which a standard is contained;

(ii) other publications which are relevant to the objects of the SABS;

(iii) reference material; and

(iv) any assets of the SABS.

(2) (a) The council-

(i) shall in each financial year, at a time determined by the Minister, submit a statement of the estimated income and expenditure of the SABS during the following financial year, and

(ii) may at any time during a financial year submit supplementary statements of the estimated income and expenditure of the SABS for that financial year, to the Minister for his approval, granted with the concurrence of the Minister of State Expenditure.

(b) The SABS shall not incur expenses which may result in the total amount approved under paragraph (a) being exceeded.

(3) The SABS shall utilize its funds for defraying expenses in connection with the performance of its functions and the exercise of its powers in accordance with the statements referred to in subsection (2)(a): Provided that the SABS-

(a) may utilize any amount or portion of an amount required to be so utilized for a particular purpose in connection with a specified matter, for any other purpose in connection with the performance of its functions;

(b) may carry forward any balance of such funds remaining at the end of the financial year concerned, to its next financial year for defraying any expenses in connection with the performance of its functions; and

(c) shall, notwithstanding the provisions of paragraphs (a) and (b), utilize any donations or contributions referred to in subsection (1)(c) in: accordance with the conditions, if any, imposed by the donor or contributor concerned.

(4) The SABS may, notwithstanding the provisions of subsection (3)(b), invest any unexpended portion of its funds with a financial institution approved by the Minister with the concurrence of the Minister of Finance.

(5) The SABS may establish such reserve funds and deposit therein such amounts as the Minister with the concurrence of the Minister of State Expenditure may approve: Provided that the particulars of the reserve funds shall be reflected in the annual report.

Accounting officer

13. (1) In addition to the other functions and duties entrusted to him by this Act, the president shall be the accounting officer charged with the responsibility of accounting for all money received, the utilization

thereof and the use and care of the property of the SABS.

(2) The accounting officer shall cause such records of account to be kept as are necessary to represent fairly the state of affairs and business of the SABS and to explain the transactions and financial position of the business of the SABS.

Auditing and annual report

14. (1) The Auditor-General shall audit the books of accounts, accounting statements and annual financial statements of the SABS.

(2) The council shall-

- (a) furnish to the Minister such information as he may call for from time to time in connection with the activities and financial circumstances of the SABS; and
- (b) as soon as practicable after the end of each financial year submit to the Minister an annual report on the affairs and functions of the SABS in respect of that financial year which shall, inter alia, include a statement of income and expenditure and a balance sheet certified by the Auditor-General and such further particulars as the Minister may require.

(3) The Minister shall table the annual report referred to in subsection (2) (b) in Parliament-

- (a) within 14 days after receipt thereof, if Parliament is in ordinary session; or
- (b) if Parliament is not in ordinary session, within 14 days of the commencement of its next ensuing ordinary session.

Recovery of loss and damage

15. (1) If the accounting officer is convinced that a person who is or was in the employment of the SABS has caused the SABS any loss or damage because he-

- (a) failed to collect money due to the SABS and for the collection of which he is or was responsible;
- (b) is or was responsible for an irregular payment of money of the SABS or for a payment of such money not supported by a proper voucher;
- (c) is or was responsible for a deficiency in, the destruction of or damage to money, stamps, face value documents and forms of the SABS having a potential value, securities, equipment, stores or other property of the SABS
- (d) is or was responsible for a claim against the SABS, or the fruitless expenditure of money of the SABS due to an omission to carry out his duties or due to exceeding his powers,

the accounting officer shall determine the amount of such loss or damage, and may order that person, by notice in writing, to pay to the SABS, within

30 days from the date of such notice, the whole or any part of the amount so determined.

(2) If a person who is in the employment of the SABS and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice concerned, the amount shall, subject to the provisions of subsections (4) and (5), be recovered from his monthly salary: Provided that such deduction shall not in any month exceed a fourth of his monthly salary.

(3) (a) If a person who was in the employment of the SABS and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice concerned, the accounting officer may, subject to the provisions of paragraph (b) and subsections (4) and (5), recover the amount from the person concerned by legal process.

(b) If any money is due by the SABS to a person referred to in paragraph (a), the amount referred to in that paragraph shall, subject to the provisions of subsections (4) and (5), be deducted from the amount thus due.

(4) If a person who has in terms of subsection (1) been ordered to pay an amount, offers, within the period stipulated in the notice concerned, to pay the amount in instalments, the accounting officer may allow him to pay in such instalments and on such conditions as the accounting officer may consider reasonable.

(5) A person who has in terms of subsection (1) been ordered to pay an amount, may-

(a) within a period of 30 days from the date of such order appeal in writing against such order to the council, stating the grounds for his appeal, and the council may, after such investigation as it may deem necessary, dismiss the appeal, or order that the appellant be exempted, either wholly or partly, as the council may deem fair and reasonable, from the payment of such amount, or

(b) apply within a period of 30 days from the date of such order, or within such further period as the court may allow, to a competent court for an order setting aside such first-mentioned order or reducing such amount and the court may upon such an application, if it is not convinced by the accounting officer on the merits of the case that the order was rightly made or that the amount is correct, make an order setting aside such first-mentioned order or reducing that amount, as the case may be.

Standards

16. (1) The council shall publish by notice in the Gazette the norm which the SABS uses to set or amend a standard.

(2) The SABS shall as far as possible ensure that in the setting or amendment of a standard-

(a) the norm referred to in subsection (1) is maintained;

(b) the latest technological development is considered; and

(c) the interests of all parties concerned, including the manufacturer, supplier and consumer, are considered.

(3) (a) The SABS may-

- (i) set and issue as a standard a specification, code of practice or standard method;
- (ii) amend a set standard; or
- (iii) withdraw a set standard.

(b) A standard may be set merely by referring to a provision which occurs-

- (i) in any other standard set by the SABS; or
- (ii) in a document in the nature of a specification, code of practice or standard method issued by a foreign or international body having objects similar to any object of the SABS and which it deems fit to issue as a standard for the purposes of this Act.

(4) (a) The council may in any manner make known the setting and issue of a standard, and any amendment or withdrawal thereof.

(b) If a standard or an amendment thereof is made known in terms of paragraph (a) by notice in the Gazette, it shall be sufficient if the notice concerned-

- (i) states the title and number of the standard; and
- (ii) contains a resume of the scope and purport of that standard or the amendment thereof.

(5) (a) Subject to the provisions of the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990), or the Liquor Products Act, 1989 (Act No. 60 of 1989), no person shall issue a document which creates or may create the impression that it contains a standard as contemplated in this Act, unless it is issued in terms of this Act.

(b) If the Agricultural Product Standards Act, 1990, or the Liquor Products Act, 1989, applies to a commodity, a standard in respect of such commodity shall only be set or amended in accordance with the terms and conditions of an agreement entered into by the council and the Director-General: Agriculture.

(6) The control over the use or application of codes of practice or any category of codes of practice which have been set and issued as a standard shall be as prescribed.

(7) The SABS may levy fees-

- (a) in respect of the setting and issue of a standard;
- (b) in respect of services rendered in connection with the control over the use or application of codes of practice or any category of codes of practice which have been set and issued as a standard; and

(c) in regard to the participation in any scheme operated by the SABS.

(8) At the commencement of this Act a specification referred to in section 13, a code of practice referred to in section 18, a standard method referred to in section 19 or a document referred to in section 19(4) of the Standards Act, 1982 (Act No. 30 of 1982), which is in force in terms of the provisions of that Act, shall be deemed to be a standard which has been set and issued in terms of the provisions of this Act.

(9) If a provision referred to in subsection (3)(b) is amended any reference to that provision shall be construed as a reference to the provision as amended.

Copyright in standards and publications

17. (1) Notwithstanding the provisions in any other law contained-

- (a) the copyright in a standard or a publication issued by the council shall vest in the SABS; and
- (b) the SABS shall not be deprived of the copyright referred to in paragraph (a) if a standard, or a provision of such standard, or any publication issued by the SABS, is incorporated in a law in terms of section 31(1)(a) or the provisions of any other law.

(2) No person shall, without the authorization of the SABS, in any manner or in any form publish, reproduce or record any document or part thereof in respect of which the copyright vests in the SABS in terms of subsection (1): Provided that any person may at any time make a copy of such document or part thereof for his own use.

Establishment of marks

18. (1) The Minister may, subject to the provisions of subsection (2) and on the recommendation of the council, by notice in the Gazette establish, alter or abolish-

- (a) certification marks;
- (b) marks of proof;
- (c) marks of authenticity; and
- (d) distinctive marks.

(2) A mark shall not be established as a mark in terms of subsection (1) if such mark is registered as a trade mark in terms of the provisions of any law with regard to the registration of trade marks or so closely resembles such a mark as to be likely to be mistaken for it.

(3) A mark which has been established as a mark in terms of subsection (1) or so closely resembles such a mark as to be likely to be mistaken for it, shall not be registered as a trade mark under any law with regard to the registration of trade marks.

(4) A mark which has been established in terms of subsection (1) shall be deemed to be a mark the use of which is absolutely prohibited in terms

of section 15(1) of the Merchandise Marks Act, 1941 (Act No. 17 of 1941), except by the SABS or its mandatories.

(5) At the commencement of this Act a standardization mark referred to in section 14(1) of the Standards Act, 1982 (Act No. 30 of 1982), which is in force in terms of the provisions of that Act, shall be deemed to be a certification mark.

Mark specification

19. (1) (a) The council may, subject to the provisions of section 20(1), by notice in the Gazette determine that a certification mark may be applied to a commodity falling within the scope of a specific specification which has been set and issued as a standard.

(b) The notice referred to in paragraph (a) shall contain a resume of the scope and purport of the specification concerned.

(2) (a) Upon the publication in the Gazette of a notice referred to in subsection (1)(a), the specification concerned shall become a mark specification.

(b) If a specification which has been set and issued as a standard, is amended in terms of section 16(3)(a)(ii), the specification concerned as amended shall, for the purposes of subsection (1)(a), be deemed to be the mark specification.

(3) At the commencement of this Act a standard specification referred to in section 15(1) of the Standards Act, 1982 (Act No. 30 of 1982), which is in force in terms of the provisions of that Act, shall be deemed to be a mark specification.

Application of certification mark

20. (1) (a) A certification mark shall only be applied or used in a manner authorized by this Act.

(b) No person shall apply a certification mark to a commodity except under a mark permit issued in terms of section 25 and unless that commodity complies with or has been manufactured in accordance with the relevant mark specification.

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

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

the relevant mark specification.

(3) (a) If a certification mark is altered in terms of section 18(1), the SABS may authorize the continued use of that certification mark as it existed prior to the alteration thereof on such conditions, including conditions regarding the withdrawal of the authorization, as it may deem expedient in the particular instance.

(b) A certification mark referred to in paragraph (a) shall, during the period of the continued use thereof, be deemed to be a certification mark which has not been so altered by the Minister.

(4) (a) The SABS may-

(i) subject to the conditions it deems necessary, grant permission to a person entitled under a mark permit to apply a certification mark to a commodity, to apply to the commodity concerned a code mark approved by the SABS in lieu of that certification mark; and

(ii) for the purpose of the application of a code mark referred to in subparagraph (i), suspend or amend any condition to which the issue of the said mark permit is subject.

(b) The code mark referred to in paragraph (a)(i) shall be deemed to be a certification mark.

Limitations on certain claims

21. (1) No person shall in connection with the sale of a commodity refer directly or indirectly to the SABS or the council in a manner or under circumstances likely to create the impression that such commodity has been approved by the SABS or the council, unless such commodity complies with or has been manufactured in accordance with a mark specification and such person has under a mark permit applied the relevant certification mark to such commodity.

(2) No person shall claim or declare that he or any other person complied with a standard unless-

(a) such claim or declaration is true and accurate in all material respects; and

(b) the identity of that person or of the person on whose authority such claim or declaration is made, is clear.

(3) The SABS may in connection with any claim or declaration referred to in subsection (2) evaluate, examine, test or analyse any article to confirm the truthfulness or accuracy of such claim or declaration and, in the event of its proving false or inaccurate, the person by whom the claim or declaration was made, shall be liable for the payment of the full cost incurred by the SABS in regard to such evaluation, examination, test or analysis.

(4) The provisions of subsection (3) shall not be construed as preventing any person from evaluating, examining, testing or analysing any article in order to determine whether any claim or declaration referred to in subsection (2) is true and accurate.

(5) Notwithstanding the provisions of subsection (1)-

- (a) a trader may advertise or otherwise make known the fact that a certification mark has been applied to a commodity sold by him provided that he mentions or displays the trade name or trade mark of that commodity at the same time in the advertisement or notification concerned;
- (b) any person required to make a statement in a contract, tender, quotation or other similar document as to the question whether any commodity offered or supplied by him complies with or has been manufactured in accordance with a particular mark specification, may make such a statement, but only if such statement is correct and he confirms that statement in an affidavit or affirmation; and
- (c) any person may advertise or otherwise make known the fact that he has used a commodity to which a certification mark has been applied in an installation or in a process of manufacture, provided that he mentions or displays the trade name or trade mark of that commodity at the same time in the advertisement or notification concerned.

Compulsory specifications

22. (1) (a) The Minister may, subject to the provisions of subsections (3)(a) and (5) and after the expiry of the period referred to in subsection (3)(b), on the recommendation of the council and to promote and maintain standardization and quality if safety, health, consumer protection or the environment is concerned, by notice in the Gazette-

- (i) declare a specification which has been set and issued as a standard or a provision of such specification, to be a compulsory specification;
- (ii) amend a compulsory specification; or
- (iii) withdraw a compulsory specification.

(b) The notice referred to in subsections (1)(a)(i) and (ii) shall contain full particulars of such specification, provision or amendment.

(2) (a) A declaration referred to in subsection (1)(a)(i) or an amendment referred to in subsection (1)(a)(ii) shall come into operation on a date fixed in the notice, which date shall be not less than two months after the date of the publication of such notice.

(b) Different dates may be fixed in terms of paragraph (a) on which different provisions of a compulsory specification shall come into operation.

(c) The Minister may alter a date referred to in paragraph (a) or (b) by notice in the Gazette.

(3) If the Minister intends to publish a notice under subsection (1)(a)(i) or (ii), he shall publish in the Gazette a preliminary notice-

- (a) in which full particulars are set out of the specification or the provision of the specification he intends to declare to be a

compulsory specification, or of the amendment of a compulsory specification; and

- (b) in which all interested persons are invited to lodge objections to the proposed notice he intends to publish, or any part thereof, in writing at a stated address and before a stated date, which shall be not less than two months after the date of the publication of such preliminary notice.

(4) The Minister shall consult with the Minister to whom the administration of any other law has been assigned if that law, or the regulations promulgated thereunder, lays down or may lay down requirements in respect of a commodity or the manufacture thereof which is the subject of a preliminary notice referred to in subsection (3)(a).

(5) The Minister shall not publish a notice referred to in subsection (1)(a)(i) or (ii) if in his opinion such a notice differs materially from the preliminary notice concerned.

(6) The Minister may by notice in the Gazette-

- (a) determine that a commodity that complies with a compulsory specification shall be marked in the prescribed manner with an appropriate distinctive mark;
- (b) determine the requirements regarding the marking of a commodity in accordance with its origin, batch, date of manufacture, characteristics or other particulars of a commodity falling within the scope of a compulsory specification and which a manufacturer or importer shall indicate on that commodity;
- (c) amend a requirement referred to in paragraph (b); and
- (d) withdraw a notice referred to in paragraph (a), (b) or (c).

(7) (a) At the commencement of this Act a compulsory specification referred to in section 16(1)(a) of the Standards Act, 1982 (Act No. 30 of 1982), which is in force in terms of the provisions of that Act, shall be deemed to be a compulsory specification for the purposes of this Act.

(b) At the commencement of this Act a requirement referred to in section 16(1)(c) of the Standards Act, 1982, which is in force in terms of the provisions of that Act, shall be deemed to be a requirement determined under subsection (6)(b)

(8) The Minister may, in order to give effect to the provisions of subsections (1)(a) and (6), publish only one notice in the Gazette.

Effect of declaration as compulsory specification and application of distinctive mark

23. (1) (a) No person shall sell a commodity to which a compulsory specification applies, unless-

- (i) such a commodity complies with or has been manufactured in accordance with the compulsory specification concerned; and
- (ii) if applicable, the distinctive mark referred to in section

22(6)(a) has been applied to the commodity concerned in the prescribed manner as set out in the notice concerned, and such commodity has been marked in accordance with the requirements referred to in section 22(6)(b).

(b) The provisions of section 20(2) shall mutatis mutandis apply to the application of a distinctive mark to a commodity.

(c) The SABS may issue a sales permit exempting the person to whom it has been issued from the provisions of paragraph (a).

(2) The prescribed records shall be kept by the seller, manufacturer or importer in respect of sales, or quantities manufactured or imported, of a commodity to which a compulsory specification applies.

(3) The prescribed fees shall be payable to the SABS by a manufacturer or importer of a commodity to which a compulsory specification applies.

(4) A commodity to which a compulsory specification applies and which is manufactured outside the Republic shall be deemed to comply with the provisions of subsection (1)(a) if that commodity has been certified by a person or organization recognized by the Minister by notice in the Gazette: Provided that if the Minister so directs, such a commodity shall be tested or examined and if it is found that that commodity does not comply with the provisions of subsection (1)(a)(i), it may be dealt with in terms of section 24(3).

Non-compliance with compulsory specification

24. (1) If the president upon reasonable grounds suspects that a commodity, excluding a commodity referred to in section 23(4), or a consignment or batch thereof does not comply with or has not been manufactured in accordance with the compulsory specification that applies to it, he may direct a person in whose possession or under whose control that commodity, consignment or batch is, to keep it in his possession or under his control, at or upon premises mentioned in the directive, until the said directive is withdrawn by the president in writing.

(2) (a) If a certificate referred to in section 4(2) has not been issued in respect of a consignment of a commodity to which a compulsory specification applies and which has been imported into the Republic, the Commissioner of Customs and Excise may, subject to the provisions of paragraph (b), cause that consignment to be secured at the request of the president until the president withdraws his request.

(b) For the purposes of paragraph (a) the provisions of the Customs and Excise Act, 1964 (Act No. 91 of 1964), with regard to the securing of goods, shall mutates mutandis apply.

(3) If it is found by the SABS, or as a result of a test or examination referred to in section 23(4), as the case may be, that a commodity referred to in subsection (1) or (2) does not comply with the compulsory specification concerned, the Minister may direct in writing that-

(a) an importer of the consignment concerned of the said commodity return it to the country of origin;

(b) the consignment or batch concerned of the said commodity be

confiscated and destroyed; or

- (c) the consignment or batch concerned of the said commodity be dealt with in such other manner as may be stated in the directive.

Permits

25. (1) An application for a mark permit or a sales permit shall be made to the SABS and shall be accompanied by the fees determined by the SABS.

(2) The SABS may-

- (a) issue a mark permit or sales permit for an indefinite period or for a fixed period subject to such conditions as it may deem necessary;
- (b) withdraw or, subject to such conditions as it may deem necessary, suspend a permit referred to in paragraph (a), or terminate the suspension of such permit.

(3) The holder of a permit which has been withdrawn in terms of subsection (2)(b), or which has expired due to effluxion of time or any other cause, shall, at the written request of the SABS, forthwith return that permit to the SABS.

Right to appeal to Minister

26. (1) (a) Any person who feels himself aggrieved by a decision of the SABS to refuse to issue to him a permit mentioned in section 25(2)(a), or to withdraw or suspend any of those permits issued to him, may appeal to the Minister in the prescribed manner and within the prescribed period.

(b) The Minister shall in the case of an appeal in terms of paragraph (a), confirm, amend or set aside the decision of the SABS.

(2) A decision of the SABS in terms of section 25(2)(b) to withdraw or suspend a permit, shall not be suspended and shall not lapse by reason of an appeal in terms of subsection (1) by such person against that decision.

Marks of proof and marks of authenticity

27. (1) The application by a person authorized thereto by regulation of a mark of proof or mark of authenticity to an article in accordance with its characteristics, including its nature, quality, strength, purity, composition, quantity, dimensions, mass, grade, durability, origin or age, whichever may be applicable, or the material or substance from or with which or the manner in which it has been manufactured, shall be as prescribed.

(2) No person shall sell or otherwise alienate any article on which a mark of proof or a mark of authenticity may be applied in terms of subsection (1), unless that mark has been applied to the article by the SABS or a person authorized thereto in writing by the SABS.

(3) The SABS may levy fees for the application to an article of a mark of proof or a mark of authenticity by or on behalf of the SABS.

Inspectors and auditors

28. (1) (a) The council may in general or for a specific purpose-

- (i) appoint a suitably qualified employee as an inspector; or
- (ii) appoint a person, institution or organization as an auditor for the purposes of this Act.

(b) The council may withdraw an appointment referred to in paragraph (a).

(c) An inspector or auditor shall be furnished with a certificate stating that he has been appointed in general or for a specific purpose as an inspector or auditor, as the case may be, for the purposes of this Act.

(d) The certificate referred to in paragraph (c) shall be signed by the president.

(e) The council may pay to an auditor the compensation agreed upon by the council and the auditor concerned.

(2) An inspector or auditor may, subject to the provisions of his appointment, for the purposes of this Act-

(a) at any time during working hours and without prior notice enter any premises in or upon which-

- (i) there is an article in respect of which a compulsory specification certification mark, mark of proof or mark of authenticity is in force,
- (ii) a manufacturing process or action in accordance with a provision of a standard is executed or is suspected to be executed
- (iii) there is or was an article in respect of which the impression has been created that it complies with or has been manufactured in accordance with a mark specification or a compulsory specification, while such article in the opinion of the SABS does not comply with or has not been manufactured in accordance with such mark specification or compulsory specification;
- (iv) the records with regard to the manufacture or sale of an article referred to in subparagraph (i), (ii) or (iii) are kept;

(b) examine and take samples of an article referred to in paragraph (a)(i) or any component, material or substance in or upon the premises concerned used or suspected to be intended for use in the manufacture of such an article, and open and examine any package or container in or upon those premises which contains or is suspected to contain such an article or such a component, material or substance;

(c) examine any operation or process carried on in or upon the premises referred to in paragraph (a) in connection with the manufacture of any article, if a compulsory specification, certification mark,

mark of proof or mark of authenticity is in force for or with regard to such manufacture;

- (d) at any time demand from any person that he there and then or at a time and place fixed by the said inspector or auditor produce to him any book, notice, record, list or other document which is in the possession or 1 custody or under the control of that person or any other person on his behalf;
- (e) examine a book, notice, record, list or other document referred to in paragraph (d) and make copies thereof or extracts therefrom or request that they be made, if it relates to an article referred to in paragraph (a)(i) 2 or to a permit referred to in section 25(2), and require from a person referred to in paragraph (d) an explanation of any record or entry therein, and seize such a book, notice, record, list or other document if in his opinion it may afford evidence of any offence in terms of this Act;
- (f) with regard to any matter which he is investigating, question any person whom he finds in or upon the premises referred to in paragraph (a) or whom he on reasonable grounds suspects to be or to have been employed in or upon such premises or to have possession or custody of or control over anything referred to in this subsection; and
- (g) order a person referred to in paragraph (d) or (f) to appear before him at a time and place fixed by him, and at that time and place question that person with regard to any matter which is being investigated by him.

(3) An inspector or auditor entering any premises referred to in subsection (2)(a) may take an interpreter with him.

(4) Any person who is in charge of premises referred to in subsection (2) shall at all reasonable times furnish such assistance as an inspector or auditor may require in the exercise of his powers under that subsection.

(5) An inspector or auditor exercising a power assigned to him by subsection (2) shall on demand of any person affected by the exercise of that power, produce the certificate referred to in subsection (1)(c) to that person.

(6) An auditor may check any relevant document of a manufacturer or importer of a commodity in respect of which a compulsory specification is in force to determine whether that manufacturer or importer has paid the prescribed fees referred to in section 23(3).

Samples and information

29. (1) Notwithstanding anything to the contrary in this Act contained, any person who-

- (a) manufactures any commodity and is entitled under a mark permit to apply a certification mark to such a commodity;
- (b) manufactures or sells any commodity for which or the manufacture of which a compulsory specification is in force;

- (c) manufactures or sells any article in respect of which a mark of proof or mark of authenticity is in force; or
- (d) performs an act or carries out a process in which a commodity referred to in paragraph (a), (b) or (c) is involved,

shall at the written request of the SABS, within a period stated in the request, at his own cost-

- (i) transmit to the SABS such samples as may be specified in the request, of the article concerned for examination, testing or analysis; or
- (ii) furnish to the SABS such information as may be so specified with regard to the article concerned or its manufacture.

(2) (a) The SABS may examine, test or analyse a sample obtained in terms of this Act in order to determine whether the article, component, material or substance concerned complies with, or has the characteristics or has been manufactured in accordance with, the requirements of any provision applicable in terms of this Act.

(b) If any sample obtained in terms of this Act is damaged or destroyed during the process of examining, testing or analysing such sample, the SABS shall not be liable for the damage to or destruction of that sample.

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

Restriction on use of word "standard"

30. (1) (a) Subject to the other provisions of this section and except with the written consent of the Minister-

- (i) no person shall under a name containing the word "standard"-
 - (aa) conduct his affairs or business or carry on his occupation or trade; or
 - (bb) be registered or licensed under any law;
- (ii) no mark containing the word "standard" shall be registered as a trade mark under any law with regard to the registration of trade marks; and
- (iii) no person shall sell any commodity under a mark which contains the word "standard" or under a description in which the said word is used in a manner likely to create the impression that that commodity complies with or has been manufactured in accordance with a mark specification unless a certification mark has been applied to such a commodity in accordance with section 20(1).

(b) The Minister may at any time withdraw the consent given by him in terms of paragraph (a) if he deems it necessary to avoid confusion or abuse.

(2) Any person who immediately prior to the commencement of the Standards Act, 1982 (Act No. 30 of 1982), lawfully conducted his affairs or business, carried on his occupation or trade, or was registered or licensed under any law, under a name containing the word "standard", may notwithstanding the provisions of subsection (1) (a) (i) continue to conduct his affairs or that business or carry on that occupation or trade, or remain so registered or licensed, under that name.

(3) Any trade mark registered at the commencement of the Standards Act, 1982, and the sale of any commodity under such a trade mark, shall not be affected by the provisions of subsection (1)(a)(ii).

Incorporation of standards in laws

31. (1) (a) If a standard has been published in the Gazette, such standard or a provision of such standard may be incorporated in any law by a mere reference to the title and number thereof.

(b) If a standard or a provision of such standard has been incorporated in any law in terms of paragraph (a) and that standard or provision is amended in terms of section 16(3)(a)(ii), the amended standard or provision shall be deemed to be so incorporated.

(2) A State department, local authority or other institution or body responsible for or involved in the administration of a standard or provision so incorporated shall keep available for free inspection at each of its offices where or from where the administration of that standard or provision is undertaken, a copy, issued by the SABS, of the full text of-

(a) the standard concerned and every amendment thereof; and

(b) every standard or document referred to in section 16(3)(b) the whole or a part of which appears in a standard referred to in paragraph (a), and every amendment thereof.

(3) (a) Criminal prosecution may only be instituted against a person on a charge of having contravened or failed to comply with a provision so incorporated if the State department, local authority or other institution or body referred to in subsection (2) has in every case furnished to the attorney-general or public prosecutor concerned a copy issued by the SABS, of each relevant standard or document which he shall in terms of the said subsection keep available for free inspection.

(b) The standard or document referred to in paragraph (a) shall on the mere production thereof be prima facie proof of the contents of the standard concerned or an amendment thereof.

(4) At the commencement of this Act a provision incorporated in terms of 1 section 33(1) of the Standards Act, 1982 (Act No. 30 of 1982), and the incorporation of which is still in force, shall be deemed to be incorporated in terms of subsection (1)(a).

Secrecy

32. (1) Any person who is or was concerned in the performance of any function in terms of this Act, shall not disclose any information which he obtained in the performance of such a function except-

- (a) to the Minister;
- (b) to any person who of necessity requires it for the performance of his functions in terms of this Act;
- (c) if he is a person who of necessity supplies it in the performance of his functions in terms of this Act;
- (d) such information which is required in terms of any law or as evidence in any court of law;
- (e) to any competent authority which requires it for the institution, or an investigation with a view to the institution, of any criminal prosecution; or
- (f) by or on the authority of the Minister, the chairman or the president.

(2) Notwithstanding the provisions of subsection (1), the disclosure of any information in connection with an invention shall not prejudice the rights of the SABS or any other person to obtain a patent in respect of such an invention.

Inventions by staff members and other persons

33. (1) (a) If any invention is made-

- (i) by an employee in the course of or in connection with the performance of his functions;
- (ii) by a person while following a course of study with the assistance, whether financial or otherwise, of the SABS; or
- (iii) by a person assisting the SABS with any investigation or research, the rights in respect of that invention shall vest in the SABS unless the SABS and the employee or person concerned have entered into a written agreement that the rights to the invention vest in the employee or person concerned or in that employee or person and the SABS jointly.

(b) In the absence of an agreement referred to in paragraph (a), the SABS shall be deemed to be the sole inventor.

(2) If the rights in respect of an invention vest solely in the SABS, the SABS may make such invention available for use in the public interest subject to such conditions as the council may determine.

(3) The SABS may pay to an employee or person referred to in subsection (1) (a) money or royalties or, with the approval of the Minister granted with the concurrence of the Minister of State Expenditure, provide for financial participation by such employee or person in the profit obtained as a result of the use of an invention referred to in subsection (1)(a).

(4) The SABS may apply for a patent in respect of an invention referred to in subsection (1) if an agreement in terms of that subsection has not been entered into, and shall for the purpose of the Patents Act, 1978 (Act No. 57 of 1978), be regarded as the cessionary of the invention concerned.

Offences and penalties

34. (1) Any person who-

- (a) contravenes or fails to comply with any provision of this Act, or any directive, order, condition, requirement, determination or request made thereunder;
- (b) refuses or fails to pay any money levied under this Act;
- (c) falsely represents any material or substance to be reference material supplied by the SABS;
- (d) falsely holds himself out to be an inspector, or to be an auditor for the purposes of this Act;
- (e) makes any relevant statement to an inspector or auditor which is false in any material respect, knowing it to be false;
- (f) refuses or fails to answer to the best of his knowledge any relevant question which an inspector or auditor has in the exercise of his powers put to him;
- (g) refuses or fails to comply to the best of his ability with any lawful requirement, demand or order of an inspector or auditor; or
- (h) hinders or obstructs an inspector or auditor in the exercise of his powers,

shall be guilty of an offence.

(2) Any person who is convicted of an offence in terms of this Act shall-

- (a) in the case of a first conviction of an offence referred to in subsection (1)(a) read with section 3(i), 16(5), 17(2), 20(1), (3)(a) or (4)(a), 23(1)(a) or (2), 24(1), 25(2)(a) or (b) or 27(2) be liable to a fine, or to imprisonment for a period not exceeding two years;
- (b) in the case of a second or subsequent conviction of an offence mentioned in paragraph (a), whether it be the same or some other offence mentioned in that paragraph, be liable to a fine, or to imprisonment for a period not exceeding four years;
- (c) in the case of a first conviction of an offence referred to in subsection (1)(a) read with section 25(3), 29(1), 30(1)(a)(i)(aa) or (a)(iii) or 32(1), or an offence referred to in subsection (1)(b) to (h), be liable to a fine, or to imprisonment for a period not exceeding one year;
- (d) in the case of a second or subsequent conviction of an offence mentioned in paragraph (c), whether it be the same or some other offence mentioned in that paragraph, be liable to a fine, or to imprisonment for a period not exceeding two years; and
- (e) in the case of an offence referred to in subsection (1)(a) read

with any other provision of this Act which is not mentioned in paragraphs (a), (b), (c) or (d), be liable to a fine, or to imprisonment for a period not exceeding one year.

(3) A court convicting any person of an offence in terms of this Act may, in addition to any penalty imposed in respect of that offence-

(a) and subject to the provisions of subsection (4), order that a commodity, a consignment or batch of a commodity, any other article, or any material or substance in respect of which that offence was committed, be forfeited; and

(b) summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence and impose on that person a fine to a maximum equal to the amount so assessed and, in default of payment, imprisonment for a period not exceeding one year.

(4) (a) The Minister shall, subject to the provisions of paragraph (b), generally or in a particular case determine the manner in which the forfeited goods referred to in subsection (3)(a) shall be dealt with.

(b) Section 35(4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall apply mutatis mutandis in the case of a forfeiture referred to in subsection (3) (a)

(5) Notwithstanding anything to the contrary in any other law contained, a magistrate's court shall be competent to impose any penalty provided for in this Act.

(6) No person shall be convicted of an offence referred to in section 20(1) or (3), 23(1), 24(1), 25(2)(a) or (b), 27(2) or 32(1), if it is proved that he-

(a) took all reasonable precautions against committing the offence concerned; and

(b) at the request of the SABS, an inspector or an auditor furnished all information relating to the facts and attendant circumstances in connection with any act or omission constituting the alleged offence and which he should reasonably have at his disposal.

Disclosure of certain information to protect consumer

35. (1) The president may, notwithstanding the provisions of section 32, if he is of the opinion that it is necessary in the public interest and to protect the consumer, reveal in any manner-

(a) any information which in his opinion is necessary to prevent the public from being misled concerning any aspect regulated by this Act;

(b) the fact that the use of an article is dangerous to the consumer; or

(c) the name of a person who in his opinion does not comply with or does not comply fully with a provision of this Act or any aspect regulated by this Act.

(2) The disclosure referred to in subsection (1) may include the trade name and trade mark of a commodity.

Presumption

36. If it is necessary for the purposes of this Act to determine the importer of an article, it shall be presumed, unless the contrary is proved, that the person who is indicated on the documents concerning the import transaction as the importer, is or was the importer of that article.

Regulations

37. (1) The Minister may, after consultation with the council, make regulations, not inconsistent with the provisions of this Act, regarding any matter which in terms of this Act is required or permitted to be prescribed and, generally, regarding any matter in respect of which he deems it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) The power to make regulations in terms of subsection (1) shall include the power conditionally or unconditionally to restrict or prohibit any matter referred to in that subsection and to grant exemptions from, or to allow deviations with regard to, the payment of the prescribed fees.

(3) Different regulations which differ in the respects deemed expedient by the Minister, may, subject to the provisions of this Act, be made under subsection (1) in respect of different areas in the Republic or different commodities.

(4) A regulation made under subsection (1) may in respect of any contravention thereof or failure to comply therewith, prescribe a penalty which, in the case of a first conviction, shall not exceed a fine of R 4000 or imprisonment for a period of one year or both that fine and that imprisonment, and, in the case of a second or subsequent conviction, a fine of R8 000 or imprisonment for a period of two years or both that fine and that imprisonment.

Levying of interest

38. (1) The SABS may levy interest in respect of money payable to it but which has not yet been paid, from a date on which such money became payable, except in respect of money payable by the State.

(2) The rate at which interest referred to in subsection (1) shall be calculated, shall be the rate which is determined from time to time in terms of section 26(1) of the Exchequer Act, 1975 (Act No. 66 of 1975), and which is applicable on the date on which the money referred to in subsection (1) is paid.

Delegations

39. (1) The council may, subject to such conditions as it may impose-

(a) in writing delegate to the chairman, the president or a committee referred to in section 9(1) (a) any power conferred upon the council by or under this Act or any other law; or

(b) in writing authorize the chairman, the president or a committee referred to in section 9(1)(a) to perform any duty assigned to the council by or under this Act or any other law.

(2) The president may, subject to such conditions as he may impose-

(a) delegate a power to an employee; or

(b) authorize an employee to perform a duty, which has been-

(i) delegated or assigned to the president under subsection (1), unless the council has in the delegation or assignment concerned determined otherwise; or

(ii) conferred or imposed on the president by this Act or any other law.

(3) The council or the president, as the case may be, shall not be divested of any power delegated under subsection (1) or (2), as the case may be, by it or him, and may amend or withdraw any decision made in the exercise of such delegated power.

Certain acts not interpreted as assurances or guarantees

40. The fact that anything has been done under this Act by the Minister, the SABS, the council, a member of the council, a committee referred to in section 9(1) (a) or a member of such committee, the president or an employee of the SABS in connection with any article, material, substance, act or matter, shall not be interpreted as an assurance or a guarantee of any nature in respect of that article, material, substance, act or matter.

Limitation of liability

41. The State, the Minister, the SABS, the council, a member of the council, a committee referred to in section 9(1)(a) or a member of such committee, the president or an employee of the SABS shall not be liable in respect of anything done under this Act in good faith and without negligence.

Repeal of laws, and savings

42. (1) Subject to the provisions of subsection (2), the Standards Act, 1982 (Act No. 30 of 1982), and the Standards Amendment Act, 1984 (Act No. 50 of 1984), are hereby repealed.

(2) Any proclamation, regulation, notice, order, prohibition, authorization, appointment, permission, information or document made, issued, imposed, granted or given and any other action taken under any provision of a law repealed under subsection (1), shall be deemed, if applicable, to have been made, issued, imposed, granted, given or taken under the corresponding provision of this Act.

Short title and commencement

43. This Act shall be called the Standards Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.