

DOMINICA BUREAU OF STANDARDS

PROCEDURAL MANUAL FOR THE IMPORT MONITORING AND STANDARDS COMPLIANCE PROGRAMME

2008

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1.0 SCOPE

The Purpose of this document is to provide guidelines for inspection activities under the Compulsory Standards Compliance Programme. These guidelines cover the enactment of Powers that are described in the Standards Act No 4 1999.

2.0 REFERENCE

The Standards Act No 4 1999.

3.0 DEFINITION

Definitions in accordance with the Standards Act No 4 1999

4.0 ACTION

4.1 Introduction

4.1.1 An “Inspector” is an employee of the Bureau or any other public officer appointed under Section 29 of the Standards Act No. 4 of 1999, for the purpose of:

- (a) Monitoring compulsory standards or eliminating any process or practice the effect of which adversely affect the environment
- (b) Preventing the entry of goods (to which compulsory standards apply) into the market place which are likely to be a danger to the health and safety of consumers and/or the environment.
- (c) To monitor any service, process or practice to which a compulsory standard applies

4.2 Powers

4.2.1 The powers of Inspectors are outlined in Section 29 of the Standards Act No. 4 of 1999

4.2.2 Powers of Entry

4.2.2.1 Reasonable Time

4.2.2.1.1 Entry into a facility should be within normal business hours, that is 8:00am – 5:00pm

4.2.2.2 **Production of Credentials**

4.2.2.2.1 Identification cards which have provided by the Bureau, should be worn by Inspectors at all times

4.2.2.3 **Assistance and Equipment**

4.2.2.3.1 Inspectors are allowed to use equipment such as cameras to photograph offending articles, or processes.

4.2.2.4 **Request to Enter**

4.2.2.4.1 In all cases, other than those in which the request for admission could defeat the purpose of entry, inspectors should first seek and obtain the consent of owner/occupier or any other person entitled to grant access to the premises prior to entry. Clandestine entry is discouraged.

4.2.2.4.2 In accordance with Section 29(5) where an Inspector does in fact enter a place, the person in charge must give to the Inspector “all reasonable assistance and furnish him with such information as he may reasonably require.”

4.2.2.4.3 If any person obstructs the Inspector by not giving him reasonable assistance or access to records, documents or information relevant to the performance of his functions under the Act, he is guilty of summary offence and liable on summary conviction.

4.2.2.4.4 Threats of violence and intimidation against an Inspector in the performance of his/her duties are actionable offences. An Inspector may in such a case maintain a personal action in Assault and Battery against the offender.

4.2.2.4.5 It is advisable on entering any premises, to state the purpose of entry and grounds for undertaking it, (for example a routine check) and to inform the person concerned that he is not obliged to consent and that anything seized may be produced as evidence against him.

4.2.2.4.6 Searches must be conducted with due consideration for the property and privacy of the occupier of the premises and with no more disturbances than necessary and with the least possible disruption to any business or other activity being carried out on the premises.

4.2.2.4.7 If the occupier wishes to ask a friend, neighbour or other person to witness the search then he must be allowed to do so unless the Inspector has

reasonable grounds for believing that this would hinder the search seriously.

4.2.2.4.8 Where:

- (a) Entry is refused by the owner, or his representative, or
- (b) Refusal is apprehended, or
- (c) A request for admission would defeat the object of entry

The Standards Act allows the Inspector to obtain a **warrant** under the hand of a Magistrate authorizing entry on the premises (Section 29(3)).

4.2.2.4.9 Note that the Search Warrant has to be issued and executed by a police officer in the presence of the Inspector. Once the warrant is executed, the Inspector can properly proceed to carry out his functions under the Act (See Appendix A for the procedure to be followed in securing a warrant).

4.2.3 Power to examine articles and take samples thereof (Section 29, Standard Act No. 4, 1999.)

4.2.3.1 (a) Samples taken must be kept safely and securely so that they remain in the state in which taken and are “free from contamination” so as to prevent any accusation that the samples have been tampered with

(b) Goods submitted for testing shall be marked, labeled and packaged so as to be clearly identified and protected from reasonably foreseeable damage and delivered to the testing facility where the required tests are to be carried out

4.2.3.2 It is recommended that:

4.2.3.3 (a) Samples taken be placed in a bag where feasible to do so, and sealed;

(b) Markings on the bag - the Inspector must put his initials as well as the date on which the sample was taken. It is also advisable for the owner of the goods to put his initials;

(d) If the Owner however refuses to do so, a record of this refusal must be made in the Inspector’s report;

(e) Where the Owner so requests, and in fact it is advisable that, a Duplicate sample should be delivered to the Owner. This sample must be similar to

that seized and cleared marked or identified and labelled “Duplicate Sample”;

- (f) The inspector and inspector’s assistant must contemporaneously make a record of this event their dairies.

4.2.4 Power to open and examine any receptacle or package (Section 29(2c))

4.2.4.1 This is a complementary power and again should be exercised with due regard for rights or property.

4.2.4.2 Where the need arises no more force than is reasonable in all the circumstances should be used by the Inspector to open and examine any receptacle. It is advisable for this power to be exercised in the presence of the owner or person authorized by the owner.

4.2.4.3 Where force is used to open any receptacle, the Inspector shall ensure that the receptacle is properly secured before leaving.

4.2.5 **Power to examine any books, documents or other records and to make copies or transcribe extracts there from (Section 29 (2d)).**

4.2.5.1 In the exercise of this power the following is to be noted:

- (a) Transcriptions must be copious and detailed
- (b) Where photocopies are made markings must be made on all copies taken. The inspector must initial and date each copy as well as obtain if possible the counter signature of the owner of the goods. A contemporaneous record of this event must also be made in the Inspector’s dairy

4.2.6 **Power to seize and detain goods (Section 29 (2e))**

4.2.6.1 This is a power which must be exercised with great care and circumspection where the Inspector has reasonable grounds to believe that any provision of the Act has been infringed upon.

4.2.6.2 The Act stipulates that’s goods seized may at the option of the Inspector either be kept in the building or place where it was seized or be removed to be stored in any other place.

4.2.6.2 In the case of large bulky items which cannot be moved or stored at the offices of the Bureau the following should be observed:

- a) Where possible, the offending articles must be cordoned off or secured in a room where access is to be restricted;
- b) The offending items must be marked with the Inspector's initials, as well as the date. Where more than one of the same articles is seized they should be marked consecutively e.g "J.D1", "J.D2", "J.D3" etc;
- c) The Inspector may also photograph or copy or have photographed or copied any document or article which he has power to seize;
- d) A detailed inventory must be taken of the goods marked. In order for the goods taken to be clearly identified it is advisable that the serial numbers be recorded, where possible to do so. This inventory is to be done in duplicate;
- e) Where property is seized, the person who has custody or control of it immediately prior to its seizure must be provided with a list or description (inventory) of the property at the time of seizure;
- f) The inspector shall be as soon as practicable either personally or by post, give the owner a notice in writing identifying the goods, and stating that they have been seized under Section 29(2e) of the Standards Act;

4.2.6.4 In the case of items seized which can be removed or stored at the offices of the Bureau refer to section 29 (6).

4.2.6.5 In all cases where goods are seized and/or brought to the Bureau for testing/storage a proper record/log must be made. The person responsible must ensure the information is accurately recorded and in a consistent manner.

4.2.6.6 All articles seized must be kept in a secured environment where access is restricted and controlled.

4.2.6.7 In all cases detailed records, statements must always be kept by both Inspectors and Inspector's Assistants in order for there to be corroboration – **Which is essential in proving a case.**

4.2.6.8 As soon as reasonably possible after a search, the Inspector must make a record. This record shall include:

- Address of premises;
- Date/time and duration of search;

- Authority under which search was made i.e either under a warrant or statutory power of entry and search;
- Name of officers who conducted search;
- Name of persons on premises;
- List of articles seized, if any and reason for seizure;
- Whether force was used and if so, the reason for the use of force.
- All materials particulars

4.2.7 **Destruction of goods**

4.2.7.1 The following points must be noted:

- (a) Goods seized which on examination/testing are found not to comply with the relevant compulsory standards can only be destroyed after a conviction has been secured under the Act and an order of the Court has been obtained to that effect – or
- (b) The owner consents to its destruction – Section (), Standards Act
- (c) Consent entails that
 - The owner must provide with a Notice in the prescribed form of the reasons in writing why the article failed to comply with the relevant compulsory standard
 - The owner will be given 10 working after the receipt of the Notice, in which to appeal to the Bureau to prove satisfactory to the Bureau that the articles do in fact comply with the requirements of the compulsory standard.
 - The Bureau will allow the owner sufficient opportunity to inspect the seized goods for the purpose of substantiating any claim.
 - If the owner has no objection he can consent to the goods being forfeited to the state by giving notice in the prescribed form to that effect to the Bureau of Standards on or before the expiry of the 10-day period.
 - If the Consent is not forthcoming then Summary Court Proceedings must be instituted to secure a conviction under the Standards Act.
- (d) Offending articles may only be destroyed or disposed of as the Minister may direct, based on appropriate technical advice.

5.0 EXAMINATION OF IMPORTS

- (a) By virtue of Section ... of the Standards Act, Inspectors have the authority to examine goods upon landing any customs entries in respect of such goods.
- (b) Where the Standard declared is compulsory, goods may only be entered for trade if (a) on examination they are found to comply with the Standard or (b) the goods are accompanied by a certificate of examination and compliance with the standard issued by a laboratory, or other similar institution in the country of origin recognized by the Bureau.

Note that a Supplier's Declaration should be in accordance with **Appendix ...** for products as determined by the Bureau.

- (c) Where importers are found not to comply with the compulsory standard, a Notice of non-conformity in the prescribed form is to be sent to both the Comptroller of Customs & Excise Department as well as the Importer
- (d) This Notice of non-conformity places this matter in the jurisdiction of Customs & Excise that will treat with the non-conformity goods according to provisions of their enabling legislation.