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THE NATIONAL ASSEMBLY Social Security House, Block A PAPERS, P.O. Box 30547 - 00100 NAIROBI, GPO KENYA	
DATE: 11 JUN 2020	
Tabled BY: Majority Whip Hon. Emmanuel Wanjau	8th June 2020
CLERK-AT THE-TABLE: Rachel G.	

Ref. No: KEBS/LEGAL/1

Mr. Michael Sialai, CBS
 Clerk to the National Assembly
 Parliament Buildings
NAIROBI

*w register and
 tabled*

Dear *Bwana Sialai*

**LEGAL NOTICE NO.78 - THE STANDARDS
 (VERIFICATION OF CONFORMITY TO STANDARDS AND
 OTHER APPLICABLE REGULATIONS) ORDER, 2020**

10/6/20

Legal Notice No.78 - The Standards (Verification of Conformity to Standards and other applicable Regulations) Order, 2020 was published in the Special Issue of Kenya Gazette Supplement No.62 dated 28th April 2020.

According to section 11 of the Statutory Instruments Act, 2013 the responsible Cabinet Secretary should ensure that a copy of the Regulations is transmitted to the Clerk of the National Assembly within seven (7) days of the publication for Parliamentary scrutiny.

The purpose of this letter is to forward a copy of the Regulations and the Explanatory Memorandum as required by section 5A of the Act.

Yours *Sincerely*
Betty C. Maina

**BETTY C. MAINA, CBS
 CABINET SECRETARY**

NATIONAL ASSEMBLY
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Copy to

Mr. Lawrence Karanja

Chief Administrative Secretary

Ministry of Industrialization, Trade and
Enterprise Development

NAIROBI

Dr. F. O. Owino, PhD, CBS

Principal Secretary

State Department for Industrialization

NSSF Building

NAIROBI

Lt. Col. (Rtd) Bernard N. Njiraini

Managing Director

Kenya Bureau of Standards

NAIROBI

EXPLANTORY NOTES ON REVIEWED PROVISIONS OF LEGAL NOTICE NO. 78 OF 28TH APRIL 2020.

General Notes

1. The term **goods** has been substituted with the term '**product**' wherever is occurred in Legal Notice 183 of 2019. Although the term 'goods' is a recognized terminology under the Customs Act, it is ambiguous when applied in the context on conformity assessment which is based on product standards.
2. The terms **Council** and **Bureau** have been defined in the Legal Notice and used throughout the document with the same meaning as the terms "National Standards Council" and "Kenya Bureau of Standards" as used respectively in the previous notices.

Explanatory notes on changes in the body of the Legal Notice 78 of 2020

1. **PARAGRAPH 1 OF LN 78:2020 (Citation):** [Paragraph 1 Legal Notice 183 of 2019]: Changed to read: *"This Order may be cited as the Standards (Verification of Conformity to Standards and Other Applicable Regulations) Order, 2020"*
2. **PARAGRAPH 2 OF LN 78:2020 (Interpretation):** [new paragraph] created by inserting the following words: *"In this Order, unless the context otherwise requires,*
"Bureau" means the Kenya Bureau of Standards established by section 3 of the Act;
and
"Council" means the National Standards Council established by section 6 of the Act.'
3. **PARAGRAPH 3 OF LN 78:2020 (Application)** [Paragraph 2 (1) of LN 183:2019]: No change.
4. **PARAGRAPH 4 OF LN 78:2020 (Exempted Products):** New paragraph created by combining paragraphs 2(2) and paragraph 3 of LN 127:2019 to Provide for exemptions.
Paragraph 4(1) [Paragraph 2 (2) of LN 183:2019]: No change.
Paragraph 4 (2) [Paragraph 2(3) of LN 183:2019]: No change.
5. **PARAGRAPH 5 OF LN 78:2020 (Compliance with Standards):**
Paragraph 5(1) [paragraph 3 of LN 183:2019]: Amended by inserting the word "*lor*" after "*and*".
Paragraph 5(2) [new provision]: inserted the following words *" A person who imports products to Kenya shall notify KEBS prior to importation and provide proof that the products to be imported meet the requirements of Kenya standards, approved specification and/or other applicable regulations"*

Note: This is aimed at enabling KEBS undertake appropriate assessment before importation and allow KEBS to profile the consignment and determine the appropriate interventions. The measure will ensure efficiency of cargo clearance at the port.

6. **PARAGRAPH 6 OF LN 78:2020 (Appointment of Inspection Bodies):**

Paragraph 6 (10) [paragraph 4(1)]: Amended by substituting the word “shall” with “may” and inserts the words “in a port of entry”.

Paragraph 6(2) [paragraph 4(2) of LN 183:2019]: Amended to read: *“The Bureau may recognise a national standards body of an exporting country that performs inspection functions as an inspection body for the purposes of pre-shipment verification of conformity.”*

7. **PARAGRAPH 6 OF LN 78:2020 (Verification of Conformity):**

Paragraph 7 (1) [Paragraph 5(1) of LN 183:2019]: Amended to read: *Any product which is the subject of this Order may be subjected to verification of conformity to Kenya standards, approved specifications and other applicable regulations in the exporting country or transshipment port by the inspection body appointed under paragraph 6.*

Paragraph 7(2): inserts the following words: *“Notwithstanding the provisions of subparagraph (1), the Bureau may re inspect the imported product at a port of entry if, in the Bureau’s opinion, it is necessary to do so.”*

8. **PARAGRAPH 8 OF LN 78:2020 (Certificate of conformity and non-conformity report) [Paragraph 6 on LN183:2019]:**

Note: Splits provisions for certificate of conformity and non-conformity reports under separate paragraphs

Paragraph 8(1) [provision for CoC]: *The Bureau or an inspection body appointed under paragraph 6 shall issue a certificate of conformity, certificate of inspection or certificate of roadworthiness in respect of a product that conforms to Kenya standards, approved specifications and other applicable regulations.*

Paragraph 8(2) [Provision for NCR]: *The Bureau or an inspection body appointed under paragraph 6 shall issue a non-conformity report in respect of a product that does not conform to Kenya standards, approved specifications and other applicable regulations.*

Paragraph 8(3) [Provision for treatment of non-compliant products]: *A product that does not conform to Kenya standards, approved specifications and other applicable regulations shall not be permitted to be imported into Kenya and shall be re-exported to the exporting country or destroyed at the importer’s expense.*

9. **PARAGRAPH 9 OF LN 78:2020 (Destination Inspection)**

Paragraph 9(1) [paragraph 7(1) of LN 183:2029]: Amended by substituting “twenty per centum of the goods” with “five per cent of the approved customs value of the product.”

Notes: limits the fee applicable in the case of mixed consignments to only those products that have not been certified rather than basing the fee on all the goods.

Paragraph 9(2): [Paragraph 7(2) of LN 183:2019: Amended by substituting “equivalent to the said fee” with “five per cent of the approved customs value of the product”.

Paragraph 9(3): [Paragraph 7(3) of LN 183:2019: No change.

Paragraph 9(4) [New provision]: inserted the words ***“A product which is the subject of this Order which arrives at a port of entry without a certificate of conformity, certificate of inspection or certificate of roadworthiness from an exporting country where the Bureau has not appointed an inspection body shall be subjected to destination inspection at the importer’s expense at the rate that would be applicable if inspection had been undertaken in the exporting country by an inspection body appointed by the Bureau .”***

Note: provides for equal treatment for importers whose failure to obtain PVOC certification is not of their own making but stems from unavailability of services in the country of exportation.

10. PARAGRAPH 10 OF LN 78:2020 (Exemption from Order) [paragraph 8 of LN 183:2019 : No Change

11. PARAGRAPH 10 OF LN 78:2020 (Revocation of LN 183:2019) [Paragraph 9 of LN 183:2019

Amended to read: ***“The Standards (Verification of Conformity to Kenya Standards and Other Applicable Regulations) Regulations, 2019, are revoked.”***

NOTES ON THE SCHEDULE

SN	CATEGORY	DOCUMENTS REQUIRED	NOTES
1 [1 of LN 183:2019]	No change	No Change	
2 [2 of LN 183:2019]	Amended by substituting the words: <i>“power generation connected to the national grid”</i> with <i>“Licensed power generating companies”</i> .	Evidence of original equipment manufacturer warranty	Aimed at giving power generators not supplying to national grid equal treatment
3 [3 of LN 183:2019]	No change	No change	
4 [4 of LN 183:2019]	No change	No change	
5 [5 of LN 183:2019]	No change	No change	

6 [6 of LN 183:2019]	No change	No change	
7 [7 of LN 183:2019]	No change	No change	
8 [8 of LN 183:2019]	No change	No change	
9 [9 of LN 183:2019]	No change	No change	
10 [10 of LN 183:2019]	No change	No change	
11 [11 of LN 183:2019]	No Change	No change	
12 [12 of LN 183:2019]	No change	No change	
13 [New provision]	Printed matter and recorded digital media.	Declaration that the material has not violated any intellectual property rights.	
14 [new provision]	The following products regulated under specific laws: (1) explosives, arms and ammunition (2) plants, seeds and planting materials (3) live animals, carcasses and hatching eggs (4) tissues and organs	Proof of compliance with the relevant Regulations	Removes duplication of processes in the country of exportation

	(5) human and veterinary pharmaceutical products (6) pesticides (7) aircraft and aircraft parts (8) marine craft and marine craft parts (9) radioactive materials and isotopes		
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LEGAL NOTICE NO. 78

THE STANDARDS ACT

(Cap. 496)

IN EXERCISE of the powers conferred by section 20 of the Standards Act, the Cabinet Secretary for Industrialisation, Trade and Enterprise Development, in consultation with the Council, makes the following Order—

THE STANDARDS (VERIFICATION OF CONFORMITY TO STANDARDS AND OTHER APPLICABLE REGULATIONS) ORDER, 2020

PART I—PRELIMINARY

1. This Order may be cited as the Standards (Verification of Conformity to Standards and Other Applicable Regulations) Order, 2020. Citation.
2. In this Order, unless the context otherwise requires— Interpretation.
“Bureau” means the Kenya Bureau of Standards established by section 3 of the Act; and
“Council” means the National Standards Council established by section 6 of the Act.
3. This Order shall apply to all products imported into Kenya. Application.
4. (1) Notwithstanding any other provision of this Order, the products specified in the first column of the Schedule shall be exempted from the provisions of this Order: Exempted products.
Provided that a person importing any exempted product specified in the Schedule shall provide the documents specified in the second column of the Schedule with respect to the exempted product.
(2) The products specified in the Schedule may be inspected on arrival at a port of entry.
5. (1) An importer of products shall ensure that the imported products meet Kenya standards, approved specifications and other applicable regulations. Compliance with standards.
(2) An importer of products shall notify the Bureau in the prescribed form before importing any product into Kenya and provide proof that the imported product meets Kenya standards, approved specifications and other applicable regulations.
6. (1) The Bureau may appoint an inspection body in the country of exportation of products, or in a transshipment port, or in a Appointment of inspection bodies.

port of entry, to undertake verification of conformity to Kenya standards, approved specifications and other applicable regulations.

(2) The Bureau may recognise a national standards body of an exporting country that performs inspection functions as an inspection body for the purposes of pre-shipment verification of conformity.

7. (1) Any product which is the subject of this Order may be subjected to verification of conformity to Kenya standards, approved specifications and other applicable regulations in the exporting country or transshipment port by the inspection body appointed under paragraph 6.

Verification of conformity.

(2) Notwithstanding the provisions of subparagraph (1), the Bureau may reinspect the imported product at a port of entry if, in the Bureau's opinion, it is necessary to do so.

8. (1) The Bureau or an inspection body appointed under paragraph 6 shall issue a certificate of conformity, certificate of inspection or certificate of roadworthiness in respect of a product that conforms to Kenya standards, approved specifications and other applicable regulations.

Certificate of conformity and non-conformity report.

(2) The Bureau or an inspection body appointed under paragraph 6 shall issue a non-conformity report in respect of a product that does not conform to Kenya standards, approved specifications and other applicable regulations.

(3) A product that does not conform to Kenya standards, approved specifications and other applicable regulations shall not be permitted to be imported into Kenya and shall be re-exported to the exporting country or destroyed at the importer's expense.

9. (1) A product which is the subject of this Order which arrives at a port of entry without a certificate of conformity, certificate of inspection or certificate of roadworthiness shall be subjected to destination inspection at a fee equal to five per cent of the approved customs value of the product.

Destination inspection.

(2) The importer of a product which is the subject of this Order which arrives at a port of entry without a certificate of conformity, certificate of inspection or certificate of roadworthiness shall, in addition to the fee specified in subparagraph (1), execute a security bond in favour of the Bureau equal to five per cent of the approved customs value of the product.

(3) A product which is the subject of this Order which arrives at a port of entry without a certificate of conformity, certificate of inspection or certificate of roadworthiness shall be held at the port of entry or kept in an approved warehouse for the purposes of inspection and testing.

(4) A product which is the subject of this Order which arrives at a port of entry without a certificate of conformity, certificate of inspection or certificate of roadworthiness from an exporting country where the Bureau has not appointed an inspection body shall be subjected to destination inspection at the importer's expense at the rate

that would be applicable if inspection had been undertaken in the exporting country by an inspection body appointed by the Bureau.

10. The Cabinet Secretary may, on the advice of the Council, exempt any product from the provisions of this Order if the Cabinet Secretary is satisfied that it is in the national interest to do so.

Exemption from Order.

11. The Standards (Verification of Conformity to Kenya Standards and Other Applicable Regulations) Regulations, 2019, are revoked.

Revocation of L.N. 183/2019.

SCHEDULE

(para. 4)

CRITERIA FOR EXEMPTION OF SPECIFIC PRODUCTS FROM PRE-SHIPMENT VERIFICATION OF CONFORMITY REQUIREMENTS

No.	CATEGORY	REQUIRED DOCUMENTS
1.	Industrial raw materials excluding materials specified by the Council, completely knocked down kits for road vehicles, machinery and industrial spares imported by registered manufacturers for own use	(a) Certificate of registration of the manufacturer or assembler issued by the Bureau or any other regulatory agency responsible for regulating manufactured products
		(b) Certificate of analysis or material safety datasheet for raw materials
2.	Equipment and original equipment manufacturers (OEM) parts for licensed power generation companies	Evidence of original equipment manufacturer warranty
3.	Original equipment medical manufacturer's parts for medical equipment	(a) Evidence of original equipment manufacturer for spare parts
		(b) Evidence of manufacturer's warranty
4.	Products imported by diplomats and diplomatic missions except motor vehicles	Form PRO IA or PRO IB issued by the Ministry of Foreign Affairs
5.	Courier parcels with a value specified by the Council and direct assessment items approved by the Kenya Revenue Authority	(a) Parcel handler's license issued by the Communications Authority of Kenya
		(b) Direct assessment documents approved by the Kenya Revenue Authority
6.	Products certified by the Bureau under the Diamond Mark Scheme	Valid Diamond Mark Permit issued by the Bureau
7.	Products manufactured within the East African Community	(a) Certificate of origin
		(b) Product Certification Permit or Certificate of Analysis (Raw Materials) or Test Report issued by

		the respective National Standards Body of the Country of Origin
8.	Used personal effects belonging to returning residents and arriving expatriates excluding road vehicles	Approval by the Kenya Revenue Authority
9.	General consumables (stores) imported by international carriers for in-flight or ships services and duty-free products	(a) Proof of licensing as an international carrier
		(b) Authority by Kenya Revenue Authority to operate as duty-free
10.	Re-imports	Re-importation certificate issued by the Kenya Revenue Authority
11.	Temporary imports	(a) Proof of bond execution with Kenya Revenue Authority
		(b) Carnet certificate (for road vehicles)
12.	New road vehicles and new mobile equipment	Manufacturer's warranty or type approval
13.	Printed matter and recorded digital media	Declaration that the material has not violated any intellectual property rights
14.	The following products regulated under specific laws: (1) explosives, arms and ammunition (2) plants, seeds and planting materials (3) live animals, carcasses and hatching eggs (4) tissues and organs (5) human and veterinary pharmaceutical products (6) pesticides (7) aircraft and aircraft parts (8) marinecraft and marinecraft parts (9) radioactive materials and isotopes	Proof of compliance with the relevant Regulations

Dated the 14th April, 2020.

BETTY C. MAINA,
Cabinet Secretary for Industrialisation, Trade and Enterprise Development.