



LAWS OF KENYA

KENYA PLANT HEALTH INSPECTORATE SERVICE ACT

No. 54 of 2012

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**KENYA PLANT HEALTH INSPECTORATE
SERVICE ACT**

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NO. 54 OF 2012

KENYA PLANT HEALTH INSPECTORATE SERVICE ACT

[Date of assent: 31st December, 2012.]

[Date of commencement: By Notice.]

An Act of Parliament to establish the Kenya Plant Health Inspectorate Service as a regulatory body for the protection of plants, seeds and plant varieties and agricultural produce; to provide that the Service shall be responsible for administering several other written laws and; for matters incidental thereto or connected therewith

PART I – PRELIMINARY

1. Short title and commencement

This Act may be cited as the Kenya Plant Health Inspectorate Service Act, 2011, and shall come into operation on such date as the Cabinet Secretary may, by notice in the *Gazette*, appoint.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**Board**” means the Board of Directors of Kenya Plant Health Inspectorate Service established by section 8;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for agriculture;

“**chairperson**” means the Chairman of the Board of Directors appointed under section 8(a);

“**managing director**” means the managing director of the Service appointed under section 10;

“**member**” means a member of the Board of Directors and includes the chairperson;

“**Service**” means the Kenya Plant Health Inspectorate Service established under section 3.

(2) Despite subsection (1), until after the first general elections under the Constitution, references in this Act to the expression “**Cabinet Secretary**” and “**Principal Secretary**” shall be construed to mean “Minister” and “Permanent Secretary” respectively.

PART II – ESTABLISHMENT OF THE SERVICE

3. Establishment of the Service

(1) There is established a body to be known as the Kenya Plant Health Inspectorate Service which shall be a body corporate with perpetual succession and a common seal, and capable, in its corporate name, of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing and lending money;
- (d) charging fees for services rendered by the Service; and
- (e) doing or performing all other things or acts which may lawfully be done by a body corporate.

(2) The Service shall be a successor to the body known as the Kenya Plant Health Inspectorate Service existing immediately before the commencement of this Act, and subject to this Act, all rights and obligations of that body existing at the commencement of this Act shall be automatically and fully transferred to the Service, and any reference to the Kenya Plant Health Inspectorate Service in any document or contract shall for all purposes, be deemed to be a reference to the Service established under this Act.

4. Headquarters

(1) The headquarters of the Service shall be in Nairobi.

(2) Notwithstanding subsection (1), the Board may establish branches in such other areas of the country as it may deem necessary.

5. Functions of the Service

The functions of the Service shall be to—

- (a) regulate matters relating to plant protection, seeds and plant varieties;
- (b) administer and enforce sanitary and phytosanitary measures;
- (c) support the administration and enforcement of food safety measures;
- (d) establish service laboratories to monitor the quality and levels of toxic residues in agro-inputs, irrigation water, plants, soils and produce;
- (e) be the principal advisor to the Government on issues relating to seeds and planting material;
- (f) implement plant variety protection in Kenya, administer plant breeders' rights and maintain the Plant Breeders' Rights Register;
- (g) undertake plant variety testing and description, seed certification and plant quarantine control;
- (h) undertake inspection and grading of plants and plant produce at the ports of entry and exit;
- (i) in consultation with other relevant agencies, develop and implement standards for seed and plant materials;
- (j) implement and enforce national biosafety regulations on the introduction and use of genetically or living modified species of plants, insects and micro-organisms, plant products and other related species;

- (k) regulate import and export of plants and plant materials;

- (l) in consultation with other relevant agencies, regulate the commercial exploitation of naturally occurring plants and plant-related micro-organisms;
- (m) register and license seed merchants, seed growers, agents and any other person who may be required to be registered under the provisions of this Act or any of the laws specified in the First Schedule;
- (n) enter into association with such other bodies or organizations or authorized persons as the Board may consider desirable or appropriate in furtherance of the purposes for which the Service is established, and
- (o) be the liason office for international conventions relating to plant variety protection, plant protection, seed certification and dealing with endangered species or any other related conventions

6. Service to administer laws in First Schedule

(1) The Service shall, in the performance of its functions under this Act, implement the provisions of the laws specified in the First Schedule.

(2) The Cabinet Secretary may by Order published in the *Gazette*, amend the First Schedule.

(3) The Board may charge fees for services rendered by it in the implementation of the laws referred to in subsection (1).

7. Regulation of modified living organisms

(1) The Service shall be the competent regulatory authority to implement the national biotechnology policy and regulations on introduction, transit and use of living modified plants, plant products and other regulated species of plants.

(2) The Service may charge such fees for its services as it may deem appropriate.

8. Board of Directors

(1) There shall be a Board of Directors for the Service which shall, subject to this Act, be responsible for the policy, control and management of the Service, and which shall consist of—

- (a) a non-executive chairperson appointed by the President;
- (b) the Principal Secretary to the Treasury or a designated representative;
- (c) the Principal Secretary in the Ministry responsible for agriculture or a designated representative; and
- (d) not more than seven other persons, not being employees of the Service, and of whom not more than three shall be public officers, appointed by the Cabinet Secretary, with due regard to gender parity, as follows—
 - (i) one who shall have knowledge and experience in matters relating to agriculture and research;

- (ii) one who shall have knowledge, and experience in matters relating to the horticultural sector;
- (iii) one who shall have knowledge and experience in matters relating to the seed sector, and
- (iv) four who shall have knowledge and experience in matters relating to the functions of the Service;
- (e) the managing director, who shall be secretary.

(2) The person shall be eligible for appointment as Chairman where the person holds a degree from a university recognized in Kenya and has experience in management.

(3) A person shall be eligible to be appointed under paragraph (1)(d) if such person has a university degree in their area of expertise.

(4) The members appointed under subsection (1)(d) shall be appointed at different times so that their terms of office expire at different times.

(5) Subject to subsection (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(6) The Second Schedule shall apply with respect to the conduct of the business and affairs of the Board.

9. Tenure of office of Board Members

(1) The chairperson or a member of the Board, other than an *ex officio* member, shall hold office for a term not exceeding three years, on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for one further term.

(2) The chairperson or a member other than an *ex officio* member may—

- (a) at any time resign from office by notice in writing addressed to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary if the member—
 - (i) is absent from three consecutive meetings of the Board without the permission of the Board;
 - (ii) is convicted of a criminal offence and sentenced to a term of imprisonment;
 - (iii) is adjudged bankrupt or enters into a scheme of composition or arrangement with his creditors;
 - (iv) is incapacitated by prolonged physical or mental illness;
 - (v) fails to comply with the provisions of the Second Schedule on disclosure of interest;
 - (vi) is involved in conduct deemed by the Cabinet Secretary to be inconsistent with membership of the Board; or
 - (vii) fails to comply with Chapter Six of the Constitution on leadership and integrity.

10. Appointment of Managing Director

(1) There shall be a managing director of the Service who shall be appointed by the Board on such terms and conditions of service as may be specified in the instrument of appointment.

(2) The managing director shall be responsible to the Board, for the day-to-day management of the affairs of the Service and shall be Secretary to the Board, and perform such other functions as the Board may direct.

(3) A person shall be qualified for appointment under this section where the person holds an advanced degree in agricultural, plant or chemical sciences from a university recognized in Kenya.

(4) The managing director shall hold office for a term not exceeding three years, on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for one further term.

(5) The Board may terminate the appointment of the managing director for—

- (a) breach of the public service code of conduct;
- (b) inability to perform the functions of his office by reason of mental or physical infirmity;
- (c) conviction for a criminal offence; or
- (d) for any other sufficient cause to the satisfaction of the Board.

11. Appointment of staff and committees

(1) The Board may appoint such officers and other staff of the Service as may be necessary for the proper discharge of its functions under this Act or any other written law, upon such terms and conditions of service as the Cabinet Secretary may approve.

(2) The Board may establish and assign functions to such committees as it may consider appropriate, and such committees may consist partly or wholly of members of the Board.

12. Delegation of duties

The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Service the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or under any of the Acts specified in the First Schedule.

PART III – FINANCIAL PROVISIONS**13. Funds of the Service**

The funds of the Service shall comprise—

- (a) such sums as may be appropriated by Parliament;
- (b) such monies or assets as may accrue to or vest in the Service in the course of the exercise of its powers or the performance of its functions under this Act or any other written law; and
- (c) all monies from any other source provided for or donated or lent to the Service.

14. Financial year

The financial year of the Service shall be the period of twelve months ending on the thirtieth of June in each year.

15. Annual estimates

(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Service for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Service for the financial year concerned, and in particular shall provide for—

- (a) the payment of the salaries, allowances and other charges in respect of the staff of the Service and members of the Board;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits to staff of the Service;
- (c) the proper maintenance, repair and replacement of movable and immovable property of the Service; and
- (d) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matters as the Board may consider appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval.

16. Accounts and audit

(1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Service.

(2) Within three months after the end of each financial year, the Board shall submit to the Controller and Auditor-General the accounts of the Service including —

- (a) a statement of income and expenditure of the Service during that year; and
- (b) a statement of the assets and liabilities of the Service on the last day of the financial year.

(3) The accounts of the Service shall be audited in accordance with the provisions of the Public Audit Act, 2003 (Cap. 412B).

(4) As soon as reasonably practicable after the end of the financial year, the Auditor-General shall report on the examination and audit of the accounts of the Service to the Board and to the Cabinet Secretary.

17. Investment of funds

(1) The Board may invest any of the funds of the Service which are not immediately required for its purposes, in such securities as the Treasury may, from time to time, approve.

(2) The Board may, subject to the approval of the Treasury, place on deposit with such bank or banks as it may determine, any money not immediately required for the purposes of the Service.

PART IV – MISCELLANEOUS

18. Seal of the Service

(1) The common seal of the Service shall be authenticated by the signatures of the Chairman and the Secretary to the Board.

(2) In the absence of the chairman, a member designated by the Board for that purpose may authenticate the seal in his place, and in the absence of the Secretary to the Board, the person for the time being performing the functions of the Secretary may authenticate the seal in the secretary's place.

(3) Every document purporting to be an instrument issued by the Service and to be sealed with the seal of the Service authenticated in the manner provided under subsection (1) or (2) shall be deemed to be such an instrument and shall be officially and judicially noticed.

19. Powers of arrest

(1) A police officer may arrest, without a warrant, any person whom he suspects, upon reasonable grounds of having committed any offence under this Act or any of the Acts specified in the First Schedule.

(2) Any officer of the Service who at the time is wearing a visible badge of office and authorized thereto in writing by the Board, may arrest, without a warrant, any person who, in his presence, commits any offence, and may detain such person until he can be delivered into the custody of a police officer to be dealt with according to law:

Provided that no person shall be arrested or detained under this section unless reasonable grounds exist for believing that, except by the arrest of such a person; the person may not be found or made answerable to justice without reasonable delay, trouble or expense.

20. Protection from personal liability

(1) No action shall lie against the Service or any of its officers or other persons appointed or authorized to perform any function under this Act on behalf in respect of anything done or omitted to be done by them in good faith in the exercise of or performance of any power, authority or duty conferred or imposed by them under this Act.

(2) Notwithstanding subsection (1), a person employed by the service shall be personally liable for any act or omission done or committed in the performance of his functions under this Act or any other law listed in the First Schedule if, having regard to the circumstances of the case, such act or omission is—

- (a) done or committed willfully or dishonestly by such person;
- (b) due to the negligence of such person; or
- (c) done or committed by the person in contravention of any provisions of this Act, or any other Act listed in the First Schedule; administered by the Inspectorate or Regulations made thereunder or any other written law.

21. Exemption from payment of stamp duty

No stamp duty shall be chargeable under the Stamp Duty Act in respect of any instrument executed by or on behalf of or in favour of the Service.

22. Limitation of actions

Where any action or other legal proceeding is commenced against the Service for any act done in pursuance or in execution, or intended execution of this Act or any of the Acts specified in the First Schedule or of any such duty or authority, the following provisions shall have effect—

- (a) the action or legal proceeding shall be commenced against the Service at least one month after written notice containing the particulars of the claim, and of intention to commence legal proceedings, has been served upon the managing director by the plaintiff or his agent; and
- (b) the action or legal proceedings shall not lie or be instituted unless it is commenced within twelve months of the act of neglect or default complained of or, in the case of a continuing injury or damage, within six months after the cessation thereof.

23. Execution against property of the Service

Notwithstanding anything to the contrary in any written law, where any judgment or order has been obtained against the Service, no execution or attachment, or process in the nature thereof, shall be issued against the Service, or against any property of the Service, but the managing director shall, without delay, cause to be paid out of the revenue of the Service such amounts as may, by the judgment or order, be awarded against the Service to the person entitled thereto.

24. Service of notices on the Service

Any notice or other document required or authorized under this Act to be served on the Service may be served by—

- (a) delivering the notice or other document to the managing director or to any authorized employee of the Service;
- (b) leaving it at the office of the managing director; or
- (c) sending it by registered post to the managing director.

25. Service of notice by the Service

Any notice or other document required or authorized under this Act to be served on any person by the Service or the managing director or any employee of the Service may be served by—

- (a) delivering it to that person;
- (b) leaving it at the usual or last known place of abode of that person; or
- (c) sending it by registered post addressed to that person at his usual or last known address.

26. Contracting out of duties or services

(1) The Service may authorize or contract out any of its services, duties or functions under this Act to any appropriately qualified or private person or institution who or which shall perform such duties under the supervision of the Service.

(2) Non-compliance with the terms of the authorization or contract under subsection (1) shall lead to automatic suspension or cancellation of the delegation made under that subsection.

27. Arbitration of disputes

Any person aggrieved by acts or omissions under this Act or the laws specified under the First Schedule may seek redress under the arbitration rules of the respective Acts or any other relevant law.

28. Regulations

The Cabinet Secretary may, after consultation with the Board, make regulations for the better carrying out of the provisions of this Act.

29. Supercession

Where there is a conflict between the provisions of this Act and the provisions of any written law with regard to the powers or functions of the Service under this Act, the provisions of this Act shall prevail.

PART V – TRANSITIONAL PROVISIONS**30. Revocation of L.N. 305/1996**

(1) The Kenya Plant Health Inspectorate Service Order, 1996 (L.N. 305/1996), is revoked.

(2) Notwithstanding subsection (1)—

- (a) all the funds, assets and other property, both movable and immovable, which immediately before the appointed day were vested in the former Service shall, by virtue of this paragraph, vest in the Service;
- (b) all rights, powers and liabilities which immediately before the appointed day were vested in, imposed on or enforceable against the former Service shall, by virtue of this paragraph, be vested in, imposed on or enforceable against the Service;
- (c) any reference in any written law or in any document or instrument to the former Service shall, on and after the appointed day, be construed to be a reference to the Service;
- (d) the annual estimates of former Service for the financial year in which the appointed day occurs shall be deemed to be the annual estimates of the Service for the remainder of that financial year:

Provided that such estimates may be varied by the Board in such manner as the Cabinet Secretary may approve,

- (e) the administrative directions made by the former Service or by the Cabinet Secretary which are in force immediately before the appointed day shall, on or after such day, have force as if they were directions made by the Service or the Cabinet Secretary under this Act;
 - (f) All the staff of the Service who immediately before the appointed day were staff of the Service shall by virtue of this paragraph be deemed to be staff of the Service;
 - (g) the Board which immediately before the appointed day was the Board of the Service shall serve the remainder of their term of office.
- (3) In this section—
- (a) “**appointed day**” means the date appointed by the Cabinet Secretary as the date on which this Act shall come into force;
 - (b) “**former Service**” means the Kenya Plant Health Inspectorate Service established under the Kenya Plant Health Inspectorate Service Order, 1996 (now revoked).

FIRST SCHEDULE

[Section 6.]

LAWS TO BE IMPLEMENTED BY THE SERVICE

- (a) The Plant Protection Act, (Cap. 324);
- (b) The Seeds and Plant Varieties Act, (Cap. 326)
- (c) The Agricultural Produce (Export) Act (Cap. 319)
- (d) The Suppression of Noxious Weeds Act, (Cap. 325)

SECOND SCHEDULE

[Section 8 (6).]

CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

1. The Board shall meet at least four times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.
2. Notwithstanding paragraph 1, the chairperson may at any time, and shall, within twenty-one days of the receipt by him of a written request signed by at least seven members of the Board, convene a special meeting of the Board.
3. The quorum for the conduct of the business of the Board shall be five members.

4. The Chairperson shall preside at every meeting of the Board at which he is present, but in the absence of the chairperson the members present shall elect one among their number to preside, and such member shall, for the purposes of that meeting have all the powers of the chairperson.
 5. The decisions of the Board shall be carried by the votes of a majority of the members present, but in the case of an equality of votes the chairperson or person presiding shall have a casting vote.
 6. Any member who has a direct or indirect interest in any decision to be taken on any specific matter by the Board, shall disclose the nature of such interest at the meeting of the Board where such decision is being taken, and the disclosure shall be recorded in the minutes of the meeting, and if a majority of the members of the Board believe that such member's interest in the matter is such as to influence his judgment, the member shall not participate in the deliberation or the decision of the Board on such matter.
 7. Except as provided in this Schedule, the Board may regulate its own procedure.
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