



OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE



AG/LDD/442/2/21

29th October, 2024

Dr. Paul K. Ronoh PhD., CBS
The Principal Secretary
State Department for Agriculture
Ministry of Agriculture & Livestock Development
P.O Box 30028-00100
NAIROBI

Legal
cc MD/KEPHIS
P.N.K
11/11/24

RE: THE KENYA PLANT HEALTH INSPECTORATE SERVICE (AMENDMENT) BILL, 2024

This has reference to your letter dated the 2nd September, 2024 under Ref. MOA/OFTA/13/1/21, on the draft Kenya Plant Health Inspectorate Service (Amendment) Bill, 2024.

We have revised the draft Kenya Plant Health Inspectorate Service (Amendment) Bill, 2024 to align the tenure of the Chief Executive Officer of the Kenya Plant Health Inspectorate Service with the Code of Governance for State Corporations (Mwongozo) as directed by the Cabinet. Enclosed herewith, please find a revised copy of the Kenya Plant Health Inspectorate Service (Amendment) Bill, 2024 for your consideration and further instructions.

We trust that this is in order.

[Signature]
HON. SHADRACK J. MOSE
SOLICITOR-GENERAL
Encl.

- CS*
1. Renew & Advise.
 2. Is Section 8(d) contradicting Section 12?

[Signature]

26/11/2024



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**THE KENYA PLANT HEALTH INSPECTORATE
SERVICE (AMENDMENT) BILL, 2024**

A Bill for

**AN ACT of Parliament to amend the Kenya Plant Health
Inspectorate Service Act Cap. 349; and for
connected purposes**

ENACTED by the Parliament of Kenya, as follows—

Short title

1. This Act may be cited as the Kenya Plant Health
Inspectorate Service (Amendment) Bill, 2024.

Amendment of
section 2 of
Cap. 349.

2. Section 2 of the Principal Act is amended by—

(a) deleting the definition of the term “managing
director”

(b) inserting the following new definition in
proper alphabetical sequence—

“Director General” means the Director
General of the Service appointed under
section 10 of the Act;

(c) repealing subsection (2).

Amendment of
section 3 of
Cap. 349.

3. Section 3 of the principal Act is amended by
deleting subsection (2).

Repeal and
replacement of
section 5 of
Cap. 349.

4. The Principal Act is amended by repealing
section 5 and replacing with the following section—

Functions of the
Service.

5.(1) 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) implement 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 plant health;
- (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) support the implementation and enforcement of 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

The Kenya Plant Health Inspectorate Service (Amendment) Bill, 2024

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;

(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; and

(p) undertake training, capacity building and research on sanitary and phytosanitary issues.

Amendment of
section 6 of
Cap. 349.

5. Section 6 of the principal Act is amended in subsection (3) by deleting the word “Board” and substituting therefor the word “Service”.

Amendment of
section 7 of
Cap. 349.

6. Section 7 of the Principal Act is amended in subsection (1) by deleting the words “shall be the competent regulatory authority to implement” and substituting therefor the words “shall enforce in consultation with other relevant bodies”.

Amendment of
section 8 of
Cap. 349.

7. Section 8 of The Principal Act is amended in subsection (1) by —

(a) deleting paragraph (d) (iv) and substituting therefor the following new paragraph—

(iv) four whom shall have knowledge and experience in matters relating to the functions of the Service, one of whom shall have expertise in financial management or accounting and a member

The Kenya Plant Health Inspectorate Service (Amendment) Bill, 2024

of a professional body regulating the
accountancy profession";

(b) deleting paragraph (e) and substituting
therefor the following new paragraph—

(e) the Director General.

Amendment of
section 10 of
Cap. 349.

8. Section 10 of the Principal Act is amended—

(a) in the marginal note, by deleting the words
“managing director” and substituting therefor
the words “Director General”

(b) by deleting subsection (1) and substituting
therefor the following new subsection—

(1) There shall be a Director General who
shall be the chief executive officer of the
Service who shall be appointed by the Board
on such terms and conditions of service as
may be specified in the instrument of
appointment.

(c) by deleting subsection (2) and substituting
therefor the following new subsection—

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

* (d) by deleting subsection (4) and substituting
therefor the following new subsection—

(4) The Director General shall be
appointed for a term of three years on such
terms and conditions as may be specified in
the instrument of appointment and shall be
eligible for re-appointment for one further
term of three years.

(e) in subsection (5) by deleting the words
“managing director” and substituting therefor
the words “Director General”

Insertion of
new section

9. The principal Act is amended by inserting the
following new section immediately after section 10—

The Kenya Plant Health Inspectorate Service (Amendment) Bill, 2024

10A of Cap.
349.

Corporation
Secretary.

10A. (1) The Board shall appoint a corporation secretary who shall be the secretary to the Board.

(2) The Secretary shall be responsible for arranging the business of the Board's meetings, keeping records of the proceedings of the Board, and shall perform such other duties as the Board may direct.

(3) In the performance of his or her duties under this Act, the Secretary shall be responsible to the Director-General.

(4) The Board may in the absence of the Secretary appoint any member of the Board or staff of the Authority to temporarily perform the functions of the Secretary under subsection (2).

(5) Any functions delegated under subsection (3) may be so delegated subject to such conditions or restrictions as the Board may either generally or specifically determine.

Amendment of
section 11 of
Cap. 349.

10. Section 11 of the Principal Act is amended —

(a) in the marginal note, by deleting the words “and committees”;

(b) by repealing subsection (2).

Insertion of
new section
11A of Cap.
349.

11. The principal Act is amended by inserting the following new section immediately after section 10—

Committees of
the Board.

11A. The Board may establish and assign functions to such committees as it may consider appropriate, and such committees may consist partly or wholly of members of the Board.

The Kenya Plant Health Inspectorate Service (Amendment) Bill, 2024

- * Amendment of section 15 of Cap. 349. 12. Section 15 of the Principal Act is amended in subsection (1) by deleting the word “three” and substituting therefor the word “five”.
- Amendment of section 18 of Cap. 349. 13. Section 18 of the principal Act is amended by—
- (a) in the marginal note by inserting the word “common” immediately before the word “seal”;
 - (b) in subsection (1) by deleting the words “secretary to the board” and substituting therefor the words “Director General”; and
 - (c) in subsection (3) by inserting the word “common” immediately before the words “seal of the Service”.
- Amendment of section 22 of Cap. 349. 14. Section 22 of the principal Act is amended in paragraph (a) by deleting the words “managing director” and substituting therefor the words “Director General”.
- Amendment of section 23 of Cap. 349. 15. Section 23 of the principal Act is amended by deleting the words “managing director” and substituting therefor the words “Director General”.
- Amendment of section 24 of Cap. 349. 16. Section 24 of the principal Act is amended—
- (a) in paragraph (a) by deleting the words “managing director” and substituting therefor the words “Director General”;
 - (b) in paragraph (b) by deleting the words “managing director” and substituting therefor the words “Director General”;
 - (c) in paragraph (c) by deleting the words “managing director” and substituting therefor the words “Director General”.
- Amendment of section 25 of Cap. 349. 17. Section 25 of the principal Act is amended by deleting the words “managing director” and substituting therefor the words “Director General”.
- Repeal and replacement of section 28 of Cap. 349. 18. The Principal Act is amended by repealing section 28 and replacing with the following new section—

The Kenya Plant Health Inspectorate Service (Amendment) Bill, 2024

Regulations. **28.** The Cabinet Secretary may, after consultation with the Service, county governments and other relevant stakeholders, make Regulations for the better carrying out of the provisions of this Act.

Amendment of
the First
Schedule of
Cap. 349. **19.** The First Schedule of the principal Act is amended by —

(a) repealing paragraph (c).

(b) repealing paragraph (d).

Amendment of
the Second
Schedule of
Cap. 349. **20.** The Second Schedule of the principal Act is amended in paragraph 1, by deleting the word “two” and substituting therefor with the word “three”.

MEMORANDUM OF OBJECTS AND REASONS

The principle objective of the Bill is to amend Kenya Plant Health Inspectorate Service Act, 2012 so as to align it with the relevant guidelines in the Public Service.

Clause 1 deals with the short title of the Act.

Clause 2 proposes the amendment to section 2 of the Act by deleting the definition of the term managing director and introducing the definition of Director General so as to align it with the relevant guidelines in the Public Service on state corporations and deleting subsection (2) which is spent.

Clause 3 proposes the amendment of section 3 of the principal Act by deleting subsection (2) which provides for the transition of the defunct Kenya Plant Health Inspectorate Service to the Service as the provision is obsolete.

Clause 4 provides for amendment of section 5 of the principal Act to expand on the functions of the Service.

Clause 5 provides for the amendment of the principal Act by deleting the word board and substituting with the word Service.

Clause 6 provides for the amendment of section 7 of the principal Act to provide that the service shall work in consultation with other relevant government agencies.

Clause 7 proposes the amendment of the principal Act to provide for the full membership of the Service to include four people and the qualifications and deleting paragraph (e) which provides for the deletion of the managing director and replacing with Director General so as to align it with the relevant guidelines in the Public Service on state corporations.

Clause 8 provides for the amendment of section 10 of the principal Act to provide for the appointment of the managing director who will also be the Chief Executive Officer so as to align it with the relevant guidelines in the Public Service on state corporations.

Clause 9 provides for the insertion of a new section to introduce the position of the corporation secretary. This is to so as to align it with the relevant guidelines in the Public Service on state corporations.

Clause 10 proposes to amend section 10 of the Act by substituting managing director with Director General so as to align it with the relevant guidelines in the Public Service on state corporations.

Clause 11 proposes to amend section 11 of the Bill by proposing a new section on committees of the Board of the Service.

Clause 12 of the Bill proposes to amend section 15(1) of the Act to increase the period of the Board to submit estimates from three months to five months.

The Kenya Plant Health Inspectorate Service (Amendment) Bill, 2024

Clause 13 proposes to amend section 18 of the Act by substituting managing director with Director General so as to align it with the relevant guidelines in the Public Service on state corporations.

Clause 14 proposes to amend section 22 of the Act by substituting managing director with Director General so as to align it with the relevant guidelines in the Public Service on state corporations.

Clause 15 proposes to amend section 23 of the Act by substituting managing director with Director General so as to align it with the relevant guidelines in the Public Service on state corporations.

Clause 16 proposes to amend section 24 of the Act by substituting managing director with Director General so as to align it with the relevant guidelines in the Public Service on state corporations.

Clause 17 proposes to amend section 25 of the Act by substituting managing director with Director General so as to align it with the relevant guidelines in the Public Service on state corporations.

Clause 18 proposes to amend section 28 of the Act by providing for the role of county governments and other relevant stakeholders on the making of Regulations.

Clause 19 proposes to amend the First Schedule of the Act by deleting paragraph (c) and (d) which are spent.

Clause 20 proposes to amend the Second Schedule of the Act by providing for the period between meetings of the Board so as to align it with the relevant guidelines in the Public Service on state corporations.

Section 2 of Cap. 349 which it is intended to amend—

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

2 (2) Spent.

Section 3 of Cap. 349 which it is intended to amend—

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

Section 5 of Cap. 349 which it is intended 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 6 of Cap. 349 which it is intended to amend—

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

Section 7 of Cap. 349 which it is intended to amend—

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

Section 8 of Cap. 349 which it is intended to amend—

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

Section 10 of Cap. 349 which it is intended to amend—

10. Appointment of Managing Director

- (1) There shall be a managing director of the Service who shall be appointed by the Board on such terms and conditions of service as may be specified in the instrument of appointment.
- (2) The managing director shall be responsible to the Board, for the day-to-day management of the affairs of the Service and shall be Secretary to the Board, and perform such other functions as the Board may direct.
- (4) The managing director shall hold office for a term not exceeding three years, on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for one further term.
- (5) The Board may terminate the appointment of the managing director for—

Section 11 of Cap. 349 which it is intended to amend—

11. Appointment of staff and committees

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

Section 15 of Cap. 349 which it is intended to amend—

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

Section 18 of Cap. 349 which it is intended to amend—

18. Seal of the Service

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

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

Section 22 of Cap. 349 which it is intended to amend—

(a) the action or legal proceeding shall be commenced against the Service at least one month after written notice containing the particulars of the claim, and of intention to commence legal proceedings, has been served upon the managing director by the plaintiff or his agent; and

Section 23 of Cap. 349 which it is intended to amend—

23. Execution against property of the Service

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

Section 24 of Cap. 349 which it is intended to amend—

(a) delivering the notice or other document to the managing director or to any authorized employee of the Service;

(b) leaving it at the office of the managing director; or

(c) sending it by registered post to the managing director.

Section 25 of Cap. 349 which it is intended to amend—

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

The Kenya Plant Health Inspectorate Service (Amendment) Bill, 2024

Section 28 of Cap. 349 which it is intended to amend—

28. Regulations

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

First Schedule of Cap. 349 which it is intended to amend—

(c)Spent.

(d)Spent.

Second Schedule of Cap. 349 which it is intended to amend—

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

