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AGRICULTURE, FISHERIES AND FOOD AUTHORITY ACT

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NO. 13 OF 2013

AGRICULTURE, FISHERIES AND FOOD AUTHORITY ACT

[Date of assent: 14th January, 2013.]

[Date of commencement: 17th January, 2014 except for paragraphs 1(ix),
1(x) and 9 of the First Schedule.]

An Act of Parliament to provide for the consolidation of the laws on the regulation and promotion of agriculture generally, to provide for the establishment of the Agriculture, Fisheries and Food Authority, to make provision for the respective roles of the national and county governments in agriculture excluding livestock and related matters in furtherance of the relevant provisions of the Fourth Schedule to the Constitution and for connected purposes

[L.N. 4/2014.]

PART I – PRELIMINARY

1. Short title and commencement

This Act may be cited as the Agriculture, Fisheries and Food Authority Act, 2013 and shall come into operation on such a date as the Cabinet Secretary may, by notice in the *Gazette*, appoint not being more than twelve months after its publication and different dates may be appointed for different provisions.

[Act No. 37 of 2013, s. 2.]

2. Interpretation

In this Act, unless the context otherwise requires—

“**agriculture**” means cultivation of land and the use of land (whether or not covered by water) for any purpose of husbandry, aquaculture and food production and includes—

- (a) cultivation of crops and horticultural practice within the meaning of the Crops Act;
- (b) breeding of aquatic animals and plants in the Kenya fishery waters and sea ranching and fish farming in the sea as provided for in the Fisheries Act;
- (c) the use of land, meadow land, market gardens or nursery grounds;
- (d) fish harvesting within the meaning of the Fisheries Act; and
- (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, Fisheries 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;

“**directorate**” means a directorate of the Authority established under section 11;

“**manufacture**” means the processing of agricultural products and includes the packaging, labeling, 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.

PART II – ESTABLISHMENT, FUNCTIONS AND POWERS OF THE AUTHORITY

3. Establishment of the Authority

(1) There is established an authority to be known as the Agriculture, Fisheries and Food Authority.

(2) The Authority is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (b) borrowing money or making investments;
- (c) entering into contracts; and
- (d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The Authority shall be the successor to the institutions established by the Acts repealed under section 41 existing immediately before the commencement of this Act, the Crops Act, the Livestock Act and Fisheries Act respectively.

(4) Despite subsection (3), the Authority shall not be the successor of livestock based institutions existing immediately before this Act was enacted into law.

(5) The provisions of the First Schedule shall apply upon the commencement of this Act.

4. Functions of the Authority

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

- (a) administer the Crops Act, and the Fisheries 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 and aquatic products excluding livestock products as may be provided for under the Crops Act, and the Fisheries Act;
- (c) collect and collate data, maintain a database on agricultural and aquatic products excluding livestock products, documents and monitor agriculture through registration of players as provided for in the Crops Act and the Fisheries Act;
- (d) be responsible for determining the research priorities in agriculture and aquaculture and to advise generally on research thereof;
- (e) advise the national government and the county governments on agricultural and aquatic 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, the Fisheries Act and any written law while respecting the roles of the two levels of governments.

5. Board of the Authority

(1) The management of the Authority shall vest in a Board which shall consist of—

- (a) a chairperson appointed by the President with the approval of the National Assembly;
- (b) the Principal Secretary in the Ministry responsible for agriculture;
- (c) the Principal Secretary in the Ministry responsible for finance;
- (d) the Principal Secretary in the Ministry responsible for matters relating to county governments;
- (e) the Principal Secretary in the Ministry responsible for lands;
- (f) the Principal Secretary in the Ministry responsible for environment;
- (g) the Principal Secretary in the Ministry responsible for co-operatives;
- (h) a representative of the National Land Commission;
- (i) eight persons, being farmers' representatives, elected by the farmers to represent the major crop subsectors in Kenya;
- (j) the Director General who shall be the secretary to the Board and chief executive officer of the Authority; and
- (k) the Chairperson of the Transition Authority or his representative.

(2) The Cabinet Secretary shall make rules for election of the members of the Board under subsection (1)(i).

(3) The rules made under subsection (2) shall provide for mechanisms to ensure that not more than two thirds of the members so elected are of the same gender.

(4) A person appointed as a member of the Board under subsection (1)(a) and (i) shall—

- (a) be persons who have the relevant expertise qualification and experience in the agricultural sector:

- (b) be appointed through a competitive recruitment process;
 - (c) serve for a term of five years and shall be eligible for re-appointment once for a further term of five years.
- (5) A member of the Board, appointed under subsection (1)(a)(i) and (j)—
- (a) shall be appointed through a competitive appointment process;
 - (b) may at any time resign from office by notice in writing to the Cabinet Secretary;
 - (c) may be removed from office if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) otherwise fails to comply with the requirements of Chapter Six of the Constitution;
 - (v) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (vi) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his or her duties as a member of the Board.

6. Powers of the Authority

The Authority shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Authority shall have power to—

- (a) enter into contracts;
- (b) manage, control and administer its assets in such manner and for such purposes as best promote the purpose for which the Authority is established;
- (c) determine the provisions to be made for its capital and recurrent expenditure and for the reserves of the Authority;
- (d) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (e) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established;
- (f) open such bank accounts for its funds as may be necessary;
- (g) invest any funds of the Authority not immediately required for its purposes;
- (h) undertake any activity necessary for the fulfilment of any of its functions.

7. Conduct of business and affairs of the Authority

(1) The conduct and regulation of the business and affairs of the Authority shall be as provided in the Second Schedule.

(2) Except as provided in the Second Schedule, the Authority may regulate its own procedure.

8. Delegation by the Authority

The Authority may, either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act or under any other written law.

9. Remuneration of members of the Board

The remuneration payable to members of the Board shall be determined by the Salaries and Remuneration Commission.

10. Director-General

(1) There shall be a Director-General who shall be the chief executive officer of the Authority be appointed by the Board of the Authority through a competitive recruitment process.

(2) The appointment of the Director-General of the Authority under subsection (1) shall be done in consultation with the Cabinet Secretary and with the approval of the National Assembly.

(3) The Director-General shall hold office for a period of not more than five years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment for one further term.

(4) The Director-General shall be an *ex officio* member of the Board but shall have no right to vote at any meeting of the Board.

(5) The Director-General shall—

- (a) subject to the direction of the Board, be responsible for the day to day management of the Authority;
- (b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Authority, the exercise, discharge and performance of its objectives, functions and duties, and the general administration of the Authority;
- (c) be the secretary of the Board.

11. Organization of the Secretariat of the Authority

(1) The Authority shall organise its secretariat into such directorates as the Authority, with the approval of the Cabinet Secretary, may determine taking into account the functions of the Authority under this Act and any other Act of Parliament and including a Directorate of fisheries and Food production.

(2) The directorates to be established under subsection (1) shall include a directorate on fisheries and a separate directorate on food.

(3) Each directorate of the Authority shall have such autonomy as to enable it discharge its professional mandate and shall for purposes of enabling Kenya meet the relevant international obligations especially with respect to standards, each directorate shall be the recognized entity to represent Kenya in that behalf as the competent authority.

(4) Without prejudice to the general power of the Authority to establish directorates as contemplated under subsection (1), the Authority may establish directorates for each produce as may be necessary to enable the carrying out of any specialized activities with respect to the promotion or management of that agricultural and aquatic product.

(5) The appointments of any director or head of directorate under this section shall only be done with the prior approval of the National Assembly.

12. Staff

The Board may appoint such officers, agents and other staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act, upon such terms and conditions of service as the Board may determine.

13. The common seal of the Authority

(1) The common seal of the Authority shall be kept in the custody of the Director General or of such other person as the Board may direct, and shall not be used except upon the order of the Board.

(2) The common seal of the Authority, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

(3) The common seal of the Authority shall be authenticated by the signature of the chairperson of the Board and the Director-General.

(4) The Board shall, in the absence of either the chairperson or the Director General, in any particular matter, nominate one member of the Board to authenticate the seal of the Authority on behalf of either the chairperson or the Director-General.

14. Protection from personal liability

(1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Authority shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Board, shall, if the court holds that such act was done *bona fide*, be paid out of the funds of the Authority, unless such expenses are recovered by him or her in such suit or prosecution.

15. Liability for damages

The provisions of section 14 shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him or her,

his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works

PART III – FINANCES OF THE AUTHORITY

16. Funds of the Authority

(1) The funds and assets of the Authority shall consist of—

- (a) such moneys as may be appropriated by Parliament for the purposes of the Authority;
- (b) such gifts as may be given to the Authority;
- (c) all moneys from any other lawful source provided, donated or lent to the Authority.

(2) All moneys received in respect of the levy shall be paid to the Authority and if not paid on or before the date prescribed by the order, the amount due shall be a civil debt recoverable summarily by the Authority.

(3) The Authority shall apply the money received under this section for the furtherance of the objects and performance of the functions of the Authority.

17. Financial year

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

18. Annual estimates

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

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

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

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

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorisation of the Board given with prior written approval of the Cabinet Secretary.

19. Accounts and audit

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

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Authority together with—

- (a) a statement of the income and expenditure of the Authority during that year; and
- (b) a balance sheet of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act (Cap. 412B).

20. Investment of funds

(1) The Board may invest any of the funds of the Authority in securities in which, for the time being, trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

(2) The Board may place on deposit, with such bank or banks as it may determine, any moneys not immediately required for the purpose of the Authority.

PART IV – POLICY GUIDELINES ON DEVELOPMENT, PRESERVATION AND UTILIZATION OF AGRICULTURAL LAND

21. Land development guidelines

(1) The Cabinet Secretary shall, on the advice of the Authority, and in consultation with the National Land Commission, provide general guidelines, in this Act referred to as land development guidelines, applicable in respect of any category of agricultural land to the owners or the occupiers thereof.

(2) The land development guidelines contemplated under subsection (1) shall be implemented by the respective county governments taking into account the circumstances of the respective areas under their jurisdiction.

(3) The guidelines referred to in this section may require the adoption of such system of management or farming practice or other system in relation to land in question (including the execution of such work and the placing of such things in, on or over the land, from time to time) as may be necessary for the proper development of land for agricultural and fishing purposes.

22. Rules on preservation, utilization and development of agricultural land

(1) The Cabinet Secretary shall, on the advice of the Authority, and in consultation with the National Land Commission, make general rules for the preservation, utilization and development of agricultural land and aquatic resources, either in Kenya generally or in any particular part thereof.

(2) Without prejudice to the generality of subsection (1), rules made thereunder may—

- (a) prescribe the manner in which owners (whether or not also occupiers) shall manage their land in accordance with rules of good estate management;
- (b) prescribe the manner in which occupiers shall farm their land in accordance with the rules of good husbandry;
- (c) advise on the control or prohibition of the cultivation of land or the keeping of stock or any particular kind of stock thereon;
- (d) advise on the kinds of crops which may be grown on land;
- (e) provide for controlling the erection of buildings and other works on agricultural land;
- (f) provide for such exemptions or conditional exemptions from the provisions thereof as may be desirable or necessary;
- (g) provide for *ex situ* fish breeding to supplement *in situ* fish breeding and thereby outlaw seasonal bans on fishing;
- (h) provide for efficient and effective fishing methods that are sensitive to the social-economic status of local communities; and
- (i) provide for technical and other assistance to fishing communities to enhance their socio-economic development, especially that of vulnerable groups, including women.

(3) For the purposes of this section and of any rules made thereunder, and of any legislation of any county government—

- (a) an owner of agricultural land shall be deemed to fulfil his or her responsibilities to manage it in accordance with the rules of good estate management if, having regard to the character and situation of the land and other relevant circumstances, it enables an occupier of the land reasonably skilled in husbandry to maintain efficient production as respects both the kind of produce and the quality and quantity thereof;
- (b) the occupier of agricultural land shall be deemed to fulfil his or her responsibilities to farm it in accordance with the rules of good husbandry if the occupier is maintaining a reasonable standard of efficient production, as respects both the kind of produce and the quality and quantity thereof, while keeping the land in a condition to enable such a standard to be maintained in the future;
- (c) “**relevant circumstances**”, in relation to an owner or occupier, includes all circumstances affecting management or farming other than the personal circumstances of the owner or occupier.

23. Land preservation guidelines

(1) The Cabinet Secretary, on the advice of the Authority, and in consultation with the National Land Commission, for the purposes of the conservation of the soil, or the prevention of the adverse effects of soil erosion on, any land, may, prescribe national guidelines for any or all of the following matters—

- (a) prohibiting, regulating or controlling the undertaking of any agricultural activity including the firing, clearing or destruction of vegetation when such prohibiting, regulating or controlling is deemed by the Cabinet Secretary to be necessary for the protection of land against degradation, the protection of water catchment areas or otherwise, for the preservation of the soil and its fertility;
 - (b) requiring, regulating or controlling—
 - (i) the afforestation or re-afforestation of land;
 - (ii) the drainage of land, including the construction, maintenance or repair of drains, gullies, contour banks, terraces and diversion ditches;
 - (iii) salination, acidification and saltification of soil;
 - (c) requiring the uprooting or destruction, without payment of any compensation therefor, of any vegetation which has been planted in contravention of a land preservation order;
 - (d) requiring the supervision of unoccupied land;
 - (e) prohibiting, restricting or controlling the use of land for any agricultural purpose excluding livestock.
- (2) Any guidelines made under this section may provide for—
- (a) such exemptions or conditional exemptions from the operation thereof as may be specified;
 - (b) the grant of permits or conditional permits of exemption from the operation thereof;
 - (c) its application to certain periods or seasons of the year;
 - (d) restricting its application to specified persons or any class or description of person or to any area or areas;
 - (e) requiring or prohibiting any act or thing to be done to or in respect of any land notwithstanding that the purpose of such rule or order or its carrying into effect is or will be to the benefit of any other land or land in the ownership or occupation of another person.

PART V – PROVISIONS ON NOXIOUS AND INVASIVE WEEDS

24. Power to declare plant a noxious or invasive weed

(1) The Cabinet Secretary may, on the advice of the Authority, by notice in the Gazette, declare a plant to be a noxious or invasive weed in any area which shall be specified in the notice, and which may consist either of the whole of Kenya or of one or more areas thereof.

(2) By establishment of the county government, the Cabinet Secretary shall seek advice contemplated in subsection (1) from the county executive committee member responsible for agriculture.

(3) The county government shall provide technical support for the eradication of noxious and invasive weeds as part of its constitutional functions for plant disease control.

25. Duty to report

(1) A person having control or an interest over land within an area in which a plant has been declared a noxious or invasive weed in accordance with section 24 shall—

- (a) report forthwith to the county government the presence of any noxious or invasive weed thereon; and
- (b) clear the noxious or invasive weed, or cause it to be cleared from that land.

(2) A person who fails to comply with the provisions of this section commits an offence.

26. Power of county government officer to enter land

(1) An officer of the county government authorized for that purpose may at all reasonable times enter upon land situated in an area in respect of which he or she is authorized for the purpose of ascertaining whether any noxious or invasive weed exists thereon.

(2) A person who obstructs or attempts to obstruct or hinder an officer of the county government in the exercise of his or her duties under this Act commits an offence.

27. Order by county government to clear land

(1) If the officer of the county government finds upon land within a declared area any plant which has been declared to be a noxious or invasive weed under this Act, the county government may, by notice in writing to the person responsible for the land, require that person to clear the land of the noxious or invasive weed within a time to be specified in the notice.

(2) The notice referred to in subsection (1) shall state the particular noxious or invasive weed which has been found upon the land, and, as far as practicable, the portion or portions of the land on which the noxious or invasive weed has been found.

(3) A person who fails to comply with the provisions of a notice within the time specified therein commits an offence.

28. Eradication of weed by county government

(1) If the person responsible fails to clear the land within the time specified in a notice under this Part, an officer of the county government may enter, with or without assistance, upon the land and eradicate or cause to be eradicated any noxious or invasive weed found thereon.

(2) Any expenses incurred in eradication shall be a civil debt recoverable summarily from the person responsible for the land.

(3) Nothing in this section shall relieve the person responsible of any penalty incurred under this Act in consequence of his or her failure to comply with the provisions of a notice under this Act.

(4) Where the noxious or invasive weed is of such a nature or proportion that it cannot be cleared by an individual or community, the government shall take steps, within six months, of such notice given by an individual to the government, to clear the noxious or invasive weed.

PART VI – RESPONSIBILITY OF COUNTY GOVERNMENTS

29. Respective roles of national and county governments

(1) Each county government shall within its area of jurisdiction be responsible, for agricultural matters in accordance with Part 2 of Fourth Schedule to the Constitution.

(2) The national government shall, in accordance with Part 1 of section 29 of the Fourth Schedule to the Constitution, be responsible for agricultural policy and for assisting the county governments on agricultural matters.

(3) Each county government shall, for purposes of ensuring uniformity and national standards in the agricultural sector, through its legislation and administrative action, implement and act in accordance with the national policy guidelines issued by the Cabinet Secretary on the advice of the authority under this Act.

(4) Any action required under this Act to be done by the county government shall be deemed to have been done if done by an officer of the county government authorised by that government in that behalf.

30. Penalty for non-compliance with order

A person who contravenes or fails to comply with the terms of a land development order commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years, or both, and in the case of a continuing offence to a fine not exceeding fifty thousand shillings for every day of which the offence continues.

31. Register of land development orders

(1) Each county government shall cause a register to be kept containing the names and addresses of all persons upon whom land development orders are served and containing also copies of the orders, and, where any order does not contain them, particulars of the survey or land reference number of the land to which each order relates.

(2) Upon any land development order being fully complied with, or being varied or cancelled under any of the powers conferred by this Act, an appropriate entry recording compliance, variation or cancellation shall be made in the register.

(3) The register shall at all reasonable times be open to inspection by any person upon payment of the prescribed fee, and any person inspecting the register may take copies of or extracts from any entry therein.

(4) Any person may, on payment of the prescribed fee, obtain a copy of or extract from any entry in the register.

(5) Upon a land development order, or any cancellation or variation of such an order, coming into effect, the county government shall cause a notification thereof, and of the survey, land reference or title number of the land affected, to be given to the Registrar of Titles, who shall, without fee, enter against the title of the land in the appropriate register of titles a memorandum or note of the making, cancellation or variation of the order.

(6) Every land development order shall be deemed to be an encumbrance on the land to which the order relates.

32. Land preservation orders

A county government may make a land preservation order against the owner or occupier of land, or against both the owner and occupier either at the same time or at different times.

33. Appeal against a land preservation order

A person aggrieved by the making of a land preservation order may appeal to the court established under Article 162(2)(b) of the Constitution in the prescribed manner within thirty days of the issue of the order and upon an appeal the court may confirm, vary or cancel the order.

34. Cancellation and amendments of orders

(1) The county government may, by order, cancel any land preservation order, or exempt the person on whom any such order has been served from complying with any of the terms of the order, or extend the period within which any of the terms of the order is to be complied with.

(2) Whenever the county government exercises the powers conferred by subsection (1), it shall cause a notice to be served on the person concerned specifying the manner in which those powers have been exercised, and the order in respect of which those powers have been exercised shall thereupon be deemed to be cancelled or amended accordingly.

35. Register of orders

(1) The county government shall cause a register to be kept containing the names and addresses of all persons upon whom land preservation orders are served and containing copies of those orders, and, where any order does not contain them, particulars of the survey or land reference number of the land to which each order relates.

(2) Upon any land preservation order being fully complied with or being varied or cancelled under any of the powers conferred by this Act, an appropriate entry recording compliance, variation or cancellation shall be made in the register.

(3) The register shall at all reasonable times be open to inspection by any person upon payment of a prescribed fee, and any person inspecting the register may take copies of or extracts from any entry therein.

(4) A person may, on payment of the prescribed fee, obtain a copy of or extract from any entry in the register.

(5) Upon a land preservation order, or any cancellation or variation of such an order, coming into effect, the county government shall cause a notification, and of the survey, land reference or title number of the land affected, to be given to the Registrar of Titles, who shall, without fee, enter against the title of the land in the appropriate register of titles a memorandum or note of the making, cancellation or variation of the order.

(6) Every land preservation order shall be deemed to be an encumbrance on the land to which the order relates for the purposes of the Lands Act.

36. Failure to comply with an order

(1) Where an owner or occupier against whom a land preservation order is made refuses or fails to comply with the terms of the order, the county government may authorize another person or body of persons, to enter upon the land to which the order relates and to carry out such works on or to place such things in, on or over the land as are required to be done by the order or which are otherwise necessary to comply with, and any person who obstructs the execution of any such works, or any part thereof, or the placing of any such things in, on or over the land commits an offence.

(2) The expenses incurred in or about the exercise of the powers conferred by subsection (1) shall be a debt due to the Government from the owner or occupier of the land affected, as the county government may determine, or from the owner and occupier of the land affected in such proportions as the county government may determine.

(3) So long as any debt under subsection (2) remains due, interest at such rate as may be prescribed by the county government in consultation with the Cabinet Secretary for the time being responsible for finance shall be payable as from the date upon which the expenses were incurred.

37. Penalty for failure to comply

A person who contravenes or fails to comply with the terms of any land preservation order duly served upon him or her commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding one year or both, and in addition, in the case of a continuing offence, to a fine not exceeding one hundred shillings for each day on which the offence continues.

38. Right of lessee to compensation for work done in compliance with order

(1) Subject to the terms of the lease, where a lessee of any land has incurred expenditure on the land in complying with the terms of any land preservation order, he or she shall be entitled, at the termination of his or her lease, to obtain from the lessor, as compensation for that expenditure, such sum as fairly represents the residuary value of the expenditure by the lessor.

(2) No claim for compensation under this section shall be enforceable unless before the expiration of two months after the termination of the lease the lessee has served notice in writing on the lessor of his or her intention to make the

claim, and a notice under this subsection shall specify the nature of the claim and particulars of the expenditure incurred by the lessee.

(3) The lessor and the lessee may, within the period of four months after the termination of the lease, by agreement in writing, settle a claim under this section, and the county government may, upon the application of the lessor or lessee made within that period, extend that period by three months.

(4) Where, on the expiration of the period and any extension thereof made under subsection (3), a claim has not been settled, it shall cease to be enforceable unless before the expiration of one month from the end of the period and any extension, or within such longer time as the county government may in special circumstances allow, an arbitrator has been appointed by agreement between the lessor and the lessee under the provisions of this Act in that behalf or an application for the appointment of an arbitrator under those provisions has been made by the lessor or the lessee.

(5) Where a lessee lawfully remains in occupation of part of the land in respect of which expenditure referred to in subsection (1) was incurred after the termination of a lease, references in this section to the termination thereof shall, in the case of a claim relating to that part of the land, be construed as references to the termination of the occupation.

(6) A claim for compensation under this section shall, in default of agreement, be determined by the arbitration of a single arbitrator, and the provisions of the Arbitration Act (Cap. 49) shall apply to the arbitration.

(7) In this section, “**lessor**” includes a landlord and a licensor, “**lessee**” includes a tenant and a licensee and “**lease**” includes a tenancy and a licence.

39. Change of owner or occupier affect order

Where a land preservation order is in force in respect of any land, any disposition (including a testamentary disposition), devolution or transmission of the land to which the order relates shall not affect the continued operation of the order, and accordingly the order shall remain in force and be binding on the new owner or occupier as if it had been made so as to relate to the new owner or occupier as well as to the former owner or occupier.

40. Participation of farmers

(1) For purposes of ensuring effective participation of farmers in the governance of the agricultural sector in Kenya, there shall be close consultation with all registered farmers’ organisations in the development of policies or regulations and before the making of any major decision that has effect on the agricultural sector.

(2) The Cabinet Secretary shall make rules—

- (a) to ensure that any agreements, including any agreement with regard to contributions by farmers to their organizations, entered into between the farmers and the farmers’ organizations to which such farmers belong shall be respected by any third parties; and
- (b) to provide the procedures for internal democracy in the farmers’ organizations.

PART VII – MISCELLANEOUS PROVISIONS

41. Appeals

A person aggrieved by the making of a decision made under this Act by the Authority may appeal to the court established under Article 162(2)(b) of the Constitution.

42. Measurement of weight

The unit of measurement of the weight of all produce subject to regulation by the Authority shall be the kilogramme and each single package shall not exceed a weight of fifty kilogrammes.

43. Prohibition of export of some raw produce

A person shall not export raw cashew nuts, raw pyrethrum, raw bixa or raw macadamia except with written authority of the Cabinet Secretary issued with the approval of the National Assembly.

44. Competition in the sector

In the discharge of its functions under this Act or any other written law, the Authority shall ensure that there are no dominant undertakings in the sector as defined in section 23 of the Competition Act (Cap. 504).

45. Repeals

The following Acts are repealed—

- (a) Agriculture Act (Cap. 318);
- (b) Suppression of Noxious Weeds Act (Cap. 325);
- (c) Grass Fires Act (Cap. 327).

46. Regulations

The Cabinet Secretary may, on the advice of the Authority, make regulations generally for the better carrying out of the purposes and provisions of this Act, and without prejudice to the generality of the foregoing, may make regulations—

- (a) prescribing fees or charges for services rendered under this Act by the Board or its officers, servants or agents;
- (b) regulating and monitoring the entire value chain in the agricultural sector;
- (c) authorizing the examination and inspection of books and documents relating to the production, manufacture, distribution or sale of any produce; and
- (d) requiring the giving of agriculture related information, records to be kept, returns and estimates to be furnished to the Authority relating to the industry.

FIRST SCHEDULE

[Section 3(4).]

TRANSITIONAL PROVISIONS

1. Interpretation

In this Schedule—

“**appointed day**” means the day on which this Act comes into force;

“**assets**” include all property movable or immovable and all estates, easements and rights whether equitable or legal in, over or out of property, choses-in-action, money or goodwill of the former institutions whether situated in Kenya or elsewhere;

“**former institution**” means any institution established by a repealed Act, or a revoked legal notice, existing immediately before the appointed day and includes—

- (i) the Coconut Development Authority;
- (ii) the Kenya Sugar Board;
- (iii) the Tea Board of Kenya;
- (iv) the Coffee Board of Kenya;
- (v) the Horticultural Crops Development Authority;
- (vi) the Pyrethrum Board of Kenya;
- (vii) the Cotton Development Authority;
- (viii) the Sisal Board of Kenya;
- (ix) the Pests Control Products Board;
- (x) the Kenya Plant Health Inspectorate Service;

“**liabilities**” means liabilities, debts, charges, duties and obligations of every description, whether present or future, actual or contingent, and whether to be observed or performed in Kenya or elsewhere;

“**revoked legal notice**” means a legal notice revoked under paragraph 2 of this Schedule;

“**rights**” means all rights, powers, privileges and immunities whether actual, contingent or prospective, whether observed or performed in Kenya or elsewhere;

“**successor company**” means a company incorporated pursuant to paragraph 3.

2. Cabinet Secretary to review and revoke certain legal notices

The Cabinet Secretary shall review all legal notices establishing any former institution whose functions, by virtue of this Act, falls to be performed by the Authority and such legal notices shall be revoked by the respective authority with powers to revoke such legal notice in order to enable the transfer of the functions, assets, liabilities of former institutions to the Authority or successor companies, as contemplated under this Act.

3. Commercial institutions

(1) Every former institution which immediately before the commencement of this Act carried out any commercial activity with the objective of making profit shall within twelve months of the appointed day, and in accordance with the relevant procedures and practice applicable, transform into a company and be registered as a company under the Companies Act (Cap. 486) so as to enable the former institution carry on the commercial activity.

(2) Where a former institution was established for the purpose of carrying out both commercial activity for profit and any other non-commercial activity for the purpose of the promotion of agriculture or the provision of extension services to farmers, the functions of that institution shall be rationalized so that any non-commercial activities that was carried out by the former institution shall be carried out by the Authority under this Act.

4. Assets and liabilities

(1) On the appointed day, all the funds, assets and other property, both movable and immovable, which immediately before that date were vested in a former institution and—

- (a) which were for the purposes of the regulatory functions of the former institution shall, vest in the Authority;
- (b) which were for the purposes of the commercial objectives of the former institution, shall vest in the successor company.

(2) The Cabinet Secretary on the advice of the Transition Authority, shall cause to be distributed the assets of the former institutions between the Authority and the successor companies taking into account the respective needs of the Authority and the successor company as determined by their respective roles to be inherited from the former institution.

(3) On the appointed day, all rights, powers and liabilities, which immediately before that date were—

- (a) by virtue of its regulatory functions, vested in, imposed on or enforceable against a former institution shall be vested in, imposed on or enforceable against the Authority;
- (b) by virtue of its commercial objectives vested in, imposed on or enforceable against a former institution shall be vested in, imposed on or enforceable against the successor company.

(4) If, on the appointed day, any suit, appeal, arbitration or other proceedings of whatever nature and wheresoever's instituted in relation to the business of a former institution is pending, it shall not abate, be discontinued or be in any way prejudicially affected by reason of such transfer of the business of the former institution or of anything contained in this Act, and any suit, appeal arbitration or other proceedings shall be continued, and enforced by or against the Authority, in respect of the regulatory functions of the former institution or to the successor company, in respect of the commercial objectives of the former institution.

(5) In the case of assets and liabilities arising under any loans which vest in the Authority on the appointed day, the Authority may enter into such arrangements or agreements over such rights and liabilities with the Government or any other third party.

5. Reference to former institution

Any reference in any written law or in any document or instrument to a former institution shall, on and after the appointed day, be construed to be a reference to—

- (a) the Authority, if the reference relates to the regulatory functions of the former institution;
- (b) the successor company, if the reference relates to the commercial objectives of the former institution.

6. Proceedings

Any proceedings pending immediately before the appointed day to which a former institution was a party shall be continued in lieu of the former institution —

- (a) in respect of the regulatory functions of the former institution, by or against the Authority, as if the Authority was a party thereto;
- (b) in respect of the commercial objects of the former institution, by or against the successor company, as if the successor was a party thereto.

7. Agreements, deeds, etc.

Every agreement, deed, bond or other instrument to which a former institution was a party or which affected the former institution and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if the Authority or the successor company were a party thereto or affected thereby instead of the former institution and as if for every reference (whether express or implied) therein to the former institution there were substituted in respect of anything to be done on or after the appointed day.

8. Administrative decisions

The administrative decisions made by a former institution or by the Minister which are in force immediately before the appointed day shall, on or after such day, have force as if they were directions made by the Authority or the Cabinet Secretary under this Act.

9. ASCU to act as interim secretariat

The secretariat of the unit known as the Agricultural Sector Coordinating Unit existing at the commencement of this Act, shall for a period of not less than two years but not more than three years from the date of the commencement of this Act, act as the secretariat of the Authority.

10. Secretariats of former institutions to become directorates of the Authority

The respective secretariats or management units of the respective former institutions shall on the appointed date become directorates of the Authority subject to such rationalization measures as the Authority may deem necessary for the effective performance of its functions under the Act.

11. Staff

(1) Any person who, at the commencement of this Act, is a member of staff of a former institution shall, on the appointed day, become a member of staff of the Authority on the same or improved terms and conditions of service as may be specified by the Cabinet Secretary.

(2) A member of staff of a former institution may retire on the basis of abolition of office as the Authority may determine.

12. Disciplinary proceedings

(1) Where on the appointed day—

(a) any disciplinary proceedings against any member of staff of a former institution are in the course of being heard or instituted, or have been heard or investigated by the former institution but no order or decision has been made thereon;

(b) any such member of staff is interdicted or suspended,

the Authority shall—

(i) in the case of paragraph (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and

(ii) in the case of paragraph (b), deal with such member of staff in such manner as it deems appropriate having regard to the offence committed by him or her, including the completion of disciplinary proceedings that have been commenced against that member of staff.

(2) Where on the appointed day, any penalty, other than dismissal, has been imposed on any member of staff of a former institution pursuant to disciplinary proceedings and the penalty has not been, or remains to be, served by such member of staff, the member shall upon transfer to the Authority, serve or continue to serve such penalty to its full as if it had been imposed by the Authority.

13. Pension

(1) A member of staff of a former institution who becomes a member of staff of the Authority shall continue to be governed by the existing Government pension scheme.

(2) Where any person whose services are transferred to the Authority is, on the appointed day, a member of any statutory voluntary pension scheme or provident fund, the person shall for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds, as if the person had not been so transferred, and for purposes of the regulations governing those schemes or funds, service with the Authority shall be deemed to be service in the former institution.

SECOND SCHEDULE

[Section 7.]

PROVISIONS AS TO THE CONDUCT OF BUSINESS
AND AFFAIRS OF THE BOARD OF THE AUTHORITY

1. Meetings

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be one half of all the members.

(5) The chairperson shall preside at every meeting of the Board at which he is present but, in his absence, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

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

2. Disclosure of interest by Board members

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

3. Execution of instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

4. Minutes

The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

