

## **CHAPTER 2 - Interpretation and General Provisions Act**

*Commencement Date: 12/11/1956*

**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**

### **Part I – INTRODUCTORY**

Short title

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

Application  
18 of 1968, Sch.

2.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.

### **Part II - GENERAL PROVISIONS OF INTERPRETATION**

Interpretation of terms

39 of 1958, s. 2, 13 of 1961, s. 2, 26 of 1961, s. 9, 28 of 1961, Sch., L.N.142/1961, 36 of 1962, 38 of 1962, L.N.559/1962, L.N.256/1963, L.N.458/1963, L.N.519/1963, 1 of 1964,s.7, L.N.27/1964, 15 of 1966, Sch., 17 of 1967, s. 22, 31 of 1967, s. 20, L.N.280/1967, 18 of 1968, s. 2, Sch. 39 of 1968, s. 14 60 of 1968, 3rd Sch., 5 of 1969, s. 8, 2 of 1972, s. 4, 3 of 1975, s. 2, 14 of 1977, Sch., 19 of 1982, Sch. 6 of 1989, Sch., 11 of 1993, Sch. Cap. 412. Cap. 4. Cap. 21. Cap. 85. Cap.16. Cap 199. 11 &12 Geo.6, c.56.Cap 15. Cap. 1. Cap. 9. Act 6 of 1989. Cap. 280. Cap. 265. Cap. 10. Cap 253. Cap. 84. Cap 110. Cap. 288. Cap.15. Cap.371. 5 of 1992, S. 4 ss. 1,

3.(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" means a person appointed to be an accounting officer within the meaning, and for the purposes, of the Exchequer and Audit Act;

"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;

"action" means any civil proceedings in a court and includes any suit as defined in section 2 of the Civil Procedure Act;

"administration police officer" means a person appointed to the office of that name under the Administration Police Act;

"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;

"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" has the same meaning as in the Armed Forces Act;

"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;

"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" means the East African Community established by the Treaty for East African Co-operation;

"Consolidated Fund" means the Consolidated Fund of Kenya established by the Constitution;

"the Constitution" means the Constitution of Kenya set out in the Second Schedule to the Constitution of Kenya Act, 1969, and reproduced in the Laws of Kenya under the authority of section 4 of the Revision of the Laws Act;

"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;

"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;

"Crown Agents" means the persons or body for the time being acting as the Crown Agents for Oversea 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, 1992 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;

"exclusive economic zone" means the exclusive economic zone established and delimited by the Maritime Zones Act.

"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;

"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;

"Government analyst" includes an assistant or other analyst employed by the Government;

"Government land" has the same meaning as in the Government Lands Act;

"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 Court" means the High Court established by the Constitution;

"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;

"local authority" has the meaning assigned to it in the Local Government Act;

"magistrate" has the meaning assigned to it in the Magistrates' Courts Act;

"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;

"Minister" means a person appointed as a Minister of the Government of Kenya under the Constitution, or the President, the Vice-President or the Attorney-General;

"the Minister" means the Minister for the time being responsible for the matter in question, or the President where executive authority for the matter in question is retained by him, or the Attorney-General where executive authority for the matter in question has been conferred on him;

"month" means calendar month;

"movable property" means property of every description except immovable property;

"municipality" has the meaning assigned to it in the Local Government Act;

"the Nairobi Area" means the area of that name referred to in section 2 of the Districts and Provinces Act, 1992;

"National Assembly" means the National Assembly established by the Constitution;

"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, misdemeanor 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 Police Act;

"power" includes any privilege, authority or discretion;

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

"the President" means the person elected as President of the Republic under the Constitution;

"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, 1992 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;

"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;

"public body" means—

(a) the Government, or any department, institution or undertaking thereof; or

(b) *(Deleted by 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;

"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;

"receiver of revenue" means a person appointed to be a receiver of revenue within the meaning, and for the purposes, of the Exchequer and Audit Act;

"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;

"the Republic" means the Republic of Kenya;

"rule" includes rule of court, by-law and regulation;

"the Rules Committee" means the Rules Committee established by section 81 of the Civil Procedure Act;

"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;

"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;

"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 as it stood immediately before 1st June, 1963;

"statutory declaration", if made—

(a) in Kenya, means a declaration made under the Oaths and Statutory Declarations Act;

(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, 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 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, and includes any inland water of Kenya.

"township" has the meaning assigned to it in the Local Government Act;

"the Treasury" means the Minister for the time being responsible for finance, and such other officer or officers of his Ministry as may be deputed by him to exercise and perform on behalf of the Treasury any power or duty conferred or imposed on the Treasury by any written law;

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

"the United Kingdom" means Great Britain and Northern Ireland;

"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; or

(c) any subsidiary legislation for the time being in force;

"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.

(5) Where any written law authorizes or requires a document to be served by post, whether the expression "serve" or "give" or "send" or any other expression is used, then, unless a contrary intention appears, the service shall be deemed to be effected by properly addressing to the last known postal address of the person to be served, prepaying and posting, by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of the post.

### **Part III - GENERAL PROVISIONS REGARDING WRITTEN LAWS**

#### Commencement of Acts

**9.**(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 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.

#### Acts to be divided into sections without introductory words

**10.**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.

#### Applied law to be read with necessary modifications 21 of 1966, 2nd Sch., 18 of 1968, Sch.

**11.**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.

#### Reference to written law to include amendments 18 of 1968, s. 3

**13.**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.

#### Time when written law comes into operation

**19.**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.

#### Repealed written law not revived

**20.**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.

#### Repeal of amended law to include amendments

**21.**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.

#### Repeal and substitution



**22.** 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.

Provisions respecting amended written law, and effect of repealing written law  
L.N.142/1963

**23.**(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 repealed written law had not been made.

Effect of repeal of Act on subsidiary legislation

**24.** 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.

Construction of amending written law with amended written law

**25.** 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.

Effect of expiry of written law

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

Publication and commencement of subsidiary legislation  
46 of 1963. s. 183, 18 of 1968, Sch., 19 of 1982, Sch.

**27.(1)** All subsidiary legislation shall, unless it is otherwise expressly provided in a written law, be published in the Gazette, and shall come into operation on the day of publication, or, if it is enacted either in the subsidiary legislation or in some other written law that the subsidiary legislation shall come into operation on some other day, on that day, subject to annulment where applicable.

(2) Notwithstanding anything in sub-section (1), where a written law contains a power to prescribe forms then, unless it is otherwise expressly provided therein, those forms need not be published in the Gazette.

#### Retrospective operation of subsidiary legislation

**28.** 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.

#### Construction of subsidiary legislation

**29.** 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.

#### Exercise of powers between publication and commencement of Act

**30.** 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.

#### General provisions with respect to power to make subsidiary legislation 21 of 1966. 1st Sch

**31.** 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.

References to written laws to include subsidiary legislation thereunder

**32.** 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.

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

**33.** 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.

Rules and regulations to be laid before National Assembly  
39 of 1956, ss.2, 3, 4, 15 of 1961, Sch., L

**34.**(1) All rules and regulations made under an Act shall, unless a contrary intention appears in the Act, be laid before the National Assembly without unreasonable delay, and, if a resolution is passed by the Assembly within twenty days on which it next sits after the rule or regulation is laid before it that the rule or regulation be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the making of any new rule or regulation.

(2) Subsection (1) shall not apply to rules or regulations a draft of which is laid before the National Assembly and is approved by resolution before the making thereof, nor to rules of court.

(3) In this section, "rules" and "regulations" mean respectively those forms of subsidiary legislation which may be cited as rules or regulations, as the case may be.

Fees

**35.**(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.

Provision for transfer of statutory powers and duties  
31 of 1955, s. 2, 7 of 1956, s. 3, L.N.458/1963, 21 of 1966, 2nd Sch

**36.(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 Minister.

(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.

Provision for execution of duties of Minister or public officer during temporary absence or inability  
7 of 1956,s.4, 21 of 1966. 2nd Sch

**37.**Where, by or under an Act, powers are conferred or duties are imposed upon a Minister or a public officer, the President, in the case of a Minister, or the Minister, in the case of a public officer, may direct that, if from any cause the office of that Minister or public officer is vacant, or if during any period, owing to absence or inability to act from illness or any other cause, the Minister 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 Minister designated by the President or by a person named by, or by the public officer holding an office designated by, the Minister; and thereupon the Minister, 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 Minister may direct.

Delegation of powers  
31 of 1955, s. 3, 15 of 1961, Sch., L.N.27/1964, 21 of 1966, 2nd Sch., 25 of 1967, s. 22.

**38.**(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 Minister, the President, the Attorney-General or the Minister, 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 Minister 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)*(Repealed by 8 of 1968, Sch.)*

#### **Part IV - GENERAL PROVISIONS REGARDING POWERS, DUTIES AND APPOINTMENTS AND THE EXERCISE AND SIGNIFICATION THEREOF**

##### Power and duties to be exercised and performed from time to time

**42.**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 occasion arises.

##### Powers and duties of holder of office

**43.**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

##### Powers to appoint by name or office

18 of 1968, s. 4

**44.**Where the President, a Minister, 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.

##### Reference to holder of office includes person discharging functions of that office

**45.**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.

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

**46.(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.

Change of title of public officer  
7 of 1952, s. 3, 28 of 1961, Sch., 21 of 1966, 2nd Sch.

**47.(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.

Construction of enabling words

**48.**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.

Power to appoint chairman, etc., of board, etc

**49.**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 chairman, deputy chairman, vice-chairman and secretary of the board, commission, committee or similar body.

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

**50.**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.

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

**51.(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.

#### Power to appoint alternate or temporary members

**52.** 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.

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

**53.** 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, 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.

#### Affixing of common seal

**54.** 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 chairman of the board, commission, committee or similar body and shall be authenticated by his signature.

#### Power of majority to act

**55.** 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**

#### Time

**56.**(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.

#### Computation of time 11 of 1993, Sch

**57.** 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.

#### Provisions where no time prescribed

**58.** 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.

#### Construction of power to extend time

**59.** 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**

#### Evidence of signature of President, Minister or Attorney-General to consent 21 of 1966, 2nd Sch., 18 of 1968, Sch.

**60.** Where the consent of the President, a Minister or the Attorney-General is necessary before a prosecution or action is commenced, a document purporting to bear the consent of the President, a Minister 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 Minister or the Attorney-General.

#### *Ex officio* proceedings not to abate on death, etc.

**61.** 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.

#### Imposition of penalty no bar to civil action

**62.** 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.

#### Provisions as to offences under two or more laws

**63.** 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.



#### Amendment of penalty

**64.** 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.

#### Statement of penalty at foot of section to indicate penalty for contravention of section

**65.** 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.

#### Penalties prescribed may be maximum penalties, but may be cumulative

**66.(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.

#### Disposal of forfeits 13 of 1961, s. 4.

**67.(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.

#### Disposal of fines and penalties

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

### **Part VII - GENERAL MISCELLANEOUS PROVISIONS**

#### Gazette, etc., to be prima facie evidence 46 of 1963, 2nd Sch., L.N.458/1963. L.N.27/1964.

**69.** 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.

#### Power to issue licences, etc., subject to conditions

39 of 1958, s. 8.

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

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

71.(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.

Deviation from forms

72. 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.

Provision concerning Nairobi Area  
L.N.458/1963, 21 of 1966, 2nd Sch. 5 of 1992

73. 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 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.

## **Part VIII - GENERAL PROVISIONS- REGARDING THE GOVERNMENT**

Saving of rights of Government  
18 of 1968, Sch.

75. 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 to bind Government  
18 of 1968, Sch.

76. This Act shall bind the Government

**Orders under section 36—**

L.N.112/1962.  
L.N.206/1962.  
L.N.599/1963.  
L.N.279/1964,  
L.N.263/1965.  
L.N.58/1970.  
L.N.139/1971.  
L.N.137/1972.  
L.N.72/1977.

*These orders are dealt with by amendment of the sections of the Acts which confer the powers transferred.*

### **Delegations under section 37—**

The exercise of the powers and the performance of the duties of the Registrar General, the Public Trustee or the Official Receiver shall, during his absence or inability to act from illness or any other cause, be exercised and performed by the Deputy Registrar General, the Deputy Public Trustee or the Official Receiver, as the case may be.

*All other delegations are recorded as footnotes to the sections of the Acts conferring the powers delegated.*

### **Titles of public officers changed under section 47—**

The titles of public officers specified in the first column hereunder are replaced, for the purposes of all written laws, by the titles specified in the second column hereunder.

Old Title	New Title
Director of Education	Chief Education Officer
Assistant Director of Education	Assistant Chief Education Officer
Chief Labour Officer	Labour Commissioner
Assistant Chief Labour Officer	Assistant Labour Commissioner
Chief Hydraulic Engineer	Director of Water Development
Crown Counsel	State Counsel
Senior Crown Counsel	Senior State Counsel
Chief Fisheries Officer	Director of Fisheries
District Commissioner, Nairobi Area	Provincial Commissioner, Nairobi Area
Chief Statistician	Director of Statistics
Health Inspector	}Public Health Officer
Sanitary Inspector	
Controller of Inland Revenue	Commissioner of Inland Revenue
Chief Inspector of Factories	Director of Occupational Health and Safety Services

**Delegations under section 37—**

The exercise of the powers and the performance of the duties of the Registrar General, the Public Trustee or the Official Receiver shall, during his absence or inability to act from illness or any other cause, be exercised and performed by the Deputy Registrar General, the Deputy Public Trustee or the Official Receiver, as the case may be.

All other delegations are recorded as footnotes to the sections of the Acts conferring the powers delegated.