

SPECIAL ISSUE

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CONTENT

Act—	PAGE
The Standards (Amendment) Act, 2004.....	227

THE STANDARDS (AMENDMENT) ACT, 2004

No. 7 of 2004

Date of Assent: 31st December, 2004

Date of Commencement: By Notice

AN ACT of Parliament to amend the Standards Act to provide for a Standards Tribunal, the making of orders to destroy goods in certain cases and certain other matters

ENACTED by the Parliament of Kenya as follows:-

Short title and commencement.

1. This Act may be cited as the Standards (Amendment) Act, 2004 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Amendment of section 2 of Cap. 496.

2. Section 2 of the Standards Act is amended by inserting the following new definition after the definition of "standardization mark": -

"Tribunal" means the Standards Tribunal established under section 16A.

Amendment of section 10B of Cap. 496.

3. Section 10B of the Standards Act is amended by inserting the following new subsection after subsection (4): -

(5) Any person who is aggrieved by an act or decision under a standards levy order may appeal in writing to the Tribunal.

Replacement of section 11 of Cap. 496.

4. The Standards Act is amended by deleting section 11 and substituting therefor the following new section: -

Appeals.

11. Any person who is aggrieved by a decision of the Bureau or the Council may within fourteen days of the notification of the act complained of being received by him, appeal in writing to the Tribunal.

Amendment of
section 14 of
Cap. 496.

5. Section 14 of the Standards Act is amended by inserting the following new subsection after subsection (4): –

(5) In this section –

Cap. 472. “premises” includes an aircraft, vehicle or vessel, all within the meaning of section 2 of the Customs and Excise Act.

Insertion of
section 14A
into Cap. 496.

6. The Standards Act is amended by inserting the following new section after section 14: –

Order that
goods be
destroyed.

14A.(1) An inspector may order the destruction of goods detained under section 14(1) if the following conditions are satisfied:–

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

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

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

(4) Any person who is aggrieved by an order under subsection (1) may, within fourteen days of the notice of the order under subsection (3), appeal in writing to the Tribunal.

(5) An order under subsection (1) shall not be carried out until the time for appealing to the Tribunal has expired and, if the order is appealed, the order shall not be carried out until the Tribunal has dealt with the appeal.

Cap. 472.

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

(7) No inspector shall be personally liable for making an order under subsection (1) in good faith.

(8) No person shall be personally liable for carrying out an order under subsection (1) in good faith.

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

(10) For the purposes of carrying out

his duties under the Act, every inspector shall have the powers, rights and privileges specified in section 14 and the protection of a police officer.

(11) An inspector who-

- (a) directly or indirectly solicit for, or receives in connection with any of his duties, a payment or other reward whatsoever, whether pecuniary or otherwise, or a promise or security for any such payment or reward not being a payment or reward which he is lawfully entitled to claim; or
- (b) enters into any agreement to do, abstain from doing, permit, conceal or connive at any act whereby the Bureau is or may be defrauded, or which is contrary to the provisions of this Act or the proper execution of the duty of that officer; or
- (c) discloses, except for the purposes of this Act or when required to do so as a witness in a court of law or with the approval of the Director, information acquired by him in the performance of his duties relating to a person, firm or business of any kind; or
- (d) uses his position to improperly enrich himself or others.

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

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

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

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

Conditional release

14B(1) An inspector may order the conditional release of goods to a manufacturer, importer, possessor, dealer or seller or his agent pending the testing of the samples of goods to determine whether they comply with the relevant Kenya Standard.

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

(3) Where the goods are released under subsection (1) or retained under subsection (2), the inspector shall ensure that the samples are tested and the results thereof released to the manufacturer, importer, possessor, dealer, seller or agent within fourteen days after the testing period of such samples.

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

(5) Where the goods fail to comply with the relevant Kenya Standard, they shall be destroyed in accordance with Section 14A.

(6) Any person who removes, sells, uses, disposes off, re-exports, damages, wastes, destroys or in any manner deals with the goods specified in subsection (2) before the release of the results shall be guilty of an offence.

(7) Goods of a perishable nature shall not be subject to conditional release

Amendment of
section 15 of
Cap. 496.

7. Section 15(1) of the Standards Act is amended -

- (a) by deleting the words "five hundred thousand" and substituting therefor the words "one million";
- (b) by deleting the words "twenty thousand" and substituting therefor the words "one hundred thousand".

Insertion of
Part IVA into
Cap. 496.

8. The Standards Act is amended by inserting the following new Part after section 16: -

PART IVA – STANDARDS TRIBUNAL

Establishment
of Tribunal.

16A.(1) The Standards Tribunal is hereby established.

(2) The Tribunal shall consist of a Chairman and four other members, appointed by the Minister.

(3) To be appointed as the Chairman, a person must have one of the following qualifications: -

- (a) the person must be an advocate of at least seven years' standing; or
- (b) the person must have been a judge of the High Court.

(4) Of the four members of the Tribunal appointed under subsection 2, one person shall be a person with knowledge and experience in matters relating to customs and excise, and the other three members shall be persons with knowledge and experience in matters relating to standardisation.

(5) No member of the Council or employee of the Bureau may be appointed as a member of the Tribunal.

(6) The Minister shall appoint a legal officer from the Attorney-General's Chambers to be the secretary to the Tribunal.

(7) The Chairman and members of the Tribunal shall serve for a term of five years and shall be eligible for re-appointment.

(8) The Minister may terminate the appointment of the Chairman or any member of the Tribunal if a tribunal appointed under this section finds that the Chairman or member of the Tribunal:-

- (a) is unable to perform the functions of his office by reason of a mental or physical infirmity;

No.4 of 2003

- (b) has been involved in corruption as defined in the Anti-Corruption and Economic Crimes Act; or
- (c) has been declared bankrupt;

(9) The Council may request the Minister to appoint a conduct tribunal if in the Council's opinion the Chairman or member of the Tribunal:-

No.4 of 2003

- (a) is unable to perform the functions of his office by reason of a mental or physical infirmity; or
- (b) is involved in corruption as defined by the Anti-Corruption and Economic Crimes Act.

(10) Upon receiving a request under subsection (9) -

- (a) the Minister may suspend the Chairman or member of the Tribunal pending the final resolution of the matter; and
- (b) shall appoint a conduct tribunal of three persons one of whom the Minister shall designate as chairman.

(11) Each member of the Conduct Tribunal shall be a person qualified to be appointed as a judge of the High Court.

(12) The Conduct Tribunal shall conduct an inquiry into the matters specified in subsection (9), in accordance with such procedures as the conduct tribunal may determine and in accordance the rules of natural justice.

(13) Within thirty days after concluding its inquiry, the Conduct Tribunal shall publicly announce its findings and reasons thereof, and submit a report to the Minister.

Remuneration
and
allowances of
members.

16B. The Minister shall pay the members of the Tribunal such remuneration and allowances as the Minister determines.

Powers on
appeal.

16C. Upon an appeal under this Act, the Tribunal may confirm, set aside or vary the decision or act in question and may make such other order as the Tribunal considers appropriate, including an order with respect to the payment of costs.

Reference to
Tribunal

16D.(1) If a matter appears to involve a point of law or to be of unusual importance or complexity the Director may refer the matter to the Tribunal for a general direction.

(2) The Director shall give notice of the reference to any party to the matter and that party shall be entitled to be heard by the Tribunal.

(3) The Bureau and the Director shall be bound by the directions of the Tribunal on a reference, subject to any appeal to the High Court.

Appointment
of expert
advisors.

16F.(1) The Chairman of the Tribunal may appoint an advisor from a panel of persons with expert knowledge in matters relating to standards to assist in the *determination* of a matter before the Tribunal.

(2) No member of the Council or employee of the Bureau may be appointed as an advisor.

Appeal from
Tribunal to
Court

16G. A party to proceedings before the Tribunal may appeal the decision of the Tribunal to the High Court.

Procedure of
Tribunal

16H.(1) The Minister may make rules for regulating the practice and procedure of the Tribunal.

(2) Subject to the rules made under subsection (1), the Tribunal may regulate its own procedure.