

REPUBLIC OF SOUTH AFRICA

NATIONAL REGULATOR FOR COMPULSORY SPECIFICATIONS BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 30351 of 8 October 2007)
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 47—2007]

ISBN 978-1-77037-044-9

No. of copies printed 1 800

BILL

To provide for the establishment of the National Regulator for Compulsory Specifications of South Africa; to provide for the appointment of the Board of the National Regulator; to provide for the administration and maintenance of compulsory specifications in the interests of public safety and health or for environmental protection; and to provide for matters connected therewith.

PREAMBLE

WHEREAS it is desirable to—

- **PROMOTE** the rights and obligations of government to protect the health and safety of the public and the environment;
- **ESTABLISH** the National Regulator for Compulsory Specifications of South Africa to be responsible for the administration and maintenance of compulsory specifications and the implementation of a regulatory and compliance system for compulsory specifications; and
- **PROVIDE** for market surveillance by the National Regulator in order to ensure compliance with the compulsory specifications and to provide for sanctions for non-compliance to compulsory specifications,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

TABLE OF CONTENTS

Sections

INTERPRETATION AND PURPOSE OF ACT		5
1.	Definitions	
2.	Purpose of Act	
ESTABLISHMENT OF NATIONAL REGULATOR FOR COMPULSORY SPECIFICATIONS OF SOUTH AFRICA AS PUBLIC ENTITY		
3.	Establishment of National Regulator	10
4.	Powers of National Regulator	
5.	Objects of National Regulator	
BOARD OF NATIONAL REGULATOR FOR COMPULSORY SPECIFICATIONS OF SOUTH AFRICA		
6.	Appointment of members and Chairperson of Board of National Regulator	15
7.	Term of office	
8.	Disqualification	
9.	Conditions of appointment	
10.	Operating procedures of Board	

11. Committees
12. Advisory Forum

COMPULSORY SPECIFICATIONS

13. Compulsory specifications
14. Effect of declaration as compulsory specification 5
15. Non-conformance to compulsory specification
16. Appointment of market surveillance inspectors
17. Powers of entry
18. Identification prior to entry and co-operation with inspectors
19. Powers to question and do market surveillance inspections 10
20. Samples and information

EXECUTIVE MANAGEMENT

21. Appointment of Chief Executive Officer
22. Employment contract and performance agreement
23. Appointment of staff 15
24. Services by non-employees
25. Delegation and assignment

FINANCIAL MANAGEMENT

26. Funding and investments
27. Application of Public Finance Management Act 20
28. Financial year and accounting

GENERAL PROVISIONS

29. Disclosure of certain information in public interest
30. Presumption
31. Certain acts not interpreted as assurances or guarantees 25
32. Confidentiality of certain information
33. Liability of National Regulator
34. Offences and penalties
35. Transitional provisions
36. Regulations 30
37. Short title and commencement

INTERPRETATION AND PURPOSE

Definitions

1. In this Act, unless the context indicates otherwise—
 - “**amendment**”, with regard to a compulsory specification, includes the complete 35 or partial substitution of one or more of the provisions of a compulsory specification;
 - “**Board**” means the Board of the National Regulator for Compulsory Specifications appointed in terms of section 6;
 - “**commodity**” includes any substance or any element or characteristic of a 40 commodity or a category or system of commodities;
 - “**compulsory specification**” means a compulsory specification contemplated in section 13;
 - “**conformity assessment**” means the procedure used to determine, directly or indirectly, that the relevant requirement in technical regulations, standards or any 45 other relevant and validated documentation has been fulfilled;
 - “**distinctive mark**” means a mark prescribed in terms of this Act which is applied to a commodity;
 - “**examine**” means to inspect or analyse a product or service closely in order to determine compliance of the product or service with the requirements of a 50 compulsory specification;

- “**importer**” means an importer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964);
- “**inspector**” means a person appointed as an inspector in terms of section 16(1);
- “**issue**” with regard to a compulsory specification, includes making available by means of electronic, photographic or another medium; 5
- “**letter of authority certificate**” means a letter of authority issued to a manufacturer or importer in terms of section 5(2)(f);
- “**manufacture**” includes produce, assemble, alter, modify, adapt, convert, process or treat;
- “**market surveillance inspection**” means any activity of the National Regulator, other than testing, concerned with determining, either directly or indirectly, whether any or all of the requirements of a compulsory specification are met; 10
- “**Minister**” means the Minister responsible for trade and industry;
- “**National Regulator**” means the National Regulator for Compulsory Specifications of South Africa established by section 3(1); 15
- “**premises**” means any land or any building or other structure, and includes any train, boat, ship, aircraft or other vehicle;
- “**prescribed**” means prescribed by regulation or notice in terms of this Act;
- “**product**” means any commodity that is manufactured or any agricultural product, including fish and fish products; 20
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “**regulation**” means a regulation made under section 36;
- “**SABS**” means the South African Bureau of Standards;
- “**sales permit**” means a permit issued under section 14(4); 25
- “**SANS**” means a South African National Standard approved by the South African Bureau of Standards in accordance with the Standards Act, 2007;
- “**sell**” includes—
- (i) display, offer or advertise for sale; or
 - (ii) export from the Republic for or in pursuance of a sale; 30
 - (iii) having in possession for the purposes of sale, trade, manufacture or export from the Republic;
 - (iv) exchange, donate, lease or offer or display for leasing;
- “**system**”, with regard to a commodity, means a system which is designed to achieve a particular purpose or to perform a specific function; 35
- “**this Act**” includes a regulation made under section 36.

Purpose of Act

2. The purpose of the Act is—
- (a) to provide a legal framework for the administration and maintenance of compulsory specifications in the interests of public safety and health or for environmental protection in the Republic; and 40
 - (b) to establish the National Regulator to administer compulsory specifications.

ESTABLISHMENT OF NATIONAL REGULATOR AS PUBLIC ENTITY

Establishment of National Regulator as public entity

3. (1) The National Regulator is hereby established as a public entity. 45
- (2) The National Regulator is a juristic person and must operate and perform its functions in accordance with this Act.
- (3) The establishment of the National Regulator does not affect the validity of any action taken by the SABS prior to the commencement of this Act.

POWERS AND OBJECTS OF NATIONAL REGULATOR 50

Powers of National Regulator

4. (1) The National Regulator may do all that is necessary or expedient to perform its functions, including—

- (a) acquiring or disposing of property or any right in respect thereof, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister in concurrence with the Minister of Finance;
 - (b) opening and operating banking accounts in the name of the National Regulator; 5
 - (c) investing any of the money of the National Regulator;
 - (d) insuring the National Regulator—
 - (i) against any loss, damage or risk; or
 - (ii) against any liability it may incur in the application of this Act;
 - (e) performing legal acts, including acts in association with or on behalf of any other person or organ of state; 10
 - (f) subject to subsection (2), concluding agreements with organs of state and other persons; or
 - (g) instituting or defending any legal action.
- (2) An agreement concluded in terms of subsection (1)(f) may not conflict with any international requirement that is binding on the National Regulator. 15

Objects of National Regulator

5. (1) The objects of the National Regulator are to—
- (a) make recommendations to the Minister with regard to compulsory specifications; 20
 - (b) administer and maintain compulsory specifications;
 - (c) carry out market surveillance through inspection in order to monitor compliance with compulsory specifications; and
 - (d) enforce compliance with compulsory specifications.
- (2) In order to achieve its objects, the National Regulator may— 25
- (a) acquire and maintain the equipment required for market surveillance inspection purposes;
 - (b) inform the South African commerce, industry and the public about compulsory specifications;
 - (c) establish and maintain the necessary expertise on an internationally acceptable level; 30
 - (d) obtain membership of, participate in or develop relationships with, foreign or international bodies having any objects similar to those of the National Regulator;
 - (e) perform, in so far as it is not contrary to or inconsistent with any Act, such functions as the Minister may assign to the National Regulator; 35
 - (f) issue a letter of authority certificate which—
 - (i) permits commodities or products to be sold or services to be supplied; and
 - (ii) prescribes records to be kept in respect of— 40
 - (aa) sales or supplies;
 - (bb) quantities manufactured or imported;
 - (cc) conformity of production or supply; or
 - (dd) any combination of such records;
 - (g) obtain the cooperation of government departments, local authorities or other public bodies, and enter into agreements with them; 45
 - (h) enter into agreements with conformity assessment services providers to inspect, examine, test or analyse samples on behalf of the National Regulator; and
 - (i) establish specialist consultative committees to provide input into the process to interpret and implement compulsory specifications. 50

BOARD OF NATIONAL REGULATOR FOR COMPULSORY SPECIFICATIONS

Appointment of members and chairperson of Board of National Regulator

6. (1) The Board consists of not less than ten, and not more than 13 members, and is made up as follows: 55
- (a) The Chief Executive Officer of the National Regulator by virtue of his or her office;

- (b) the rest of the members, who are non-executive members and are appointed by the Minister.
- (2) When appointing the members of the Board, the Minister must ensure that such members—
 - (a) are broadly representative of the demographics of the country; and 5
 - (b) have sufficient knowledge, experience or qualifications relating to the functions of the National Regulator and the responsibilities of the Board.
- (3) The Minister must designate a member of the Board as chairperson.

Term of office

- 7. (1) Non-executive members of the Board hold office for a period not exceeding five years and are eligible for reappointment. 10
- (2) A person appointed to fill a vacancy holds office for the remaining portion of the term of the vacating member.
- (3) A member of the Board may resign by giving at least one month's written notice.

Disqualification 15

- 8. (1) A person may not be appointed or continue to serve as a member of the Board if he or she—
 - (a) is an unrehabilitated insolvent;
 - (b) has at any time been convicted of an offence involving dishonesty;
 - (c) has, as a result of improper conduct, been removed from an office of trust; or 20
 - (d) has been declared by a court to be mentally ill or unfit.
- (2) A member of the Board must vacate his or her office if he or she is absent from three consecutive meetings of the Board without the prior leave of the chairperson.
- (3) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may at any time after consulting the Board terminate the term of office of 25 any member of the Board if there are good reasons for doing so.

Conditions of appointment

- 9. (1) The conditions of appointment of members of the Board who are not in the employ of an organ of state, are determined by the Minister, after consultation with the Minister of Finance. 30
- (2) The conditions of appointment may include remuneration and any allowance payable by the Board.
- (3) Members who are employed by an organ of state are not entitled to remuneration, or any allowance, but must be reimbursed for out-of-pocket expenses by the Board.

Operating procedures of Board 35

- 10. (1) The Board must meet at least four times a year.
- (2) The chairperson of the Board decides when and where the Board will meet, but a majority of Board members may request the chairperson in writing to convene a meeting at a time set out in the request.
- (3) If the chairperson and the vice-chairperson are absent from a meeting, the Board may elect a member from among their number to preside at that meeting. 40
- (4) A majority of the members of the Board constitutes a quorum for a meeting of the Board.
- (5) Decisions of the Board require the supporting vote of a majority of members present at a meeting. 45
- (6) The Board must keep minutes of its proceedings and decisions.
- (7) The Board may, by resolution, make rules to further regulate its proceedings.

Committees

- 11. (1) The Board may establish committees to assist it in the performance of its functions. 50
- (2) The Board must determine the composition, rules and procedures of committees established in terms of this section.
- (3) The Board may from time to time dissolve or reconstitute a committee.

(4) Any decision taken by a committee established under this section must be ratified by the Board.

Advisory Forum

12. (1) The Board must establish an Advisory Forum with a balance of interests consisting of representatives of organisations who have an interest in the matters contemplated in this Act. 5

(2) The Advisory Forum must advise the Board on—

- (a) matters in respect of which the National Regulator could play a role; and
- (b) any other matter on which the Board requests advice.

(3) The Board must establish a constitution and, if necessary, rules for the Advisory Forum. 10

COMPULSORY SPECIFICATIONS

Compulsory specifications

13. (1) The Minister may, on the recommendation of the Board, in respect of any commodity, product or service which may affect public safety, health or the environment, by notice in the *Gazette*— 15

(a) declare a SANS or a provision of a SANS to be a compulsory specification—

- (i) by referring to the title and the number of that standard only, without indicating the year or edition number, and if that SANS is amended, the amended SANS is deemed to have been incorporated; or 20
- (ii) by referring to the title, number and year or edition number of that SANS;

(b) declare an amended SANS or an amended provision of a SANS to be a compulsory specification if the original declaration was made in terms of subsection (1)(a)(ii); 25

(c) declare or amend a compulsory specification if a SANS or a provision of a SANS is not available; or

(d) withdraw a compulsory specification.

(2) A notice under subsection (1)(a), (b) or (c)—

- (a) must contain full particulars of the specification, provision or amendment; 30
- (b) comes into operation on a date fixed in the notice, which date may not be less than two months after the date of publication of the notice;
- (c) may fix different dates on which different provisions of a compulsory specification come into operation.

(3) The Minister may alter a date referred to in subsection 2(b) or (c) by notice in the *Gazette*. 35

(4) The Minister may not publish a notice under subsection (1)(a), (b) or (c), unless a preliminary notice has been published in the *Gazette*—

- (a) setting out full particulars of the proposed compulsory specification or amendment; and 40
- (b) in which interested persons are invited to comment on the proposed compulsory specification in writing by not less than two months after the date of the publication of the preliminary notice.

(5) The Minister must consult with the Minister responsible for administering any Act or regulations that regulate the import, sale or supply of any commodity, product or service, or any process, that is the subject of a preliminary notice in terms of subsection (4)(a). 45

(6) A notice under subsection (1)(a), (b) or (c) may—

- (a) require that a commodity or product to which a compulsory specification applies be marked in the prescribed manner with a distinctive mark, which constitutes a declaration of conformity to the requirements of a compulsory specification; 50
- (b) require that importers and manufacturers label a commodity or product to which a compulsory specification applies in accordance with its origin, batch, date of manufacture, characteristics or other particulars of the article; 55
- (c) require that importers and manufacturers be in possession of a letter of authority certificate issued by the National Regulator, in terms of section 5(2)(f);

- (d) amend a requirement referred to in paragraph (b); and
 - (e) withdraw a requirement referred to in paragraph (a), (b), (c) or (d).
- (7) The Minister may give effect to subsections (1) and (6) in the same notice.

Effect of declaration as compulsory specification

- 14.** (1) No person may import, sell or supply a commodity, product or service to which a compulsory specification applies, except in accordance with that specification. 5
- (2) No person may import, sell or supply a commodity, product or service to which a compulsory specification applies, unless—
- (a) the commodity, product or service complies with, or has been manufactured in accordance with, the compulsory specification, or both; and 10
 - (b) if applicable, the distinctive mark referred to in section 13(6)(a) has been applied to the commodity, product or service in the prescribed manner and the commodity, product or service has been marked in accordance with any requirements in terms of section 13(6)(b).
- (3) Any person who imports, sells or supplies a commodity, product or service to which a compulsory specification applies, must— 15
- (a) keep such records as may be prescribed in the compulsory specification in respect of sales or supplies, or quantities manufactured or imported, or of conformity of production;
 - (b) pay such fees to the National Regulator as may be prescribed by the Minister after consultation with the Minister of Finance. 20
- (4) The National Regulator may issue a sales permit exempting the person to whom it has been issued from complying with subsection (2)(a).
- (5) The National Regulator may issue a permit exempting the person to whom it has been issued from complying with subsection (2)(a) for an experimental type approval commodity or product to which a compulsory specification applies. 25
- (6) The Minister may make regulations in terms of section 36 to set criteria for the issuing of a sales permit contemplated in subsection (5).

Non-conformance to compulsory specification

- 15.** (1) If the Chief Executive Officer on reasonable grounds suspects that a commodity or product, or a consignment or batch of a commodity or product, does not conform to or has not been manufactured in accordance with a compulsory specification that applies to it, the Chief Executive Officer may issue a directive to ensure that any person who is in possession or control of the commodity or product, consignment or batch, keeps it in his or her possession or under his or her control at or on any premises specified in the directive, and does not tamper with or dispose of it, until the directive is withdrawn by the Chief Executive Officer in writing. 30 35
- (2) The Minister may make regulations in terms of section 36 to set time limits for the withdrawal of the directive referred to in subsection (1).
- (3) If the National Regulator finds that a commodity or product referred to in subsection (1) does not conform to the compulsory specification concerned, the Board may— 40
- (a) take action to ensure the recall of a commodity or product;
 - (b) direct in writing that the importer of the consignment returns it to its country of origin; or 45
 - (c) direct in writing that the consignment or batch of the article concerned be confiscated, destroyed or dealt with in such other manner as the Board may consider fit.
- (4) The Board must inform the Minister in writing on action taken in terms of subsection (3) within 21 days. 50

Appointment of market surveillance inspectors

- 16.** (1) In order to ensure compliance with this Act, the Chief Executive Officer may in general or for a specific purpose appoint suitably qualified employees of the National Regulator as inspectors.
- (2) The Chief Executive Officer may withdraw an appointment referred to in subsection (1). 55

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

(4) The certificate referred to in subsection (3) must be signed by the Chief Executive Officer.

5

Powers of inspector to enter, inspect, search and seize

17. (1) In order to monitor and enforce compliance with this Act and, subject to the conditions of his or her appointment, an inspector may at any reasonable time and without prior notice enter any premises, other than a private dwelling, in or upon which—

10

- (a) an article in respect of which there is a compulsory specification is—
 - (i) manufactured or sold;
 - (ii) stored or used in the course of any business; or
 - (iii) stored for any purpose in connection with the import or export of the commodity or product;
- (b) any manufacture, sale, use or storage is reasonably suspected; or
- (c) any records with regard to the import, manufacture or sale of an article referred to in paragraph (a) or (b) are kept.

15

(2) An inspector may enter a private dwelling or any place other than a place referred to in subsection (1) only—

20

- (a) with the consent of the owner or occupier; or
- (b) if authorised to do so by a warrant issued in terms of subsection (3).

(3) A warrant contemplated in subsection (2) may be issued by a judge or a magistrate if it appears from written information given by the inspector on oath or affirmation that there are reasonable grounds for believing that a contravention of this Act has been or is being committed within the area of jurisdiction of that judge or magistrate.

25

(4) The warrant contemplated in subsection (3) must specify the parameters within which the inspector may perform an entry, search or seizure.

(5) An inspector entering any premises referred to in subsections (1) and (2) may be accompanied by an interpreter.

30

(6) An inspector who enters and inspects any premises under this section must conduct the entry and inspection with strict regard for decency and order, and with regard to each person's right to dignity, freedom, security and privacy;

(7) An inspector who removes anything from premises being searched, must—

- (a) issue a receipt for it to the owner or person in control of the premises; and
- (b) return it as soon as practicable after it has served the purpose for which it was removed.

35

Identification prior to entry and co-operation with inspectors

18. (1) An inspector must immediately before entering premises in accordance with section 17—

40

- (a) audibly identify himself or herself and demand admission to the premises;
- (b) notify the person in control of the premises of the purpose of the entry, unless there are reasonable grounds to believe that such notification might defeat the purpose of the search; and
- (c) on request of the person in charge of such premises, produce the certificate referred to in section 16(3) to that person.

45

(2) Any person who is in charge of premises referred to in section 17(1) and (2) must at all reasonable times co-operate with and furnish such assistance as an inspector may require in the exercise of his or her powers under this Act.

(3) In the event of resistance to an entry and search, an inspector may call the police to use such force as is reasonably necessary, including the breaking of a door or window of the premises.

50

Powers to question and do market surveillance inspections

19. (1) In order to monitor and enforce compliance with this Act, an inspector may—

- (a) examine and take samples of an article referred to in section 17(1) 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;

55

- (b) open and examine the contents of any package or container which contains or is suspected to contain an article referred to in section 17(1) 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;
 - (c) examine any operation or process carried out in or upon the premises referred to in section 17(1) in connection with the manufacture or supply of any commodity, product or service, for which a compulsory specification is applicable in terms of this Act; 5
 - (d) at any time demand from any person that he or she at a time and place fixed by the inspector produce to him or her any book, notice, record, list or other document which is in the possession or custody or under the control of that person or any other person on his or her behalf; 10
 - (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 section 17(1)(a) or (b); 15
 - (f) require from a person in charge of any records referred to in section 17(1)(c) an explanation of any record or entry therein, and seize such record if it may afford evidence of any offence in terms of this Act;
 - (g) require any person who is the owner or in control of the premises referred to in section 17(1) to appear at a time and place fixed by the inspector, and question that person with regard to any matter which the inspector is investigating; or 20
 - (h) examine any relevant document of a manufacturer or importer of a commodity, or product or the supplier of a service 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 14(3)(b). 25
- (2) A person questioned by an inspector conducting an investigation in terms of this section must answer each question truthfully and to the best of his or her ability.
- (3) No self-incriminating answer given or statement made to an inspector is admissible as evidence in criminal proceedings against the person who gave the answer or made the statement. 30

Samples and information

- 20.** (1) Notwithstanding anything to the contrary in this Act, any person who imports, sells or supplies any commodity or product or supplies any service for which a compulsory specification is in force, must at the written request of the National Regulator, within a period stated in the request, and at that person's own cost— 35
- (a) submit, or make available, to the National Regulator any sample as may be specified in the request, for examination, testing or analysis; or
 - (b) furnish to the National Regulator such information as may be specified with regard to the article concerned or its manufacture or the service supplied; and 40
 - (c) comply with the sampling requirements of the compulsory specification that is in force.
- (2) The National Regulator may examine any sample obtained in terms of this Act, or have it tested or analysed, in order to determine whether the article, component, material or substance concerned complies with or has the characteristics of or has been manufactured in accordance with the requirements of any compulsory specification applicable in terms of this Act. 45
- (3) If any sample obtained in terms of this Act is damaged or destroyed during the process of examining, testing or analysing such sample, the National Regulator is not liable for the damage to or destruction of that sample, except where the damage is due to negligence of the National Regulator. 50
- (4) The result of any examination, test or analysis of any sample of a commodity, product manufactured or service supplied in respect of which a compulsory specification is in force, is regarded to be valid for the whole consignment or batch from which the sample was obtained or to the similar services by the supplier, until the contrary is proved, or unless otherwise specified in the compulsory specification that is in force. 55

EXECUTIVE MANAGEMENT

Appointment of Chief Executive Officer

- 21.** (1) The Board, with the concurrence of the Minister, must appoint a suitably qualified person as the Chief Executive Officer.
- (2) The Chief Executive Officer is an employee of the National Regulator and is accountable to the Board. 5
- (3) The Chief Executive Officer is responsible for the efficient management of the National Regulator and must perform any function assigned or delegated to him or her by the Board.
- (4) The Chief Executive Officer holds office for an agreed term not exceeding five years and may be reappointed upon the expiry of that term of office. 10
- (5) If the Chief Executive Officer is unable to fulfil his or her functions, the Board must appoint an acting Chief Executive Officer to exercise the powers and perform the functions of the Chief Executive Officer.

Employment contract and performance agreement 15

- 22.** (1) The Board must conclude a written performance agreement with the Chief Executive Officer—
- (a) within a reasonable time after the appointment of the Chief Executive Officer; and
- (b) thereafter, annually within one month of the commencement of each financial year. 20
- (2) The performance agreement must include—
- (a) measurable performance objectives and targets that must be met, and must provide for the time-frames within which those performance objectives and targets must be met; 25
- (b) standards and procedures for evaluating performance and intervals for evaluation; and
- (c) the consequences of substandard performance.
- (3) The employment contract of the Chief Executive Officer must incorporate in an appropriate form section 57 of the Public Finance Management Act. 30

Appointment of staff

- 23.** (1) The Chief Executive Officer may, after consultation with the Board, appoint staff to assist the National Regulator in carrying out its functions.
- (2) The Minister may, after consultation with the Minister for the Public Service and Administration and the Minister of Finance— 35
- (a) approve a human resource policy for the National Regulator;
- (b) approve the remuneration, allowances, benefits and other terms and conditions of appointment of members of staff, taking into account the Public Service Act, 1994 (Proclamation No. 103 of 1994).

Services by non-employees 40

- 24.** The National Regulator may contract for the services of any person, other than an employee, to perform any specific act or function.

Delegation and assignment

- 25.** (1) The Board may delegate or assign any of its powers and duties to the Chief Executive Officer in accordance with this section. 45
- (2) The Chief Executive Officer may delegate any power or assign any duty conferred or imposed upon the Chief Executive Officer by or under this Act to—
- (a) any other person with appropriate knowledge and experience who is under the control of the Chief Executive Officer; or
- (b) any other person, after consulting the Board. 50
- (3) A delegation or assignment under subsections (1) and (2) must be in writing and—
- (a) may be subject to any conditions or restrictions determined by the Board or the Chief Executive Officer;

- (b) does not prevent the exercise of that power or the performance of that duty by the Board or the Chief Executive Officer; and
- (c) may be withdrawn or amended by the Board or the Chief Executive Officer.

FINANCIAL MANAGEMENT

Funding and investments 5

- 26.** (1) The funds of the National Regulator consist of—
- (a) moneys appropriated by Parliament for that purpose;
 - (b) income derived by the National Regulator from its investments;
 - (c) fees charged in terms of section 14(3)(b); and
 - (d) money received from any other source. 10
- (2) The National Regulator may invest any of its funds not immediately required—
- (a) subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act; and
 - (b) in such manner as may be approved by the Minister in consultation with the Minister of Finance. 15

Application of Public Finance Management Act

- 27.** (1) The National Regulator is a national public entity and must comply with the Public Finance Management Act.
- (2) For the purposes of the Public Finance Management Act—
- (a) the Board is the accounting authority as contemplated by section 49(2)(a) of that Act; 20
 - (b) the Minister is the executive authority as contemplated by section 52 of the Public Finance Management Act; and
 - (c) any delegation or assignment of the Board's powers and duties must be in accordance with section 56 of the Public Finance Management Act. 25

Financial year and accounting

- 28.** The financial year of the National Regulator is from 1 April in any year to 31 March in the following year, except that the first financial year of the National Regulator begins on the date that this Act comes into operation, and ends on 31 March next following that date. 30

GENERAL PROVISIONS

Disclosure of certain information in public interest

- 29.** (1) The Chief Executive Officer may, notwithstanding section 32, if it is necessary in the public interest, reveal—
- (a) any information which he or she considers necessary to prevent the public from being misled concerning any aspect regulated by this Act; 35
 - (b) the fact that a commodity is not in compliance with a compulsory specification; or
 - (c) the name of a person who does not comply with or does not comply fully with a provision of this Act or any aspect regulated by this Act. 40
- (2) The disclosure referred to in subsection (1) may include the trade name and trade mark of a commodity or product.

Presumption

- 30.** If it is necessary for the purposes of this Act to determine the importer of an article, the person who is indicated on the documents concerning the import transaction as the importer is, in the absence of evidence to the contrary which raises reasonable doubt, presumed to be the importer of that article. 45

Certain acts not interpreted as assurances or guarantees

31. The fact that anything has been done under this Act by the Minister, the National Regulator, the Board, a member of the Board, a committee referred to in section 11 or a member of such committee, the Chief Executive Officer or an employee of the National Regulator in connection with any article, material, substance, act or matter, may not be interpreted as an assurance or a guarantee of any nature in respect of that article, material, substance, act or matter. 5

Confidentiality of certain information

32. Any person who is or was concerned in the performance of any function in terms of this Act, may not disclose any information which he or she obtained in the performance of such a function, except— 10

- (a) to the Minister;
- (b) to any person who of necessity requires it for the performance of his or her functions in terms of this Act;
- (c) if he or she is a person who of necessity supplies it in the performance of his or her functions in terms of this Act; 15
- (d) if such information is required in terms of any law or as evidence in any court of law; or
- (e) to any competent authority which requires it for the institution, or an investigation with a view to the institution, of any criminal prosecution. 20

Liability of National Regulator

33. (1) The State Liability Act, 1957 (Act No. 20 of 1957), applies in respect of the National Regulator, and in such application a reference in that Act to a Minister of a department must be construed as a reference to the Chief Executive of the National Regulator. 25

(2) No person is liable for anything done or omitted in good faith when performing a function in terms of this Act.

Offences and penalties

34. (1) A person is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year if that person— 30

- (a) contravenes or fails to comply with section 14(1), 19(2) or 20(1)(a), (b) or (c);
- (b) fails to keep a commodity or product or consignment or batch in his or her possession or under his or her control at or on specified premises as contemplated in section 15(1);
- (c) tampers with or disposes of a commodity or product or consignment or batch in contravention of a directive issued under section 19(1)(g); 35
- (d) fails to co-operate and furnish assistance to an inspector as contemplated in section 18(2);
- (e) fails to appear before an inspector for questioning as contemplated in section 19(1)(g); 40
- (f) discloses any information in contravention of section 32;
- (g) falsely represents any material or substance to be reference material supplied by the National Regulator;
- (h) falsely holds himself or herself out to be an inspector for the purposes of this Act; 45
- (i) makes any relevant statement to an inspector which is false in any material respect, knowing it to be false;
- (j) refuses or fails to answer to the best of his or her knowledge any relevant question which an inspector has in the exercise of his or her powers put to him or her; 50
- (k) refuses or fails to comply to the best of his or her ability with any lawful requirement, demand or order of an inspector; or
- (l) hinders or obstructs an inspector in the exercise of his or her powers.

(2) If any person is again convicted of an offence in terms of this Act, whether it be for the same or some other offence, that person is for the second or subsequent conviction liable to a fine or imprisonment for a period not exceeding four years. 55

- (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 or 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 to the State; and 5
 - (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. 10
- (4) The Board must generally or in a particular case determine the manner in which the forfeited goods referred to in subsection (3)(a) shall be dealt with.
- (5) Section 35(4) of the Criminal Procedure Act, 1977 (Act 51 of 1977), applies with the necessary changes in the case of a forfeiture referred to in subsection (3)(a). 15
- (6) Notwithstanding anything to the contrary in any other law contained, a magistrate's court is competent to impose any penalty provided for in this Act.

Transitional provisions

- 35.** (1) For purposes of this section, "effective date" means the date on which the National Regulator is established as a public entity. 20
- (2) As from the effective date:
- (a) All assets, liabilities, rights and obligations of the regulatory department of SABS are transferred to the National Regulator;
 - (b) all employees of SABS employed in the regulatory department are transferred to the National Regulator in terms of section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995); 25
 - (c) all notices, designations and certificates issued in terms of the Standards Act, 1993 (Act No. 29 of 1993), in respect of any matter dealt with in this Act are deemed to have been issued in terms of this Act; and
 - (d) all regulations promulgated in terms of the Standards Act, 1993 (Act No. 29 of 1993), in respect of any matter dealt with in this Act are deemed to have been issued in terms of this Act. 30
- (3) For the purposes of the application of subsection (2), the Minister may with the concurrence of the Minister of Finance, make a binding written determination—
- (a) that an asset, liability, right or obligation is an asset, liability, right or obligation of the Regulatory Department of the SABS; 35
 - (b) that an employee of the SABS is employed in the regulatory department of the SABS.
- (4) A compulsory specification referred to in section 22 of the Standards Act, 1993 (Act No. 29 of 1993), which is in force in terms of the provisions of that Act immediately before the commencement of this Act, is deemed to be a compulsory specification declared in terms of this Act. 40
- (5) If a compulsory specification contemplated in subsection (4) is amended in terms of this Act, any reference to that compulsory specification must be construed as a reference to the compulsory specification as amended. 45
- (6) Any notice issued in terms of section 22(6)(a) to (c) of the Standards Act, 1993 (Act No. 29 of 1993), which is in force at the commencement of this Act, is deemed to be a notice issued in terms of section 13(6) of this Act.

Regulations

- 36.** (1) The Minister may, after consultation with the Board, make regulations, that are not inconsistent with this Act— 50
- (a) regarding any matter that may or must be prescribed in terms of this Act;
 - (b) regulating—
 - (i) the criteria for the issuing of a sales permit; or
 - (ii) time limits for the withdrawal of directives issued by the Chief Executive Officer; and 55
 - (c) regarding any other ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) The power to make regulations under subsection (1) includes 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 contemplated in section 14(3)(b).

(3) Regulations which differ in such respects as may be necessary in the circumstances may, subject to the provisions of this Act, be made under subsection (1) in respect of different areas in the Republic or different commodities. 5

Short title and commencement

37. This Act is called the National Regulator for Compulsory Specifications Act, 2007, and comes into operation on a date determined by the President by proclamation 10 in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL REGULATOR FOR COMPULSORY SPECIFICATIONS BILL, 2007

1. BACKGROUND

1.1 This Bill emanates from the Department of Trade and Industry (the dti) project to restructure the South African Technical Regulatory Infrastructure and to optimise the South African Standards, Quality Assurance, Accreditation and Metrology System (SQAM).

1.2 The aim of the restructuring of the South African Technical Infrastructure is to align the infrastructure with international best practice.

1.3 Part of the restructuring is the re-establishment of the current regulatory department within the South African Bureau of Standards (SABS) as a public entity and the introduction of the National Regulator for Compulsory Specifications Act, 2007.

1.4 In keeping with international trends, the current regulatory department within the SABS is to be separated from that of the SABS as standards writer and conformity assessment service provider.

1.5 The Bill provides a legal framework for the administration and maintenance of compulsory specifications in the interests of public safety, health or environmental protection and the establishment of the National Regulator for Compulsory Specifications (NRCS).

1.6 The Bill seeks to ensure that the NRCS operates optimally in pursuit of the national interest and that it has strategic direction.

1.7 The Bill has been revised following comments received from a wide range of organisations, interest groups and individuals.

2. OBJECTS OF BILL

The Bill is drafted in line with the modernisation of the Technical Infrastructure Policy and seeks to establish the NRCS as a public entity responsible for compulsory specifications. The NRCS will be responsible for the protection of the health and safety of the public and the environment through the administration and maintenance of compulsory specifications in the interests of public safety, health or environmental protection.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

3.1 The National Regulator for Compulsory Specifications Bill provides for transitional arrangements, including the transfer of all regulatory staff and administrative staff responsible for administrative support with regards to compulsory specifications as well as the transfer of relevant assets and liabilities from the SABS to the NRCS. The Bill also provides for the appointment of a Chief Executive Officer and a Board.

3.2 During the transitional period, the current Regulatory Departmental Manager will act as Chief Executive Officer.

3.3 The recruitment process for a permanent Chief Executive Officer will commence once the legislative process for the establishment of the NRCS has been approved and a Board has been established.

3.4 All assets, liabilities, rights and obligations of the regulatory department of the SABS are transferred to NRCS.

3.5 The transfer and continuation of all notices, designations, certificates and regulations issued in terms of the Standards Act, 1993 (Act No. 29 of 1993), relevant to the NRCS.

4. FINANCIAL IMPLICATIONS FOR STATE

Currently the budget allocation is part of the allocation the dti has made for the SABS. This budget will be proportionally divided when the current organisation is separated into two organisations, namely the NRCS and the SABS; the amounts that will be transferred from the SABS is R20,6 million in 2008/9 and R21,4 million in 2009/2010, respectively. There will, however, be additional financial implications, i.e. the one-off costs associated with the separation of the SABS functions, as well as other possible costs, in particular in terms of increased rental and support services. The cost in respect of Board members of the NRCS is estimated at R2 million per annum. The allocation to

the NRCS will be reviewed at the end of the first financial year of its existence as a public entity, so as to ensure that appropriate levels of funds are available to the NRCS to implement its mandate.

5. COMMUNICATION IMPLICATIONS

The dti will implement a communication strategy to ensure that all affected parties are aware of the establishment of and services offered by the entity.

6. CONSTITUTIONAL IMPLICATIONS

None.

7. OTHER DEPARTMENTS/COMMITTEES/BODIES CONSULTED

National Treasury and the Department of Public Service and Administration have been formally consulted, in line with the PFMA, on the transfer of the Regulatory Division of the SABS into a separate public entity, namely the NRCS.

Other stakeholders consulted:

- Department of Agriculture;
- Department of Environmental Affairs and Tourism;
- Department of Housing;
- Department of Health;
- Department of Labour;
- Department of Minerals and Energy;
- Department of Provincial and Local Government;
- Department of Science and Technology;
- Department of Transport;
- The Presidency;
- National Metrology Institute of South Africa (NMISA); and
- South African National Accreditation System (SANAS).

Industry and other interested parties:

- Nedlac

8. PARLIAMENTARY PROCEDURE

8.1 The State Law Advisers and the Department of Trade and Industry are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

8.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Printed by Creda Communications

ISBN 978-1-77037-044-9