

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 106 (Senate Bills No. 28)*



REPUBLIC OF KENYA

---

***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2023**

---

---

**NAIROBI, 30th June, 2023**

---

---

CONTENT

Bill for Introduction into the Senate—	PAGE
The Food and Feed Safety Control Co-ordination Bill, 2023 .....	601



**THE FOOD AND FEED SAFETY CONTROL CO-  
ORDINATION BILL, 2023**

**ARRANGEMENT OF CLAUSES**

*Clause*

**PART I—PRELIMINARY**

- 1 — Short title.
- 2 — Interpretation.
- 3 — Object of this Act.
- 4 — Application of this Act.
- 5 — Guiding principles.

**PART II—OFFICE OF THE CONTROLLER**

- 6 — Establishment of the Office of the Controller.
- 7 — Appointment of the Controller.
- 8 — Qualifications of the Controller.
- 9 — Functions of the Controller.
- 10 — Vacancy in the Office of the Controller.
- 11 — Removal from the Office of the Controller.
- 12 — Staff of the Office of the Controller.
- 13 — Remuneration of the Controller.
- 14 — Delegation by the Controller.
- 15 — Protection from personal liability.

**PART III—FOOD SAFETY AND FEED SAFETY BY  
COUNTY GOVERNMENTS**

- 16 — Functions of a county government.

**PART IV—FOOD SAFETY AND FEED SAFETY  
CONTROL AND COORDINATION**

- 17 — Multi-annual control plan.
- 18 — Verification of mechanisms to enforce of food and feed safety requirements.
- 19 — Overlaps in functions of Competent Authorities.
- 20 — Audits of food safety or feed safety mechanisms.

- 21 — Verification audit.
- 22 — Risk analysis.
- 23 — Traceability.
- 24 — Reference laboratory for official control.
- 25 — Report on food safety and feed safety.
- 26 — Appointment of compliance officers.
- 27 — Powers of compliance officer.

**PART V—FINANCIAL PROVISIONS**

- 28 — Funds of the Office of the Controller.
- 29 — Investment of funds.
- 30 — Annual estimates.
- 31 — Accounts and audit.

**PART VI—MISCELLANEOUS PROVISIONS**

- 32 — Act to supersede other Acts.
- 33 — Regulations.
- 34— Consequential amendments.

**FIRST SCHEDULE— COMPETENT  
AUTHORITIES**

**SECOND SCHEDULE—CONSEQUENTIAL  
AMENDMENTS**

**THE FOOD AND FEED SAFETY CONTROL CO-ORDINATION BILL, 2023**

**A Bill for**

**AN ACT of Parliament to provide for the coordination of the public institutions in the control of food and feed safety; to establish the Office of the Food Safety Controller; to provide for the role of County Governments in food and feed safety; and for connected purposes.**

**ENACTED** by Parliament as follows—

**PART I—PRELIMINARY**

**1.** This Act may be cited as the Food and Feed Safety Control Co-ordination Act, 2023.

Short title.

**2.** In this Act, unless the context otherwise requires –

Interpretation.

“Cabinet Secretary” means the Cabinet Secretary responsible for food safety;

“Competent Authority” means the public institutions responsible for official control set out in the First Schedule, or such other public entity as the Cabinet Secretary may, by Order in the *Gazette*, determine;

“Compliance officer” means a person appointed as such under section 26;

“Controller” means a Food Safety Controller appointed under section 7;

“feed” means processed, semi-processed or raw material which is to be consumed directly by an animal which is consumed as food or an animal whose produce is capable of being consumed as food;

“feed business” means the production, manufacture, storage or distribution of feed, feed ingredient, feed additive or feed supplement;

“feed ingredient” means a component or any combination of components used in the production of feed and includes a feed additive;

“feed safety” means all measures that ensure that feed will not cause harm to an animal which is consumed as food or to an animal whose produce is capable of being consumed as food, when the feed is consumed in accordance to the recommended use of the manufacturer of the feed;

“food” means a processed, semi-processed or raw substance which is consumed by a human being and includes drinking water and a substance which has been used in the production, manufacture, preparation or treatment of food but does not include a cosmetic, tobacco or a substance used as drugs;

“food business” means the production, processing, storage or distribution of food but does not include the domestic preparation, handling or storage of food for consumption within a residence;

“food safety” means measures taken to ensure that food shall not cause harm to a consumer when consumed according to its intended use;

“hazard” means any biological, chemical or physical agent or condition of food or feed which is capable of causing an adverse health effect;

“multi annual control plan” means a plan which —

- (a) specifies information on the structure, roles and responsibilities of the Competent Authorities; and
- (b) provides an overview of how the Competent Authorities safeguard the health of the Members of the public, animal and plant health, protects consumers;

“official control” means a regulatory activity by a Competent Authority that—

- (a) provides protection to a consumer during the production, handling, storage, processing and distribution of food or feed; and
- (b) ensures food or feed is safe, wholesome and fit for human consumption, and conforms to the quality and safety requirements for the conduct of food business or feed business;

“Office of the Controller” means the Office of the Food Safety Controller established under section 6;

“risk analysis” means a process which consists of risk assessment, risk management and risk communication;

“risk assessment” means a scientifically based process which consists of the—

- (a) identification of a hazard;
- (b) characterisation of a hazard;
- (c) assessment of the exposure to the hazard; and
- (d) characterisation of the risk;

“risk communication” means the interactive exchange of information and opinions throughout a risk analysis on the risk-related factors, risk perceptions of risk assessors, risk managers, consumers, industry, the academic community and other interested parties, and the explanation of risk assessment findings as the basis of risk management; and

“risk management” means the process of evaluating policy alternatives, in consultation with interested parties considering risk assessment and other factors relevant for the protection of health of consumers and for the promotion of fair-trade practices, and, if needed, selecting appropriate prevention and control options.

**3.** The object of this Act is to—

Object of this Act.

- (a) effectively coordinate the performance of the functions of Competent Authorities; and
- (b) enhance accountability in the implementation of official control.

**4.** This Act shall apply to every Competent Authority and every person conducting food business or feed business.

Application of this Act.

**5.** The guiding principles for the implementation of this Act shall be—

Guiding principles.

- (a) the protection of human life and health;
- (b) the protection of consumer interests in the conduct of food business and feed business;
- (c) the promotion of the use of scientific based risk analysis;

- (d) the promotion of food safety and feed safety;
- (e) the promotion of fair-trade practices in the conduct of food business and feed business; and
- (f) efficiency in the performance of official control.

## **PART II—OFFICE OF THE CONTROLLER**

**6.** (1) There is established the office of the Food Safety Controller which shall be a body corporate with perpetual succession and a common seal, and in its corporate name shall be capable of—

Establishment of the Office of the Controller.

- (a) suing and being sued;
- (b) acquiring or disposing of movable and immovable property; and
- (c) performing such acts as may be performed by a body corporate.

(2) The Office of the Controller shall be designated as a State Office in accordance with Article 260(q) of the Constitution.

**7.** (1) There shall be a Food Safety Controller who shall be appointed by the President, with the approval of Parliament.

Appointment of the Controller.

(2) Whenever a vacancy arises in the office of the Controller, the Public Service Commission shall initiate the recruitment process.

(3) Within seven days of the vacancy referred to in section (2) occurring, the Public Service Commission shall invite applications from persons who qualify for nomination and appointment for the position of the Controller.

(4) The Public Service Commission shall within twenty-one days of receipt of applications under subsection (3)—

- (a) consider the applications received to determine their compliance with this Act;
- (b) shortlist qualified applicants;
- (c) publish and publicise the names of the applicants and the shortlisted applicants;

- (d) conduct interviews of the shortlisted persons in an open and transparent process;
- (e) nominate three qualified applicants in the order of merit for the position of Controller; and
- (f) submit the names of the persons nominated under paragraph (e) to the President.

**8.** (1) A person shall qualify to be appointed as the Controller if that person—

Qualifications of the Controller.

- (a) holds a Master's degree in a discipline related to food safety or feed safety;
- (b) has at least fifteen years' experience working in a field related to food safety or feed safety;
- (c) has at least five years' experience working in a senior management position; and
- (d) meets the requirements of Chapter Six of the Constitution.

(2) The Controller may be appointed for a term of three years and shall be eligible for reappointment for a final term of three years.

**9.** The functions of the Controller shall be to—

Functions of the Controller.

- (a) coordinate the Competent Authorities through the implementation of the multi-annual control plan;
- (b) coordinate the development and review of a multi-annual national control plan;
- (c) monitor and evaluate the implementation of a multi annual control plan at the national level;
- (d) liaise with Competent Authorities to identify and advise on policy gaps and inadequate regulation in food safety and feed safety;
- (e) assess the adequacy of food safety and feed safety preparedness and make recommendations to the relevant Competent Authority;
- (f) establish an information management system for food safety and feed safety in the country;

- (g) verify that Competent Authorities have put in place systems for effective official control;
- (h) prepare an annual report on the state of food safety in Kenya; and
- (i) perform such other duties as may be necessary to ensure food safety and feed safety.

**10.** The Office of the Controller shall become vacant, if the Controller—

Vacancy in the Office of the Controller.

- (a) dies;
- (b) resigns from office by notice in writing addressed to the President; or
- (c) is removed from office in accordance with section 11.

**11.** (1) The Controller may be removed from office on the grounds of—

Removal from the Office of the Controller.

- (a) violation of Chapter Six of the Constitution;
- (b) gross misconduct in the performance of the functions of the Controller;
- (c) incapacity to perform the functions of the Controller due to a physical or mental illness;
- (d) being an adjudged bankrupt; or
- (e) being convicted of an offence and sentenced to a term of imprisonment exceeding six months.

(2) A person who desires the removal of the Controller on any ground specified under subsection (1) shall present a complaint to the Public Service Commission setting out the alleged facts constituting that ground.

(3) Subject to Article 47 of the Constitution, the Public Service Commission shall consider the complaint and, if satisfied that the complaint discloses a ground under subsection (1), the Public Service Commission shall—

- (a) investigate the matter expeditiously;
- (b) report on the facts; and
- (c) make a recommendation to the President.

(4) Prior to any action under sub-section (3), the Public Service Commission shall—

- (a) inform the Controller, in writing, of the reasons for the intended removal; and
- (b) offer the Controller an opportunity to put in a defence against the alleged grounds.

**12.** The Controller, in consultation with the Public Service Commission, shall employ such members of staff as are necessary for the discharge of the functions of the Controller on such terms of service as the Controller in consultation with the Salaries and Remuneration Commission may determine.

Staff of the Office of the Controller.

**13.** The Controller shall be paid such remuneration or allowances as the Salaries and Remuneration Commission may determine.

Remuneration of the Controller.

**14.** The Controller may delegate the performance of any of the functions of the Controller to any member of staff of the Office of the Controller as the Controller deems necessary.

Delegation by the Controller.

**15.** (1) The Controller or a member of staff of the Office of the Controller, or a person acting on the directions of the Controller, shall not be personally liable to any action, claim or demand whatsoever for any matter or thing done in the performance of the functions of the Office of the Controller and in good faith.

Protection from personal liability.

(2) Subsection (1) shall not relieve the Office of the Controller of the liability to pay compensation or damages, for loss or injury to a person or property, in the performance of the functions on the Office of the Controller.

### **PART III—FOOD SAFETY AND FEED SAFETY BY COUNTY GOVERNMENTS**

**16.** (1) The functions of a county government in relation to food safety and feed safety in the respective County shall be to—

Functions of a county government.

- (a) implement and enforce food safety and feed safety measures;
- (b) license and exercise official control of persons who conduct food business and feed business;

- (c) conduct capacity building on food safety and feed safety;
- (d) conduct public awareness on matters food safety and feed safety;
- (e) prepare county food safety and feed safety reports.
- (f) provide a platform for the consultation and cooperation of the County Governments and stakeholders in the implementation of a multi-annual control plan;
- (g) conduct audits to ascertain compliance and enforcement of food safety and feed safety measures;
- (h) coordinate food safety and feed safety activities;
- (i) regulate and enforce official control; and
- (j) monitor and evaluate implementation of the multi-annual control plan.

(2) Each County Government shall at least thirty days before the end of a financial year, prepare an annual report on the state of food safety and feed safety in the respective County and submit the report to the Controller.

#### **PART IV—FOOD SAFETY AND FEED SAFETY CONTROL AND COORDINATION**

**17.** The Office of the Controller, in consultation with the Competent Authorities and County Governments shall develop and review a multi-annual control plan as a basis and mechanism for official control.

Multi-annual control plan.

**18. (1)** The Controller shall verify that a Competent Authority has mechanisms to enforce the requirements of food safety or feed safety in accordance with the international standards of food and feed safety.

Verification of mechanisms to enforce of food and feed safety requirements.

(2) The scope of the verification conducted by the Controller shall include the—

- (a) conduct of inspections;
- (b) taking of samples and conducting analyses;
- (c) staff health and hygiene;

- (d) examination of the records; and
- (e) issuance of certificates, permits and licenses.

(3) Upon conducting a verification under sub-section (1), the Controller shall prepare a report and submit the report to the Cabinet Secretary responsible for the Competent Authority.

**19.** The Controller in consultation with the Competent Authorities shall advise where an overlap occurs in the performance of their functions under their respective legislation.

Overlap in functions of Competent Authorities.

**20.** (1) The Controller shall conduct an audit of the food safety or feed safety mechanisms of a Competent Authority to ascertain compliance and enforcement.

Audit of food safety or feed safety mechanisms.

(2) The Controller in liaison with the Competent Authorities, shall develop the criteria for conducting the audit under subsection (1).

(3) Upon conducting an audit under subsection (1), the Controller shall prepare an audit report and submit the report to the Cabinet Secretary responsible for the Competent Authority.

**21.** (1) The Controller shall conduct a verification audit to ascertain whether the systems established by a Competent Authority provide accurate certification, inspection and validation of—

Verification audit.

- (a) the effective monitoring of compliance with set standards;
- (b) the implementation of corrective measures including penalties, suspension and withdrawal of licenses;
- (c) the sustainability of the system;
- (d) the investigative powers of the Competent Authority;
- (e) the registration conducted by the Competent Authority, where applicable;
- (f) the confidentiality of the information held by the Competent Authority;
- (g) the self-assessment persons conducting food business, where applicable;

- (h) the self-assessment persons conducting feed business, where applicable;
- (i) the effectiveness of the early warning system for food safety risks, where applicable;
- (j) the effectiveness of the early warning system for feed safety risks;
- (k) the effectiveness of the handling and resolution of complaints;
- (l) the compensation mechanism; and
- (m) such other matter as the Controller considers necessary.

(2) On conducting a verification audit and it is determined that the Competent Authority is in contravention of subsection (1), the Controller shall recommend corrective measures which are to be undertaken within the specified timelines.

(3) Where a Competent Authority does not implement the corrective measures recommended under subsection (2), the Controller shall notify the Cabinet Secretary responsible for the Competent Authority of the contravention.

**22.** (1) The Controller shall conduct risk assessment in relation to food hazards and feed hazards.

Risk analysis.

(2) Where an overlap of functions is discovered upon conducting a risk assessment under subsection (1), the Controller may conduct a risk management on an identified hazard.

(3) Upon conducting a risk management under subsection (2), the Controller, shall communicate the risk of the hazard to the relevant Competent Authority.

(4) The Controller, in consultation with Competent Authorities shall develop and maintain food safety and feed safety risk profiles for every region of the country.

**23.** The Controller shall verify that a Competent Authority has an effective mechanism to enforce traceability requirements by persons conducting food business or feed business.

Traceability.

**24.** (1) The Controller in consultation with the relevant Competent Authorities shall designate a laboratory as a reference laboratory for confirmatory testing.

Reference laboratory.

(2) Upon receipt of an adverse report, the results of an audit conducted under this Act or a complaint by a consumer, the Controller shall conduct confirmatory testing at a designated laboratory for food and feed safety control.

**25.** (1) Every Competent Authority shall, at least thirty days before the end of a financial year, prepare and submit a report on the measures taken to ensure food safety or feed safety to—

Report on food safety and feed safety.

(a) the relevant Competent Authorities; and

(b) the Office of the Controller.

(2) On receipt of the reports under subsection (1), the Controller shall—

(a) analyse the reports and provide feedback to the Competent Authorities; and

(b) within three months after the end of a financial year, prepare an annual report on the state of food safety and feed safety in the Country.

(3) The Controller shall submit the report prepared under subsection (2)(b) to—

(a) the Cabinet Secretary;

(b) all the County Governors; and

(c) the Competent Authorities.

(4) On receipt of the reports under subsection (3) (a), the Cabinet Secretary shall submit the reports to Parliament.

**26.** The Controller shall appoint such compliance officers as are necessary for the proper discharge of the functions of the Controller from amongst the technical members of staff of the Office of the Controller.

Appointment of compliance officers.

**27.** (1) A compliance officer may at all reasonable times—

Powers of compliance officer.

(a) access and inspect land, premises, vessels or vehicles and make such enquiries as are necessary;

(b) inspect, examine and make copies licences, registers, records and other documents relating to food safety; and

(c) take samples for analysis.

(2) A compliance officer shall identify himself when exercising the powers under subsection (1).

### **PART V—FINANCIAL PROVISIONS**

**28.** The funds of the Office of the Controller shall consist of—

Funds of the Office of the Controller.

(a) moneys appropriated by Parliament;

(b) any grants, gifts, donations or other endowments given to the Office of the Controller ; and

(c) such funds as may vest in or accrue to the Office of the Controller in the performance of its functions under this Act or any other written law.

**29.** The Controller may invest the funds of the Office of the Controller—

Investment of funds.

(a) in trust funds or in any other securities;

(b) by depositing moneys not immediately required for the performance of the functions of the Controller,

with the approval of the National Treasury.

**30.** (1) At least three months before the commencement of each financial year, the Controller shall prepare the estimates of the revenue and expenditure of the Office of the Controller for that financial year.

Annual estimates.

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

(a) the payment of the salaries, allowances, pensions, gratuities, retirement benefits and other expenses of the members of staff or agents of the Office of the Controller;

(b) the payment of allowances and other expenses to the members of the staff of the Office of the Controller;

- (c) the acquisition, maintenance and repair of the property of the Office of the Controller; and
- (d) the creation of reserve funds for future or contingent liabilities for retirement benefits, insurance, maintenance or replacement of property, or such other matters as the Controller deems necessary.

(3) The annual estimates shall be submitted to the Cabinet Secretary for tabling in Parliament for approval.

**31.** The annual accounts of the Office of shall be prepared, audited and reported in accordance with the provisions of Article 226 of the Constitution, the Public Finance Management Act, 2012 and the Public Audit Act 2015.

Accounts and audit.  
No. 18 of 2012.  
No. 34 of 2015.

#### **PART VI—MISCELLANEOUS PROVISIONS**

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

Act to supersede other Acts.

**33.** (1) The Cabinet Secretary in consultation with the Controller, may make regulations for the better carrying into effect of this Act.

Regulations.

(2) Without prejudice to subsection (1), the regulations made under this section may provide for—

- (a) the conduct of risk analysis;
- (b) the traceability of food;
- (c) third party authorization;
- (d) the designation of laboratories for official control; and
- (e) any other matter necessary for better realisation of the object of this Act.

**34.** The written law specified in the Second Schedule are amended in the manner specified in the Schedule.

Consequential amendments.

**FIRST SCHEDULE***(s. 2)***COMPETENT AUTHORITIES**

1. The Ministry responsible for matters relating to public health and medical services.
2. The Ministry responsible for matters relating to veterinary services, crop development and livestock development.
3. The Ministry responsible for matters relating to fisheries.
4. The Agriculture and Food Authority
5. The Kenya Dairy Board
6. The Kenya Plant Health Inspectorate Service
7. The Pest Control Products Board
8. The Fertilizer and Animal Foodstuff Board
9. The National Biosafety Authority
10. The Kenya Bureau of Standards

**SECOND SCHEDULE**

(s. 34)

**CONSEQUENTIAL AMENDMENTS**

<b>Written law</b>	<b>Provision</b>	<b>Amendment</b>
Public Health Act (Cap. 242)	s. 2	Delete the definition of the term “food”.
	s. 2	inserting the following new definitions in proper alphabetical sequence — “Controller” means the Food Safety appointed under the Food and Feed Safety Control Coordination Act; “food” means a processed, semi-processed or raw substance which is consumed by a human being and includes a substance which has been used in the production, manufacture, preparation or treatment of food but does not include a cosmetic, tobacco or a substance used as drugs; and “multi-annual control plan” has the meaning assigned to it in section 2 of the Food and Feed Safety Control Coordination Act.
	s. 10	Insert the following new subsection immediately after subsection (2) — (2A) The function of the Medical Department shall include the— (a) conduct of audits on the traceability mechanisms established by persons who sell food or expose food for sale; and (b) implementation the multi-annual control plan in the performance of its functions.
New.	Insert the following new section immediately after section 10 —	

Role of the  
Controller.

**10A.** (1) Where the Director-General for Health determines that there is an overlap in its functions and the function of any other public institution in relation to food safety, the Director-General for Health may request the Controller to advise.

(2) Where a conflict arises between the Director-General for Health and any other public institution in the execution of its functions in relation to food safety, the Director-General for Health may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Director-General for Health to verify that the Director-General for Health has established a system for the effective official control for food safety.

The Food,  
Drugs and  
Chemical  
Substances Act  
(Cap. 254)

s. 2 Delete the definition of the term “food”

Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food Safety Controller appointed under the Food and Feed Safety Control Coordination Act, 2023;

“food” means a processed, semi-processed or raw substance which is consumed by a human being and includes a substance which has been used in the

production, manufacture, preparation or treatment of food but does not include a cosmetic, tobacco or a substance used as drugs; and

“multi-annual control plan” has the meaning assigned to it in section 2 of the Food and Feed Safety Control Coordination Act, 2023.

New. Insert the following new sections immediately after section 27—

Functions of the Board.

**27A.** The functions of the Board shall be to —

- (a) conduct audits of the traceability mechanisms established by persons who label, packages, sells or advertises any food; and
- (b) implement the multi-annual control plan in the performance of its functions.

Role of the Controller.

**27B.** (1) Where the Board determines that there is an overlap in its functions and the function of any other public institution in relation to food safety, the Board may request the Controller to advise.

(2) Where a conflict arises between the Board and any other public institution in the execution of its functions in relation to food safety, the Board may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety

established by the Board to verify that the Board has established a system for the effective official control for food safety.

The Dairy  
Industry Act  
(Cap. 336)

s. 3 Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food Safety Controller appointed under the Food and Feed Safety Control Coordination Act, 2023; and

“multi-annual control plan” has the meaning assigned to it in section 2 of the Food and Feed Safety Control Coordination Act, 2023.

s. 17 Insert the following new paragraphs immediately after paragraph (e)—

(ea) conduct audits of the traceability mechanisms established by persons who engage in the production, marketing, distribution and supply of dairy produce; and

(eb) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 17—

Role of the  
Controller.

**17A.** (1) Where the Board determines that there is an overlap in its functions and the functions of any other public institution in relation to food safety, the Board may request the Controller to advise.

(2) Where a conflict arises between the Board and any other public institution in the execution of its functions in relation to food safety, the Board may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Board to verify that the Board has established a system for the effective official control for food safety.

The Fertilizers  
and Animal  
Foodstuffs Act  
(Cap. 345)

s. 2 Insert the following new definitions in proper alphabetical sequence —

“Controller” means the Food Safety Controller appointed under the Food and Feed Safety Control Coordination Act, 2023; and

“multi-annual control plan” has the meaning assigned to it in section 2 of the Food and Feed Safety Control Coordination Act, 2023.

s. 2B Insert the following new paragraphs immediately after paragraph (f) —

(fa) conduct audits of the traceability mechanisms established by persons who engage in the production, manufacture, packaging, importation and marketing of animal foodstuffs; and

(fb) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 2B —

Role of the  
Controller.

**2BA.** (1) Where the Board determines that there is an overlap in its functions and the functions of any other public institution in relation to food safety or feed safety, the Board may request the Controller to advise.

(2) Where a conflict arises between the Board and any other public institution in the execution of its functions in relation to food safety or feed safety, the Board may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Board to verify that the Board has established a system for the effective official control for food safety or feed safety.

The Pest  
Control  
Products Act  
(Cap. 346)

s. 2 Insert the following new definitions in proper alphabetical sequence —

“Controller” means the Food Safety Controller appointed under the Food and Feed Safety Control Coordination Act, 2023; and

“multi-annual control plan” has the meaning assigned to it in section 2 of the Food and Feed Safety Control Coordination Act, 2023.

s. 6 Insert the following new paragraphs immediately after paragraph (b) —

(ba) conduct audits of the traceability mechanisms established by persons who deal in pest control products; and

(bb) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 6—

Role of the Controller.

**6A.** (1) Where the Board determines that there is an overlap in its functions and the functions of any public institution in relation to food safety or feed safety, the Board may request the Controller to advise.

(2) Where a conflict arises between the Board and any other public institution in the execution of its functions in relation to food safety or feed safety, the Board may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Board to verify that the Board has established a system for the effective official control for food safety or feed safety.

The Meat Control Act (Cap. 356)

s. 2 Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food Safety Controller appointed under the Food and Feed Safety Control Coordination Act, 2023;

“multi-annual control plan” has the meaning assigned to it in section 2 of the Food and Feed Safety Control Coordination Act, 2023.

s. 3 (1) Insert the following new paragraphs immediately after paragraph (h)—

(ha) conduct of audits of the traceability mechanisms established by persons

who operate slaughterhouses or who engage in the production, manufacture, packaging, importation, exportation or marketing of meat products; and

(hb) implementation of the multi-annual control plan in the performance of its functions.

The Standards Act  
(Cap. 496)

s. 2 Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food Safety Controller appointed under the Food and Feed Safety Control Coordination Act, 2023; and

“multi-annual control plan” has the meaning assigned to it in section 2 of the Food and Feed Safety Control Coordination Act, 2023.

s. 4 (1) Insert the following new paragraphs immediately after paragraph (d)—

(da) conduct audits of the traceability mechanisms established by persons who use of standardization marks and distinctive marks for foods or feeds; and

(db) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 4—

Role of the Controller. **4A.** (1) Where the Bureau determines that there is an overlap in its functions and the functions of any other public institution in relation food safety or feed safety, the Bureau may request the Controller to advise.

(2) Where a conflict arises between the Bureau and any public institution in the execution of its functions in relation to food safety or feed safety, the Bureau may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Bureau to verify that the Bureau has established a system for the effective official control for food safety or feed safety.

The Biosafety Act, 2009  
(No. 7 of 2009)

s. 2 Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food Safety Controller appointed under the Food and Feed Safety Control Coordination Act, 2023; and

“multi-annual control plan” has the meaning assigned to it in section 2 of the Food and Feed Safety Control Coordination Act, 2023.

s. 7 (2) Insert the following new paragraphs immediately after paragraph (b)—

(ba) conduct audits of the traceability mechanisms established by persons who engage in the transfer, handling and use of genetically modified organisms; and

(bb) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 7—

Role of the Controller. **7A.** (1) Where the Authority determines that there is an overlap in its functions and the function of any other institution in relation food

safety or feed safety, the Authority may request the Controller to advise.

(2) Where a conflict arises between the Authority and any other public institution in the execution of its functions in relation to food safety or feed safety, the Authority may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Authority to verify that the Authority has established a system for the effective official control for food safety or feed safety.

The Kenya  
Plant Health  
Inspectorate  
Service Act,  
2012

(No. 54 of  
2012.)

s. 2 Inserting the following new definitions in proper alphabetical sequence—

“Controller” means the person appointed as the Food Safety Controller under the Food and Feed Safety Control Coordination Act, 2023; and

“multi-annual control plan” has the meaning assigned to it in section 2 of the Food and Feed Safety Control Coordination Act, 2023.

s. 5 Insert the following new paragraphs immediately after paragraph (m)—

(ma) conduct audits of the traceability mechanisms established by seed merchants, seed growers, agents and any other person who may be required to be registered under the provisions of this Act or any of the laws specified in the First Schedule; and

(mb) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 5—

Role of the Controller.

**5A.** (1) Where the Service determines that there is an overlap in its functions and the function of any other public institution in relation food safety, the Service may request the Controller to advise.

(2) Where a conflict arises between the Service and any other public institution in the execution of its functions in relation to food safety or feed safety, the Service may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Service to verify that the Service has established a system for the effective official control for food safety or feed safety.

The Agriculture and Food Authority Act, 2013  
(No. 13 of 2013)

s. 2

Insert the following new definitions in proper alphabetical sequence—

“Controller” means the person appointed as the Food Safety Controller under the Food and Feed Safety Control Coordination Act, 2023; and

“multi-annual control plan” has the meaning assigned to it in section 2 of the Food and Feed Safety Control Coordination Act, 2023.

s. 4 Insert the following new paragraphs immediately after paragraph (e)—

(ea) conduct audits of the traceability mechanisms established by persons who engage in the production, processing, marketing, grading, storage, collection, transportation or warehousing of agricultural products excluding livestock products as may be provided for under the Crops Act; and

(eb) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 4—

Role of the  
Controller.

**4A.** (1) Where the Authority determines that there is an overlap in its functions and the function of any other institution in relation food safety, the Authority may request the Controller to advise.

(2) Where a conflict arises between the Authority and any other institution in the execution of its functions in relation to food safety, the Authority may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Authority to verify that the Authority has established a system for the effective official control for food safety.

The Fisheries  
Management  
and  
Development  
Act, 2016  
(No. 35 of  
2016)

s. 2 Insert the following new definitions in proper alphabetical sequence—

“Controller” means the person appointed as the Food Safety Controller under the Food and Feed Safety Control Coordination Act, 2023; and

“multi-annual control plan” has the meaning assigned to it in section 2 of the Food and Feed Safety Control Coordination Act, 2023.

s. 58 Insert the following new paragraphs immediately after paragraph (h)—

(ha) conduct audits of the traceability mechanisms established by persons who engage in the handling, landing, transportation, processing or marketing of fish or fish products; and

(hb) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 58—

Role of the Controller.

**58A.** (1) Where the Committee established under section 58 determines that there is an overlap in its functions of the and the function of any other public institution in relation food safety, the Committee may request the Controller to advise.

(2) Where a conflict arises between the Committee established under section 58 and any other public institution in the execution of functions of the Committee in relation to food safety, it may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety

established by the Committee established under section 58 to verify that the Committee has established a system for the effective official control for food safety.

The Water Act, s. 2  
2016  
(No. 43 of  
2016)

Insert the following new definitions in proper alphabetical sequence—

“Controller” means the person appointed as the Food Safety Controller under the Food and Feed Safety Control Coordination Act, 2023; and

“multi-annual control plan” has the meaning assigned to it in section 2 of the Food and Feed Safety Control Coordination Act, 2023.

New. Insert the following new paragraphs immediately after paragraph (f)—

(fa) conduct audits of the traceability mechanisms established by water services providers; and

(fb) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 72—

Role of the Controller. **72A.** (1) Where the Regulatory Board determines that there is an overlap in its functions of the and the function of any other public institution in relation food safety, the Regulatory Board may request the Controller to advise.

(2) Where a conflict arises between the Regulatory Board and any other public institution in the execution of functions of the

Regulatory Board in relation to food safety, it may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Regulatory Board to verify that the Regulatory Board has established a system for the effective official control for food safety.

The Health Act, s. 2  
2017  
(No. 21 of  
2017)

Insert the following new definitions in proper alphabetical sequence—

“Controller” means the person appointed as the Food Safety Controller under the Food and Feed Safety Control Coordination Act, 2023; and

“multi-annual control plan” has the meaning assigned to it in section 2 of the Food and Feed Safety Control Coordination Act, 2023.

s. 17 Insert the following new paragraphs immediately after paragraph (k)—

(ka) conduct audits of the traceability mechanisms established in exercising stewardship in setting policy guidelines and standards for human food consumption, dietetic services and healthy lifestyle; and

(kb) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 17—

Role of the  
Controller.

**17A.** (1) Where the Director-General determines that there is an

overlap in its functions of the and the function of any other public institution in relation food safety, the Director-General may request the Controller to provide guidance.

(2) Where a conflict arises between the Director-General and any other public institution in the execution of functions of the Director-General in relation to food safety, it may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Director-General to verify that the Director-General has established a system for the effective official control for food safety.

## **MEMORANDUM OF OBJECTS AND REASONS**

The principle object of the Bill is to provide for the coordination of the public institutions in the control of food and feed safety. It establishes the Office of the Food Safety Controller and provides for the role of County Governments in food and feed safety in order to ensure the supply of safe food. Food safety is a critical function of the national and county government in fulfilment of the consumer protection as provided in the Constitution. The Bill will ensure that food is safely produced, distributed, processed, marketed and prepared for human consumption from the farm to fork.

The Bill provides for the coordination of Competent Authorities and provides for the multi-annual control plan, the verification of mechanisms utilised by Competent Authorities to enforce food and feed safety requirements and for audits of food safety or feed safety mechanisms. It further provides for the conduct of verification audits and risk analyses by the Controller. The Bill provides for traceability requirements and for reference laboratories for purposes of official control. It requires the submission of reports on food safety and feed safety to the Controller and for the appointment of compliance officers and the powers of compliance officers.

The Bill further provides for consequential amendments to the Public Health Act, Food, Drugs and Chemical Substances Act, Dairy Industry Act, Fertilizers and Animal Foodstuffs Act, Pest Control Products Act, Meat Control Act, Standards Act, Biosafety Act, 2009, Kenya Plant Health Inspectorate Service Act, 2012, Agriculture and Food Authority Act, 2013, Fisheries Management and Development Act, 2016, Water Act, 2016 and Health Act, 2017, to provide for the role of the Controller and for the multi-annual control plan.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill confers on the Cabinet Secretary the powers to make Regulations under the Act for the purposes of operationalizing the Act in order to implement the objectives. The Bill does not limit any fundamental rights or freedoms.

### **Statement on how the Bill concerns County Governments**

Food safety is a critical function of the national and county government in fulfilment of Article 43(1)(c) on Socio economic rights as read with Article 46 of the Constitution on the consumer protection. This Bill seeks to put in place a legal framework for collaboration between the national government and county governments in fulfilment of the

consumer protection as provided in the Constitution. The Bill therefore concerns county governments in terms of Articles 110(1)(a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Constitution.

**Statement of the Bill as a money Bill within the meaning of Article 114 of the Constitution**

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

AARON CHERUIYOT,  
*Senate Majority Leader.*

*Section 2 of the Public Health Act which the Bill proposes to amend*

**2. Interpretation**

In this Act, unless the context otherwise requires—

“adult” means a person of eighteen years of age or over;

“approved” and “prescribed” means respectively approved or prescribed by the Minister or the board or by the appointed officers or by the regulations framed under this Act as the case may be;

“basement” means any cellar, vault or underground room;

“board” means the Central Board of Health constituted under section 3;

“building” includes any structure whatsoever for whatever purpose used;

“burial” means burial in earth, interment or any other form of sepulture, or the cremation or any other mode of disposal of a dead body, and “buried” has a corresponding meaning;

“child” means a person under eighteen years of age;

“commercial area” means any area in any municipality, township or district which the Minister may, by order, define;

“dairy” means any farmhouse, cow-shed, milk-shop, milk-store or other place from which milk is supplied on, or for, sale, or in which milk is kept or used for purposes of sale or in which only surplus milk is manufactured into butter or cheese, or in which vessels used for the sale of milk are kept, but does not include premises from which milk is not supplied otherwise than in receptacles which are properly closed and sealed on delivery to the premises and which remain properly closed and sealed during the whole time from their delivery to the premises until their removal by the purchaser;

“dairyman” includes any cow-keeper, purveyor of milk or occupier of a dairy, and, in cases where a dairy is owned by a corporation or company, the secretary or other person actually managing the dairy;

“drain” means any drain used for the drainage of one building only, or of premises within the same curtilage and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed; at the Minister may appoint for any particular area;

“dwelling” means any house, room, shed, hut, cave, tent, vehicle, vessel or boat or any other structure or place whatsoever, any portion whereof is used by any human being for sleeping or in which any human being dwells;

“factory” means any building or part of a building in which machinery is worked by steam, water, electricity or other mechanical power, for the purposes of trade;

“food” means any article used for food or drink other than drugs or water, and any article intended to enter into or be used in the preparation of such food, and flavouring matters and condiments;

“guardian” means any person having by reason of the death, illness, absence or inability of the parent or any other cause the custody of a child;

“health authority”, in relation to the area of a municipality, means the municipal council of the municipality concerned, and, in relation to any other area, means the Minister;

“infected” means suffering from, or in the incubation stage of, or contaminated with the infection of, any infectious or communicable disease;

“infectious disease” means any disease (not including any venereal disease except gonorrhoeal ophthalmia) which can be communicated directly or indirectly by any person suffering therefrom to any other person;

“isolation” means the segregation and the separation from and interdiction of communication with others, of persons who are or are suspected of being infected; “isolated” has a corresponding meaning;

“keeper of a lodging-house” means any person licensed to keep a lodging-house;

“land” includes any right over or in respect of immovable property;

“latrine” includes privy, urinal, earth-closet and water-closet;

“lodging-house” means a building or part of a house including the veranda thereof, if any, which is let or sublet in lodgings or otherwise, either by storeys, by flats, by rooms or by portions of rooms;

“magistrate” means any magistrate empowered to hold a subordinate court of the first, second or third class;

“meat inspector” means any person employed by a health authority to inspect any meat;

“medical officer of health” means—

- (a) the Director-General for health; and
- (b) in relation to the area of any municipality, the duly appointed medical officer of health of the municipality including a public officer seconded by the Government to hold such office; and
- (c) in relation to any other area a medical officer of health appointed by the Minister for that area;

“medical observation” means the segregation and detention of persons under medical supervision;

“medical surveillance” means the keeping of a person under medical supervision; persons under such surveillance may be required by the medical officer of health or any duly authorized officer to remain within a specified area or to attend for medical examination at specified places and times;

“the Minister” means the Minister for the time being responsible for matters relating to Health;

“occupier” includes any person in actual occupation of land or premises without regard to the title under which he occupies and in case of premises subdivided and let to lodgers or various tenants the person receiving the rent payable by the lodgers or tenants whether on his own account or as an agent for any person entitled thereto or interested therein;

“offensive trade” includes the trades of blood-boiler, bone-boiler, fellmonger, soap-boiler, tallow-melter and tripe-boiler, and any other noxious or offensive trade, business or manufacture whatsoever;

“this Act” includes any rules or order made thereunder;

“owner”, as regards immovable property, includes any person, other than the Government, receiving the rent or profits of any lands or premises from any tenant or occupier thereof or who would receive such rent or profits if such land or premises were let whether on his own account or as agent for any person, other than the Government, entitled thereto or interested therein; the term includes any lessee or licensee from the Government and any superintendent, overseer or manager of such lessee or licensee residing on the holding;

“parent” means the father and the mother of a child, whether legitimate or not;

“premises” includes any building or tent together with the land on which the same is situated and the adjoining land used in connexion therewith, and includes any vehicle, conveyance or vessel;

“public building” means a building used or constructed or adapted to be used either ordinarily or occasionally as a place of public worship or as a hospital, college, school, theatre, public hall or as a public place of assembly for persons admitted by ticket or otherwise, or used or adapted to be used for any other public purpose;

“public latrine” means any latrine to which the public are admitted on payment or otherwise;

“rules” includes regulations and by-laws made or deemed to be made under this Act;

“slaughterhouse” means any premises set aside for the purpose of the slaughter of animals for human consumption;

“stock” means all domesticated animals of which the flesh or milk is used for human consumption;

“street” means any highway, road or sanitary lane, or strip of land reserved for a highway, road or sanitary lane, and includes any bridge, footway, square, court, alley or passage whether a thoroughfare or not, or a part of one;

“trade premises” means any premises (other than a factory) used or intended to be used for carrying on any trade or business;

“veranda” includes any stage, platform or portico projecting from the main wall of any building;

“veterinary officer” means a veterinary surgeon in the employment of the Government;

“workshop” means any building or part of a building in which manual labour is exercised for purposes of trade.

*Section 10 of the Public Health Act which the Bill proposes to amend*

### **10. Functions of Medical Department**

(1) There shall be a department, to be known as the Medical Department, which shall be under the control of the Director-General for health.

(2) The functions of the Medical Department shall be, subject to the provisions of this Act, to prevent and guard against the introduction of infectious disease into Kenya from outside; to promote the public health and the prevention, limitation or suppression of infectious, communicable or preventable disease within Kenya; to advise and direct local authorities in regard to matters affecting the public health; to promote or carry out researches and investigations in connexion with the prevention or

treatment of human diseases; to prepare and publish reports and statistical or other information relative to the public health; and generally to carry out in accordance with directions the powers and duties in relation to the public health conferred or imposed by this Act.

(3) It shall be the duty of the department to obtain and publish periodically such information regarding infectious disease and other health matter in Kenya, and such procurable information regarding epidemic disease in territories adjacent to Kenya or in other countries, as the interests of the public health may require.

*Section 2 of the Food, Drugs and Chemical Substances Act which the Bill proposes to amend*

## **2. Interpretation**

In this Act, except where the context otherwise requires—

“advertisement” includes any representation by any means whatsoever for the purpose of promoting directly or indirectly the sale or disposal of any food, drug, cosmetic, device or chemical substance;

“article” includes—

- (a) any food, drug, cosmetic, device or chemical substance and any labelling or advertising materials in respect thereof;
- (b) anything used for the preparation, preservation, packing or storing of any food, drug, cosmetic, device or chemical substance;

“authorized officer” means a medical officer of health, a public health officer or any suitably qualified person authorized in writing by a municipal council for the purposes of this Act, and—

- (a) for the purpose of any provision of this Act relating to the taking of samples, includes a police officer of or above the rank of sub-inspector;
- (b) for the purpose of section 29, includes a Veterinary Surgeon registered or licensed under the Veterinary Surgeons Act (Cap. 366);
- (c) for the purpose of any proceedings under section 35 of this Act, includes the clerk of a municipal council;

“Board” means the Public Health (Standards) Board established by section 27;

“chemical substance” means any substance or mixture of substances prepared, sold or represented for use as—

- (a) a germicide;
- (b) an antiseptic;
- (c) a disinfectant;
- (d) a pesticide;
- (e) an insecticide;
- (f) a rodenticide;
- (g) a vermicide; or
- (h) a detergent,

or any other substance or mixture or substances which the Minister may, after consultation with the Board, declare to be a chemical substance;

“container” includes any basket, pail, tray, package or receptacle of any kind, whether open or closed;

“cosmetic” includes any substance or mixture of substances manufactured, sold or represented for use in cleansing, improving or altering the complexion, skin, hair, eyes or teeth, and includes deodorants and perfumes;

“device” means any instrument, apparatus or contrivance, including components, parts and accessories thereof, manufactured, sold or represented for use in the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state, or the symptoms thereof, in man or animal;

“drug” includes—

- (a) any substance included in any publication mentioned in the Schedule; and
- (b) any substance or mixture of substances prepared, sold or represented for use in—
  - (i) the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state, or the symptoms thereof, in man or animal; or
  - (ii) restoring, correcting or modifying organic functions in man or animal;

“food” includes any article manufactured, sold or represented for use as food or drink for human consumption, chewing gum, and any ingredient of such food, drink or chewing gum;

“insanitary conditions” means such conditions or circumstances as might contaminate food, a drug or a cosmetic with dirt or filth or might render the same injurious or dangerous to health;

“label” includes any legend, work or mark attached to, included in, belonging to or accompanying any food, drug, cosmetic, device or chemical substance;

“medical officer of health” means a person appointed as a medical officer of health in accordance with the Public Health Act (Cap. 242), and includes a deputy medical officer of health and an assistant medical officer of health so appointed;

“package” includes anything in which any food, drug, cosmetic, device or chemical substance is wholly or partly placed or packed;

“premises” includes any building or tent together with the land on which the same is situated and any adjoining land used in connection therewith, and includes any vehicle, conveyance or vessel;

“preparation” includes manufactured and any form of treatment, and “prepared” shall be construed accordingly;

“public analyst” means a person appointed by the Minister, or by a municipal council with the approval of the Minister, to act as an analyst for the purposes of this Act:

Provided that no person shall be appointed a public analyst for any area in which he is engaged directly in any trade or business connected with the sale of food, drugs, cosmetics, devices or chemical substances;

“public health officer” means any person for the time being lawfully appointed as such by the Minister or by a municipal council to be a public health officer;

“sell” includes offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange, dispose of for any consideration whatsoever, or transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid;

“ship” includes any boat or craft;

“substance” includes liquid.

*Section 27 of the Food, Drugs and Chemical Substances Act which the Bill proposes to amend*

*Section 3 of the Dairy Industry Act which the Bill proposes to amend*

### **3. Interpretation**

In this Act, except where the context otherwise requires—

“Board” means the Kenya Dairy Board established by section 4;

“butterfat” means the natural and complete fat which is present in milk;

“Central Agricultural Board” means the Board established by section 35 of the Agriculture Act (Cap. 318);

“consumer” means a person who buys dairy produce for his own use and not for resale;

“dairy produce” means milk, cream, butter, ghee, cheese and any other product or by-product of milk;

“distributor” means a person who buys dairy produce for the purpose of resale;

“ghee” means pure clarified butterfat containing no preservative or colouring matter and no fats or oils other than butterfat;

“milk” means milk from a cow;

“Non-Scheduled Areas” means all areas of land in Kenya not for the time being comprised in the Scheduled Areas;

“package” includes cask, keg, crate, can, box, case, wrapper, tin, bottle, carton and every other receptacle or covering used for the packing of dairy produce;

“producer” means a person who produces, processes, manufactures, prepares or treats dairy produce for sale;

“registered producer” means a person registered under Part V;

“retailer” means a producer who sells dairy produce directly to consumers or a person who purchases dairy produce from a distributor for resale to consumers;

“Scheduled Areas” means the areas of land specified in the Schedule;

“sell” includes offer, advertise, keep, expose, transmit, convey, deliver, or prepare for sale and any exchange or disposal for consideration.

*Section 17 of the Dairy Industry Act which the Bill proposes to amend*

**17. Functions of the Board**

- (1) The functions of the Board shall be—
- (a) to organise, regulate and develop the efficient production, marketing, distribution and supply of dairy produce, having regard to the various types of dairy produce required by different classes of consumers;
  - (b) to improve the quality of dairy produce;
  - (c) to secure reasonable and stable prices to producers of dairy produce;
  - (d) to promote market research in relation to dairy produce;
  - (e) to permit the greatest possible degree of private enterprise in the production, processing and sale of dairy produce, consistent with the efficiency of the producer and the interests of other producers and of consumers; and
  - (f) generally to ensure, either by itself or in association with any Government department or local authority, the adoption of measures and practices designed to promote greater efficiency in the dairy industry.

(2) In the exercise of its powers and in the performance of its functions under this Act, the Board shall act in accordance with any general or special directions that may be given to it by the Minister.

*Section 2 of the Fertilizers and Animal Foodstuffs Act which the Bill proposes to amend*

**2. Interpretation**

In this Act, except where the context otherwise requires—

“analyst” means any person appointed under section 8 of this Act to be an analyst for the purposes of this Act;

“animal” means cattle, camels, horses, sheep, pigs, goats and poultry, but does not include dogs, cats and other domestic pets, or marine animals;

“animal foodstuff” means—

- (a) any—
  - (i) substance obtained by a process of crushing, gristing or grinding or by the addition to any substance or the removal therefrom of any ingredient; or

(ii) condimental foodstuff or mineral substance which possesses or is alleged to possess nutritive properties; or

(iii) substance of animal origin,

which is intended or offered for the feeding of livestock, domestic animals or poultry; or

(b) any stock lick or substance which can be and is used as a stock lick, whether or not it possesses medicinal properties,

but does not include straw, chaff, underground hay, silage, cereal in the grain or any substance which has been crushed, gristed or ground for a farmer in accordance with his directions for his own use, unless such substance has been declared by the Minister, by notice in the Gazette, to be an animal foodstuff for the purposes of this Act;

“Board” means the Fertilizer and Animal Foodstuffs Board of Kenya established by section 2A;

“Cabinet Secretary” means the Cabinet Secretary for the time being in-charge of matters relating to agriculture;

“fertilizer” means any substance or mixture of substances which is intended or offered for improving or maintaining the growth of plants or the productivity of the soil, but does not include manure, compost, wood ash, gypsum or refuse when sold in its original condition and under the same name, nor does it include organic fertilizers, other than lime;

“inspector” means any person appointed by the Minister under section 8 of this Act to be an inspector for the purposes of this Act;

“sell” includes offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange, dispose of for any consideration whatsoever, or transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid;

“the Director” deleted by Act No. 20 of 2015, s. 2(a).

*Section 2B of the Fertilizers and Animal Foodstuffs Act which the Bill proposes to amend*

## **2B. Functions of the Board**

The functions of the Board shall be to—

(a) regulate the fertilizers and animal foodstuffs industry in Kenya including the production, manufacture, packaging, importation and marketing of fertilizers and animal foodstuffs;

- (b) regulate the importation of raw materials for the manufacture of animal foodstuffs;
- (c) promote the manufacture of fertilizers and animal foodstuffs;
- (d) advise the national and county governments on—
  - (i) the procurement, importation and efficient and timely distribution of subsidized fertilizers and animal foodstuffs;
  - (ii) establishment of retail outlets of fertilizers and animal foodstuffs in the counties; and
  - (iii) development of policies related to the manufacture and distribution of fertilizer and animal foodstuffs;
- (e) inspect and test fertilizers and animal foodstuffs to ensure their qualify and safety;
- (f) license manufacturers, distributors and retailers of fertilizers and animal foodstuffs on the recommendation of the Director of Agriculture and the Director of Veterinary Services;
- (g) promote, in collaboration with stakeholders in the agriculture industry, research on fertilizer and animal foodstuffs;
- (h) ensure that fertilizers and animal food stuffs imported, manufactured or distributed in Kenya meet the standards of quality and safety as prescribed by law.

*Section 2 of the Pest Control Products Act which the Bill proposes to amend*

## **2. Interpretation**

In this Act, unless the context otherwise requires—

"adulteration" means addition of any substance or thing to a pest control product so as to change or alter its character, value, quality, composition, merit, efficacy and safety;

"advertise" includes any representation by any means whatever for the purpose of promoting directly or indirectly the sale or disposal of any pest control product;

"Board" means the Pest Control Products Board established under section 5;

"counterfeiting" means manufacturing, formulating, producing or making of any pest control products, labels or packages that are identical or substantially indistinguishable from those legally authorized under this Act and are likely to cause confusion, mistake or to deceive or pass off as

being genuine pest control products, labels or packages of the registrant of that particular product and "counterfeit goods" shall be construed accordingly;

"inspector" means a person appointed as an inspector under section 8;

"label" includes a legend, word, mark, symbol, pictogram or design applied or attached to, included in, belonging to or accompanying any pest control product;

"package" includes any container, wrapping, covering or holder in which any pest control product or material is wholly or partly contained, placed or packed;

"pest" means any injurious, noxious or troublesome insect, fungus, bacterial organism, virus, weed, rodent or other plant or animal pest; and includes any injurious, noxious or troublesome organic function of a plant or animal;

"pest control product" means a product, device, organism, substance or thing that is manufactured, represented, sold or used as a means for directly or indirectly controlling, preventing, destroying, attracting or repelling any pest and includes—

- (a) any compound or substance that enhances or modifies or is intended to enhance or modify the physical or chemical characteristics of a pest control product to which it is added; and
- (b) any active ingredient used for the manufacture of a pest control product;

"place" includes any vehicle, vessel, railway carriage or aircraft;

"sell" includes offer, advertise, keep, expose, transmit, convey, deliver and prepare for sale or exchange, and dispose of for any consideration whatsoever.

*Section 6 of the Pest Control Products Act which the Bill proposes to amend*

## **6. Functions of the Board**

The functions of the Board shall be—

- (a) to assess and evaluate pest control products in accordance with the provisions of the regulations made under this Act;
- (b) to consider applications for registration of pest control products and to make recommendations thereon to the Minister;

- (c) to advise the Minister on all matters relating to the enforcement of the provisions of this Act and regulations made thereunder;
- (d) to facilitate collaboration with other Government agencies in matters relating to this Act to promote trade under the National Electronic Single Window System established under section 3 of the National Electronic Single Window System Act.

*Section 2 of the Meat Control Act which the Bill proposes to amend*

**2. Interpretation**

In this Act, unless the context otherwise requires—

“animal” means any mammal or bird declared by the Minister, by notice in the Gazette, to be an animal to which this Act applies;

“meat” means any portion of an animal which is intended for human consumption, whether fresh, chilled or frozen or otherwise processed by any means whatsoever or included in any article of food for human consumption;

“the Minister” means the Minister for the time being responsible for veterinary services;

“slaughterhouse” means any place kept for the purpose of the slaughter of animals for human consumption.

*Section 3 of the Meat Control Act which the Bill proposes to amend*

**3. Power to make regulations**

(1) The Minister may make regulations—

- (a) providing for the licensing, control and regulation of slaughterhouses and of premises where meat is processed in any manner for human consumption, including the maintenance of technical, and in consultation with the Minister for the time being responsible for health, sanitary and hygiene standards in such slaughterhouses and premises;
- (b) defining areas to be served by specified slaughterhouses;
- (c) specifying standards, in consultation with the Minister for the time being responsible for health, to be observed in respect of the manufacture of meat products, including the name or description, composition, additives or contaminants, labeling and packaging of such products;

- (d) providing for the inspection of slaughterhouses and premises, and the taking of samples of meat products and food additives or contaminants used in connexion therewith;
  - (e) specifying the standards to be observed in respect of the storage and transportation of meat, and the transportation of animals intended for slaughter;
  - (f) for the control of imports and exports of meat;
  - (g) for the professional control, supervision and licensing of persons appointed to carry out any inspections in specified areas under the regulations;
  - (h) prescribing forms to be used and fees to be paid in respect of things to be done under the regulations;
  - (i) generally for the purpose of ensuring that meat is wholesome and properly fit for human consumption.
- (2) Regulations under this section—
- (a) may be made applicable to the whole or any part of Kenya, and different regulations may be made in respect of different parts of Kenya;
  - (b) may be made applicable to all slaughterhouses or premises used for meat processing, and different regulations may be made in respect of different classes of slaughterhouses or premises;
  - (c) may make such differential provision in respect of other matters as the Minister may consider necessary;
  - (d) may provide for the penalties, not exceeding a fine of ten thousand shillings or imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment, which may be imposed in respect of any breach of the regulations, and may provide for continuing penalties, not exceeding two hundred shillings, in respect of each day during which any such breach continues.

*Section 2 of the Standards Act which the Bill proposes to amend*

**2. Interpretation**

In this Act, unless the context otherwise requires—

“approved specification” means a specification in respect of which a standardization mark has been specified under section 10(1)(b);

“Bureau” means the Kenya Bureau of Standards established by section 3;

“code of practice” means a set of rules relating to the methods to be applied or the procedure to be adopted in connexion with the construction, installation, testing, sampling, operation or use of any article, apparatus, instrument, device or process;

“consolidator” means a person who assembles cargo belonging to various persons to form one consignment at the country of supply which may be declared as belonging to one importer at the port of destination and de-consolidated back into the original individual consignments for delivery to the respective cargo owners upon arrival at the destination port or consolidators warehouse;

“Council” means the National Standards Council established by section 6;

“Director” means the Director of the Bureau appointed under section 5;

“inspector” means an inspector appointed under section 13;

“Kenya Standard” means a specification or code of practice declared under section 9(1);

“manufacture” includes produce, process, treat, install, test, operate and use;

“mark” includes any device, brand, heading, label, ticket, name, signature, word, letter or numeral, or any combination thereof;

“permit” means a permit issued under section 10 of this Act or the regulations;

“sell” includes barter and exchange, and exposure or offer for sale, and export for or in pursuance of sale, and have in possession for any purpose of sale, export, trade or manufacture;

“specification” means a description of any commodity by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age or other characteristics, or to any substance or material of or with which, or the manner in which, any commodity may be manufactured, produced, processed, treated, tested or sampled;

“standardization mark” means a mark which has been specified by the Council under section 10;

“Tribunal” means the Standards Tribunal established under section 16A.

*Section 4 of the Standards Act which the Bill proposes to amend*

#### **4. Functions of the Bureau**

(1) The functions of the Bureau shall be—

- (a) to promote standardization in industry and commerce;
- (b) to make arrangements or provide facilities for the testing and calibration of precision instruments, gauges and scientific apparatus, for the determination of their degree of accuracy by comparison with standards approved by the Minister on the recommendation of the Council, and for the issue of certificates in regard thereto;
- (c) to make arrangements or provide facilities for the examination and testing of commodities and any material or substance from or with which and the manner in which they may be manufactured, produced, processed or treated;
- (d) to control, in accordance with the provisions of this Act, the use of standardization marks and distinctive marks;
- (e) to prepare, frame, modify or amend specifications and codes of practice;
- (f) to encourage or undertake educational work in connexion with standardization;
- (g) to assist the Government or any local authority or other public body or any other person in the preparation and framing of any specifications or codes of practice;
- (h) to provide for co-operation with the Government or the representatives of any industry or with any local authority or other public body or any other person, with a view to securing the adoption and practical application of standards;
- (i) to provide for the testing at the request of the Minister, and on behalf of the Government, of locally manufactured and imported commodities with a view to determining whether such commodities comply with the provisions of this Act or any other law dealing with standards of quality or description.

(2) Deleted by Act No. 5 of 1980, s. 3.

*Section 2 of the Biosafety Act, 2009 which the Bill proposes to amend*

**2. Interpretation**

In this Act, unless the context otherwise requires—

"applicant" means a person submitting an application pursuant to the provisions of this Act;

"Authority" means the National Biosafety Authority established under section 5;

"biosafety" means the avoidance of risk to human health and safety, and the conservation of the environment, as a result of the use of genetically modified organisms;

"contained use" means any activity undertaken within a facility, installation or other physical structure which involves genetically modified organisms that are controlled by specific measures;

"environment" includes the physical factors of the surroundings of human beings, including land, water, atmosphere, soil, vegetation, climate, sound, odour, aesthetics, fish and wildlife;

"financial year" means the period of twelve months ending on the thirtieth June in each year;

"genetically modified organism" means any organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology techniques;

"intentional introduction into the environment" means any deliberate use of genetically modified organisms other than not contained use;

"Minister" means the Minister for the time being responsible for matters relating to science and technology.

"modern biotechnology" includes the application of—

- (a) in-vitro nucleic acid techniques including the use of recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles; or
- (b) fusion of cells beyond the taxonomic family, that overcome natural physiological, reproductive and recombination barriers and which are not techniques used in traditional breeding and selection;

"placing on the market" means making a genetically modified organism available for sale; and

"regulatory agency" means a regulatory agency as set out in the First Schedule to the Act, or such other agency as the Minister may, by Order in the Gazette, determine.

*Section 7 of the Biosafety Act, 2009 which the Bill proposes to amend*

### **7. Objects and functions of the Authority**

(1) The object and purpose for which the Authority is established is to exercise general supervision and control over the transfer, handling and use of genetically modified organisms with a view to ensuring—

- (a) safety of human and animal health;
- (b) provision of an adequate level of protection of the environment.

(2) Without prejudice to the generality of subsection (1), the Authority shall—

- (a) consider and determine applications for approval for the transfer, handling and use of genetically modified organisms, and related activities in accordance with the provisions of this Act;
- (b) co-ordinate, monitor and assess activities relating to the safe transfer, handling and use of genetically modified organisms in order to ensure that such activities do not have adverse effect on human health and the environment;
- (c) co-ordinate research and surveys in matters relating to the safe development, transfer, handling and use of genetically modified organisms, and to collect, collate and disseminate information about the findings of such research, investigation or survey;
- (d) identify national requirements for manpower development and capacity building in biosafety;
- (e) advise the Government on legislative and other measures relating to the safe transfer, handling and use of genetically modified organisms;
- (f) promote awareness and education among the general public in matters relating to biosafety; and
- (g) establish and maintain a biosafety clearing house to serve as a means through which information is made available facilitate the exchange of scientific, technical, environmental and legal information on, and experience with, living modified organisms;
- (h) perform any other function which is incidental to the performance of any of the foregoing functions.

*Section 2 of the Kenya Plant Health Inspectorate Service Act, 2012 which the Bill proposes to amend*

## **2. Interpretation**

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

"Board" means the Board of Directors of Kenya Plant Health Inspectorate Service established by section 8;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for agriculture;

"chairperson" means the Chairman of the Board of Directors appointed under section 8(a);

"managing director" means the managing director of the Service appointed under section 10;

"member" means a member of the Board of Directors and includes the chairperson;

"Service" means the Kenya Plant Health Inspectorate Service established under section 3.

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

*Section 5 of the Kenya Plant Health Inspectorate Service Act, 2012 which the Bill proposes to amend*

## **5. Functions of the Service**

The functions of the Service shall be to—

- (a) regulate matters relating to plant protection, seeds and plant varieties;
- (b) administer and enforce sanitary and phytosanitary measures;
- (c) support the administration and enforcement of food safety measures;
- (d) establish service laboratories to monitor the quality and levels of toxic residues in agro-inputs, irrigation water, plants, soils and produce;
- (e) be the principal advisor to the Government on issues relating to seeds and planting material;

- (f) implement plant variety protection in Kenya, administer plant breeders' rights and maintain the Plant Breeders' Rights Register;
- (g) undertake plant variety testing and description, seed certification and plant quarantine control;
- (h) undertake inspection and grading of plants and plant produce at the ports of entry and exit;
- (i) in consultation with other relevant agencies, develop and implement standards for seed and plant materials;
- (j) implement and enforce national biosafety regulations on the introduction and use of genetically or living modified species of plants, insects and micro-organisms, plant products and other related species;
- (k) regulate import and export of plants and plant materials;
- (l) in consultation with other relevant agencies, regulate the commercial exploitation of naturally occurring plants and plant-related micro-organisms;
- (m) register and license seed merchants, seed growers, agents and any other person who may be required to be registered under the provisions of this Act or any of the laws specified in the First Schedule;
- (n) enter into association with such other bodies or organizations or authorized persons as the Board may consider desirable or appropriate in furtherance of the purposes for which the Service is established, and
- (o) be the liaison office for international conventions relating to plant variety protection, plant protection, seed certification and dealing with endangered species or any other related conventions

*Section 2 of the Agriculture and Food Authority Act, 2013 which the Bill proposes to amend*

## **2. Interpretation**

In this Act, unless the context otherwise requires—

"agriculture" means cultivation of land and the use of land for any purpose of husbandry and food production and includes—

- (a) cultivation of crops and horticultural practice within the meaning of the Crops Act;
- (b) deleted by Act No. 7 of 2016, Sch., Act No. 35 of 2016, Sch.;

- (c) the use of land, meadow land, market gardens or nursery grounds;
- (d) deleted by Act No. 7 of 2016, Sch., Act No. 35 of 2016 Sch.;
- (e) the use of land for agroforestry, when that use is ancillary to the use of land for other agricultural purposes;
- (f) transgenic and microbial formulations for use and application in agricultural systems; and "agricultural" shall be construed accordingly;

"Authority" means the Agriculture and Food Authority established by section 3;

"Board" means the Board of the Authority constituted pursuant to section 5;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to agriculture;

"director" means a director of the Authority established under section 11;

"manufacture" means the processing of agricultural products and includes the packaging, labelling, distribution or importation of scheduled agricultural products for sale in Kenya;

"person responsible", in relation to land, means—

- (a) the occupier of land, or, in the case of unoccupied land, the registered owner thereof; and
- (b) in the case of public lands over which grazing, occupation or other rights have been granted, the holder of those rights.

*Section 4 of the Agriculture and Food Authority Act, 2013 which the Bill proposes to amend*

#### **4. Functions of the Authority**

The Authority shall, in consultation with the county governments, perform the following functions—

- (a) administer the Crops Act, in accordance with the provisions of these Acts;
- (b) promote best practices in, and regulate, the production, processing, marketing, grading, storage, collection, transportation and warehousing of agricultural products excluding livestock products as may be provided for under the Crops Act;

- (c) collect and collate data, maintain a database on agricultural products excluding livestock products, documents and monitor agriculture through registration of players as provided for in the Crops Act;
- (d) be responsible for determining the research priorities in agriculture and to advise generally on research thereof;
- (e) advise the national government and the county governments on agricultural levies for purposes of planning, enhancing harmony and equity in the sector;
- (f) carry out such other functions as may be assigned to it by this Act, the Crops Act, and any written law while respecting the roles of the two levels of governments.

*Section 2 of the Fisheries Management and Development Act, 2016 which the Bill proposes to amend*

## **2. Interpretation**

In this Act, unless the context otherwise requires—

"access agreement or arrangement" means any agreement or arrangement entered into pursuant to section 128;

"Act" includes regulations or other forms of subsidiary legislation made hereunder;

"agent" means any person or unit appointed by the Board or Director-General to execute designated functions under this Act, or such other agent as may be appointed in accordance with section 17 (1) (c);

"aircraft" means any propelled or remotely controlled airborne device capable of sustained movement through the atmosphere and includes helicopters and monitoring devices;

"artisanal fisheries" means small scale traditional fisheries that may be carried out for subsistence or commercial purposes in which the owner is directly involved in the day-to-day running of the enterprise and relatively small amounts of capital are used;

"artisanal fishing vessel" means any local fishing vessel, canoe or undecked vessel with a length overall of not more than ten meters, which is motorised or not motorised by an outboard or inboard engine not exceeding forty horsepower, or powered by sails or paddles, but does not include decked or undecked semi-industrial fishing vessels or vessels used for recreational fishing;

"Authority" means the Fish Marketing Authority established by section 198;

"aquaculture" means the cultivation, propagation or farming of aquatic organisms, including fish, molluscs, crustaceans and aquatic plants whether from eggs, spawn, spat, seed or other means or by rearing fish lawfully taken from the wild or lawfully imported into Kenya, or by other similar process;

"aquaculture establishment" means any area, enclosure, premise or structure set up or used on land or in water for the purposes of aquaculture, and includes any cage or raft or other system;

"aquaculture resources" means live fish and marine plants cultivated under aquaculture;

"authorized officer" includes a fisheries officer, a disciplines officer of the service and any person appointed by the Board under section 18;

"automatic location communicator" means a device approved by the Director which is placed on a fishing vessel and is designed to transmit, whether independently or in conjunction with another device or devices, information or data concerning position, fishing and such other activities of the vessel as may be required and includes a mobile transceiver unit;

"barter" means trade of fish and fish products by two or more persons without use of money;

"beach management unit" means an organization of fishers, fish traders, boat owners, fish processors and other beach stakeholders who traditionally depend on fisheries activities for their livelihoods;

"Board" means the Fisheries Service Board established by section 10;

"Board of Directors" means the Board of Directors of the Fish Marketing Authority established under section 201;

"buy" includes—

- (a) barter;
- (b) purchase;
- (c) attempt to barter;
- (d) attempt to purchase;
- (e) receive on account or consignment;
- (f) receive in order to send, forward or deliver for sale;
- (g) broker a sale;

(h) purchase or barter for future goods or for any consideration of value; and

(i) purchase or barter as an agent for another person;

"buyer" means any person who buys;

"Cabinet Secretary" means Cabinet Secretary for the time being responsible for fisheries;

"carrier vessel" means a vessel that carries fish that have been harvested by another vessel but does not engage in fishing itself;

"commercial aquaculture" includes any aquaculture operation resulting or intending or appearing to result in the sale or trade of any fish which is a product of such aquaculture operation, including semi-commercial aquaculture;

"Council" means the Kenya Fisheries Council established under section 6;

"crew member" means a worker who is part of a team working on a fishing vessel, towards a common function, whether paid or unpaid, other than the master, a pilot or shore-based persons carrying out work aboard a fishing vessel and fisheries observers;

"dealing in fish" includes collecting, transporting, storing, transshipping, buying or selling fish or fish products for purposes of trade;

"designated Fishing Port" means fishing port established under section 50(1)b;

"Director-General" means the person appointed as such under section 15;

"export" in relation to fish or fish products means to—

(a) send or take out of Kenya; or

(b) carry or transport anything out of the country;

"export facility" means any building or vessel or area in which fish and fish products is handled, prepared and stored for export purposes, including the surroundings under the control of the same management;

"farming" in relation to any fish means the breeding, cultivating and rearing of any such fish or the cultivating of any such vegetation, as the case may be;

"fish" means any marine or aquatic animal or plant, living or not and processed or not, and any of their parts and includes any shell, coral, reptile and marine mammal;

"fisher" means every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers;

"fish landing station" means a point on the shore of any waters or coastline of which the Director-General has by notice in the gazette designated as a point to land fish;

"fish processing" means any process that adds value to or preserves fish and includes the cutting up, dismembering, cleaning, sorting, icing, freezing, drying, chilling, salting, gutting, smoking, canning or any other action taken to alter the shape, appearance or form of fish from that in which the fish is when first taken from its natural habitat;

"fish processing establishment" means any place other than a licensed fishing vessel where fish are canned, dried, gutted, salted, iced, chilled, frozen, smoked or otherwise processed or stored but does not include a restaurant, eating place, hotel, or place where fish is prepared for immediate retail sale or consumption;

"fish product" means any product or part thereof (including oil) obtained by fish processing, and intended for use as human food, animal feed or raw material ingredient in the manufacture of other commodities of commercial or ornamental value;

"fisheries officer" means the Director-General and any employee of the Service described in the first schedule;

"fishery" means—

- (a) one or more stocks of fish, or parts thereof existing in a delineated area, which can be treated as a unit for the purposes of conservation, development and management, taking into account geographical, scientific, technical, customary, recreational, economic and other relevant characteristics; or
- (b) any fishing for such stocks;

"fishery resources" or "fisheries resources" means any fishery or stock, species or habitat of fish or part thereof;

"fishing" means—

- (a) searching for or taking of fish;
- (b) the attempted searching for or taking of fish;

- (c) engaging in any other activity which can reasonably be expected to result in the locating or taking of fish;
- (d) placing, searching for or recovering any fish aggregating device or associated equipment including radio beacons;
- (e) any operation on Kenya fishery water or on the high seas in support of or in preparation for any activity described in paragraphs (a), (b), (c) or (d);
- (f) use of an aircraft which is related to any activity described in paragraphs (a), (b), (c) or (d), except for flights in emergencies involving the health or safety of a crew member or the safety of a vessel, but does not include aquaculture or the transportation of fish;

"fishing gear" means any equipment, implement, structure, construction, installation or other article that can be used in the act of fishing, whether or not it is used in connection with a vessel, including any fishing net, line, float, cork, buoy, basket, light, winch, boat or aircraft;

"fishing operations" includes fishing, supply of provisions to fishing vessels, and the handling and processing of fish up to the time it is first landed;

"fishing port" means a place on a lake shore or sea front where fishing vessels may resort for shelter, servicing, loading and off-loading of fish and fishing equipment;

"fishing related activity" means any activity in support of, or in preparation for, fishing including the—

- (a) transshipping of fish to or from any vessel;
- (b) landing, packaging, processing, handling or transporting of fish that have not been previously landed at port ;
- (c) provision of personnel, fuel, gear and other supplies at sea or performing other activities in support of fishing operations;
- (d) exporting fish or fish products from the country;and
- (e) attempting or preparing to do any of the above;

"fishing vessel" means any vessel used for, equipped to be used for, or of a type that is normally used for, fishing or fishing related activities;

"flag State" in relation to a vessel that is not a Kenya fishing vessel means the State in which the vessel is registered, provided it is registered in only one State;

"foreign fishing vessel" means any fishing vessel other than a Kenya fishing vessel and includes any support vessel, notwithstanding that the vessel may be registered or licensed or required to be registered or licensed in Kenya pursuant to this Act or under the Merchant Shipping Act and Kenya Maritime Act;

"genetic resource" includes germplasm of plants, animals or other organisms containing useful characters of actual or potential value;

"Government" means the Government of Kenya;

"high seas" means the waters beyond areas under the jurisdiction of any State including the territorial sea, exclusive economic zone or other zone of national jurisdiction;

"illegal fishing" includes—

- (a) activities conducted by national or foreign vessels in waters under the jurisdiction of a state without the permission of that state, or in contravention of its laws and regulations;
- (b) activities conducted by vessels flying the flag of states that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which those states are bound or relevant provisions of international law; and
- (c) activities carried out in violation of national laws or international laws or international obligations, including those undertaken by co-operating states to a relevant regional fisheries management organization;

"import" means the bringing into Kenya or Kenya Fishery waters of any fish or fish product and aquatic flora from any place outside Kenya;

"industrial fishing vessel" means a decked fishing vessel with an overall length of twenty meters or greater and with an inboard engine;

"international agreement" includes any treaty, convention, or other legally binding instrument, including bilateral, multilateral regional agreements or arrangements that Kenya is a party pursuant to the Treaty Making and Ratification Act, 2013, Cap 371;

"international conservation and management measures" means measures which are notified in the Gazette in accordance with section 31;

"Kenya fishery waters" includes all maritime zones declared in the Maritime Zones Act, Cap. 250 internal waters, Lakes, riverine systems and any other waters including intertidal, inland and riverine over which Kenya exercises or claims jurisdiction;

"Kenya fishing vessel" means a fishing vessel which is registered under the Merchant Shipping Act, and does not hold any other registration, or is wholly owned and crewed by residents of Kenya or by other persons gazetted by the Service as persons who traditionally fish in Kenya fishery waters, and which meets such other conditions as may be prescribed;

"Kenya Marine and Fisheries Research Institute" means the institute established under the Science and Technology Act;

"landing" means bringing any fish or fish product to the harbour, port or beach from within or outside the Kenya fishery waters and offloading;

"licensing period" means the period of time during which any licence or authorization issued in accordance with this Act is valid;

"locally based foreign fishing vessel" means any foreign fishing vessel which—

- (a) is based in and fully controlled or operated from Kenya;
- (b) fishes exclusively in the Kenya fishery waters; and
- (c) lands all of its catch or a substantial part of its catch in Kenya;

"master" means a person in command or in charge or apparently in command of the vessel, aircraft or a vehicle, but does not include a pilot on board a vessel solely for the purpose of navigation;

"management" means an integrated process of information gathering, analysis, planning, consultation, decision making, allocation of resources, formulation and implementation of rules and regulations which govern fisheries activities in order to ensure the continued production of the resources and accomplishment of other fisheries objectives;

"operator" means any person responsible for the operations of, directs or controls a vessel, including the owner, charterer and master of the vessel;

"person" means any natural person or business enterprise and includes a corporation, partnership, cooperative, association and any foreign government, its subdivisions or agents;

"pollution" shall have the meaning assigned to it under the Environmental Management and Co-ordination Act, 1999;

"recreational fishing" means non-commercial fishing by an individual for leisure or relaxation;

"sell" includes—

- (a) any method of disposition for consideration of anything which has value or which can be exchanged for cash or barter;
- (b) disposition to an agent for sale on consignment;
- (c) offering or attempting to dispose of for value or receiving or having in possession for disposal for value or displaying for disposal for value, or sending or delivering for disposal for value or causing or permitting to be sending or delivering for disposal for value, or causing or permitting to be disposed for value, offered or displayed for disposal for value; and
- (d) disposition by way of raffle, lottery, or other game of chance under the Betting Control and Licensing Act; and "sell" and "sold" have a corresponding meaning;

"semi-industrial fishing vessel" includes—

- (a) a decked fishing vessel with an overall length of not less than ten meters and not more than fifty GRT and not powered by an inboard engine; and
- (b) an undecked fishing vessel with an overall length of not less than ten meters and not more than twenty meters with less than fifty GRT and powered by engines of at least forty horse power;

"subsistence fishing" means local or non-commercial fisheries, oriented not primarily for recreation but for the procurement of fish for consumption by the fishers, their families and community;

"support vessel" means a vessel carrying out operations in connection with and support of a fishing vessel including transport, supply;

"surveillance" means checking and ensuring compliance with control measures imposed under this Act in fishing or fishing related activities;

"Service" means the Kenya Fisheries Service established under section 7;

"subsistence fishing" means local or non-commercial fisheries, oriented not primarily for recreation but for the procurement of fish for consumption by the fishers, their families and community;

"support vessel" means any vessel carrying out operations in connection with and support of a fishing vessel including transport, supply or fishing;

"surveillance" means checking and ensuring compliance with control measures imposed under this Act in fishing and fishing related activities;

"test fishing operation" means any fishing operation undertaken over a limited period of time with the approval of the Director-General for the purpose of testing the feasibility of commercial fishing operations with a view to establishing fishery operations, and not for commercial purposes;

"territorial waters" shall have the meaning assigned to it under the Maritime Zones Act, Cap. 371 and includes the territorial sea;

"transshipment" means transferring fish or fish products to or from any vessel, whether or not the fish or fish products have first been taken on board the vessel from which the fish is passed;

"unregulated fishing" includes —

- (a) activities conducted by vessels without nationality, or by those flying the flag state not party to that organization, or by a fishing identity in a manner that is not consistent with the conservation and management measure; and
- (b) activities carried in areas or fish stocks in relation to which there are no applicable conservation or management measures in where the fishing activity is conducted;

"unreported fishing" includes activities which the relevant authority has not been notified;

"vehicle" means any car, truck, van, bus, trailer or other powered land conveyance;

"vessel monitoring system" includes a satellite based reporting system capable of monitoring the position and activities of fishing vessels.

*Section 58 of the Fisheries Management and Development Act, 2016 which the Bill proposes to amend*

### **58. Competent authority**

(1) The Ministry responsible for the Service shall be the competent authority responsible for the official control of the safety of fish, fish products and fish feed.

(2) The Cabinet Secretary shall establish a technical committee on Fish Quality and Safety.

(3) The functions of the Committee shall be to—

- (a) monitor the production of fish products and fish feed with a view to assessing risks to humans;
- (b) regulate fish handling, landing, transportation, processing and marketing;

- (c) work in collaboration with other Government agencies in matters related to this section;
- (d) carry out inspection of operational fishery enterprises for compliance with fish safety regulations issued by the Cabinet Secretary;
- (e) lay down all procedures to be followed for compliance with provisions under paragraph (f);
- (f) specify conditions for the placing on the market of fish, fish products and fish feed;
- (g) maintain a register of fishery enterprises approved by the competent authority.
- (h) issue health certification of fish, fish products and fish feed subject to the consignment meeting set requirements;
- (i) perform such other functions as may be necessary or expedient for food safety conditions of fish products in accordance with this Act.

(4) The Cabinet Secretary may for the purposes of subsection (2) make regulations, and such regulations shall regard to conduct of the affairs of the standing committee.

*Section 2 of the Water Act, 2016 which the Bill proposes to amend*

## **2. Interpretation**

In this Act, unless the context otherwise requires—

"Authority" means the Water Resources Authority established under section 11;

"aquifer" means an underground geological formation able to store and yield water;

"basin area" means an area designated as such under section 24;

"basin water resources committee" means a water basin organization established under section 25;

"bulk water" means water supplied to a water services provider by the water services provider making the supply;

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to water;

"catchment area" means an area that is part of a basin designated as such under section 22;

"charges" in relation to the use of water from a water resource, includes fees, levies and premiums of any kind;

"county government" means a county government as provided for under Chapter 11 of the Constitution Kenya;

"county government executive" means the county executive committee member responsible for matters relating to water;

"cross-county water services provider" means a water services provider providing water services to more than one county;

"easement" means the right to occupy so much of the land of another as may be necessary for or incidental to the construction or maintenance of works authorised, or the exercise of rights conferred by a permit;

"Equalisation Fund" means the Equalisation Fund provided for in Article 204 of the Constitution;

"Fund" means the Water Sector Trust Fund established in section 113;

"ground water" means the water of underground streams, channels, artesian basins, reservoirs, lakes and other bodies of water in the ground, and includes water in interstices below the water table;

"inspector" means a person appointed by the Cabinet Secretary, the Authority, a water basin resources committee, or the Regulatory Board, to exercise the powers of an inspector under this Act;

"in-stream habitat" includes the physical structure of a water resource and the associated vegetation in relation to the bed of the water course;

"international waters" means the ocean water beyond territorial waters;

"Land and Environment Court" means the Land and Environment Court as established under article 162(2) of the Constitution;

"landholder" in relation to land, means the registered owner of the land or the person in whom the land is otherwise vested by law, and includes—

- (a) any person who by any established right, custom or estate is entitled to be the holder or possessor of land;
- (b) any person lawfully holding or occupying land in accordance with the provisions of any law empowering the allotment of land upon the promise of title, subject to the fulfilment by the allottee of prescribed conditions; and

(c) any person to whom a mining lease or mining location has been granted under the Mining Act, 2016 (No. 12 of 2016);

"licence" means a licence in force under this Act;

"licensee" means a water service provider licensed by the Regulatory Board under this Act;

"limits of supply", in relation to a water undertaking, means the limits within which the licensee is for the time being authorised to supply water;

"Management Board" means the Board of the Authority established under section 14;

"management of water resources" means the development, augmentation, conservation or protection of a water resource;

"peri-urban water services" means services provided in peri-urban areas as shall be defined by the Regulatory Board from time to time;

"permit" means a permit for the time being in force under this Act;

"person" includes a company, association or other body of persons whether incorporated or unincorporated;

"pollution", in relation to a water resource, means any direct or indirect alteration of the physical, thermal, chemical or biological properties of the water resource so as to make it —

(a) less fit for any beneficial purpose for which it is or is reasonably be expected to be used; or

(b) harmful or potentially harmful to—

(i) the welfare, health or safety of human beings;

(ii) any aquatic or non-aquatic life or property; or

(iii) the environment;

"public consultation", in relation to any application made, or action proposed to be taken under this Act, has the meaning assigned to it in section 139;

"reasonable water use" means the use of water without wastage;

"Regulatory Board" means the Water Services Regulatory Board established under section 70;

"reserve" in relation to a water resource, means that quantity and quality of water required—

(a) to satisfy basic human needs for all people who are or may be supplied from the water resource; and

(b) to protect aquatic ecosystems in order to secure ecologically sustainable development and use of the water resource;

"resource quality", in relation to a water resource, means the quality of all the aspects of a water resource including—

(a) the water quality stipulated for the reserve;

(b) the quantity, pattern, timing, water level and assurance of in-stream flow;

(c) the physical, chemical and biological characteristics of the water;

(d) the character and condition of the in-stream and riparian habitat; and

(e) the characteristics, condition and distribution of the aquatic biota;

"resource quality objectives", in relation to a water resource, means the level to be achieved and maintained in each aspect of resource quality for the water resource;

"riparian habitat" means the dynamic complex of plant, animal and micro-organism communities and their non-living environment adjacent to and associated with a watercourse;

"rural water services" means services provided in rural areas as shall be defined by the Regulatory Board;

"Salaries and Remuneration Commission" means the Salaries and Remuneration Commission established under Article 230 of the Constitution;

"sanitation" means the provision of on-site sanitation services including latrines, septic tanks and conservancies including the associated exhauster services;

"sector wide approach" means coordinated development in the sector to achieve national goals, effectiveness of funds and ownership of government institutions including sector wide planning and coordination, national monitoring and information and national implementation concepts;

"sewerage services" means the development and management of infrastructure for transport, storage, treatment waste water originating from centralized and decentralized systems but shall not include household sanitation facilities;

"spring" means water emerging from beneath the surface of the ground other than as a result of drilling or excavation operations;

"state organ" has the meaning assigned in Article 260 of the Constitution;

"stream" means the water contained in a watercourse, and includes a river;

"supply of water in bulk" means a supply of water to a licensee for distribution by or on behalf of the licensee taking the supply;

"swamp" means any shallow depression in which water collects either intermittently or permanently and where there is a small depth of surface water or a shallow depth of ground water and a slight range of fluctuation either in the surface level of the water or of the ground water level so as to permit the growth of aquatic vegetation;

"transboundary waters" means water resources shared between Kenya and another State;

"urban water services" means services provided in urban areas as shall be defined by the Regulatory Board from time to time;

"use of water", in relation to a water resource includes, without any limitation to—

- (a) abstraction, obstruction, impoundment or diversion of water forming part of a water resource;
- (b) the discharge of materials or substances into a water resource or
- (c) any activity of a kind prescribed by Regulations under this Act, in relation to a water resource;

"watercourse" means any natural channel or depression in which water flows regularly or intermittently, unless declared not to be a watercourse under this Act;

"water resource" means any lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer, artesian basin or other body of flowing or standing water, whether above or below the ground, and includes sea water and transboundary waters within the territorial jurisdiction of Kenya;

"water right" means the right to have access to water through a water permit;

"water resource management" means the conservation, including soil and water conservation, protection, development and utilization of water resources; and

"water services" means any services of or incidental to the supply or storage of water and includes the provision of sewerage services;

"water services provider" means a company, public benefits organization or other person providing water services under and in accordance with a licence issued by the Regulatory Board for the service areas defined by the licence;

"water storage" means a location or structure where water is stored for future use;

"Water Storage Authority" means the National Water Harvesting and Storage Authority established in section 30;

"Water Storage Board" means the Board of the National Water Harvesting and Storage Authority established under section 31;

"Water Strategy" means the Integrated National Water Services Strategy formulated by the Cabinet Secretary in section 64;

"water table" means —

- (a) impervious granular or detrital material, the upper surface of the body of free water which fills all openings in material that is sufficiently pervious to permit percolation; and
- (b) in fractured impervious rocks and in solution openings, the surface at the contact between the water body in the openings and the overlying ground air;

"water user" means a person using water from a water resource;

"water works development agencies" means the agencies of the national government established under section 65;

"works" means any structure, apparatus, contrivance, device or thing for storing, recharging, treating, carrying, conducting, providing or utilizing water or liquid waste, but does not include hand utensils or such other contrivances as may be prescribed by Regulations made under this Act.

*Section 72 of the Water Act, 2016 which the Bill proposes to amend*

## **72. Powers and functions of the Regulatory Board**

(1) The powers and functions of the Regulatory Board shall be to —

- (a) determine and prescribe national standards for the provision of water services and asset development for water services providers;

- (b) evaluate and recommend water and sewerage tariffs to the county water services providers and approve the imposition of such tariffs in line with consumer protection standards;
- (c) set licence conditions and accredit water services providers;
- (d) monitor and regulate licensees and enforce licence conditions;
- (e) develop a model memorandum and articles of association to be used by all water companies applying to be licensed by the Regulatory Board to operate as water services providers;
- (f) monitor compliance with standards including the design, construction, operation and maintenance of facilities for the provision of water services by the water works development bodies and the water services providers;
- (g) advise the Cabinet Secretary on the nature, extent and conditions of financial support to be accorded to water services providers for providing water services;
- (h) monitor progress in the implementation of the Water Strategy and make appropriate recommendations;
- (i) maintain a national database and information system on water services;
- (j) establish a mechanism for handling complaints from consumers regarding the quality or nature of water services;
- (k) develop guidelines on the establishment of consumer groups and facilitate their establishment;
- (l) inspect water works and water services to ensure that such works and services meet the prescribed standards;
- (m) report annually to the public on issues of water supply and sewerage services and the performance of relevant sectors and publish the reports in the Gazette;
- (n) make Regulations on water services and asset development which shall include business, investment and financing plans in order to ensure efficient and effective water services and progressive realization of the right to water services;
- (o) advise the Cabinet Secretary on any matter in connection with water services; and
- (p) make recommendations on how to provide basic water services to marginalised areas.

(2) The Regulatory Board shall have such powers and functions as may be conferred on it by this or any other Act, or as may be reasonably incidental to the exercise or performance of any power or function so conferred.

*Section 2 of the Health Act, 2017 which the Bill proposes to amend*

## **2. Interpretation**

In this Act unless the context otherwise requires—

"abortion" means termination of a pregnancy before the foetus is viable as an independent life outside the womb;

"alternative medicine" means complementary medicine and includes a broad set of health care practices that are not part of Kenya's tradition and are not integrated into dominant health care system;

"Authority" means the Kenya Health Professions Oversight Authority established under section 45;

"Board" refers to the governing Board of the Kenya Health Professions Oversight Authority;

"breastfeeding" means the method of feeding an infant directly from the female breast;

"Cabinet Secretary" means the Cabinet Secretary for Ministry responsible for matters relating to health;

"Committee" means the National Research for Health Committee established under section 93;

"Director-General" means the Director-General for health appointed under section 16;

"disaster" means but is not limited to an adverse situation or event, which overwhelms local capacity for response and recovery, necessitating external assistance;

"disease" refers to any physical or mental condition that causes pain, dysfunction, distress, social problems or death to the person afflicted or similar problems for those in contact with the person;

"e-Health" means the combined use of electronic communication and information technology in the health sector including telemedicine;

"emergency treatment" refers to necessary immediate health care that must be administered to prevent death or worsening of a medical situation;

"expressing milk" means the acts of extracting human milk from the breast by hand or by pump into a container;

"health" refers to a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity;

"health care professional" includes any person who has obtained health professional qualifications and licensed by the relevant regulatory body;

"health care provider" means a person who provides health care services and includes a health care professional;

"health care services" means the prevention, promotion, management or alleviation of disease, illness, injury, and other physical and mental impairments in individuals, delivered by health care professionals through the health care system's routine health services, or its emergency health services;

"health extension worker" means a health care professional working in health centres in rural and medically underserved areas, where they provide emergency treatments and a range of other health services to patients;

"health facility" means the whole or part of a public or private institution, building or place, whether for profit or not, that is operated or designed to provide in-patient or out-patient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health service;

"health system" means an organization of people, institutions and resources, that deliver health care services to meet the health needs of the population, in accordance with established policies;

"health technology" refers to the application of organized knowledge and skills in the form of devices, medicine, vaccines, procedures and systems developed to solve a health problem and improve the quality of life;

"human blood products" means any product derived or produced from blood, including plasma, sera, circulating progenitor cells, bone marrow progenitor cells and umbilical cord progenitor cells;

"informed consent" refers to a process of getting permission before conducting a health care prevention on a person;

"lactation stations" means private, clean, sanitary and well ventilated rooms or areas in the workplace where nursing mothers can wash up, breast feed or express their milk and hygienically preserve it;

"medical emergency" means an acute situation of injury or illness that poses an immediate risk to life or health of a person or has potential

for deterioration in the health of a person or if not managed timely would lead to adverse consequences in the well-being;

"private health services" means provision of health services by a health facility that is not owned by the national or county governments and includes health care services provided by individuals, faith-based organizations and private health institutions;

"public good" means a good or service whose benefits may be provided to a group at no more cost than that required to provide for one person;

"public health services" means health services owned and offered by the national and county governments;

"referral" means the process by which a given health facility transfers a client service, specimen and client parameters to another facility to assume responsibility for consultation, review or further management;

"reproductive cloning of a human being" means the manipulation of genetic material in order to achieve the reproduction of a human being and includes nuclear transfer or embryo splitting for such purpose;

"research for health" includes but is not limited to research which seeks to contribute to the extension of knowledge in any health related field, such as that concerned with the biological, clinical, psychological or social processes in human beings improved methods for the provision of health services; or human pathology; or the causes of disease; or the effects of the environment on the human body; or the development or new application of pharmaceuticals, medicines and other preventative, therapeutic or curative agents; or the development of new applications of health technology;

"risk" means probability or threat of damage, injury, liability, loss or any other negative occurrence caused by external or internal vulnerabilities that may be avoided through pre-emptive action;

"specialist" means a health professional who is specially trained in a certain branch of his or her profession related to specific services or procedures;

"telemedicine" refers to the provision of health care services and sharing of medical knowledge over distance using telecommunications and it includes consultative, diagnostic, and treatment services;

"therapeutic manipulation or cloning" means handling of genetic material of zygotic or embryonic cells in order to alter, for therapeutic purposes, the function of cells or tissues;

"tissues" shall include but not limited to the placenta, embryonic or foetal tissue, stem cells and umbilical cord; and

"traditional medicine" includes the knowledge, skills and practices based on the theories, beliefs and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health as well as in the prevention, diagnosis, improvement or treatment of physical and mental illness.

*Section 17 of the Health Act, 2017 which the Bill proposes to amend*

### **17. Functions of the Director-General**

The Director-General shall—

- (a) be the technical advisor to the Government on all matters relating to health within the health sector;
- (b) be the technical advisor to the Cabinet Secretary of health;
- (c) be responsible for preventing and guarding against the introduction of infectious diseases into Kenya;
- (d) promote the public health and the prevention, limitation or suppression of infectious, communicable or preventable diseases within Kenya;
- (e) advice the two levels of Government on matters of national security on public health;
- (f) promote and facilitate research and investigations in connection with the prevention or treatment of human diseases;
- (g) prepare and publish reports and statistical or other information relative to the public health;
- (h) obtain and publish periodically information on infectious diseases and other health matters and such procurable information regarding epidemic diseases in territories adjacent to Kenya or in other Countries as the interests of public health may require;
- (i) provide guidelines for registration, licensing, certification and gazettelement of all health facilities;
- (j) be responsible for internship program for health workers;
- (k) supervise the directorates within the national Ministry of health; and
- (l) perform any other duties as may be assigned by the appointing authority and any other written law.