



THE REPUBLIC OF KENYA

LAWS OF KENYA

THE INTERPRETATION AND GENERAL PROVISIONS ACT

CHAPTER 2

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CHAPTER 2

INTERPRETATION AND GENERAL PROVISIONS ACT

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CHAPTER 2

INTERPRETATION AND GENERAL PROVISIONS ACT

[Date of assent: 11th December, 1956.]

[Date of commencement: 11th December, 1956.]

An Act of Parliament to make provision in regard to the construction, application and interpretation of written law, to make certain general provisions with regard to such law and for other like purposes

[Act No. 38 of 1956, Act No. 39 of 1958, Act No. 51 of 1961, Legal Notice 142 of 1961, Act No. 13 of 1961, Act No. 26 of 1961, Legal Notice 153 of 1962, Act No. 28 of 1961, Act No. 27 of 1961, Act No. 38 of 1962, Act No. 36 of 1962, Legal Notice 559 of 1962, Legal Notice 142 of 1963, Legal Notice 458 of 1963, Act No. 46 of 1963, Legal Notice 2 of 1964, Legal Notice 27 of 1964, Legal Notice 168 of 1964, Act No. 1 of 1964, Act No. 21 of 1966, Act No. 15 of 1966, Act No. 9 of 1967, Act No. 17 of 1967, Act No. 25 of 1967, Act No. 31 of 1967, Legal Notice 280 of 1967, Act No. 8 of 1968, Act No. 18 of 1968, Act No. 39 of 1968, Act No. 60 of 1968, Act No. 5 of 1969, Act No. 2 of 1972, Act No. 3 of 1975, Act No. 14 of 1977, Act No. 19 of 1982, Act No. 7 of 1987, Act No. 6 of 1989, Act No. 5 of 1992, Act No. 11 of 1993, Legal Notice 162 of 2003, Act No. 5 of 2004, Act No. 18 of 2012, Act No. 23 of 2013, Act No. 18 of 2014, Act No. 20 of 2020.]

PART I – INTRODUCTORY

1. Short title

This Act may be cited as the Interpretation and General Provisions Act.

2. Application

This Act shall not apply for the construction or interpretation of the Constitution, which is not a written law for the purposes of this Act.

[Act No. 18 of 1968, Sch.]

PART II – GENERAL PROVISIONS OF INTERPRETATION

3. Interpretation of terms

(1) In this Act, and in every other written law, and in all public documents enacted, made or issued before or after the commencement of this Act, the following words and expressions shall have the meanings hereby assigned to them respectively, except where there is something in the subject or context inconsistent with that construction or interpretation, and except where it is therein expressly otherwise provided—

“accounting officer” has the meaning given by section 2(1) of the Public Finance Management Act (Cap. 412A);

“act” used with reference to an offence or civil wrong, includes a series of acts, and words which refer to acts done extend to illegal omissions;

“Act of the Community” *deleted by Act No. 7 of 1987, 2nd Sch;*

“action” means any civil proceedings in a court and includes any suit as defined in section 2 of the Civil Procedure Act (Cap. 21);

“administration police officer” means a person appointed to the office of that name under the National Police Service Act (Cap. 84);

“administrative officer” means a Provincial Commissioner, a District Commissioner or a District Officer;

“advocate” means a person whose name is for the time being duly entered as an advocate upon the roll kept in accordance with the Advocates Act (Cap. 16);

“aircraft” includes seaplanes, flying boats, airships and aerial balloons;

“alien” means a person who is not a citizen of Kenya, a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland;

“amend” includes repeal, revoke, rescind, cancel, replace, add to or vary, and the doing of any two or more of those things simultaneously or in the same written law or instrument;

“applied law” means—

(a) an Act of the legislature of another country, or an Order in Council of the United Kingdom;

(b) subsidiary legislation made under any of the foregoing, which is for the time being in force in Kenya;

“armed forces” *deleted by Act No. 20 of 2020, Sch.*

“British protected person” means a person who is a British protected person for the purposes of the British Nationality Act, 1948, of the United Kingdom (No. 11 and 12, Geo. 6, c. 56);

“Cabinet Secretary” means a person appointed as a Cabinet Secretary of the Government of Kenya under the Constitution;

“Central Legislative Assembly” *deleted by Act No. 19 of 1982, Sch.;*

“Chapter”, “Part”, “section”, “regulation”, “rule” and “Schedule” denote respectively a Chapter, Part, section, regulation and rule of, and a Schedule to, the written law in which the word occurs; and “subsection” and “paragraph” denote respectively a subsection of the section, and a paragraph of the section or subsection regulation and rule, in which the word occurs; and subparagraph denotes a subparagraph of a paragraph;

“cognizable to the police” and “cognizable”, used with reference to an offence, means that a police officer may arrest without warrant a person whom he suspects upon reasonable grounds of having committed that offence;

“coin” means gold, silver and bronze or other coin legally current in Kenya;

“commencement”, used with reference to any written law, means the date on which it came or comes into operation;

“common law” means so much of the common law, including the doctrines of equity, of England as has effect for the time being in Kenya;

“Commonwealth citizen” means a person who has the status of a Commonwealth citizen by virtue of section 95 of the Constitution and of any Act or order making provision for the purposes of that section;

“Community” *deleted by Act No. 7 of 1987, 2nd Sch.;*

“Consolidated Fund” means the Consolidated Fund established by the Constitution;

“Constitution” means the Constitution of Kenya, 2010 adopted and enacted by the people of Kenya and published in the *Gazette* on the 27th August 2010;

“consular officer” means consul-general, consul, vice-consul, consular agent and any person for the time being authorized to discharge the duties of consul-general, consul or vice-consul;

“continental shelf” *deleted by Act No. 6 of 1989, Sch.;*

“contravene”, in relation to a requirement or condition prescribed in a written law or in a grant, permit, lease, licence or authority granted by or under a written law, includes a failure to comply with that requirement or condition;

“court” means any court of Kenya of competent jurisdiction;

“Court of Appeal” has the same meaning as in the Appellate Jurisdiction Act (Cap. 9);

“Crown Agents” means the persons or body for the time being acting as the Crown Agents for Overseas Governments and Administrations;

“definition” means the interpretation given by a written law to any word or expression;

“district” means one of the districts referred to in section 2 of the Districts and Provinces Act (Cap. 105) or the Nairobi Area, and a reference to a named district is a reference to the district of that name;

“District Assistant” means a person appointed to hold the public office of that name;

“District Commissioner” means a person appointed to hold the public office of that name;

“District Officer” means a person appointed to hold the public office of that name;

“document” includes any publication and any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used or may be used for the purpose of recording that matter;

“East African Authority” *deleted by Act No. 7 of 1987, Second Sch.*;

“exclusive economic zone” means the exclusive economic zone established and delimited by the Maritime Zones Act (Cap. 371);

“export” means to take out or to cause to be taken out of Kenya by air, land or water;

“father”, in the case of any person whose personal law permits adoption, includes an adoptive father;

“financial year” means the period from the 1st July in any year to the 30th June in the immediately succeeding year, both days inclusive;

“Government analyst” includes an assistant or other analyst employed by the Government;

“Government land” has the same meaning as in the Government Lands Act (Repealed);

“Government Printer” means the Government Printer of Kenya, and any other printer authorized by or on behalf of the President to print any written law or other document of the Government;

“High Commission” *deleted by Act No. 7 of 1987*;

“High Court” means the High Court established by the Constitution;

“Highlands” *deleted by L.N. 142/1961, Sch.*;

“Highlands Board” *deleted by L.N. 142/1961, Sch.*;

“immovable property” includes land, whether covered by water or not, any estate, right, interest or easement in or over any land and things attached to the

earth or permanently fastened to anything attached to the earth, and includes a debt secured by mortgage or charge on immovable property;

“import” means to bring or to cause to be brought into Kenya by air, land or water;

“judge” means a judge of the High Court or a judge of the Court of Appeal, and includes a Commissioner of Assize and any person appointed temporarily to be or to act as a judge of the High Court or of the Court of Appeal;

“Kenya” has the meaning assigned to it in the Constitution and includes the territorial waters;

“Kenya Defence Forces” has the meaning assigned to it under the Kenya Defence Forces Act (Cap. 199);

“Law Officer” *deleted by Act No. 9 of 1967, Sch.;*

“local authority” has the meaning assigned to it in the Local Government Act (Repealed);

“magistrate” has the meaning assigned to it in the Magistrates' Courts Act (Cap. 10);

“master”, used with reference to a ship, means a person (except a pilot or harbour master) having for the time being control or charge of the ship;

“medical officer” means a medical practitioner in the service of the Government;

“medical practitioner” means a person for the time being duly registered or licensed as a medical practitioner under the Medical Practitioners and Dentists Act (Cap. 253);

“month” means calendar month;

“movable property” means property of every description except immovable property;

“municipality” has the meaning assigned to it in the Urban Areas and Cities Act (Cap. 275);

“National Assembly” means the National Assembly established by the Constitution;

“National Treasury” means the National Treasury established by section 11 of the Public Finance Management Act (Cap. 412A);

“oath” and “affidavit”, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration; and “swear” in the same case, includes “affirm” and “declare”;

“occupy” includes use, inhabit, be in possession of or enjoy the premises in respect whereof the word is used, otherwise than as a mere servant or for the mere purpose of the care, custody or charge thereof;

“offence” means a crime, felony, misdemeanour or contravention or other breach of, or failure to comply with, any written law, for which a penalty is provided;

“Parliament” means the Parliament of Kenya established by the Constitution and a reference in any written law to “the Legislature” shall be construed as a reference to “Parliament”;

“person” includes a company or association or body of persons, corporate or incorporate;

“police officer”, and terms and expressions referring to ranks in the Police Force, bear the meaning respectively assigned to them by the National Police Service Act (Cap. 84);

“power” includes any privilege, authority or discretion;

“prescribed” means prescribed by the Act in which the word occurs or by subsidiary legislation made thereunder;

“property” includes money, goods, choses in action, land and every description of property, whether movable or immovable; and also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as herein defined;

“province” means one of the provinces referred to in section 3 of the District and Provinces Act (Cap. 105) or the Nairobi Area, and a reference to a named province is a reference to the province of that name;

“Provincial Commissioner” means a person appointed to hold the public office of that name;

“public body” means—

- (a) the Government, or any department, institution or undertaking thereof; or
- (b) *deleted by Act No. 18 of 1968, s. 2;*
- (c) a local authority; or
- (d) any authority, board, commission, committee or other body, whether paid or unpaid, which is invested with or is performing, whether permanently or temporarily, functions of a public nature;

“public holiday” means a day which is a public holiday by virtue of the Public Holidays Act (Cap. 110);

“public land” *deleted by Act No. 18 of 1968, s. 2;*

“public office” means an office or employment the holding or discharging of which by a person would constitute that person a public officer;

“public officer” means a person in the service of, or holding office under, the Government of Kenya, whether that service or office is permanent or temporary, or paid or unpaid;

“public place” includes every place to which the public are entitled or permitted to have access whether on payment or otherwise;

“publication” includes all written and printed matter, and any record, tape, wire, perforated roll, cinematograph film or other contrivance by means of which any words or ideas may be mechanically or electrically produced, reproduced, represented or conveyed, and everything, whether of a nature similar to the foregoing or not, containing any visible representation, or by its form, shape or in any manner capable of producing, reproducing, representing or conveying words or ideas and every copy and reproduction of a publication;

“receiver of revenue”

- (i) in relation to national government revenue, means a receiver of national revenue designated under section 75 of the Public Finance Management Act (Cap. 412A); and

- (ii) in relation to county government revenue, means a receiver of county revenue designated under section 157 of the Public Finance Management Act (Cap. 412A);

“registered”, used with reference to a document or the title, to immovable property, means registered under the provisions of any written law for the time being applicable to the registration of that document or title;

“repeal” includes rescind, revoke, cancel or replace;

“rule” includes rule of court, by-law and regulation;

“rules of court”, when used in relation to a court, means rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of that court;

“Secretary of State” *deleted by Act No. 18 of 1968, s. 2;*

“sell” includes barter, exchange and offer to sell or expose for sale;

“shilling” (or its abbreviated form “Sh.” or “KSh.”) means the Kenya shilling;

“ship” includes every description of vessel used in navigation not propelled by oars;

“sign”, with reference to a person who is unable to write his name, includes mark;

“son”, in the case of a person whose personal law permits adoption, includes an adopted son;

“statutory declaration”, if made—

- (a) in Kenya, means a declaration made under the Oaths and Statutory Declarations Act (Cap. 15);
- (b) in the Commonwealth, elsewhere than in Kenya, means a declaration made before a justice of the peace, notary public, commissioner for oaths or other person having authority therein under any law for the time being in force to take or receive a declaration;
- (c) in any other place, means a declaration made before a Kenya consular officer or pro-consul, or a British consular officer or pro-consul, or before any person having authority under any Act or imperial enactment for the time being in force to take or receive a declaration;

“street” or “road” includes a highway, street, road, bridge, square, court, alley, lane, bridleway, footway, parade, thoroughfare, passage or open space to which the public are entitled or permitted to have access whether on payment or otherwise;

“subordinate court” means a magistrate’s court within the meaning of the Magistrates’ Courts Act (Cap. 10), and a reference to a subordinate court of a particular class means a magistrate’s court of that class within the meaning of that Act;

“subsidiary legislation” means, any legislative provision (including a transfer or delegation of powers or duties) made in exercise of a power in that behalf conferred by a written law, by way of by-law, notice, order, proclamation, regulation, rule, rule of court or other instrument;

“the Authority” *deleted by Act No. 31 of 1967, s. 20;*

“the Cabinet Secretary” means the Cabinet Secretary for the time being responsible for the matter in question, or the President where executive authority is retained by him:

Provided that where there is no Cabinet Secretary assigned the responsibility for matters relating to the legal sector, the Attorney-General shall be responsible for the matter in question.

“the Colony” *deleted by Act No. 19 of 1982, Sch.;*

“the Colony of Kenya” *deleted by Act No. 19 of 1982, Sch.;*

“the Commonwealth” *deleted by Act No. 13 of 1961, s. 2;*

“the *Gazette*” means the Kenya *Gazette* published by authority of the Government of Kenya, and includes any supplement thereto;

“the Government” means the Government of Kenya;

“the Governor-General” *deleted by Act No. 18 of 1968, s. 2;*

“the House of Representative” *deleted by Act No. 18 of 1968, s. 2;*

“the Nairobi Area” means the area of that name referred to in section 2 of the Districts and Provinces Act (Cap. 105);

“the Organization” *deleted by Act No. 7 of 1987, 2nd Sch.;*

“the President” means the person elected as President of the Republic under the Constitution;

“the Rules Committee” means the Rules Committee established by section 81 of the Civil Procedure Act (Cap. 21);

“the Republic” means the Republic of Kenya;

“the Senate” *deleted by Act No. 18 of 1968, s. 2;*

“the special areas” means the areas of land the boundaries of which are for the time being set out in the First Schedule to the Trust Land Act (Repealed) as it stood immediately before 1st June, 1963;

“the territorial waters” means any part of the open sea within twelve nautical miles of the coast of Kenya measured in accordance with the provisions of the Maritime Zones Act (Cap. 371) and includes any inland water of Kenya;

“the Treasury” *deleted by Act No. 18 of 2012, 1st Sch.;*

“the United Kingdom” means Great Britain and Northern Ireland;

“township” has the meaning assigned to it in the Local Government Act (Repealed);

“Trust land” means land which is for the time being and for the purposes of the Constitution;

“vessel” includes any ship or boat or any other description of vessel used in navigation;

“will” includes codicil;

“writing” and expressions referring to writing, include printing, photography, lithography, typewriting and any other modes of representing or reproducing words in visible form;

“written law” means—

- (a) an Act of Parliament for the time being in force;
- (b) an applied law;

- (c) any subsidiary legislation for the time being in force; or
 (d) any county legislation as defined in Article 260 of the Constitution;

“year” means a year reckoned according to the British calendar.

(2) Where any word or expression is defined in this or in any other written law, that definition shall extend, *mutatis mutandis*, to the grammatical variations and cognate expressions of that word or expression.

(3) In every written law, except where a contrary intention appears, words and expressions importing the masculine gender include females.

(4) In every written law, except where a contrary intention appears, words and expressions in the singular include the plural and words and expressions in the plural include the singular.

[Act No. 39 of 1958, s. 2, Act No. 13 of 1961, s. 2, Act No. 26 of 1961, s. 9, Act No. 28 of 1961, Sch., LN 142 of 1961, Sch., Act No. 36 of 1962, Sch., Act No. 38 of 1962, s. 12, LN 559 of 1962, Sch., LN 153 of 1962, s. 4, LN 256 of 1963, 4th Sch., LN 458 of 1963, rr. 3, 4 & Sch., LN 519 of 1963, r. 2, Act No. 1 of 1964, s. 7, LN 27 of 1964, s. 3, Act No. 15 of 1966, Sch., Act No. 21 of 1966, 1st Sch., Act No. 9 of 1967, Sch., Act No. 17 of 1967, s. 22, Act No. 31 of 1967, s. 20, LN 280 of 1967, Act No. 18 of 1968, s. 2, Sch., Act No. 39 of 1968, s. 14, Act No. 60 of 1968, 3rd Sch., Act No. 5 of 1969, s. 8, Act No. 2 of 1972, s. 4, Act No. 3 of 1975, s. 2, Act No. 14 of 1997, Sch., Act No. 19 of 1982, Sch., Act No. 7 of 1987, 2nd Sch., Act No. 6 of 1989, Sch., Act No. 5 of 1992, s. 4, Act No. 5 of 2004, 3rd Sch., Act No. 18 of 2012, 1st Sch., Act No. 18 of 2014, Sch., Act No. 20 of 2020, Sch.]

4.

[Repealed by 18 of 1968, s. 5.]

5.

[Repealed by 18 of 1968, s. 5.]

6.

[Repealed by 18 of 1968, s. 5.]

PART III – GENERAL PROVISIONS REGARDING WRITTEN LAWS

A—Acts of Parliament and Applied Law

[Act No. 26 of 1961, s. 9, L.N. 27/1964, s. 4, Act No. 7 of 1987, 2nd Sch.]

7.

[Repealed by Act No. 18 of 1968, s. 5.]

8.

[Repealed by Act No. 31 of 1967, s. 20.]

9. Commencement of Acts

(1) Subject to the provisions of subsection (3), an Act shall come into operation on the day on which it is published in the *Gazette*.

(2) *Deleted by Act No. 18 of 1968, Sch.*

(3) If it is enacted in the Act, or in any other written law, that the Act or any provision thereof shall come or be deemed to have come into operation on some other day, the Act or, as the case may be, that provision shall come or be deemed to have come into operation accordingly.

[Act No. 13 of 1961, s. 3, L.N. 458/1963, Sch., Act No. 18 of 1968, Sch.]

10. Acts to be divided into sections without introductory words

All Acts shall be divided into sections, if there are more enactments than one which sections shall be deemed to be substantive enactments without any introductory words.

11. Applied law to be read with necessary modifications

An applied law shall be read with such formal alterations as to names, localities, courts, officers, persons, moneys, penalties or otherwise as may be necessary to make it applicable to the circumstances, and in particular a reference to a Probate Court, Bankruptcy Court or Admiralty Court, or similar expression, shall be construed as a reference to the High Court exercising the appropriate jurisdiction.

[Act No. 21 of 1966, 2nd Sch., Act No. 18 of 1968, Sch.]

12.

[Repealed by Act No. 18 of 1968, s. 5]

13. Reference to written law to include amendments

A reference in a written law to another written law or to any provision thereof shall be construed as a reference to that other written law or provision as for the time being amended, if the amendment extends or applies to Kenya.

[Act No. 18 of 1968, s. 3.]

B—Written Laws Generally**14.**

[Repealed by Act No. 18 of 1968, s. 5]

15.

[Repealed by Act No. 18 of 1968, s. 5]

16.

[Repealed by Act No. 18 of 1968, s. 5]

17.

[Repealed by Act No. 18 of 1968, s. 5]

18.

[Repealed by Act No. 18 of 1968, s. 5]

19. Time when written law comes into operation

Where any written law, or part of a written law, came or comes into operation on a particular day, it shall be deemed to have come or shall come into operation immediately on the expiration of the day next preceding such day.

C—Repeal, Amendment and Expiry

[Act No. 39 of 1958, s. 3.]

20. Repealed written law not revived

Where a written law repealing in whole or in part a former written law is itself repealed, that last repeal shall not revive the written law or provisions before repealed unless words are added reviving the written law or provisions.

21. Repeal of amended law to include amendments

Where a written law which has been amended by another written law is itself repealed, that repeal shall, unless a contrary intention appears, include the repeal of all those provisions of other written laws by which the first-mentioned written law has been amended.

22. Repeal and substitution

Where a written law repeals wholly or partially a former written law and substitutes provisions for the written law repealed, the repealed written law shall remain in force until the substituted provisions come into operation.

23. Provisions respecting amended written law, and effect of repealing written law

(1) Where in a written law a reference is made to another written law, that reference shall, except where the context otherwise requires, be deemed to include a reference to the last-mentioned written law as it may from time to time be amended.

(2) Where a written law repeals and re-enacts, with or without modification, a provision of a former written law, references in another written law to the provisions so repealed shall, unless a contrary intention appears, be construed as references to the provision so re-enacted.

(3) Where a written law repeals in whole or in part another written law, then, unless a contrary intention appears the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of a written law so repealed or anything duly done or suffered under a written law so repealed; or
- (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under a written law so repealed; or
- (d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against a written law so repealed; or
- (e) affect an investigation, legal proceeding or remedy in respect of a right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing written law had not been made.

[L.N. 142/1963, Sch., L.N. 162/2003, r. 2.]

24. Effect of repeal of Act on subsidiary legislation

Where an Act or part of an Act is repealed, subsidiary legislation issued under or made in virtue thereof shall, unless a contrary intention appears, remain in force, so far as it is not inconsistent with the repealing Act, until it has been revoked or repealed by subsidiary legislation issued or made under the provisions of the repealing Act, and shall be deemed for all purposes to have been made thereunder.

25. Construction of amending written law with amended written law

Where one written law amends another written law, the amending written law shall, so far as it is consistent with the tenor thereof, and unless a contrary intention appears, be construed as one with the amended written law.

26. Effect of expiry of written law

Upon the expiry of a written law the provisions of section 23(3) shall apply as if the written law had been repealed.

D — Subsidiary Legislation**27.**

[Repealed by Act No. 23 of 2013, s. 27.]

28. Retrospective operation of subsidiary legislation

Subsidiary legislation may be made to operate retrospectively to any date, not being a date earlier than the commencement of the written law under which the subsidiary legislation is made, but no person shall be made or become liable to any penalty whatsoever in respect of an act committed or of the failure to do anything before the day on which that subsidiary legislation is published in the *Gazette*.

29. Construction of subsidiary legislation

Where an Act confers power to make subsidiary legislation, expressions used in the subsidiary legislation shall, except where a contrary intention appears, have the same respective meanings as in the Act conferring the power, and a reference in the subsidiary legislation to “the Act” shall mean the Act conferring the power to make the subsidiary legislation.

30. Exercise of powers between publication and commencement of Act

Where an Act is not to come into operation immediately on the publication thereof and confers power to make an appointment, to make subsidiary legislation, to prescribe forms or to do any other thing for the purposes of the Act, the power may, unless a contrary intention appears, be exercised at any time after the publication of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation on the day of the commencement thereof, but an instrument made in exercise of that power shall not, unless a contrary intention appears in the Act or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

31. General provisions with respect to power to make subsidiary legislation

Where an Act confers power on an authority to make subsidiary legislation, the following provisions shall, unless a contrary intention appears, have effect with reference to the making of the subsidiary legislation—

- (a) when subsidiary legislation purports to be made or issued in exercise of a particular power or powers, it shall be deemed also to be made or issued in exercise of all other powers thereunto enabling;
- (b) no subsidiary legislation shall be inconsistent with the provisions of an Act;
- (c) subsidiary legislation may at any time be amended by the same authority and in the same manner by and in which it was made; but where the authority has been replaced wholly or in part by another authority, the power conferred hereby upon the original authority may be exercised by the replacing authority concerning all matters or things within its jurisdiction as if it were the original authority;
- (d) where an Act confers power on an authority to make subsidiary legislation for a general purpose and also for special purposes

incidental thereto the enumeration of the special purposes shall not be deemed to derogate from the generality of the powers conferred with reference to the general purpose;

- (e) there may be annexed to the breach of subsidiary legislation a penalty, not exceeding six thousand shillings or such term of imprisonment not exceeding six months, or both, which the authority making the subsidiary legislation may think fit.

[Act No. 21 of 1966, 1st Sch.]

32. References to written laws to include subsidiary legislation thereunder

A reference to a written law in another written law shall include a reference to subsidiary legislation made under the written law to which reference is made.

33. Acts done under subsidiary legislation deemed done under Act which authorizes it

An act shall be deemed to be done under an Act or by virtue of the powers conferred by an Act or in pursuance or execution of the powers of or under the authority of an Act, if it is done under or by virtue of or in pursuance of subsidiary legislation made under a power contained in that Act.

34.

[Repealed by Act No. 23 of 2013, s. 27.]

35. Fees

(1) Where an Act confers power on a person to make subsidiary legislation, and provision may be made by that subsidiary legislation in respect of fees or other charges, the subsidiary legislation may provide for all or any of the following matters—

- (a) specific fees or charges;
- (b) maximum or minimum fees or charges;
- (c) maximum and minimum fees or charges;
- (d) the payment of fees or charges either generally or under specified conditions or in specified circumstances; and
- (e) the reduction, waiver or refund, in whole or in part, of any such fees or charges, either upon the happening of a certain event or in the discretion of a specified person.

(2) Where a reduction, waiver or refund in whole or in part, of a fee or charge is provided for, the reduction, waiver or refund may be expressed to apply or be applicable either generally or specifically—

- (a) in respect of certain matters or transactions or classes of matters or transactions;
- (b) in respect of certain documents or classes of documents;
- (c) when an event happens or ceases to happen;
- (d) in respect of certain persons or classes of persons; or
- (e) in respect of a combination of those matters, transactions, documents, events or persons,

and may be expressed to apply or be applicable subject to such conditions as may be specified in the subsidiary legislation or in the discretion of any person specified therein.

E—Transfer and Delegation of Statutory Powers and Duties**36. Provision for transfer of statutory powers and duties**

(1) Where by an Act the exercise of a power or the performance of a duty is conferred upon or is vested in the President, the President may, by order, transfer the exercise of that power or the performance of that duty to a Cabinet Secretary.

(2) The powers transferable by an order made under this section shall include a power to make rules.

(3) The draft of every order to be made under this section shall be laid before the National Assembly, and shall be approved by resolution of the Assembly before it is submitted to the President, and if the Assembly resolves that the draft be not so submitted no further proceedings shall be taken thereon, but without prejudice to the laying of a new draft before the National Assembly.

(4) An order made under this section may be varied by a subsequent order made in the same manner and subject to the same conditions.

(5) An order made under this section may make such amendments to the Act in respect of which the order is made, being amendments consequential upon the transfer by the order of the exercise of a power or the performance of a duty, as may be necessary for carrying the order into effect.

(6) Where an order is made under this section, an Act in respect of which the order is made shall thereafter be read and construed in all respects as if it were amended in conformity with the terms of the order.

[Act No. 31 of 1955, s. 2, Act No. 7 of 1956, s. 3,
L.N. 458/1963, Sch., Act No. 21 of 1966, 2nd Sch.]

37. Provision for execution of duties of Cabinet Secretary or public officer during temporary absence or inability

Where by or under an Act, powers are conferred or duties are imposed upon a Cabinet Secretary or a public officer, the President, in the case of a Cabinet Secretary, or the Cabinet Secretary, in the case of a public officer, may direct that, if from any cause the office of that Cabinet Secretary or public officer is vacant, or if during any period, owing to absence or inability to act from illness or any other cause, the Cabinet Secretary or public officer is unable to exercise the powers or perform the duties of his office, those powers shall be had and may be exercised and those duties shall be performed by a Cabinet Secretary designated by the President or by a person named by, or by the public officer holding an office designated by, the Cabinet Secretary; and thereupon the Cabinet Secretary, or the person or public officer, during that period, shall have and may exercise those powers and shall perform those duties, subject to such conditions, exceptions and qualifications as the President or the Cabinet Secretary may direct.

[Act No. 7 of 1956, s. 4, Act No. 39 of 1958, s. 5, Act No. 21 of 1966, 2nd Sch.]

38. Delegation of powers

(1) Where by an Act the exercise of a power or the performance of a duty is conferred upon or is vested in the President, the Attorney-General or a Cabinet Secretary, the President, the Attorney-General or the Cabinet Secretary, may, unless by law expressly prohibited from so doing, delegate, by notice in the *Gazette*, to a person by name, or to the person for the time being holding an office specified in the notice, the exercise of that power or the performance of that

duty, subject to such conditions, exceptions or qualifications as the President, the Attorney-General or the Cabinet Secretary may specify in the notice.

(2) Nothing in subsection (1) shall authorize the persons therein mentioned to delegate—

- (a) a power to make subsidiary legislation; or
- (b) a power to issue warrants or to make proclamations or to hear an appeal,

under a power in that behalf conferred upon or vested in any such person by an Act.

(3) A delegation made under subsection (1) may be varied or cancelled by the person by whom it was made by notice in the *Gazette*.

(4) No delegation under subsection (1) of a power or duty shall exclude the exercise of the power or the performance of the duty by the person by whom the delegation was made.

(5) *Deleted by Act No. 8 of 1968, Sch.*

39.

[Repealed by Act No. 8 of 1968, Sch.]

40.

[Deleted by Act No. 7 of 1987, 2nd Sch.]

PART IV – GENERAL PROVISIONS REGARDING POWERS, DUTIES AND APPOINTMENTS AND THE EXERCISE AND SIGNIFICATION THEREOF

[Act No. 39 of 1958, s. 4.]

41.

[Repealed by Act No. 18 of 1968, s. 5.]

42. Power and duties to be exercised and performed from time to time

Where a written law confers a power or imposes a duty, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed from time to time as the occasion arises.

43. Powers and duties of holder of office

Where a written law confers a power or imposes a duty on the holder of an office as such, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed by the person for the time being holding that office.

44. Power to appoint by name or office

Where the President, a Cabinet Secretary, a public officer or a public body is empowered by a written law to appoint a person to perform any functions or hold any office, he or it may either appoint a person by name or appoint the holder of a named office to perform the functions or hold the office in question.

[Act No. 18 of 1968, s. 4.]

45. Reference to holder of office includes person discharging functions of that office

In this Act and in any other written law, instrument, warrant or process of any kind, a reference to a person holding an office shall include a reference to any person for the time being lawfully discharging the functions of that office.

46. Power to appoint substantively pending retirement, etc., of existing office-holder

(1) Where the substantive holder of a public office constituted by or under an Act is on leave of absence pending relinquishment by him of that office, another person may be appointed substantively to the same public office.

(2) Where two or more persons are holding the same office by reason of an appointment made in accordance with subsection (1), then, for the purposes of all written laws and in respect of every power conferred or duty imposed upon the holder of that office, the person last appointed to the office shall be deemed to be the holder thereof.

47. Change of title of public officer

(1) Whenever the title of a public officer is changed, the President may, by notice in the *Gazette*, declare that, for the purposes of all written laws and the title of the officer shall be replaced by the new title specified in the notice.

(2) Where a notice is published under subsection (1), a written law containing a reference to the title which is changed shall be deemed to have been amended by substituting for that reference a reference to the new title.

[Act No. 7 of 1952, s. 3, Act No. 28 of 1961, Sch., Act No. 21 of 1966, 2nd Sch.]

48. Construction of enabling words

Where a written law confers power upon a person to do or to enforce the doing of an act or thing, all powers shall be deemed to be also conferred as are necessary to enable the person to do or to enforce the doing of the act or thing.

49. Power to appoint Chairperson, etc., of board, etc.

Where by or under a written law, power is given to a person to appoint a board, commission, committee or similar body, that person may, unless a contrary intention appears, appoint a Chairperson, deputy Chairperson, vice-Chairperson and secretary of the board, commission, committee or similar body.

50. Power to appoint public officer to serve on board, etc.

Where by or under a written law, power is given to a person to appoint persons to be members of a board, commission, committee or similar body, that person may, unless a contrary intention appears, appoint, by his official designation, a public officer, and, on the appointment and until the appointment shall be revoked or otherwise determined, the person for the time being holding the office in question shall be a member of the board, commission, committee or similar body.

51. Power to appoint to include power to suspend, dismiss, etc., and to reappoint, etc.

(1) Where by or under a written law, a power or duty is conferred or imposed upon a person to make an appointment or to constitute or establish a board, commission, committee or similar body, then, unless a contrary intention appears, the person having that power or duty shall also have the power to remove, suspend, dismiss or revoke the appointment of, and to reappoint or reinstate, a person appointed in the exercise of the power or duty, or to revoke the appointment, constitution or establishment of, or dissolve, a board, commission, committee or similar body appointed constituted or established, in exercise of the power or duty, and to reappoint, reconstitute or re-establish it.

(2) Where the power or duty of a person under this section is exercisable only upon the recommendation, or is subject to the approval or consent of another person, then the power shall, unless a contrary intention appears be exercisable only upon that recommendation or subject to that approval or consent.

52. Power to appoint alternate or temporary members

Where by or under a written law a board, commission, committee or similar body, whether corporate or unincorporate, is established, then, unless a contrary intention appears, a person who is by that written law empowered to appoint any or all of the members thereof may—

- (a) appoint one or more duly qualified persons to be alternate members, and any one alternate member may attend a meeting when a substantive member is temporarily unable to attend;
- (b) appoint a duly qualified person to be a temporary member in the place of a substantive member who is precluded by illness, absence from Kenya or other cause from exercising his functions, and,

when attending a meeting of the board, commission, committee or similar body, the alternate or temporary member shall be deemed for all purposes to be a member thereof.

53. Power of board, etc., not affected by vacancy, etc.

Where by or under a written law a board, commission, committee or similar body, whether corporate or un-incorporate, is established, then, unless a contrary intention appears, the powers of the board, commission, committee or similar body shall not be affected by—

- (a) a vacancy in the membership thereof; or
- (b) a defect afterwards discovered in the appointment or qualification of a person purporting to be a member thereof.

54. Affixing of common seal

Where by or under a written law a board, commission, committee or similar body is constituted to be a body corporate having perpetual succession and a common seal, and a document requires to be sealed with the common seal, then, in the absence of express provision to the contrary, the common seal shall be affixed by the Chairperson of the board, commission, committee or similar body and shall be authenticated by his signature.

55. Power of majority to act

Save as is otherwise expressly provided by a written law, where an act or thing may or is required to be done by more than two persons, a majority of them may do it.

PART V – GENERAL PROVISIONS REGARDING TIME

56. Time

(1) The standard time of Kenya shall be three hours in advance of Greenwich Mean Time.

(2) Where an expression of time occurs in a written law, instrument, warrant or process of any kind, the time referred to shall, unless it is otherwise expressly provided, signify the standard time of Kenya.

57. Computation of time

In computing time for the purposes of a written law, unless the contrary intention appears—

- (a) a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
- (b) if the last day of the period is Sunday or a public holiday or all official non-working days (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;
- (c) where an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;
- (d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

[Act No. 11 of 1993, Sch.]

58. Provisions where no time prescribed

Where no time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises.

59. Construction of power to extend time

Where in a written law a time is prescribed for doing an act or taking a proceeding, and power is given to a court or other authority to extend that time, then, unless a contrary intention appears, the power may be exercised by the court or other authority although the application for extension is not made until after the expiration of the time prescribed.

PART VI – GENERAL PROVISIONS REGARDING
LEGAL PROCEEDINGS AND PENALTIES

60. Evidence of signature of President, Cabinet Secretary or Attorney-General to consent

Where the consent of the President, a Cabinet Secretary or the Attorney-General is necessary before a prosecution or action is commenced, a document purporting to bear the consent of the President, a Cabinet Secretary or the Attorney-General shall be received as *prima facie* evidence in proceedings without proof being given that the signature to the consent is that of the President, a Cabinet Secretary or the Attorney-General.

[Act No. 21 of 1966, 2nd Sch., Act No. 18 of 1968, Sch.]

61. Ex officio proceedings not to abate on death, etc.

Civil or criminal proceedings taken by or against any person in virtue of his office shall not be discontinued or abated by his death, resignation or absence or removal from office, but may be carried on by or against, as the case may be, the person for the time being holding that office.

62. Imposition of penalty no bar to civil action

The imposition of a penalty or fine by or under the authority of a written law shall not, in the absence of express provision to the contrary, relieve a person from liability to answer for damages to a person injured.

63. Provisions as to offences under two or more laws

Where an act or omission constitutes an offence under two or more written laws, the offender shall, unless a contrary intention appears, be liable to be prosecuted and punished under any of those laws, but shall not be liable to be punished twice for the same offence.

64. Amendment of penalty

Where an act or omission constitutes an offence, and the penalty for the offence is amended between the time of the commission of the offence and the conviction therefor, the offender shall, in the absence of express provision to the contrary, be liable to the penalty prescribed at the time of the commission of the offence.

65. Statement of penalty at foot of section to indicate penalty for contravention of section

Where in a written law a penalty is set out at the foot of a section, a contravention of the section whether by act or omission shall be an offence against that written law and shall, unless a contrary intention appears, be punishable upon conviction by a penalty not exceeding the penalty so set out.

66. Penalties prescribed may be maximum penalties, but may be cumulative

(1) Where in a written law a penalty is prescribed for an offence under that written law, that provision shall, unless a contrary intention appears, mean that the offence shall be punishable by a penalty not exceeding the penalty prescribed.

(2) Where in any written law more than one penalty is prescribed for an offence, the use of the word “and” shall, unless a contrary intention appears, mean that the penalties may be inflicted alternatively or cumulatively.

67. Disposal of forfeits

(1) Where an animal or thing is by a written law declared, or is under a written law adjudged by a court or other authority, to be forfeited, it shall, in the absence of express provision to the contrary, be forfeited to the Government, and the net proceeds thereof, if it is ordered by a competent authority to be sold, shall be paid into the Consolidated Fund, unless other provision is made.

(2) Nothing in this section shall affect any provision in a written law whereby a portion of a fine or forfeit or of the proceeds of a forfeit is expressed to be recoverable by a person or may be granted by an authority to a person.

[Act No. 13 of 1961, s. 4.]

68. Disposal of fines and penalties

A fine or penalty imposed by or under the authority of a written law shall, in the absence of an express provision to the contrary, be paid into the Consolidated Fund.

PART VII – GENERAL MISCELLANEOUS PROVISIONS

69. Gazette, etc., to be prima facie evidence

The production of a copy of the *Gazette* containing a written law or a notice, or of a copy of a written law or a notice, purporting to be printed by the Government Printer, shall be *prima facie* evidence in all courts and for all purposes whatsoever of the due making and tenor of the written law or notice.

[Act No. 46 of 1963, 2nd Sch., L.N. 458/1963, L.N. 27/1964.]

70. Power to issue licence, etc., subject to conditions

Where a written law confers a power to issue licence, permit or authorization, then, unless a contrary motion appears, the licence, permit or authorisation may be issued subject to conditions, not inconsistent with that Law, which the authority issuing it deems expedient

[Act No. 39 of 1958, s. 8.]

71. Act for which payment required need not be performed until payment made

(1) Where a person, public officer or local authority is required to do anything for which a fee is to be paid or a charge made under a written law, that person, public officer or local authority may decline to do that thing until the fee is paid or until payment of the charge is made, or, where the precise amount of the payment to be made cannot be ascertained until the thing has been done, until there is paid such an amount as may be estimated to be the correct amount by the person or public officer, or the responsible officer of the local authority, required to do the thing.

(2) Where a thing has been done for which an estimated amount has been paid, that amount shall be adjusted to the correct amount either by means of a further payment or by a refund of the amount overpaid.

72. Deviation from forms

Save as is otherwise expressly provided, whenever a form is prescribed by a written law, an instrument or document which purports to be in that form shall not be void by reason of a deviation therefrom which does not affect the substance of the instrument or document, or which is not calculated to mislead.

73. Nairobi Area

Where by or under any written law, any power is conferred or any duty is imposed on the Provincial Commissioner of a province, or on the District Commissioner of a district, or on any other public officer having the responsibility for any particular matter within a province or district, then as regards the Nairobi Area the power shall be exercised or the duty shall be performed, as the case may be, by the administrative officer in charge of the Nairobi Area or by the public officer in charge of the Nairobi Area or by the public officer having the responsibility for the particular matter within the Nairobi Area, as the case may be, except where the context otherwise requires.

[L.N. 458/1963, s. 5, Act No. 21 of 1966, Second Sch., Act No. 5 of 1992, s. 4.]

PART VIII – GENERAL PROVISIONS REGARDING THE GOVERNMENT

74.

[Repealed by Act No. 18 of 1968, s. 5.]

75. Saving of rights of Government

No written law shall in any manner whatsoever affect the rights of the Government unless it is therein expressly provided, or unless it appears by necessary implication that the Government is bound thereby.

[Act No. 18 of 1968, Sch.]

76. Act to bind Government

This Act shall bind the Government.

[Act No. 18 of 1968, Sch.]
